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**NON-TARIFF BARRIER ON
INDIAN PRIMARY EXPORTS**

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CONTENTS

Introduction	1
Chapter 1: Sanitary and Phytosanitary Measures	7
Chapter 2: The Economics of Using Disguised Non-Tariff Barrier	15
Chapter 3: Case Study	25
Experience of Indian Exporters	25
Some Well Known International Disputes	30
Comment	36
Chapter 4: Some 'Other' Barriers on Indian Agro-Exports	41
Environment	41
Comment	51
Labelling	52
Comment	55
Chapter 5: Affected Agricultural Commodities	56
Chapter 6: The Problem and Possible Solution	62
Response	62
Adaptation Required	64
Comment	69
Conclusion	70
References	78
Annexure 1: Japan's SPS Notifications	80
Annexure 2: List of Plants Prohibited for Import in Japan	82
Annexure 3: UNCTAD's Classification of NTBs Affecting Primary Products	87

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Introduction

The basic objective of establishing WTO in 1995 was to raise standards of living and income, ensuring full employment, expanding production and trade and optimal use of the world's resources.

When GATT was established on 1947, agriculture was not among the topics of discussion. But as time went on, it was noticed that the predominant feature of global agricultural transaction is not characterised by free trade. Rather, a large number of developed and developing countries were protecting their agricultural sector by domestic and export subsidy and high tariff wall. The result was a distorted world price and the protective regime often shifted comparative advantage away from the low-cost agricultural producers (who are usually developing countries). The only way out was, all member countries should follow a uniform policy. So, in order to eliminate all these deformities, agriculture was brought under the wings of GATT (and obviously WTO later) from 1986 onwards. In the subsequent years (up to 1994), various Ministerial conferences were organised to discuss the formation of WTO and finally it was established on Jan 1, 1995. Agriculture was one of the key aspects of the newly formed organisation right from the beginning.

According to the agreement on agriculture, the member countries have to lower tariff rate and the subsidy offered to the domestic producers. In addition they have to provide increased market access for their trade partners. The extent of the reduction in support will depend on the economic status of the country (i.e., developed or developing). Developing countries are granted certain favourable

concessions regarding implementation of the WTO set rules. This feature is discussed in detail in Chapter I. Regarding other forms of protection, it was stated that no country is allowed to continue Non-Tariff Barriers (henceforth NTB) except for a few special situations. They must calculate the tariff equivalent of the presently prevailing NTBs (e.g. quota) and phase out these impediments to trade gradually. This process was known as tariffication of NTBs. NTBs can broadly be defined as Govt. laws, regulations, and policies or practices those offer a shield to domestic producers from foreign competition. For a country like India, where dependence on agro-based exports is predominant, this move is a blessing. The liberalisation in the arena of international agricultural trade would enable the Indian exporters of primary commodities to boost up their export.

However in a few special WTO compatible situations, the member countries can use NTBs on agricultural commodities. A few circumstances where the trading nations can exercise these practices are as follows:

- On grounds of acute BOP problem
- On grounds of environmental degradation
- On grounds of Sanitary and Phytosanitary Measures etc.

The policy instruments used in these cases are:

- 1) Pre-shipment Inspection
- 2) Import licensing
- 3) Customs Valuation
- 4) Subsidies and Countervailing duties
- 5) Rejection of shipments, in case the potential risk is very high

Presently, the allegation of the developing countries that the developed countries are using the agreement of Sanitary and Phytosanitary Measures, and a few other policies as a disguised policy instrument to protect their agricultural sector is gaining momentum. If their complain is true, then it is definitely in direct conflict with the basic motto of WTO. There is need to analyse the

situation more carefully. It is seen that tariffs on primary products are falling in India's major trade partners. However, Indian export growth is yet to match the expected level. So, an account of the NTBs is necessary.

The Indian agriculture is most likely to gain from the entire exercise under WTO since the trade partners are supposed to provide increased market access for Indian products. Presently the **major agro-based exports** of India are:

(i) *Live Animals and Animal Products*

- (1) Meat of Bovine Animals
- (2) Acided Bones
- (3) Fish and Related Products

(ii) *Agricultural Products*

- (4) Onions
- (5) Mango Pulp
- (6) Cashew Nuts
- (7) Walnuts
- (8) Coffee
- (9) Tea
- (10) Pepper
- (11) Groundnuts
- (12) Rice
- (13) Castor Oil and its Fractions
- (14) Sesameum seeds
- (15) Psyllium Husk
- (16) Guar

(iii) *Prepared products*

- (17) Instant Coffee
- (18) Unmanufactured Tobacco
- (19) Oil cakes
- (20) Raw-cotton

The emerging agricultural export items of India are, poultry products, honey, milk and milk products, live plants and cut flowers, vegetable and vegetable preparations, grains, cereals, seeds, lac, natural gums, resins, prepared meat and fish, sugar, animal feeds, manufactured tobacco etc.

The major markets of Indian agricultural exports are:

Serial Number	Product	Destination
1	Meat of Bovine Products	Malaysia, US, Philippines, Oman, Mauritius
2	Onion	US, Malaysia, Singapore, Saudi Arabia
3	Mango Pulp	US, Netherlands, UK, Germany, Saudi Arabia, Kuwait
4	Cashewnuts	US, Netherlands, UK, Japan, Australia, Hong Kong, Singapore
5	Coffee	Russia, Italy, US, Japan, Germany
6	Tea	Russia, US, Germany, UK, Japan
7	Pepper	US, Russia, Canada, UK, France
8	Groundnut	UK, Russia, Singapore, Philippines, Netherlands
9	Rice	Gulf countries, US, EU
10	Unmanufactured Tobacco	US, Russia, Japan, UK, Germany
11	Fish and Fish Products	Japan, US, Singapore, Hong Kong

As evident from the table, the major trade partners of India are US, EU, Japan. Indian agricultural export is likely to grow in the post-WTO era, owing to the openness in agricultural trade. But it is seen from the table provided in the next page that the market share of Indian primary export is not growing appreciably over the years. The fact is, these countries are imposing several WTO-approved trade-distorting policies on the export basket of India's agricultural products. There is a need to review India's possible danger areas in this regard.

India's share in world export by commodity groups

Sl. No.	Code group	Exportables Commodity/division/ group	Years							
			1970	1975	1980	1985	1990	1995	1997	1998
01		Meat and meat preparations	0.1	0.1	0.4	0.4	0.2	0.4	0.5	0.4
03		Fish, crustaceans and molluscs & preparations	-	-	2.0	2.4	1.6	2.2	2.6	2.5
04		Cereals and cereal preparations	0.1	0.1	0.5	0.6	0.6	2.7	1.5	1.6
	042	Rice	0.6	0.6	3.7	5.6	6.4	18.7	12.5	10.4
05		Vegetable and fruits	1.2	1.5	1.1	1.4	0.8	1.0	1.1	1.0
06		Sugar, sugar preparations and honey	1.0	4.8	0.3	0.0	0.1	0.8	0.4	0.4
07		Coffee, tea, cocoa, spices and manufactures	5.1	4.8	4.0	4.7	4.0	2.9	3.4	3.3
	071	Coffee and coffee substitutes	1.0	1.6	2.1	1.9	1.7	2.8	2.6	2.7
	074	Tea and mate	33.4	31.3	27.7	26.2	22.1	14.5	18.5	16.4
	075	Spices	20.5	13.3	14.5	19.3	7.7	9.6	12.1	11.2
08		Feeding stuff for animals	-	-	1.6	1.5	2.2	3.5	3.8	4.3
12		Tobacco and tobacco manufactures	2.5	3.2	4.4	1.8	0.8	0.5	0.9	1.0
	121	Unmanufactured tobacco and refuse	4.0	5.0	4.4	3.0	2.1	2.2	3.6	3.6
	122	Manufactured tobacco	0.2	0.4	-	0.7	0.3	0.0	0.0	0.0
22		Oilseeds and oleaginous fruit	-	-	0.3	0.3	0.8	1.2	1.5	1.6

Source: Economic Survey, 2000-2001

This paper tries to analyse the present situation. In Chapter 1, the agreement on Sanitary and Phytosanitary (henceforth SPS) Measures are discussed in brief and it is checked whether the agreement on SPS measures provide any opportunity to the member countries to act WTO-inconsistently. In Chapter 2, the rationale and potential gain of countries by implementing the NTB on SPS grounds

are discussed. In Chapter 3, the experiences of the Indian exporters and that of a few other countries are presented and the real intuition behind those steps are analysed. Though the main focus of the paper is on the Sanitary and Phytosanitary Measures and their application as NTBs, it acknowledges the presence of other forms of NTBs on Indian agricultural exports as well. So, in chapter 4, a few other forms of disguised NTBs applied on Indian agricultural exports as well as a few famous international cases are discussed and the way out is suggested. In Chapter 5, an account of certain export items of India, facing NTBs are provided. In chapter 6, first the path that India should follow is put forward, and then some potential fields that India should be careful about is discussed. Lastly, in conclusion, the findings of the paper are summarised and the impact of these NTBs on Indian primary sector is shown. The agricultural commodities considered in this paper do not merely include crops, but includes aquaculture, horticulture and dairy products as well.

Chapter 1

Sanitary and Phytosanitary Measures

The Uruguay Round SPS agreement applies to product standards used to protect human, animal or plant life from additives, contaminants, toxins or disease-carrying organisms in food, beverages or feedstuffs. In particular, SPS measures include all relevant laws, decrees, regulations requirements and procedures including, end product criteria; processes and production methods; testing, inspection and certification procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during their transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety. The agreement is applicable for all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade.

The SPS agreement requires certain commitments from the member countries but that does not constrain the freedom of any member to adopt 'appropriate' SPS standards (as perceived by the member) within its territory. The agreement basically tries to bring more transparency in adoption of standards. A member must give advance notice and an opportunity for comment before adopting a standard and must establish national "enquiry points", through which other members may obtain relevant information about its SPS standards and concerned regulatory processes. The agreement also provides for reasonable procedures for inspection and approval of the imported products.

The argument in a nutshell would not be inappropriate here. The SPS agreement is a part of the Agreement of Agriculture. The

agricultural agreement requires member countries to lower subsidies in the following areas in order to ensure freer trade flows:

Nature of Reduction	Developed countries 6 years (1995-2000)	Developing countries 10 years (1995-2004)
Average cut for agricultural products	36%	24%
Minimum cut per product	15%	10%
Total AMS cut for domestic sector (base period 1986-1988)	20%	13%
Value of Export subsidy	36%	24%
Quantities of subsidised export	21%	14%

Source: WTO Agreement

The SPS agreement contains 46 paragraphs and a well-defined annex. The first portion of the agreement (paragraph 5-8) is about the **Basic Rights and Obligations** of the members. The members can undertake any SPS policy measure to protect itself, provided that policy is not in conflict with the agreement. But the policy to protect human, animal or plant life should not exceed the necessary level and should be backed by sufficient scientific evidence. The next part of the agreement (Paragraph 9-13) explains the need of **Harmonisation**. Unjustifiable discrimination among trade partners with identical situation is not allowed according to this agreement. For example, while importing meat products from US and India, EU should set equal criteria for exporters from both countries. This is an issue of Harmonisation. For this purpose, all members are supposed to base their national standards on the recommendations on the existing international ones. The provisions will be necessary to protect the life or health of human, animal or plants in that country. However, if a country can show sufficient scientific justification for maintaining a higher than relevant international standard, only then it is allowed to do so. For example, Australia is allowed to impose an import ban from EU, if a serious disease breaks out there. However, even in that case, Australia must ensure that other provisions of the agreement are strictly followed.

The international standards in case of different measures are determined by different organisations. Codex Alimentarius commission is an international organisation of scientists and regulators funded by the United Nations Food and Agricultural Organisation and World Health Organisation. Through scientific review and consensus, Codex fosters harmonised inspection standards among nations and recommends international food standards to protect consumers. Similarly, International Plant Protection Convention and International Office of Epizootics work concerning measures on plants and animals respectively. These committees review the existing standards periodically and update them as required. They also recommend the member countries accordingly. The Committee on Sanitary and Phytosanitary measures monitor the procedure of international harmonisation along with the relevant international organisations in a coordinated manner.

The next point portrayed by the agreement is **Equivalence** (Paragraph 14-15). According to the agreement, the members must consider the standards prevailing in trade partners as equivalent even if they differ from that prevailing in their home country but satisfies the required standard objectively. Members must allow reasonable access to trade partners for testing and inspection in this regard. In order to achieve the equivalence as per their multilateral commitment, the members should enter into consultation with each other when requested. For example, if the Indian SPS standard can effectively ensure absence of a micro-organism (banned in US on SPS ground) in their products, US should accept the Indian standard as equivalent to its own. Slight difference in standard should not be erected as trade barriers.

The next section (Paragraph 16-23) discusses the concept of **Assessment of Risk and Determination of Appropriate Level of Sanitary or Phytosanitary Protection**. The members also have to ensure that their SPS measures are based on a risk assessment programme following the techniques suggested by the relevant international organisations. In calculation of the national standard,

the members must take into account all available scientific information, like existence of pests or relevant ecological conditions taking full account of the ecosystem, geography or epidemiological surveillance prevailing in their territory. The relevant economic factors like potential damage from any measure, cost effectiveness of any alternate approach to limit risks must be paid due attention. However, members must ensure that these policies should never be used unjustifiably in a trade-distorting manner. If the relevant scientific evidence is insufficient, then the member should base its standard on the data available from other members and the relevant international organisation. But the member must review its policy within a reasonable period of time, and it is bound to explain the rationale of maintaining the higher standard upon request of its trade partner. For example, if India feels that the higher SPS standard prevailing in EU is causing problem for exporters, she can demand an explanation from the EU.

The following portion (Paragraph 24-26) considers **Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence**. The members must ensure that their SPS measures take full account of the ecosystem, geography or epidemiological surveillance prevailing in their territory. If the exporters claim that the consignment is sent from low pest or pest-or-disease-free area, then it must be backed by necessary evidence. Reasonable access should be given to the importing country for testing or inspection, if requested. Paragraph 27 states that any change in the SPS measures of a member should be available to the other countries. This **Transparency** clause is expanded in Annex B of the agreement. Paragraph 28 concerns about **Control, Inspection and Approval Procedures**. The provisions are explained in details under Annex C.

Next comes the issue of **Technical Assistance** (Paragraph 29-30). The competent members are expected to help their developing counterparts either bilaterally or through relevant international organisations in the necessary fields (e.g. processing technology). The help may take different forms, like advice, credit, donations, grants etc. for example, if a huge investment is required for Bangladesh

to satisfy the SPS conditions prevailing in the US, the later may consider providing necessary assistance to the former. Also the developing members are allowed a longer time span to implement the conditions of the SPS agreement, compared to their developed counterparts. They may obtain some exemptions in following the agreement, if the Committee on SPS feels that necessary. In case of any scientific dispute, the established panel should seek the view of the experts in that subject, and if required, will establish an advisory technical expert group in that matter.

Following the WTO motto, the developing countries are granted some **Special and Differential Treatment**, which are discussed in Paragraph 31-34. The next section (Paragraph 35-37) discusses **Consultations and Dispute Settlement**. It states that in case of any scientific dispute, the established panel should seek the view of the experts in that subject, and if required, will establish an advisory technical expert group in that matter. The focus of the next part (Paragraph 38-44) of the agreement is on the **Administration** of the Committee of the SPS measures. The Committee is bestowed several duties like implementing the provisions and objectives of the agreement (e.g. Harmonisation), sponsoring technical consultation and study, for increased co-ordination, keeping close contact with the three key institutions, seeking explanation for a higher standard prevailing in a member country, review of operations after every three years and update the existing ones, if required etc.

The 45th Paragraph concerns about **Implementation**. The members are responsible for any existing measure within its territory. It is the obligation of the members to ensure that the SPS policies of the regional organisations and NGOs are in conformity with the agreement. The last paragraph (46th) is concerned about **Final Provisions**. The least developed countries have to implement the SPS agreement within 5 years from the date the agreement comes into force. Other countries have to implement it within 2 years. However they can deviate from this system only when the available scientific evidence can support its higher standard satisfactorily.

Annex A provides different useful definitions regarding the agreements, like SPS measures, harmonisation, Risk assessment, appropriate level of SPS protection, Pest-or-disease-free-area, low pest area etc.

Annex B is regarding the **Transparency** of the SPS measures. The members will regularly publish the relevant standards. There will be a reasonable gap between the introduction of a measure and its implementation, so that the developing country members can keep up with their pace. The enquiry points set by any member should readily explain any queries of trade partners upon request. The copies of the regulation must be supplied to interested members if requested. Whenever an international standard does not exist, then, it should be done following a well-defined notification procedure. In extraordinary situations, members can omit such steps but then they must notify the other countries through WTO secretariat.

Annex C is about **Control, Inspection and Approval Procedures**. The members will undertake any SPS measure without any unnecessary delay and the imported products should be given no less favourable treatment than domestic production. Also the confidentiality of the information about imported products should be given due care. However, the member countries are free to undertake any enquiry in their own territory.

So far, the agreement was discussed. It is important to check whether the agreement contains any grey areas, which can be utilised in order to distort trade. Member countries must ensure that the SPS measures followed by it are not more trade restrictive than required to achieve their appropriate level of protection. It is of utmost importance to note that WTO does not set any uniform 'minimum' trade-restrictive level for the protection of human, animal or plant life. Rather, it states quite clearly that the term 'appropriate level of SPS protection' signifies the level the member feels appropriate. The freedom of choosing "*appropriate level*" can be used by any member as a policy instrument.

The implication of the above expression is explained with a small example. If United States wants to follow the policy of zero risk from pesticide X on mango, it is entitled to ban the import the mangoes containing the traces of pest residue X. If the United States' purpose is to eliminate risk from pesticide X only, then it cannot impose a crude ban on all pesticide residues in any kind of mangoes. It is inconsistent with the SPS agreement. If a technically feasible, fully reliable and inexpensive test to detect the presence of the pesticide X in mangoes can be conducted, then it must be used instead of banning the import of mangoes arbitrarily. But a number of instances from the arena of international trade show that this principle is not properly followed.

The SPS measure must be based on scientific principles and must not be maintained without sufficient scientific evidences. However, if relevant scientific information is insufficient, even then a country can apply the SPS measures provisionally on the basis of the available information. But the country using the NTB on SPS ground must find out additional information for assessment of risk and review the measure within a reasonable period of time. If after some reasonable period, no sufficient evidence of risk to human, animal or plant is found, then the ban must be lifted. But still the imposing country can get the benefit of dispute over the terms '*sufficient scientific evidence*' and '*reasonable period of time*'.

An SPS measure can only be used on the basis of a '**risk-assessment**' process. There must be some scientific evidence of a risk to human, animal or plant life or health that the SPS measure is logically destined to protect against. For example, if United States can establish scientifically that pesticide Y is dangerous to rats and scientific principles suggests even a small risk to human, then all imports containing traces of this pest would be banned.

Another feature of the SPS measure is the issue of **harmunisation**. Members must base their SPS measures on international standards, guidelines or recommendations whenever

they exist. And again a concession for needy members are granted, if a member thinks that it is still lagging far behind the desired protection level, then it can depart from the existing international standard. In other words, the member can set a higher level of risk protection unilaterally at least for a small period. Now, it is not always so easy to identify the line between a genuine SPS measure and a disguised protection.

In the agreement it is mentioned that the members shall take into account the special needs of the developing countries and should not use their superior position to exploit them on SPS ground. If requested, specified, time-limited exemptions should be granted to them taking into account their financial, trade and development needs. However, it is often seen that the developing countries have to depend on the mercy of their developed partner. And developed countries do not always consider their need sympathetically. The shrimp dispute between a few countries (India was one of the parties involved) and US can be recalled.

According to the SPS agreement, if developing countries do not satisfy the standard prevailing in the developed country, the latter should help the former to overcome the problem. Again, the developed countries are not that willing to help their poor partners. Rather they often capitalise on their technical supremacy.

If one country feels that the SPS measure introduced by its partner is constraining its export and is not based on relevant international standard, then it can ask for an explanation. But the partner can always resort to the argument for its “**required domestic standard**” and is capable to continue the restriction at least in the short run. And in case of perishable primary products, even this short delay can be fatal.

So it is seen that there exist a number of loopholes in the multilateral agreement through which protectionism can well exist in disguise.

Chapter 2

The Economics of Using Disguised Non-Tariff Barrier

In the previous chapter, the loopholes in the SPS agreement through which the countries can impose NTB on the imported food products are discussed. The present chapter tries to find a suitable explanation why countries resort to this option as an important policy instrument.

After the completion of the Uruguay Round, the member countries have committed to reduce their tariff levels. At the same time, proper attention was paid so that the traditional NTBs like import licensing, quota etc. were liberalised and phased out gradually. This was considered to be a major improvement in eliminating impediments to world trade. But a number of countries found out new avenues through which they can follow the WTO objective and distort trade at the same time. New and complex methods are now a days being followed in this view. For example, the benefit for the country implementing NTBs on SPS ground are, these measures are non-transparent and surprisingly, above all, the obligation of ‘*burden of proof*’ rests on the victim. In other words, if United States today imposes a ban on Indian rice due to presence of some pest or fumigant residue, then it is entirely India’s headache to lodge a complain to WTO, demand necessary proof from United States, consult scientists and law experts, present the case to the Dispute Settlement Panel (henceforth DSP), etc. From all these, it is quite clear that even if India wins the case after a tussle of say 6 months, at least in the short run United States’ purpose is served. Also, often the importer switch to another safe exporter. The lengthy WTO dispute settlement procedure described below supports this proposition:

Step 1

If a member requests its trading partner for settlement of a standing dispute, the requested party should respond within 10 days from its receipt and enter into consultations within a period of 30 days. However, if they either do not respond or do not enter consultation within the specified period, the first member reserves the right to proceed directly for establishment of a dispute settlement panel.

Step 2

The member who requests consultation submit applications to dispute settlement board and the relevant councils and committees in writing. The requests should accompany all necessary informations.

Step 3

If the consultations fail to settle a dispute within 60 days after the request, the complaining party may ask for the establishment of a panel. The complaining party may request a panel during the 60-day period if both the parties consider that consultations have failed to settle the dispute. In urgent cases, (like perishable product), members shall enter into consultations within a period not more than 10 days from the date of request. If the consultation has failed to settle the dispute within a period of 20 days after the request, the complaining party may request a panel. The request for establishing a panel should be made in writing.

Step 4

The panel is composed of 3 members unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of 5 panellists. If there is no agreement on the panellists within 20 days from the establishment of the panel, at the request of either party, the Director General will form the panel in consultation with relevant authorities. The members must be informed of the composition of the panel thus formed, within 10 days.

Step 5

Panel should set precise deadlines for written submissions by the parties and the parties should respect the deadline. It then listens the arguments of the parties concerned, first the applicant member and then the respondent. When the panel considers that it cannot provide its report within 6 months, or within 3 months in cases of urgency, it shall inform the DSB in writing of the reasons of the delay, together with an estimate of the period, within which it can submit its report.

Course of Action	Time required
Complaining party	3-6 weeks
Respondent party	2-3 weeks
First substantive meeting	1-2 weeks
Written rebuttals from the parties	2-3 weeks
Second substantive meeting	1-2 weeks
Report to the parties	2-4 weeks
Comment from the parties	2 weeks
Interim report	2-4 weeks
Deadline for parties for requesting review	1 week
Panel review	2 weeks
Final report to parties	2 weeks
Final report to members	3 weeks

Step 5

If any member is not happy with the panel report, then it has to notify its decision to DSB within 60 days. Then an Appellate Body is formed. The proceedings shall not exceed 60 days from the date a party formally notifies to approach DSB. If the AB can not submit the report within that period, it must inform the DSB. In no case the proceeding should exceed 90 days.

The time taken from the establishment of the panel by the DSB, until the DSB considers the panel or Appellate report for adoption

shall not, as a general rule, exceeds 9 months where the report is not appealed or 12 months, where the report is appealed. All these establish the fact that the complainant country has to bear the entire burden of the exercise.

The SPS measures are undertaken when the food imports fail to satisfy the domestic criteria set by the importing country. In chapter 1, we have already seen that these criterion are set entirely by the domestic country in order to protect the human, animal and plant life from any sort of toxication keeping in view the local condition calculating the potential risk. By exaggerating a potential risk, an importing country can definitely implement higher standards.

Some practiced forms of NTBs used on the SPS ground are as follows:

- (1) In case of rice, wheat or other foodstuffs; presence of bacteria or pest residue.
- (2) In case of livestock production, presence of all hormones, natural and synthetic, level of harmful substances like cholesterol etc.
- (3) In case of cut flowers, if pest residues and fertiliser residues exceed a certain amount.
- (4) In case of marine products, presence of certain diseases, contamination due to improper freezing or packing.
- (5) In case of fruits, presence of flies, insufficient vapour treatment etc.
- (6) In case of poultry products, potential outbreak of fowl diseases.

Now one thing is very clear from the ongoing trend. The developed countries like United States, Australia, Japan and trade bloc like EU, are more willing to use NTBs against the food import from the developing world. In the annexe, several restrictive policies of Japan are mentioned. The developing or underdeveloped countries do not exercise these things as frequently as their developed counterparts. And why these countries like United States, blocs like EU impose such strong impediments to trade being proponents of free trade? Actually these countries had comparative advantage in

capital-intensive industries, not in the primary sector. So they used to pay a high subsidy to their domestic producers for a long time. By this way, their agricultural lobby has become competent enough and now these economies are facing the problem of overproduction, so they are very much interested about capturing foreign market for primary products and hence shout for market access, free trade etc. But they are least interested to compete with foreign producers in the domestic market. Then they urge the respective Governments to intervene and block the entry of agricultural products, originating mostly from the third world. In other words, they are interested in a 'one-way' free trade.

The proposition will be more meaningful if we analyse the situation by using the famous index, Producers Subsidy Equivalence (PSE) used for indicating the subsidy level. It is seen that Japan topped the list with PSE index 72.5 percent in the early 90s. EU was in the second place with PSE index 37 percent. United States was also not far behind. Even in late 90s, Japan and EU continue to provide a high level of subsidy to their agricultural sector. As of 1996, the PSE in Japan for total agriculture is 71, the corresponding figures for crops and livestock productions being 88 and 49 respectively. In case of EU, PSE is decreasing over the years, but still it is quite high.

An analysis of the policies followed by these countries in the pre-WTO era will be helpful in explaining the point clearly. If the present SPS measures followed by them are judged in the light of their earlier policies, then it is seen that their policies are in no way inconsistent with the previous one. Rather they are simply continuation of the older policies.

Earlier Japan used extensive quantitative import restriction in case of cereals and complete ban on rice import. The domestic rice producers used to get a price considerably above the world price. Now-a-days Japan is gradually phasing out quotas for different commodities as a part of WTO commitment, but at the same time intentionally keeps restrictive Phytosanitary restrictions on fresh fruits and vegetables. Often the testing policy and other

regulations in Japan are not backed by enough scientific justification. Japanese standards are outdated and restrictive, often unique in Japan. For example, the Japanese fumigation policy lacks transparency. In case of horticultural products, upon inspection, suppose the import is found infested with live insects. Japanese plant quarantine regulations require that these imports should go through fumigation, irrespective of the fact whether these are some harmful alien plant pests or any variety already present in Japan. The result is very serious for trade in delicate horticultural products like lettuce and cut flowers, which generally do not survive this treatment. In a recent amendment of the Plant Quarantine Law the Japanese Government has exempted 53 pests and 10 plant diseases fumigation requirements. But that does not include common insects found in US fresh fruits and vegetables.

The case of EU also deserves attention. Decades back, EU was a net importer of sugar. Through a compact programme of import restriction and export subsidy, today EU is a net exporter of sugar. Still sugar can be produced in the developing countries at a lower price. So EU follow the best way in which they can protect their market without violating the WTO regulations, i.e. restrict sugar import on SPS ground, or labour condition ground. As already discussed, every country has the freedom to choose the 'appropriate' level of protection. EU simply enjoys the benefit of those grey areas. The WTO trade policy review for EU noted that PSE index for sugar producers registered an increase in the period 1995-96. The cases of the dairy products are also worth mentioning. EU became self-sufficient and a major player in the market of dairy products due to excessive subsidies coupled with strategically restrictive import policy. It was watched carefully so that no imported dairy product could reach EU at a price lower than prevailing EU prices. The import levies were reviewed every two weeks.

Now after imposition of WTO, EU has to restrict its earlier trade practice. It liberalised foodstuff import in theory and resorted to WTO-consistent NTBs on SPS ground instead of traditional quota system. An example will not be inappropriate here. Europe banned

meat import from India in 1996-97 just because the disease affected the cattle in a particular region of Andhra Pradesh. India strongly protested the incident, but EU cited the key argument that it has implemented the step that it considers necessary for the protection of its citizen. The fact is that EU has a surplus production of food; it cannot afford to allow the entry of dairy products from outside. In the early 90s, overproduction reached such a height that EU was seriously considering about destruction of 20 million metric tonnes of beef, butters and grains. At that time, the storage cost of all these items was \$4 Billion a year and there was no possibility of shortfall of supply of these three in the near future. The increased supply would lead to lower price, which was not acceptable to the local producers. This successfully explains the seriousness of EU in using SPS measures as a powerful NTB.

EU adopts the same import restricting policies for poultry imports as well. The argument floated is the old one, the concern for health. More specifically, EU focussed its attention on 'proper' anti-microbial treatments. This concern led EU to block poultry imports from US from April 1, 1997. In US, poultry products are treated with chlorinated water to free from microbial contamination. But EU considers this as insufficient.

The aflatoxin level set by EU on certain food products is also something that really hurts agricultural imports. It had set a permissible level arbitrarily without much scientific justification. Considering all these things, it is evident that there is an increasing trend in EU to adopt standards before international standards-making initiatives have been completed. All these act as a NTB on agricultural imports. Foreign producers following standards set by international organisations are suffering.

The data protection directive of EU came into effect in October 1998. Only 4 of the EU member states have transposed this directive in national law, although a number of others have poised to do so. The directive seeks to protect individual privacy with regard to the storage, processing and transmission of private data, while still permitting the free flow of data within the EU. The directive

allows the transmission of data to third countries if they are deemed by the EU to provide an adequate level of protection, or if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection. This is really a cumbersome arrangement for executing a data transfer.

The policies followed by United States are in no way different from those of EU or Japan. The United State's agricultural lobby also enjoyed several domestic support programmes for a long time. But United States had a trade deficit of more than \$100 billion on 1993. Again the Asian tigers Japan, South Korea and Taiwan who had protected their agriculture to a great extent enjoy a trade surplus with United States. So, in order to satisfy the domestic producers United States on one hand tries to remove trade barriers from other countries and at the same time are very much interested to keep the domestic market intact for the local producers. And they have rightly identified the SPS measure as the appropriate medicine for their disease. There, the multiple and complex technical regulations regarding consumer protection and environmental protection can act as an important structural impediment to market access.

The prohibition of import of tomato from France may serve as a good example. US blocked import of tomato from Brittany on the ground of presence of Mediterranean fruit fly in the Mediterranean region of France. Although Brittany is ecologically isolated from the infested regions in France and the French authorities had implemented necessary steps to prevent dissemination of the pest, imports from Brittany were not allowed to US. EU termed this measure as excessive. Also, the US health restriction on import of goats on the grounds of the risk of scrapie in sheep is also an interesting case. EU has objected to this policy and termed it as a disguised NTB due to widespread presence of scrapie in the US sheep population.

Other developed countries like Australia, New Zealand or Canada are also active players in the fields of agricultural protectionism. Since they are all members of WTO, they prefer to use disguised barriers rather than tariff hike to curb agricultural imports. Australia restricts import of dairy products, different fruits

on SPS ground without proper risk assessment. Canada also restricts fresh fruit and vegetables import by some stringent conditions, which can be termed as NTBs without hesitation. New Zealand also practices a strict SPS measure on agricultural imports and uncooked poultry products.

By the protectionist policy followed by these countries, between 1970 and 1989 the market share of developing countries in cereals fell from 16 to 12 percent, in sugar from 68 to 58 percent, and in meat from 20 to 12 percent. It was thought that after introduction of WTO the situation would improve. But though tariff barriers have come down, the non-tariff barriers have sprung up. It is always easy to implement SPS measures to restrict food import. The Agreement on SPS measures are not strictly being followed by developed countries. For example, United States informed Indian seafood exporters on first week of Nov. 97 that it is going to implement Hazard Analysis and Control at Crucial Points (HACCP) and asked them to draw up an action plan in this regard and enforce them in their factories within one month. This period should not be considered as 'sufficient'. Again, in a separate incident, United States asked seafood-exporting countries to install the Turtle Excluder Device (TED) within 6 months. The same was installed in United States completely in about 10 years. This sort of 'one-eyedness' is not uncommon in global agricultural trade.

So far the analysis circled around the instances of imposing NTBs by different countries. Now what is the result of these trade restrictive policies? Like any other trade distorting policy, those based on SPS measures also produce the same effect: raise the price for consumers. The result is obvious, as they are either barred from consuming a wide variety of products or the quantity available is not sufficient. Also, since compliance cost rises for the producers, this is another source of price increase. This, under normal circumstances would give rise to mass agitation against the concerned Government. That may prove alarming for them. Then, why they are still interested to support their agricultural sector? The question is of utmost importance.

The feature of these developed countries is that they follow a much liberal policy in case of industry compared with their agricultural policy. The inherent logic is, the political leaders devise policy packages designed to maximise their chances of staying in power. The more an interest group expects to gain from a particular discretionary policy, the greater will be its demand on the Government to provide that policy. Now if this is not politically suicidal for the Government, then it has no problem to provide that policy.

In case of developed countries, they have a much higher income level compared to their developing counterparts. With development, a few things occur. First of all, in the budget of the household on food items generally decreases as income grows. This is nothing but the famous 'Engel's law'. This ensures that political pressure from consumers and industrialists for low food prices diminishes with economic growth. Secondly, in the early stage of development, amount of capital is low and role of agriculture is predominant. But with advancement of the economy, as capital stock rises, the absolute number of farmers actually falls. So, from viewpoint of developed countries there is concern to protect the local farmers. And the primary producers over there had formed a strong pressure group and they press the Government to follow their line. Evidences show that they are being obliged frequently.

Then the question of form of restriction arises. With rise in income level, people usually get quality sensitive. They can oppose an outright ban or increased tariff, but, if import is restricted on ground of 'standard', then they welcome this decision. They have a perception that the Government has done something for the betterment of them. For example, the restrictions regarding pest-residue, fertiliser-residue, aflatoxin level etc. can be recalled. Same argument goes for measures based on environmental concern.

So, it is established that developed countries have an incentive to impose restriction on other countries agricultural exports. Now the effect of their policy on international trade should be checked.

Chapter 3

Case Study

In the previous chapter, causes behind the increased use of SPS measures were discussed. Now in this chapter, some recent cases generated on the SPS ground are discussed and the proper intuition behind imposition of these NTBs are found out.

Experience of Indian Exporters

Case : 1

Complainant : India

Year : 1997

Complain : presence of bacteria in Indian seafood export in EU

In August 1997, EU informed India that it has found presence of *Cholera* and *Salmonella* bacteria in Indian seafood export to Europe. On this ground, EU imposed ban on Indian seafood exports and asked India to rectify their production and shipment process. A delegation was also sent to India before imposing the ban for inspection of Indian shipments. The delegation included a number of office-bearers of EU's food and veterinary office. Following their report, EU let Government of India know that they will send another delegation for inspection after the later provides a list of exporters who has fully complied with the EU norms. The delegation also expressed serious concern over the hygiene standards of many of the seafood processing units visited. The ban was to be reviewed before November 30, 97.

The Commerce Ministry asked for some more time (2 months extension) and let EU know that presently only 16 out of 160 approved exporters meet the standards specified by EU. Roughly export of Rs. 700 to 800 crore suffered from this decision. The seafood industry requested Commerce Ministry to include companies, which have freezing and packing facilities on board their fishing vessels, in the list.

The ban lasted for four and a half month and EU withdrew the ban from Indian seafood in the last week of December 97. Henceforth, the seafood shipments will have to be accompanied by a health certificate issued by the Export inspection council of India.

However, India mentioned that EU has the history of banning seafood from developing countries. India has faced the ban before. Also the standard set by EU were quite restrictive and beyond 'necessary' level. Even on 97, the seafood export from Bangladesh was banned from July 30. The same kind of seafood exports from Madagascar was also banned from the same date as that of India. China also faced similar ban a few years back. So, it is more justifiable to view the EU policy as a disguised NTB rather than a SPS measure.

Case : 2

Complainant : India

Year : 1998

Complain : food import is crossing the permissible Aflatoxin level

In July 1998, the European Union adopted a regulation regarding maximum permissible level of Aflatoxin in peanut, tree nuts and dried fruits, cereals and milk, effective January 1, 1999. At the same time, a directive specifying sampling methods to be used after 31 December 2000 was adopted. The regulation was to take care of the domestic production as well as the food products imported from outside. Aflatoxin is a cancer producing substance found in the nuts when they become damp and develop moulds. This is a common feature to nuts – groundnuts, pistachio and walnuts.

India raised a strong protest against this decision. According to India, the decision of EU is not related to their concern for the health of the local people, but their main aim is trade distortion. The point will be clear if the permissible aflatoxin level set by EU and that by Codex is compared.

EU : 4 ppb (parts per billion)

Codex : 15 ppb

US : 15 ppb

India is following the Codex set standard. So, by this decision of EU, Indian export of nuts, pepper and oil cakes would be badly hit. So, India lodged protests with the European Commission (EC), the EU executive body, as she considered this move to be a disguised NTB. However later under pressure of EU the Director-General of Foreign Trade declared that before peanut export a compulsory inspection of Aflatoxin fungus will be held. Agricultural and Processed food products Export Development Authority (henceforth APEDA) is entrusted to administer the checking programme. APEDA is working positively in this regard. It is widely accepted by all the blocs concerned that the maximum limit is unjustifiably low in relation to consumer exposure and risk. US is also unhappy by this decision as they think these levels will lead to trade disruption without a corollary increase in consumer protection. Also, the sampling procedure proposed by EU will increase handling costs with no appreciable reduction of possible aflatoxin contamination in consumer products.

Case : 3

Complainant : India

Year : 1998

Complain : EU uses NTB on Basmati export from India

EU has introduced a controversial scheme called Cumulative Recovery Scheme (henceforth CRS). Indian Basmati is directed at the scheme because the CRS is for giving the ECU 250 per tonne import duty reduction to Indian Basmati. Under this scheme, European Basmati importers have to first pay the full duty and then file for refund by justifying the import price, certifying the quality of the Basmati imported and their own wholesale prices. In the absence of a quality certificate, no duty drawback is permitted. EU explained that it want to ensure the entrance of properly checked and certified product for its consumers.

But India reacted to this decision in a strong way. According to India, this decision will reduce both the number of importers of Basmati from India as well as the Basmati exporters from India. This will be a deathblow to the Indian agricultural export. Some importers

informed India that they had to wait 6 months before they can file for a refund. All these procedural delays may cause importers to shift from Indian Basmati Rice. And in India, exporters also have to fulfil certain strict guidelines. In all, India viewed this move as nothing but a NTB.

According to Indian Officials, the CRS flouts the provisions of several international trade agreements including Articles I, II, III, VIII and XI of GATT; Articles 1 through 7, 11 and Annex I of Article VII of GATT; Articles 1 and 3 of the agreement on import licensing procedures; Article 2 of technical barriers to trade etc.. In other words, EU is violating the obligations under GATT.

India made a complaint to both the Dispute Settlement Body (DSB) of WTO and the EU. To resolve the discrepancy, India has sought formal consultations with the EU, under the aegis of WTO. In case they are unable to sort out the matter, a dispute panel will be set up to hear the two sides. The issue is still not settled.

Case : 4

Complainant : India

Year : unknown

Complain : pest residue in the exported cut flower from India to Netherlands.

Netherlands complained that imported Indian cut flowers do not satisfy the SPS level prevailing there. They have found traces of pests that are harmful for human. So they imposed a ban on Importation of cut flower from India and urged the later to improve their production standards by eliminating the use of the harmful pesticides.

However, India smelt a rat in the whole process. They thought the real cause behind this ban by Netherlands is nothing but providing protection of Dutch flower-industry. In the big Dutch auction houses foreign cut flower imports are also allowed to participate. But the local producers find it tough to compete with as the cost of cultivation is steadily rising there over the last couple of years. So, India dubbed the whole exercise as a sheer NTB.

Case : 5

Complainant : India

Year : unknown

Complain : Presence of bromide residue in the imported rice to EU

In this case EU stated that Indian rice export is not worth consuming as it contains bromide residue. According to London's Pesticide Safety Directorate, the rice exported from India contains a high level of methyl bromide and ethylene di bromide. These are fumigants used during storage. So, it asked India to rectify the drawbacks of its storage procedure. If proper attention is not paid, EU warned about necessary action.

All India Rice Exporters Association stated that they are well aware about tolerance limit for bromide residue, 50 ppm. They stressed that EU must realise that foodgrains like rice have naturally occurring bromides. According to them, this is nothing but one odd case and yet EU is highlighting this issue as a part of their trade policy.

Case : 6

Complainant : China

Year : unknown

Complain : contaminated fruit export from India

Once China stated that trace of Mediterranean fruit fly was observed in the fruit export coming from India. As a result, China banned the fruit import from India.

India responded to the allegation quickly and assured China about the quality of the export in the future. However, China often follows too restrictive import policies on this Mediterranean fruit fly ground. Once China unnecessarily banned the entry of citrus fruit from all parts of US, due to occurrence of it in certain areas. Chinese SPS measures still prohibit US citrus, plums and Pacific Northwest wheat.

Case : 7

Complainant : Japan

Year : unknown

Complain : Improper treatment of mango export from India

In this case Japan asked India to export mangoes after proper vapour heat treatment so that it becomes completely germs free. India responded by stating that proper steps would be taken in future. In the process, the Indian mango export to Japan was adversely affected.

Case : 8

Complainant : Germany

Year : unknown

Complain : pest residue in Indian tea

German Govt. used a consumer movement to restrict the import of Indian tea. According to them, Indian tea import is a threat to human health as it contains pest residue in a considerable amount.

However as put forward by some observers Germany was committed to buy tea from non-traditional producers in Africa. In order to check excess supply of tea in domestic market, they have sidelined Indian exports with the help of these SPS arguments.

Some Well Known International Disputes

So far, a few Indian experiences are considered. Now NTBs are often being used on foreign agro-exports as well in several other forms. At any point of time, in future, these practices can be used on Indian exports, too. So, proper knowledge about those cases is of importance. The outlines of few such cases are provided.

Case : 9

Complainant : US

Year : 1996

Complain : Ban of growth promoting hormone on dairy products

On January 1, 1989 EU placed an import ban on meat from animals treated with growth promoter hormones. The cause shown was quite in line with the WTO agreement; the meat may cause health problems for the consumers. A few countries were severely hit by the decision, including US. The negotiations failed. So, US launched a formal WTO dispute settlement procedure in May 1996 challenging the EU ban. The WTO Appellate body (henceforth AB) found that the ban is inconsistent with WTO agreement on SPS measures and calls for the EU to comply with its WTO/SPS obligations. The AB clearly ruled that the EU ban was imposed and maintained without evidence of health risks posed by eating beef from cattle treated with growth promoters, and despite scientific evidence showing such meat to be safe.

The EU announced in March 1998 that it would implement the AB finding. A WTO arbitrator consequently decided that the EU needed 15 months to bring its measures into conformity with its WTO obligations, instead of four years it argued for, and that it is not necessary to conduct another risk assessment. The 15 months started from February 1998, with the adoption of AB report. The EU is currently undertaking additional studies on hormone usage in beef production. The WTO set period would be over on May 13, 1999. However, EU is least interested to complete the studies before the end of 'reasonable period of time'.

Now what was the actual motive behind this move? This move was used as a policy to block import as EU was facing overproduction in the dairy products in that period. It is common secret that EU had poured mammoth subsidy on their dairy products over the years. Now they want to protect the domestic producers from a lowered price due to excess supply.

Case : 10

Complainant : US

Year : 1997

Complain : Imported fruits from United States are subject to NTB

Japan restricts entry of certain United States fresh fruits, vegetables and other horticultural products, and many other products continue to face outright bans. The case of apple producers is worth mentioning. Japan officially first opened its markets to American apples in 1971, but during the next 22 years not a single United States apple was sold to the Japanese market. Japan protected their domestic market from United States entry mainly by health regulation barriers. The aim was projected as prevention of inadvertent importation of foreign insects and pests. The ban was imposed without sufficient scientific evidence of legitimate plant quarantine concern. Other US products such as cherries, walnuts and nectarines, continue to be subject to unnecessary Phytosanitary restrictions. Japan requires repeated testing of established quarantine treatments each time a new variety of already approved commodities is presented for export from US. In 1993 American growers felt that the limit has been crossed and filed a formal complain to USTR, who then send a letter to the Japanese Ministry of Agriculture. Japan formally agreed to open the market gradually, but in practice little was done.

US made efforts to resolve the varietal testing issue through bilateral negotiation but all arguments had fallen to the deaf year of the Japanese Authority. So, in October 1997, the US applied to WTO against Japan's varietal testing requirements. To the DSB, US complained that Japan's testing mechanism has no scientific basis and the relevant compliance cost has a significant effect on the American producers. The time wasted is also worth mentioning. All these act as a significant barrier to trade. US opined that all these actions of Japan are inconsistent with their obligations under the WTO agreement on SPS.

On October 27, 1998, a WTO dispute panel ruled in favour of the US. The central panel findings were that Japan's varietal testing requirement is maintained without sufficient scientific evidence, in violation of the SPS agreement article 2.2, and inconsistent with Japan's transparency obligations under SPS article 7 and Annex B, since Japan has not published its requirements. Both parties appealed the decision and, in February 1999, the AB affirmed this ruling and expanded product coverage of the initial panel report through a

finding that Japan's requirement is not based on risk assessment, in violation of article 5.1.

Case : 11

Complainant : Central and Eastern European Countries

Year : 1994

Complain : Hoof and mouth diseases

On April 1994, the EU banned imports of livestock, meat and dairy products from 18 Central and Eastern European countries after imported cattle from these states were found to suffer from hoof-and-mouth diseases (henceforth HAM). Under EU law, if proof exists that a country has livestock that is affected by HAM disease, import barriers can be erected in order to prevent these animals from spreading their diseases throughout the EU. However in this case, it was not proven the disease is present in the imported livestock of all these 18 countries, but nevertheless EU restricted animal import from all of them. Some observers argued that the main reason for this import ban is that the agriculture lobby pressurised the Authority due to the perceived threat to price and wage stability as a result of increased import competition. The EU obliged them by resorting to the easiest way, the health regulations.

Case : 12

Complainant : US

Year : 1997

Complain : United States wheat carry fungus

Turkey recently had implemented a zero-tolerance policy on wheat with regard to a large group of diseases. The first victim of this policy is United States, who sent a consignment to the country. The Turkish inspectors found traces of grain fungus, ergot, in the shipload. The United States exporters raised voice and USDA officials supported them with the argument that, it is virtually impossible to guarantee a complete absence of ergot, and the allowable 0.05 percent amount is low and does not pose any health hazards. But Turkey was not much impressed by these arguments.

Some analysts have pointed out the proper cause of Turkey's behaviour. Actually on that year the wheat market in Turkey was characterised by domestic overproduction. So, Turkey was determined to block wheat import at any cost. It should be mentioned here that on the same year Indian wheat was also banned in Turkey on the ground that they content karnal bunt fungus.

Case: 13

Complainant : United States

Year : 1996

Complain : Chinese policy to ban American poultry export on SPS ground

Normally China is a multi-million market for United States poultry products. Now on October 96, it banned import of poultry and poultry products from 10 United States provinces because of fear that they might carry a fowl plague known as highly pathogenic avian influenza. The ban order, however, was not implemented to provide an opportunity to the United States to submit scientific evidence about absence of the virus. This led to the intuition that the cause behind this move was not SPS measures, rather disguised NTB.

Case : 14

Complainant : USA

Year : 1998

Complain : US tomatoes carry tobacco blue mold

Japan does not allow free entry of US tomatoes. It normally restrict market access of tomatoes of all but a limited number of varieties due to its unsubstantiated concern that such tomatoes may carry tobacco blue mold. Japan's original concern was based upon a scientific citation dating from the 1940s that claimed tobacco blue mold disease might be carried on tomatoes. The present scientific literature contains numerous citations that refute the original claim, yet Japan continues to rely on it, clinging to the notion that tomatoes

shown to be resistant or immune to the disease may not be so owing merely to varietal differences.

In June 1998, the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) explained Japan the scientific position in this issue. At a bilateral meeting between technical experts from both countries, US clearly established that there is no scientific evidence that US tomatoes are capable of transmitting tobacco blue mold to Japan. Japan responded in December 1998 that there is no scientific evidence that field grown tomato fruit are a host of tobacco blue mold, but also indicated it will need to study some related technical issues further. Finally, on February 1999, WTO AB decided that Japan's variety-by-variety quarantine testing requirements are scientifically unjustified.

Case : 15

Complainant : Canada

Year : 1997

Complain : Improper treatment of salmon export from Canada

Australia prohibited importation of all fresh, chilled and frozen salmon from Canada without proper risk assessment. The cause shown was that these exports do not satisfy the health standard prevailing in Australia. Canada was not satisfied with the explanation and requested for consultation on October 1995. After the consultation failed, Canada requested DSB to establish a panel on March 1997. They told that Australia's prohibition is inconsistent with GATT articles XI and XIII, and also with SPS agreement. On April 1997, the panel was established. EU and US reserved their third-party rights. The panel found on June 1998 that Australia's measures complained against were inconsistent with articles 2.2, 2.3, 5.1, 5.5 and 5.6 of the SPS agreement. On July 1998, Australia appealed to AB. The AB restated that Australia has acted inconsistently with respect to articles 2.2, 2.3, 5.1 and 5.5. The report was published on October 1998. Australia was given 8 months time as 'reasonable period' to bring its regime into conformance with its WTO obligations (i.e., open its market). The reasonable period would end on July 6, 1999.

Comment

So far, a few classic cases of trade disputes on SPS ground have been discussed. From the discussion, it can be easily understood that the SPS measures are now-a-days playing a dominant role in the global agricultural market. In order to satisfy the WTO motto, this practice is to be eliminated as early as possible.

Now the cases described above are analysed in order to find whether they are really NTBs or not. The analysis starts with the cases, which are already established as NTBs by WTO DSB. Examples are cases 9,10,14 and 15.

When case 9 is observed, it is found that EU implemented this ban without sufficient scientific evidence and continued this without proper risk assessment. As a result, their policy turns out to be much more trade restrictive than it should. So, EU turns out to be violator of several SPS articles. The analysis reveals that their action was:

- More trade restrictive than the necessary level (violation of paragraph 6 and 21).
- The policy undertaken was unjustified and actions were arbitrary (violation of paragraph 20)
- The ban was not based on sufficient scientific evidence (violation of paragraph 17).

So, this is proved beyond doubt that, EU used SPS as a policy instrument.

Case 10 was also described as NTB by WTO. Japan used restrictive policies on different US exports without sufficient scientific evidences and often does not perform the necessary sampling and testing procedures. It is found that Japan's policy violates

- More trade restrictive than the necessary level (violation of paragraph 6).
- The ban was imposed without proper assessment and sufficient scientific evidence (violation of paragraph 16 and 17)
- The policy undertaken was unjustified and actions were arbitrary (violation of paragraph 20)

So, Japan was asked to withdraw its ban on the US products.

Case 14 is also an example of Japan's restrictive policy. Japan blocked entry of US tomato based on 'potential' fear without any actual incident. The action was trade restrictive to the maximum extent. The Japanese authority tried least to fulfil their obligation to harmonise the standards. In this case, Japan turns out to be violator of SPS agreement on the following grounds:

- More trade restrictive than the necessary level (violation of paragraph 6).
- The regulation was in no way consistent with the relevant international standards (violation of paragraph 9).
- The ban was imposed without proper assessment (violation of paragraph 16)
- The trade policy was instrumental in attaining maximising rather than minimising negative trade effect (violation of paragraph 19 and 21).
- The policy undertaken was unjustified and actions were arbitrary (violation of paragraph 20)
- The imposition of the trade ban was not for any reasonable period of time, but for an unnecessarily long span (violation of paragraph 22)

WTO acknowledged these measures as disguised NTBs on foreign exports.

Case 15 also provides example of another misuse of SPS as a policy instrument. Australia limits agricultural imports through quarantine and health restrictions. Often the restriction is implemented without proper risk assessment. Here import of salmon was blocked without sufficient scientific justification. It should be mentioned here that a WTO-inconsistent ban also exists in Australia on cooked pork. It is widely accepted fact that Australia is eager to protect their primary sector. The DSB found that Australia is violating articles 2.2, 2.3, 5.1 and 5.5 of SPS agreement.

Now those cases will be considered, which are not directly ruled as NTB by WTO. The examples are 2,3,5,11 and 12.

Case 2 provides an interesting example to prove our proposition. Here EU is taking the advantage of the clause 'required domestic standard' of SPS agreement, which permits a country to set the limit, which it considers suitable. But as far as the clause of 'Harmonisation' goes, EU is nothing but a violator of the WTO agreement and causes heavy loss to Indian exporters. It had simply set an arbitrary limit. EU has every right to guarantee safe food to its people, but not by distorting trade in an unjustifiable way. The following points can explain the situation:

- The EU action was in no way based on relevant international standards or the suggestions of the international organizations, namely Codex Alimentarius Commission (violation of paragraph 9, 11 and 12)
- The ban was imposed without proper assessment. EU has set a higher standard for food protection unilaterally notwithstanding the opposition of its trading partners. (violation of paragraph 16)
- The level set by EU added nothing to the protection of the consumers. The measure is not based on proper risk assessment rather an arbitrary one. As a result, it turns out to be far more trade restrictive than it should be. (Violation of paragraph 19, 20 and 21)

In **case 3**, EU implements this CRS to ensure that Basmati export satisfies a certain quality. The quality certificate is made necessary and this is coupled with institutional delay. As a result, importers want to avoid Indian rice. This affects Indian export considerably. India responded that EU had imposed this measure on Indian Basmati without any degradation in its quality. In other words, there was no considerable threat to human health. So this measure:

- The scheme was introduced without sufficient scientific evidence (violation of paragraph 6)

Case 5 provides a similar example. EU overacted regarding the rice export from India. The bromide residue contained in rice was

well within the internationally set tolerance limit. Still EU acted in such a way as if Indian rice was full of poison. It is nothing but the continuation of their pioneering attitude to set stricter standards in case of food products. Since India is following the international limit, the EU behaviour is not consistent with several provisions of SPS agreements like:

- The policy was not undertaken following the proper risk assessment and the relevant international standards (violation of paragraph 16)

Case 11 is also of much importance. Here EU banned import from 18 Central and Eastern European countries. Sufficient scientific evidence was not there, proving HAM is present in all 18 countries. Still EU imposed this ban on all of them quite arbitrarily. Naturally this measure was found to be more than trade restrictive. So, imposition of this ban was in direct conflict with several SPS articles like:

- More trade restrictive than the necessary level (violation of paragraph 6)
- The measure is not based on proper risk assessment rather an arbitrary one. AS a result, it turns out to be far more trade restrictive than it should be. (violation of 20 and 21)

Case 12 is also worth mentioning. Turkey restricted importation of US wheat without proper assessment and required a higher standard than the existing international one. Their decision was not based on proper risk assessment. So, their decision violated several articles such as

- The action was in no way based on relevant international standards or the suggestions of the international organizations, namely Codex Alimentarius Commission (violation of paragraph 9 and 11)
- The ban was imposed without any proper assessment (violation of paragraph 16).
- AS a result, it turned out to be far more trade restrictive than it should be. (violation of paragraph 20 and 21)

Cases 6 and 13 are described here as footnote. China violates a number of articles of SPS agreement, but it was not possible to raise those issues to the WTO DSB until recently. This is because China was an observer member of WTO at that time. The laws over there are very restrictive and often favour domestic producers. Transparency is another problem; Chinese regulations are not readily available to foreign producers. And another thing as described in case 13, sheer violation of article 23, often negotiations after trade restrictions is not entertained. However with China's inclusion in WTO, it is hoped that the debates will be solved soon.

Lastly, analysis is provided for cases 1, 4, 7 and 8. In the **1st case**, EU did not provide enough time to Indian Authorities to improve the prevailing condition. Also the technical standard set was stringent, which was difficult for Indian seafood procedures to satisfy. In the **4th case**, the incidence of imposition of ban on cut flower is not unexpected. Regarding flower export, Netherlands follows a very stringent policy, which in no way adds to improvement in sanitary conditions. Hence the action of it goes beyond the necessary extent and distorts trade. In the **7th case**, Japan frequently blocks several primary products of Indian origin. In the present case Japan blocked mango export from India. In two other separate incidents, Japan imposed a ban on Indian grapes and banana few years back. The argument provided at that time was the presence of fruit fly. In the **8th case**, Germany suddenly got unhappy with the quality of tea exported from India. However there was no fundamental shift in the tea production in India. This clearly shows that concern shown by Germany was exaggerated.

Chapter 4

Some 'Other' Barriers on Indian Agro-Exporters

So far the analysis concentrated on the non-tariff barriers based on Sanitary and Phytosanitary Measures. But NTBs based on 'other' grounds can also be applied on Indian exports. Of all these 'other' grounds, most popular form is NTBs on environmental ground. India has faced such NTBs in a number of occasions. Certain other measures like Eco-labelling, 'proper' packaging etc. can be applied on foreign agricultural exports and can significantly act as NTB. In this chapter, different forms of 'other' NTBs already being applied on Indian agricultural exports and some probable NTBs that may be applied in near future, will be discussed.

Environment

Now it should be considered why developed countries impose trade restrictions based on environmental ground, and whether they have any support provided in the WTO/GATT agreement. The WTO agreement was instrumental in globalisation of environmental concerns. The global environmental issues like, ozone layer depletion, greenhouse effect, protection of endangered species etc. came to the forefront and became a policy instrument to divert trade. But in practice, when environmental problems stem from production process, trade restriction is a second best policy, i.e., there is more efficient and direct domestic policy to rectify the problem. For example, indiscriminate use of fertilisers and pesticides may lead to groundwater pollution in a developing country. But to avoid that, imposition of a trade restriction on the developed country is totally meaningless. Instead, offering an incentive scheme for switching to safe production process will lead to more desirable outcome. The same argument can be extended for protection of wildlife.

It has already been established that the developed countries are keen to apply protectionist measures on agricultural imports. Since they have to keep the tariff rate within bound limit, so they now increasingly depend on the disguised NTBs. And like SPS, instead of health ground here the policy instrument is presented in a package of 'green wrapping paper'. The problem occurs when they set standards at a higher level, which exporters from poor countries cannot meet. Developed countries often set what should be the production process in developing countries. Often the process is suitable for the imposing country, but may not necessarily be optimal for the exporting country. And here the implementing country's action is not limited within its own territory. Some blocs have put this as a kind of 'green imperialism'.

The basic objective of the Convention on International Trade in Endangered Species of Wild Fauna and Flora is to provide guidelines and procedures to protect endangered species of wild flora and fauna against over-exploitation through international trade. Three Appendices are provided to avoid any future confusion where species to protect are specified. The environmental measure is applied when one country finds that the production or processing performance of its trading partner is beyond doubt fatal for any species or rare type of plants. Then the first country can appeal to the later one to follow the international standard. If the later pays no heed to its request, then it can impose restriction on the exports from that country and also on imports from intermediary countries. WTO acknowledges this right of member countries. The restriction could both be in the form of product and process standard. In case of product standard, protecting environment, health and safety of citizens of the importing country are of prime importance. The regulations are set on the final traded commodity. But process standard requires that production should take place following an environment-friendly process. Both could hurt Indian export prospect considerably.

However, like the SPS measures, this conception is also gaining momentum that developed countries are using this provision presently, not for upgrading the environmental situation (or minimisation of

environmental degradation), but for distorting trade. A few examples from the arena of international trade will clear the matter. For example, EU prepares met-matrices (which provides a quick overview of the

Met Matrix for Fruit and Vegetable

	(Raw Material)	Energy Use	Toxic Emissions
Preparation of the soil	Chemicals (e.g.- methyl bromide) Agricultural machinery (plough)	Human energy to drive the machinery	Chemicals (methyl bromide causes depletion of ozone layer)
Sowing and planting	Seeds and Plants Machinery	Human energy to move the machinery	
Fertilisation	Fertilisers Machinery	Human energy to move the machinery	Phosphate, Nitrogen (dangerous to human health, disturbance to eco system) Smell
Irrigation	Water Irrigation System	Energy to move water	Water Salt
Crop Protection	Pesticides		Pesticides (harmful to human and environment)
Harvesting Machines	Harvesting Machines	Human energy	
Storage and ripening	Chemicals (methyl bromide, phosphine, organo-chlorides) Hot air	Water Hot water Cold Heat	Smell Chemicals
Packaging	Packaging material (paper, plastic etc.)		Ink Waste material and Chemical
Transporting	Transportation means (ships, trucks, planes)	Fuel	CO ₂
Use	Food	Fuel for cooking	CO ₂
Waste		Burning or dumping	Smell Toxic gases

Source: Eco Trade Manual: August 1998

environmental impact of the industry) for the products imported into it and declares the possible toxic emissions from the production process at each stage. This indirectly forces the exporting countries to change their processing conditions. This may not suit the exporting countries under all circumstances. Below, met-matrices for a few primary products are offered.

Met Matrix for Flower and plants

	(Raw Material)	Energy Use	Toxic Emissions
Preparation of soil	Chemical (e.g.-methyl bromide)	Human energy to drive the machinery	Chemicals (methyl bromide causes depletion of ozone layer)
Sowing and planting	Seeds and Plants Machinery	Human energy to drive the machinery	
Fertilisation	Fertilisers Machinery	Human energy to drive the machinery	Phosphate, Nitrogen (dangerous to human health, disturbance to eco system) Odour
Irrigation	Water Irrigation System	Energy to move water	Water Salt
Protection	Pesticides		Pesticides (harmful to human and environment)
Harvesting	Harvesting machinery	Human energy	
Dyeing	Dyes		Dyes
Storage and Packaging	Packaging material (paper, plastic etc.)		Ink Waste material and Chemical
Trading	Extinction of flora and fauna		Spreading of diseases
Wastes		Burning or dumping	Odour

Source: *Eco Trade Manual: August 1998*

Met Matrix for Fish and aquaculture

	(Raw Material)	Energy Use	Toxic Emissions
Management of the sea	Fish Marine environment		Dead fish
Fishing	Fish Marine environment	Boats Storage	Dead fish Dead mammals, birds, flora etc.
Handling and Cleaning	Caught fish Storage and landing facilities	Freezing	Spoiled fish Fish offal
Preservation / Processing	Water Caught fish	Freezing Machinery Steam	(waste) water Solid waste Smell
Packaging	Preserved fish Packaging (carton, plastic etc.)	Frozen storage	Packaging
Use	Preserved fish	Freezing	Remains of fish packaging

Source: *Eco Trade Manual: August 1998*

The met-matrix clearly shows the extent to which EU is interested in monitoring the quality of import (by settling both product and process standard). If the imported product fails to satisfy the EU standard or the processing technique seems doubtful, then EU undertakes investigations against the exporters. The incidence of such investigations is not uncommon. These investigations are totally frustrating for the exporters owing to several reasons. For example, the management of the export house has to allocate sufficient time as required by the foreign investigating authority. It also has to bear a burden of financial cost in order to obtain legal expertise and for the purpose of compliance. Often initiation of investigation leads to loss of market as the importer switches to another exporter. Some environmental NTBs are imposed at commercial level, not at the Government level. It is seen that the requirements often vary from buyer to buyer. For example, in Germany there exist a large number of marking requirements, which are not official. These pose enormous

problems for the exporters within the EU. Again, environmental regulations of Switzerland and Luxembourg are quite lax. But the environmental regulations of countries like Germany, Netherlands or France are more stringent as compare to that of the existing EU standard. So, the market access problem facing exporters is that their products are accepted in some EU countries, but not in other members. Recently, one consignment of egg powder was rejected in Germany due to residue issues. Later it was approved by Spanish testing requirements and was sold there.

An Indian experience of trade-restriction on environmental ground is discussed.

Case : 1

Complainant : Malaysia, later Thailand, India and Pakistan

Year : 1997

Complain : Against US ban on import of shrimps

The US restricted imports of wild-harvested shrimps from countries that did not have US-compatible laws on preserving sea turtles. The basic argument floated by US was that the fishing boats of several foreign countries normally do not have Turtle Excluding Devices (TED). Turtles are generally found in the vicinity of the shrimps and the boats kill a large number of turtles while catching shrimps. US declared that their local producers use this TED and this is a major step towards achievement of greener environment. So, in order to protect environmental degradation, the foreign exports that follow such faulty production process must be banned from entering the territory of US. Also that will provide justice to the US fishermen who use TED.

The shrimp- exports from India were badly hit by this decision. Among the states, Kerala suffered most, as almost all the shrimp export from there was wild shrimp, most of it headed for US. The Marine Product Export Development Authority (henceforth MPEDA) exclaimed that this ban on Indian export is ill conceived for the simple reason that turtles are more prevalent only near the coast of Orissa.

Some leading Indian exporters had shown three distinct causes why the Indian exporters can not follow the US set condition. These are as follows:

- (1) The average Indian fishing boats are so small that fitting this TED would be a problem.
- (2) The typical TED costs about \$2,000 (Rs. 70,000). The average fisherman cannot bear the cost of the device.
- (3) Tests carried out by MPEDA indicate that up to 30 % of the catch will be lost if the device is attached. The loss is quite substantial for poor fishermen.

At first Thailand and Malaysia complained to WTO that they appreciate the US concern for of conserving sea-turtles, but the extraterritorial and arbitrary way by which US was trying to achieve the objective is against the spirit of WTO. Later Pakistan and India also joined them.

A DSB panel was established. The panel had given its findings in May 1998 to the effect that the US measure was not consistent with WTO provisions relating to elimination of quantitative restrictions, and also could not be justified under the provisions relating to general exceptions. The panel clearly stated that the US measure was not within the scope of measures permitted under the WTO agreement.

The US was unhappy with the decision and had taken the matter to the Appellate Body, the highest dispute settlement forum of the WTO. In October 1998, AB declared that the US measure failed to meet the requirements of article XX of GATT 1994.

So far an Indian experience of facing NTB on environmental ground is discussed. But the experiences of other countries also deserve attention. A similar case is presented here which will help to understand the extent of protectionism.

CASE : 2

Complainant : Mexico and Venezuela

Year : 1991

Complain : US prohibition of import of yellowfin tuna and tuna products on environmental ground

In Eastern Tropical Pacific Ocean, schools of yellowfin tuna are found with groups of dolphins. When tuna is caught with purse seine nets (fishing net for encircling fish, which floats at the top with weight at bottom edge). Occasionally, dolphin is caught inside the net and dies unless released.

Because of domestic pressure, the US Government passed Marine Mammal Protection act (henceforth MMPA), which set limits to dolphin-taking rate for domestic fleet and for other countries whose fleet catch tuna from that part of Pacific Ocean. According to the act, if a country fails to convince the US authority that it meets the standard, the US government must impose ban on fish import from that nation and also from 'intermediary' countries that purchase tuna from the countries that are subject to the embargo. Under domestic pressure, US restricted import from Mexico and Venezuela and from the intermediary countries of Costa Rica, France, Italy, Japan and Panama. The US projection was that the presence and activity of Mexican shipping vessels had lead to substantial reduction in dolphin populations in the eastern Pacific Ocean.

The US ban came into force from October 1990. In February 1991, Mexico asked for a DSP and it was established.

In addition, in December 1990, US adopted Dolphin Protection Consumer Information Act, which requires that tuna products labelled 'dolphin safe' meet certain dolphin protection standards. Mexico argued that the US measure is contrary to article XI, article XIII and article III and the dolphin act is contrary to article IX. Mexico informed that the dolphin-deaths caused by Mexican tuna fishing has been reduced by more than 70 per cent between 1986 and first 9 months of 1990. So, the ban imposed by US was imposed irrespective

of their performance. This proves that the main focus of the US ban was not dolphin protection, rather protection of the domestic fishermen.

US told that MMPA is in full agreement with GATT, and its action is justified by article XX(b) or XX(g) as the measure was necessary to protect animal health and exhaustible natural resources and there were no alternative measure available for protection outside US jurisdiction. It has also said that the Dolphin Act did not require the use of labelling but merely prohibited the false labelling of tuna as Dolphin-safe.

The Panel recommended that:

- Art. III requires that imported product be accorded no less favourable treatment than domestic products and does not require comparison between production regulations of the importing and exporting country, which has no effect on the product as such. Thus, embargo was not consistent with Art. III and so with Art. XI:1, as the import restriction is a quantitative one.
- Art. XX does not permit a Contracting Party to take trade measures for the purpose of attempting to enforce its own domestic laws regarding animal health or an exhaustible natural resource outside its jurisdiction. Moreover, the acceptance of US argument would mean that any country can ban imports of a product from another country merely because the exporting country pursues environmental, health and social policies different from its own. It would further imply that any country can unilaterally apply trade restrictions not for the purpose of enforcing its own laws within its jurisdiction, but can attempt to impose standards set out in its laws on other countries. The resulting protectionist abuse will be contrary to the purpose of GATT.
- Even if it is assumed that the import prohibition was the only resort reasonably available to US, the particular measure cannot be considered as necessary within the scope of Art. XX(b) as US had not demonstrated that it had exhausted all options, like negotiation of international co-operative arrangements, and thus the measure

was 'necessary'. The US has linked the maximum incidental dolphin-taking rate for the Mexican fisherman to the taking rate actually recorded for US fisherman during the same period, which cannot be known to the Mexican authorities, *ex ante*, or at any given point of time. Trade based on such unpredictable conditions could not be regarded as 'necessary'. The measure was not justified under Art. XX(g) as the measure cannot be applied extra-jurisdictionally and the measure should relate to the conservation of exhaustible natural resources taken 'in conjunction with restrictions on domestic production or consumption' which could only occur if the measure were 'primarily aimed at rendering effective these restrictions'.

- The secondary embargo on imports from 'intermediary nations' and the provisions in the US legislation mandating such an embargo were found to be inconsistent with Art. XI:1 and, for the same reasons as in the case of the direct embargo, not justified under Art. XX(b) and (g).

- However, regarding voluntary use of Dolphin Safe labels, the panel found that the labelling regulations applied to all other countries whose vessels fish in the Eastern Tropical Pacific Ocean and did not distinguish between products originating in Mexico and other countries, and thus were not inconsistent with Art. I:1 of the GATT.

To Venezuela, US MMPA has not given effective protection to dolphins but instead had distorted world trade and encouraged tuna fleets to leave the Eastern Tropical Pacific Ocean. To Mexico, the US MMPA was aimed at protecting US fishing fleets and not dolphins. To them, US measure was applied only to certain part of the seas without US fishing fleets pressure, and only to yellowfin tuna, whereas dolphins and tuna were found in many parts of the world.

In 1993, Venezuela complained that the panel report had not yet been adopted, and also expressed concern over the fact that the work of the panel established to examine EC's complaint against US measures had been suspended. They emphasised that it had been adjusting its fishing practices to those followed by the Inter-American Tropical Tuna Commission, of which US is an active member.

Even in 1995, Mexico complained that the US embargo continued to apply against its tuna exports, though there was no scientific evidence that Mexican fishing methods harmed dolphins. US said that it was not in a position to adopt the report.

Note that, the ruling about the measure, which was aimed at behaviour outside the territorial jurisdiction of the implementing country, which violate GATT obligation, is very crucial and important in the context of trade-related environmental measures.

Later, European Union demanded a new panel against the secondary import restrictions by the US on tuna and tuna products from 'intermediary' nations, which had imported tuna, or tuna products from countries under direct import restrictions from the US.

To the US, even if the panel had found that the measure is in violation to Art. III and XI, it can still be valid under Art. XX(g) as it pursues conservation of exhaustible natural resources. It said that there are no requirements in Art. XX(g) stipulating that the natural resources must be found within the national jurisdiction of the country taking the measure. Moreover, the measure was taken in relation to limitations on domestic consumption and production, and all other conditions mentioned in the headnote of Art. XX were fulfilled.

To the EC, Art. XX(g) is only applicable in cases when the natural resources, subject to preservation are within the national jurisdiction of the country taking the measure. Moreover, the US measure was neither aimed at preserving exhaustible natural resources, nor applied to domestic production or consumption.

Comment

While the aim of these measures is projected to be environmental concern, the improper use of this measure may turn out to be costly for developing countries. The main point of concern against these measures is that the developed countries are setting a higher standard, which the developing countries cannot meet. An example will clear the situation. India cannot accept forest conservation schemes that would lock up India's forest. Primarily, this is because forests in India are a community resource with a large number of people

depending upon them for fuel, fodder, medicine and fruits. These communities hy and large use the forests substantially, even if this type of use does not easily fit into the Western idea of conservation. This proves that there can be no absolute environmental standards or specifications, but these should be specific to all countries and communities.

In the two cases described above, US violated a number of WTO agreements and as it set production standard for other countries, it was an extra jurisdictional action. In both the cases the main aim of US was not protection and upgradation of environment. Rather their main aim was to protect their domestic producers, not the consumers. WTO DSB rightly ruled these two cases as NTBs, misuse of environmental concern. As evident from the following table, the export of shrimp accounts for a massive amount in India's export basket. Hence India should remain conscious in protecting its interest.

Category-wise export from India

Figures in Rs. crores

Category	1995-96	Share (%)	1994-95	Share (%)
Frozen Shrimp	2356.4	67.3	2510.9	70.2
Frozen Fish	372.2	10.6	446.6	12.5
Frozen Squid	319.6	9.1	245.1	6.9
Frozen cuttlefish	260.9	7.5	224.0	6.3
Others	191.9	5.5	148.7	4.2
Total	3501.1		3575.2	

Source: Global, February 1997

Labelling

Labelling is also an important field through which trade can be restricted. It is often floated to act in line of SPS or environmental measures. Following SPS ground, it is stressed that consumers should have an idea about the purity of the product that they are going to consume. The environmental argument suggests that the consumers have every right to know whether the product they buy, is Eco-

friendly or not. By this way consumers are encouraged to buy eco-friendly products.

The basic argument may sound very humble and honest. But if applied in a tactful way, any Government can apply them as NTB. An example will help to understand the situation. EU has recently initiated a move. It is required when dry milk is exported; the package should clearly mention that buffalo milk was used. Along with this, there had to be a photograph of a buffalo on the pack. Now to a person used to seeing a cow and drinking cow-milk, this could prove to be a psychological barrier to consume. Luckily, this 'standard' is yet to be imposed on India. But if EU does so the milk exporters will be badly hit. The eco labeling programmes of different countries are:

Country/Group	Name of Programme	Year of Creation
Germany	Blue Angel	1977
Japan	Ecomark	1989
US	Green Seal	1989
New Zeland	Environmental Choice	1990
Australia	Environmental Choice	1991
Netherlands	Stichting Milicukeur	1992
EU	European Flower	1992

Source : UNCTAD

The labeling requirement for genetically modified products also requires proper attention. This can also serve as NTB as revealed from trade experience of US.

Case : 1

Complainant : US

Year : 1997

Complain : GMO Imports from United States face unnecessary labelling Requirements

From point of view of US, the mandatory labelling on Genetically Modified Organisms (henceforth GMO) may disrupt

their export substantially. In May 1997, EU adopted the "Novel Foods Regulation" (henceforth NFR), which governs food safety assessments and labelling for genetically modified foods. Now the NFR does not state clearly which products processed from GMOs must be labelled. In September 1998, EU law provided for labelling of foods processed from Bt-corn and herbicide-tolerant soybeans became effective. But the law fails to specify any threshold for incidental contamination, testing method or list of exempted products. As an outcome of these confusions, some European food processors have switched to non-US soybeans to avoid these tidy labelling regulations for GMOs. Japan also imposes labelling requirements on US GMO exporters.

US strongly reacted to these moves. According to US, there should not be any labelling requirement simply because they are produced through biotechnology. In the absence of an identified and documented risk to safety or health, such labelling should not be compulsory as this could suggest a potential health risk where there is none. That would induce consumers not to buy those products. This may well serve as a NTB. US is negotiating informally with EU and Japan to change their unnecessary and inappropriate labelling requirements.

The Eco-labelling is also important from the point of view of the developing countries. Essentially, it is a type of product certification, either by a private organisation or by a mixed public-private body. The certificate indicates that the product is more eco-friendly compared to other non-certified products in the identical category. Since the labelling programmes provide additional information to potential customers who would like to purchase environment friendly products, these schemes help them to choose the appropriate one. The certification procedure also looks at production processes considered to be more eco-friendly. Among developed countries, the German 'Blue Angel Label' is worth mentioning here. The labelling can be either verified by a third party or based on self-declaration. Except a few cases, eco-labelling is still voluntary in nature, but there is no guarantee that in future it will remain to be so. There are a number of ways in which trade barriers

can be erected through eco-labelling. A brief discussion of these possible channels are outlined:

- 1) Later this situation may become compulsory that all licensees (exporters) must meet environmental or other related laws of the importing country. This is an extra jurisdictional requirement.
- 2) The lack of transparency of the system may create problem to the exporters. Any guideline or criteria for securing the label, which is not transparent, makes the process difficult for the prospective foreign licensee.
- 3) The eco-labelling standards are yet to be harmonised. Some countries like Germany follow this programme strictly, but other member countries do not. Multiplicity of national eco-labelling fragments the market for the producers.

Comment

Thus, it can be easily understood that if any country wants to implement these 'green' or 'healthy' criteria as a policy instrument, then it can act as a strong impediment to trade. As far as agricultural exports and processed food items are concerned, they will suffer a great extent as a result of these policies. Compulsory labelling, whenever there is no risk, can suggest a risk and create a psychological barrier to the consumer. This will penalise the exporter. Similarly eco-labelling can also restrict trade through various channels if misused intentionally.

Chapter 5

Affected Agricultural Commodities

In this section of the paper, certain key areas of concern for Indian exporters are mentioned. The major Indian export items facing NTBs are marine products; nuts (peanuts and cashewnuts); fruits and fresh vegetables (e.g. mango, grape etc.); tea, coffee etc. A brief account of the NTBs used on these products are provided in this section.

Marine products

The marine products and seafood export items are very important from India's point of view, as they contribute a major portion of foreign exchange earning. India's share in the total world market in this field is around 2.5 per cent. Unfortunately, India is at present unable to exploit her export potential to the maximum extent, due to increased usage of several restrictive measures undertaken by trade partners. Japan is the single largest importer of Indian seafood, followed by EU and US. For example, in the first case described in chapter 3, the dispute between EU and India has been discussed. EU informed that its inspection has revealed serious deficiencies in the infrastructure and hygiene requirements in fishery establishments. On the ground of potential risk involved, it stopped importation from India. Later, after extensive measures were taken by certain exporters (mostly big exporting houses) following the EU norms, they were allowed to export to EU. However the EU measures are disguised NTBs in the sense that, several restrictions were more stringent as compared to the relevant HACCP standards. For example, EU directed that fishes/ fillets of uniform size and of colour should be packed together. Clearly, such directive can lead to no increase in sanitary standard and hence redundant. EU has also set certain similar

stringent processing conditions for exporters, which are trade-restrictive and extra-territorial. For example, EU has dictated tolerance level in potable water; condition of wall, floor and ceiling (non-slip for easy cleaning); rational layoff (so that contamination is prevented); in-house peeling of products etc. All these expenditures meant for compliance has led to tremendous cost escalation for exporters. According to a study, the processing cost has gone up from Rs. 2 per Kg. To Rs. 7 per Kg. This increase in cost is due to the fact that exporting units have to hire additional employees for running EU-prescribed machines like ETP, Chilled Room, Flake, Ice machine etc. There has also been manifold increase in water and power consumption (5 times and 3 times respectively). Again in earlier times, outsiders on a contract basis did peeling. Need of in-house peeling as per EU directive led to a massive increase in processing costs. In short, Indian exporters have suffered severely from this exercise.

Also, the shrimp exports to US have suffered appreciably during the tuna dispute. At present, US restricts entry of Indian products by SPS regulations. Japan also imposes certain stringent SPS requirements on Indian seafood exports. The frozen fish exporters to Australia have to obtain license for sensitive products.

Nut products

In this category, products like Cashewnuts and peanuts can be included. Indian exporters enjoy a cost advantage in this product as compared to the main export destinations like EU. However, the imposition of several NTBs hurt their export prospect considerably. For example, in EU, different testing procedures and assessment standards are prevalent in different markets. Multiple testing requirements pose another problem for exporters, as each test costs a handsome amount. Discrimination among exporters is another issues. In certain cases, certain tests are required for exports from India and Egypt, but not from exports from US and Argentina. Sometimes, importing countries implement its policy objective by discriminatory tax-

structure. For example, countries often prefer bulk imports. Keeping this view in mind, no import duty is imposed on 50-Kg. bags, but on 5-Kg. bags. This poses problems for the small exporters. Another area of confusion is that of Genetically Modified Organisms (GMO). Several countries favour GMOs, and several other countries prefer the opposite. Even within the EU, these two groups coexist. Under these circumstances, it becomes difficult for exporters to fulfil the demand in both markets simultaneously.

The recent aflatoxin debate in EU has been discussed in chapter 3 under case 2. It is said that consumption of nuts with higher aflatoxin level will lead to liver cancer. While the international guideline (Codex) declares 15 ppb (parts per billion) as the safe limit for consumption, EU continues to impose a higher standard in this regard. The EU set safe limit is 10 ppb for raw material and 4 ppb for consumer ready products. This is an undue burden on the suppliers as the aflatoxin level in raw materials is generally reduced through processing. So no appreciable improvement in consumer safety can be expected by imposing this higher standard for processed products. Also, the existing sampling requirement is a burden on the exporters. For example, EU base their testing on a 30 Kg. sample equally divided in three parts. If any one of the samples is found to exceed the EU-set limit, the entire consignment is rejected. These go against the FAO directive, which recommended that testing of a 20 Kg. sample will ensure adequate safety for the consumers. Stricter norms will provide no significant improvement. According to a study, the chances of an EU citizen at risk of eating a nut contaminated with aflatoxin is extremely low. In addition, allegations about pesticide residue also hurt the market access of these products in EU.

Apart from the aflatoxin requirements, nut products face certain SPS regulations in US as well. Again in Australia, the shelled cashewnuts have to meet certain labelling requirements, which pose problem for exporters.

Fresh vegetable and processed fruit products

Of the major fruit export items, mango pulp and grapes come instantly into mind. The exporters were asked by US to implement HACCP analysis without any appreciable decline in product quality. For example, EU demanded that a record of each mango exported should be maintained. The thorough analysis for the exporters was undertaken by APEDA, with a part financed by Ministry of Food Processing Industries. The analysis involved improvements in processing units, development of quality assurance documentation, training of personnel, getting units certified etc. The exercise involved an enormous cost. The cost could have been prohibitive, without the financial and technical assistance offered by APEDA. However, only the large exporters could manage to undertake the analysis. The small exporters could not avail the benefit due to several reasons. Since the industry is a seasonal one, it was not possible for them to keep records of each mango at field level, a necessary condition for HACCP. Also, getting ISO certificate is a costly affair, and beyond capability of small exporters. Also, the main market for the small exporters are gulf countries, where cost effectiveness is more important than HACCP. The testing procedures in EU also pose a problem for the Indian exporters. Often the test results in EU are different from that obtained in India due to application of different methodology. Apart from mango pulp, several fruit products face SPS regulations or GMO testing requirements. The main products suffering from these regulations are potatoes, bananas, mango fresh and dried, grapes fresh and dried etc. The fertiliser limit, mainly 93 per cent water solubility of triple superphosphate (TSP) also acts as a barrier to Indian exports. Apart from this, tariff quota restriction, non-automatic licensing, prior authorisation, import monopoly, seasonal tariff rates etc. create major problems for fruit and vegetable products.

The rules regarding importation of fresh fruits and vegetables into the US are also very stringent. For example the quarantine and other phytosanitary requirements have resulted in a practical ban

on imports of Indian fruits like mangoes, grapes. Again litchis had to be exported with the label stating that they are not for exporting to Florida. Also, all imports of the fresh produce into the US require US Department of Agriculture clearance, which can take place only after they have conducted detailed tests including inspection of the areas where items are produced. Clearly, the process being time-consuming, it turns out to be fatal for the perishable products.

Tea and Coffee

Indian tea export is mainly facing NTBs in the German market. For example, recently Germany complained about existence of high level of ethion in Darjeeling teas and bicofol in Assam, Terai and Booras teas. However in this case also, the EU is not united regarding the domestic standards. Recently, an Indian tea brand was blocked in Germany since the pesticide residue crossed the dangerous limit. But the same tea brand was sold in UK and faced no rejection. In the light of this event, the German measures seem over-enthusiastic. The child labour clause also poses problem sometimes. Often the negotiation over pesticide residue debate results in lowering of price of the export item. This also causes severe loss for the exporters. In Germany, the present stress is on recyclability of packaging, not reusability. This also led to tremendous cost escalation for exporters.

Indian tea exports also face SPS restrictions in Japan. They also have to face certain labelling requirements in Australia. For Australia, a radiation test is to be undertaken, imposed after the Chernobyl mishap. The test can only be done at Bhaba Atomic Research centre in Mumbai. This adds to the costs of the exporters, as there is no chance of radiation in the tea producing areas. Indian Coffee exporters also face NTBs in EU on the ground of pesticide residue.

Miscellaneous products

India is a cheap supplier of meat products in the international market, for example, the meat and edible meat offal can be considered. EU often restricts import from India on SPS ground, on the basis of low standard. The specific allegations put forward in several cases are ban on the use of hormones, specified risk material ban etc. It has been widely accepted that EU regulations on growth promoting hormones and specified risk materials ban are extremely stringent. These products also face NTBs on SPS ground in US. Wide difference in EU standards and certifications pose an impediment for the exporters. Other products of animal origin (dairy products, natural honey, preparations of meat, poultry products etc.) are also being blocked from entering the EU and US market on SPS grounds. The EU poultry safety regulations differ from international system to an appreciable extent. EU often accuses that the Government is helping exporters in terms of export subsidy. The claim is baseless in almost all cases.

Indian rice exporters also suffer in the EU market. The main NTB imposed on rice in EU is CRS, by which importers have to pay the full duty and certify the quality of rice consignment while importing. The duty recovery takes a long time, forcing importers to switch to other sources. Also, the incidence of GMO regulations and variable levy on rice is common in EU. All these measures restrict the market access for exporters severely. In Japan, the rice exporters' are barred from entry by usage of quota. The tobacco products also face NTBs in EU. EU blocks the import on the ground of pesticide residue.

The products produced organically are facing market access problem in EU. Indian mushroom exports suffer severely from the EU regulations, namely lengthy and highly unpredictable approval process. Also, the regulations are stricter in Austria and Luxembourg as compared to other EU countries. Also, certain fruit products suffer from these GMO regulations.

Chapter 6

The Problem and Possible Solution

Now, in this part of this paper, the way out is suggested. If this trade-distorting tendency is not checked at this level, then there may follow incidents of retaliatory NTBs on SPS or similar grounds, which will jeopardise the world trade in agriculture. In other words, the inclusion of agriculture under the wings of WTO will be fruitless.

In this chapter, two points are illustrated. In the first part, what India has done so far and the path that she should follow if any country imposes a disguised NTB on its agricultural exports on the basis of SPS measures is discussed. The second part is more important. Indian agricultural exporters have certain weak points. If not properly corrected, then these weaknesses will provide additional channels to the foreign Authorities to impose ban on Indian exports on SPS ground whenever required. In the present situation, already standing on the toes, India cannot afford to provide additional playing field to its trading partners.

Response

As described earlier, in case of any dispute, India has to lodge a complain to the party concerned and inform WTO about their stand. If the discussion is not successful, then the Director-General of WTO forms a Dispute Settlement Panel (DSP). Both parties must submit their views to the panel before the first meeting. In the first meeting, being the complainant, India will present its case and in the next meeting the respondent starts, being followed by the complainant. Willing third parties are also invited to present their views. After hearing both parties and asking questions and clarification wherever necessary, the DSP forms its decision about it and submit its final report to the parties concerned as well as the WTO.

India should reap maximum benefit out of this system. Whenever a country imposes NTB on India on SPS or environmental ground improperly, India must respond at its earliest. It should file their complain to the WTO after proper homework, so that it can present the case in the meeting properly and convincingly. If the trade barrier hurts a number of countries, then India should keep in touch with them, so that they can jointly fight the case. In case, India alone is the victim of the policy, even then it should try to tress out countries that will participate in the case as helpful third parties. The ill preparedness of India on different aspects of WTO so far was costly for her. The exporters are still not thoroughly conversant with the WTO agreements. They must be aware of different channels through which the import of agricultural commodities can be blocked. In case of a number of commodities, the Indian standard is still lagging behind the international standard, which is a source of problems. No further relaxed attitude in this respect should continue, both on behalf of the exporters as well as the Government. India is gradually opening its domestic market to foreign producers. It should demand for 'reciprocity' in the matter of greater market access from EU or United States. More active participation in the meetings of international organisations like Codex Alimentarius Commission, and in the ministerial conferences are required where the Indian stand will be announced clearly.

In reality, India is not sitting idle. A few steps have already been taken to strengthen India's stand. They are:

1. Presently, seafood exporters have to obtain a certificate from MPEDA stating that the shrimp has been caught in an area not native to the turtles. Other varieties of seafood export certificates are obtained from :
 - (i) Export Inspection Agency
 - (ii) Marine Products Export Development Authority
 - (iii) Central Institute of Fisheries Technology

India has defended the shrimp export case to WTO panel quite properly.

2. The Agricultural and Processed Food Products Export Development Authority has applied to EU for registering India as a source of organic produce. Indian authorities are encouraging organic farming which has significant appeal in the West. APEDA is providing necessary information to the existing domestic organic units in this regard. The size of organic produce market in US and Japan is also growing considerably. Steps must be taken in this regard. Recently, APEDA helped mango pulp exporters to satisfy HACCP criteria successfully.
3. The Ministry of Agriculture has published a guideline for exporters on Sanitary and Phytosanitary certification of exportable plants and plant materials in 1996. This booklet clearly specifies 'Dos' and 'Don'ts' for the exporters. Though there exist options to update the book, it is indeed a commendable attempt.
4. In view of the various difficulties and the need to have transparency in the different countries as related to SPS aspects, a need has been felt to have a data base on SPS requirements of different countries in electronic media in a form easily accessible and understood by different countries. At the 6th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems held from 23rd-27th February, 1998 in Australia, this issue had been raised by the Indian delegation and the Committee had accepted the proposal and agreed that work on the subject should be initiated.
5. Different Governmental organisations are engaged in settling several trade disputes. For example, APEDA is involved in the Aflatoxin debate with EU. The debate is about permissible Aflatoxin level in food-products.

Adaptation required

The analysis should start with an example that will clear the purpose of this section. A few years back, an Indian firm airfreighted

a large crate of samples with metal straps to Germany. The whole consignment was stopped at the airport as Germany had already banned usage of metal straps earlier. Sadly, the exporter had no idea about it.

This shows the poor knowledge that exporters have about foreign markets. It is for sure that the foreign Governments will always try to restrict our exports for maximising their objective. So exporters should try to minimise the lethargic attitude of their own. In the remaining portion, a few areas of concern are discussed.

1) Packaging

Packaging is an essential thing for international trade today. It not only promotes the product (advertise) but also protects it from foreign elements. Different countries have different policies towards packaging, e.g. Germany wants that packaging should be fit for recycling. But the primary emphasis on packaging is due to its protective role. Indian packaging standard is now considered as bad by other countries. For example, rice is exported to gulf countries in gunny bags. In future, these countries can impose ban on Indian export on the ground that the container is not sufficient to check foreign elements. This NTB on SPS ground will not violate the WTO guidelines. In fact, Germany already informed India to ban use of jute bags on two grounds. First, jute bags are used extensively for transportation of certain foodstuffs, like- coffee, cacao, legumes, spices, dried food etc. As residues of pesticides are found in much of the jute packaging, worries have been voiced about contamination of these foodstuffs. Secondly, residues of batching oils utilised to render jute fabric more supple and prevent it from rotting are also difficult to extract and prevent composting and recycling of jute. Tea exporters also faced the German packaging restrictions, replacing aluminium packs by paper packs.

Another example will also help in understanding the situation. Indian fish export goes to Thailand. There, the local personal open the pack, refreeze and repack it. They do not consider the Indian packaging performance sufficient. In the long run, they may also resort to any other exporter. As a matter of fact, 90 per cent export of seafood industry goes in bulk packs serving as intermediate input to foreign producers. Only 10 per cent of the seafood export has started moving in as value added individual quick-frozen packs.

The problem with the Indian exporters is that they are yet to get out of the domestic practice syndrome. In domestic market, the role of packaging is limited. The exporters suffer from a myopic vision and can not understand the difference between domestic and global market. The sooner they feel it, the better. Indian Govt. should act positively in this regard. The exporters should also realise that good packaging cannot compensate a bad quality, but a bad packaging can devalue the good product. With regard to packaging, India still uses biodegradable substances like jute, bamboo baskets, gunny bags, cottons etc. However western countries nowadays prefer recyclable packaging.

2) Use of fumigants

Indian exporters normally consider fumigation as an avoidable act because in their opinion, it is wastage of money. Guided by this belief, they apply various tricks to bypass the process. Fumigation is required for cargo of rice, soya, spices, oilseeds etc.; the major exports of India. Exporters often make deal with fumigators, who produce a fake bill and later get, a fraction of the invoice price. Once, even Bangladesh rejected a 4000-tonne consignment of Indian rice. The quality of the rice was beyond consumption, as fumigants were not properly used. Now-a-days most countries do not consider a fumigation certificate from India worth the paper it is printed on. This situation, which may provide an additional excuse to the foreign countries, must not prevail.

3) The proper knowledge of the materials (fertilisers, pests, packaging modes) already banned and other relevant laws in the importing country.

Often Indian exporters are not aware of the laws and instructions prevailing in foreign countries. The example provided in the beginning of the chapter perhaps serves this purpose well. Another case is that of the pepper exporters. India is second largest pepper producing country. In many cases, the producers follow the traditional method, using banned chemicals like DDT and BHC as pesticide. Hindusthan Insecticides Ltd. is permitted to produce 10,000 tonnes of DDT annually for eradication of diseases like malaria. Unfortunately bulk of the DDT produced is applied on crops, as it is one of the cheapest pesticides available. Some importers have requested the exporters to produce the product organically and are ready to pay a premium of 20 percent or more. The chilli exporters are also requested by importers to use bio-fertilisers instead of harmful things. Government should encourage producers to use biological pest control methods wherever possible. If proper attention is not paid in time, trade partners may reject Indian exports on SPS grounds and perhaps that will not lead to violation of WTO agreement. The same applies in case of some other exports as well. The Government should come forward to wipe out the information gap.

4) Proper infrastructure facility

In case of perishable goods, primarily cut flowers and marine products, infrastructure is the key thing. In both the cases, shorter the chain between growers to consumers, the better will be the quality. It is not enough to grow world-class flowers if they cannot be delivered to consumers in shape. India suffers from poor roads, slow transportation, insufficient telecom facility, erratic power supply, lack of refrigerated trucks and trawlers etc. For example, when EU banned the export of Indian marine export on SPS ground, and later a delegation came to visit the Indian export plants, unfortunately the plants were then facing 100 percent power cut and shortage of potable water. Naturally guided by inductive conclusion, they submitted a tough report against India. The functioning of the ports due to lack

of proper care is also horrible. The comparison of container handling will make the situation clear. The figure is 59 man-hours in India, compared to 1 man-hour at leading international ports. The Government should try hard to eliminate all these problems.

5) Close interaction between research and commerce

In India, still the agricultural research institutes do not play a vital role in helping the exporters. In United States certain universities research to identify the technology-need of farmers in different situations (one such study helped the cotton exporters of Paraguay). Another example is the Rice Research Institute in Manila. So, India should follow a close co-ordination between the exporters and the researchers. The number of export-helping research units in India is also insufficient. For example, Germany often charges Indian exporters about high pesticides residues in their products. Particularly, complains are about high levels of ethion in Darjiling tea and bicifol in Assam and Terai tea. But the difficulty facing the Indian tea exporters is that there is only one Institute, the Pesticides Residue Laboratory, which can test the commercial samples of tea in India. Similar necessity is there for the seafood products to improve the product quality.

6) Environmental Degradation

Proper attention should be paid on environmental degradation. Fish producing plants, typically produce a large quantity of effluent waters containing a very high organic load. Due to the proximity to the sea of most of the processing plants, these wastewaters are discharged directly into the sea or estuary without proper treatment in most of the cases. Depletion of oxygen in the discharge area can cause serious harm to the eco-system. If continued, this may provide foreign Governments an additional scope to block Indian exports. Similarly, anabolic steroids or antibiotics used in Aquaculture farms can provide another channel. For betterment of the system, some leading environmentalists of the country suggest a way out. A system of **Green Rating** should be constructed by the Government on the basis of observance and enforcement of environmental standards. Higher the rating, greater will be assistance provided to the company. This kind of incentive scheme is most likely to beget positive result.

7) Coordination among different Government Agency

At present, matters regarding seafood industry are scattered under the following Ministries:

Matters	Ministry
Export of Seafood	Ministry of Commerce
Deep-sea Fishing and Seafood Processing	Food Processing Ministry
Inshore Fishing	Ministry of Agriculture
National Institutes concerned with development of Fisheries	Ministry of Science and Technology

Source: Export import trade flash, 16-31 May 1997

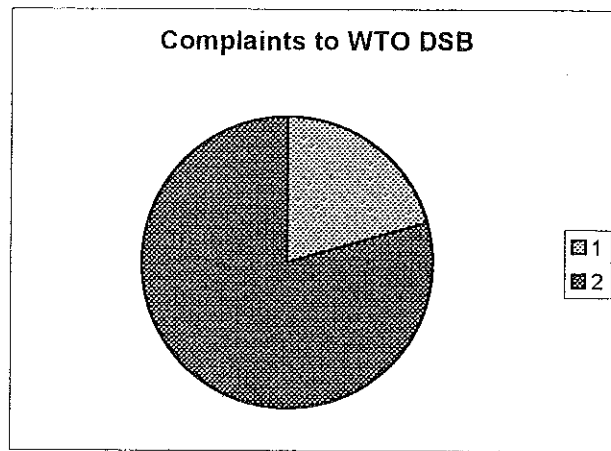
So, for co-ordinated development of this industry, it is essential that a central ministry of fisheries should be created. Similarly, several government trade, regulatory and research entities have some responsibility for addressing foreign SPS measures, but no one is directing and co-ordinating overall government efforts. Thus, a strong co-ordinating body should be constructed as soon as possible.

Comment

Though in the present days, the novelty of free trade is floated in theory, almost all countries are using the provision of the agreement on SPS ground or environmental concern as a disguised but effective NTB. Under these circumstances, in order to keep the agricultural export market intact with respect to SPS, environmental measures or labelling requirement, India has to behave tactfully. On one hand it has to raise voice whenever subjected to this practice, on the other hand, it should correct the domestic anomalies so that foreign Governments can not resort to any lame excuse. At the same time, the policy issues are to be addressed in the multilateral and bilateral forums.

CONCLUSION

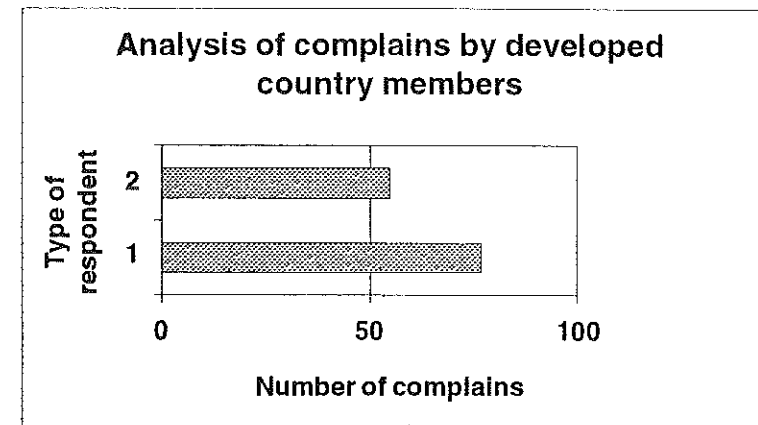
It is time to acknowledge the fact that the developed countries appropriate the benefit of the dispute settlement mechanism more than their developing counterparts. In Chapter 2, it is shown that the time taken in the whole dispute settlement process is sufficient to restrict imports. The table shown below illustrates the contention.



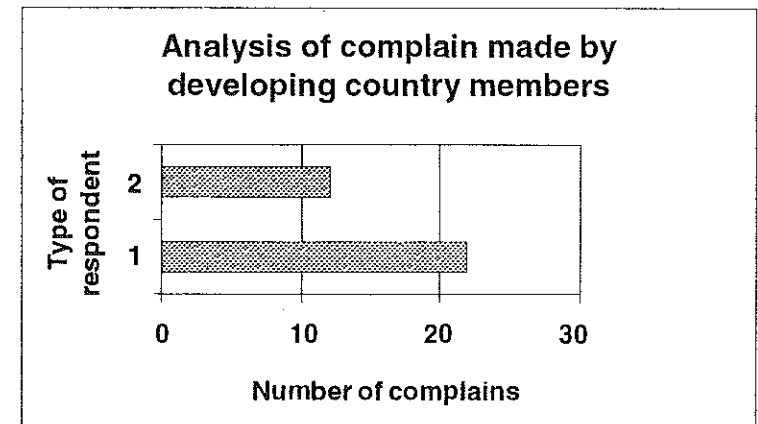
Up to 16th June, 1999 developed country members had lodged 132 complains (denoted by type 2) in the dispute settlement board. On the other hand, the developing members had registered only a meagre 34 complains (denoted by type 1). So this is easily understood that developed countries are more interested to approach and initiate the dispute settlement mechanism.

Of the 132 complains made by the developed countries, 77 are lodged against other developed countries. The most active players in this segment are EC, US, Australia, Japan, and Canada etc. 55 complains were registered against the developing countries. The upper bar denotes complains lodged against the developing countries and the lower one represents complains

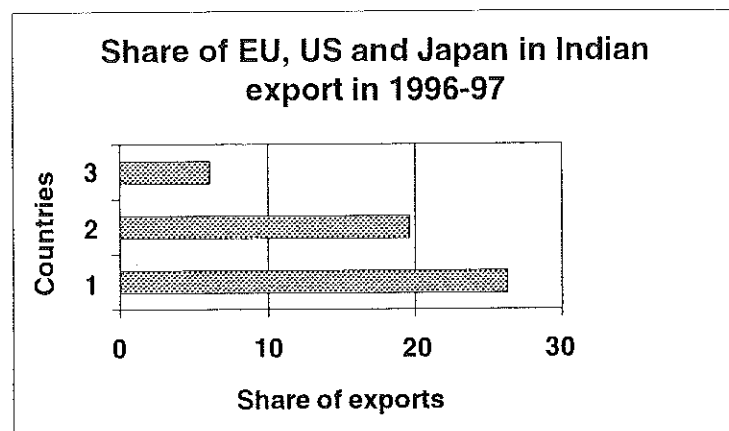
against the developed countries. It is clearly established that the introduction of trade impediments is a feature of the developed countries.



The analysis of complains made by developing countries also show some interesting facts. Of the 34 complains they made, 22 were against the developed countries, the remaining 12 being imposed on the developing countries. In the figure, the upper and the lower bar represents complains made against developing and developed countries respectively. The fact shows that often the developing countries have to approach the DSB to complain against the NTBs prevalent against its export.



US, EU and Japan are the three largest trade partners of India. The percentage share of Indian export to EU, US and Japan in the year 96-97 is 26.3, 19.6 and 6.1 respectively. Together these countries account for 52% of Indian export. In the following figure, bar 1, 2 and 3 represents EU, US and Japan respectively.



It could be seen that the amount of NTBs imposed on Indian primary products in these three countries is largest. In the following table, the NTBs used on Indian products in these countries are summarised, commodity wise.

List of NTBs imposed by EU on Indian primary products

Nature of NTB	Code HS	Item specification
GMO + ban on use of hormone + SPS measures + export subsidy + SRM ban	02	Meat and edible meat offal
Environmental standards + SPS measures	030612	Lobsters (homarus spp.) frozen
Environmental standards + SPS measures	030613	Shrimps and prawns frozen
Environmental standards + SPS measures	030622	Lobsters (homarus spp.) not frozen
Environmental standards + SPS measures	030623	Shrimps and prawns not frozen

GMO + ban on use of hormone + SPS measures + export subsidy	04	Dairy products, birds' eggs, natural honey, edible products of animal origin
SRM ban	0506	bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid
GMO	0701	Potatoes, fresh or chilled
GMO + Preferential quota	07095100	Mushrooms, fresh or chilled
GMO + Labeling	07102200	Beans, shelled or unshelled, frozen
GMO + Labeling	07104000	Sweet corn frozen
GMO + Preferential quota	07123001	Mushrooms (including morels)
GMO + Import restrictions	080300	Bananas, including plantains, fresh or dried
GMO + Pesticide residue	08045002	Mangoes fresh
GMO + Pesticide residue	08045003	Mangoes sliced, dried
GMO + Pesticide residue	080600	Grapes, fresh or dried
Pesticide residue	090100	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes
Pesticide residue	090200	Tea
Export subsidy	10010	Wheat and meslin
GMO + Variable lavy	10060	Rice
Export subsidy	11010	Wheat or meslin flour
SPS measures + pesticide residue	12	Oilseeds and oleaginous fruits; miscellaneous grains, seeds and fruits etc.
GMO + ban on use of hormone + SPS measures + export subsidy + SRM ban	16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
Preferential Quota	17	Sugars and sugar confectionary

Pesticide residue	200811	Groundnuts, prepared/preserved
Pesticide residue	2401	Unmanufactured tobacco; tobacco refuse
Pesticide residue	2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
Pesticide residue	2403	Other manufactured tobacco and manufactured tobacco substitutes

Source: B. Bhattacharyya

List of NTB imposed by US on Indian primary products

Nature of NTB	Code HS	Item specification
SPS	02	Meat and edible meat offal
SPS	03	Fish and crustaceans, molluscs or other aquatic invertebrates
SPS	04	Dairy produce, birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included
SPS	07	Edible vegetables and certain roots and tubers
SPS	08	Edible fruits and nuts; peel or citrous fruits or melons

Source: B. Bhattacharyya

List of NTB imposed by Japan on Indian primary products

Nature of NTB	Code HS	Item specification
SPS	03	Fish and crustaceans, molluscs or other aquatic invertebrates
Country of origin labelling	7032000	Garlic fresh or chilled
Country of origin labelling	9101000	Ginger
SPS	9020000	Tea

Quota	10019000	Wheat (other than durum wheat)
Quota	10060000	Rice
Quota	11010000	Wheat or meslin flour

Source: B. Bhattacharyya

An account of these NTBs on Indian products for the year 96-97 country-wise will demonstrate the potential danger for India. The losses of Indian exporters from imposition of these NTBs are quantified in the following table.

Distribution of exports to EU by NTBs (1996-97)

Nature of NTBs	Value (Rs. Million)	Percentage Share
<i>Value of exports of products facing a single NTB</i>		
Anti-dumping	16137.05	10.35
Pesticide residues	10727.34	6.88
Export subsidy	1287.36	0.83
Child labour clause	11855.63	7.60
Ban on use of azo dyes	18239.16	11.69
Technical standards	6726.46	4.31
SRM ban	10664.28	6.84
Others	2360.71	1.51
<i>Value of exports of products facing two NTBs</i>		
Environmental standards + SPS measures	4485.924	2.88
MFA + use of azo dyes	68324.207	43.81
SPS measures + Pesticide residue	2551.741	1.64
GMO + Pesticide residue	403.256	0.26
Others	1527.199	0.98
<i>Value of exports of products facing more than two NTBs</i>		
	620.414	0.40

Source: B. Bhattacharyya

Distribution of exports to US by NTBs (1996-97)

Nature of NTBs	Value (Rs. Million)	Percentage Share
<i>Value of exports of products facing a single NTB</i>		
SPS	9106.97	11.16
MFA	69364.37	84.98
Anti-dumping	18.79	0.02
<i>Value of exports of products facing multiple NTB</i>		
MFA + Labeling	3027.3	3.71
MFA + Flamability Standard	61.4	0.08
MFA + transitional safeguards	44.9	0.06

Source: B. Bhattacharyya

Distribution of exports to Japan by NTBs (1996-97)

Nature of NTBs	Value (Rs. Million)	Percentage Share
<i>Value of exports of products facing a single NTB</i>		
Quota	72.54	0.22
SPS	17158.47	51.45
Restricted imports	16102.93	48.28
Country of origin labeling	16.12	0.05

Source: B. Bhattacharyya

The tables provided above show the extent to which the Indian exporters are hurt which strengthens the proposition of the paper.

Now it is time to sum up the findings of the paper. In chapter 3, it is established that SPS agreement could be, and (actually) is being misused to block agricultural imports. In chapter 4, some other forms of NTBs are analysed and their role in distorting agricultural trade is established. Owing to the effect of these NTBs,

Indian exports are not increasing at the normal rate, and the market share of Indian products in comparison with world export is remaining stagnant. It is also beyond doubt that India simply cannot leave the membership of WTO. Isolation in world economy will hurt India more than SPS-led distortion. So, India has to reap maximum benefit out of this system. That is possible only if both Indian Government and exporters fulfil their responsibilities properly in a co-ordinated manner.

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Relevant web-sites

1. www.ustr.gov
2. www.wto.org

ANNEXURE 1
Japan's SPS notifications

Relevant legislation	Objective and rationale	Products covered
Law concerning the safety assurance and quality improvement of feed	To ensure safety and quality of feedstuff	Feed additives, probiotics
...	Consumer health and safety	Muscle-cattle, pig, sheep, horse, chicken-duck-turkey, fat-cattle, liver-cattle, kidney-cattle, milk, eggs, fish and shellfish
...	Protection of public health	Food additives
Food sanitation law	Protection of public health	Chicken and broilers, natural cheese, nuts, pork, powdered juice, bakery products, pulses, frozen processed food served without heating, processed cotton-seed products, fishpaste products, vegetable oils, processed fruit in syrup, soft drinks, sauces, food additives, reindeer meat, processed shrimps, prawns and crabs, fruits, fruitpaste, dried fruits, dried frozen vegetables, beef.
...	Protection of public health	Food additives
Food sanitation law	Consumer health and safety	Foods and food additives produced by recombinant DNA techniques.
Food sanitation law	Public health, conformance with the deregulation action programme and abolition of a rarely used system.	Prepackaged foods
Food sanitation law	Public health	Edible vegetables and certain roots and tubers; edible fruit and nuts, tea, ginger, oilseeds and

		oleageous fruits, miscellaneous grains, seeds and fruit.
Fisheries resources conservation act	Protection of aquatic animal life or health	Aquatic animals for the purpose of propagation or aquaculture
...	Public health	Wheat flour
Plant protection law	Plant health	Plants and plant products
Food sanitation law	Protection of public health	Packed food, processed thermally under pressure; fish-surimi products
Domestic animal infectious diseases control law	Animal health	Animals and animal products

ANNEXURE 2

List of the plants prohibited for import in Japan

Country	Prohibited plants	Quarantine pests
Israel, Cyprus, Jordan, Syria, Turkey, Lebanon, Albania, Italy, Austria, the Netherlands, Greece, Switzerland, Spain, Germany, Hungary, France, Belgium, Portugal, Malta, UK, former Yugoslavia, Africa, El Salvador, Guatemala, Costa Rica, Nicaragua, Panama, Honduras, Argentina, Uruguay, Ecuador, Columbia, Chile, Brazil, Peru, Bolivia, Bermuda, West Indies (excluding Cuba), Australia (excluding Tasmania), Hawaiian Islands	Fresh fruits akee, avocado, strawberry, all spice, olive, cashew nuts, kiwi fruit, <i>Thevetia peruviana</i> , carambole, pomegranate, jaboticaba, broad bean, alexandrian laurel, date palm, <i>Muntingia calabura</i> , feijoa, pawpaw, mammee apple, longan, litchi, and of plants of the genera <i>Ficus</i> , <i>Phaseolus</i> , <i>Diospyros</i> , <i>Carissa</i> , <i>Juglans</i> , <i>Morus</i> , <i>Coccoloba</i> , <i>Coffea</i> , <i>Ribes</i> , <i>Passiflora</i> , <i>Dovyalis</i> , <i>Zizyphus</i> , <i>Spondias</i> , <i>Musa</i> (excluding immature banana), <i>Carica</i> , <i>Psidium</i> , <i>Artocarpus</i> , <i>Annona</i> , <i>Malpighie</i> , <i>Santalum</i> , <i>Garcinia</i> , <i>Vitis</i> , <i>Syzygium</i> , <i>Mangifera</i> , <i>Ilex</i> , <i>Terminalia</i> and <i>Gossypium</i> , and of plants of the family Sapotaceae, Cucurbitaceae, Cactaceae, Solanaceae, Rosaceae, Rutaceae.	Mediterranean fruit fly (<i>Ceratitidis capitata</i>).
India , Indonesia, Vietnam, Cambodia, Singapore, Sri Lanka, Thailand, Taiwan, China, Pakistan, Bangladesh, East Timor, Philippines, Brunei, Hong Kong, Malaysia, Myanmar, Laos, Papua New Guinea, Hawaiian Island, Micronesia.	Fresh Fruits Of Citrus, Barbados Cherry, Avocado, Apricot, Fig, <i>Baccaurea sapida</i> , Strawberry, Olive, Indian Laurel, <i>Arengae englei</i> , carambola, pomegranate, santol, plum, tahiti chestnut, alexandrian laurel, tomato, pear, date palm, papaya, loquat, betel nut, grape, peach, <i>Terminalia catappa</i> , <i>Myrica rubra</i> , rambutan, longan, apple, litchi, vampi,	<i>Bactrocera dorsalis</i> species complex

	and of plants of the genera <i>Bouea</i> , <i>Diospyros</i> , <i>Coffea</i> , <i>Capsicum</i> , <i>Passiflora</i> , <i>Solanum</i> , <i>Zizyphus</i> , <i>Spondias</i> , <i>Psidium</i> , <i>Artocarpus</i> , <i>Annona</i> , <i>Hylocereus</i> , <i>Garcinie</i> , <i>Eugenia</i> , <i>Mangifera</i> , <i>Lansium</i> , and of plants of the family Sapotaceae, and mature banana.	
Easter Island, Australia (Excluding Tasmania), Society Islands, Tubuai Islands, New Caledonia, Papua New Guinea.	Fresh fruits of citrus, avocado, apricot, fig, olive, kiwi fruit, carambol, cherry, pomegranate, red pepper, white sapote, palm, tomato, pear, date palm, papaya, guava, loquat, grape, quince, peach, apple, and of plants of the genera <i>Diospyros</i> , <i>Rubus</i> , <i>Morus</i> , <i>Coffea</i> , <i>Passiflora</i> , <i>Zizyphus</i> , <i>Eugenia</i> , <i>Annona</i> , <i>Mangifera</i> and mature banana.	Queensland fruit-fly (<i>Bactrocera tryoni</i>).
India , Indonesia, Vietnam, Cambodia, Singapore, Sri Lanka, Thailand, Taiwan, China, Pakistan, Bangladesh, East Timor, Philippines, Brunei, Hong Kong, Malaysia, Myanmar, Laos, Kenya, Tanzania, Papua New Guinea, Hawaiian Island, Micronesia.	Live vines, leaves and fresh fruits of plants of the family Cucurbitaceae, and fresh fruits of kidney bean, pigeon pea, cowpea, red pepper, tomato, egg plant, papaya, end of plants of the genera <i>Hylocereus</i> and <i>Mangifera</i> .	Melon fly (<i>Bactrocera cucurbitae</i>)
Afghanistan, Israel, Iraq, Iran, India , Cyprus, Jordan, Syria, China, Turkey, Pakistan, Myanmar, Lebanon, Europe, Africa, USA	Fresh fruits of apricot, cherry, palm, pear, quince, peach and apple, fresh fruits and nuts in shell of walnut.	Codling moth (<i>Cydia pomonella</i>).

(excluding Hawaiian island), former USSR, Canada, Argentina, Uruguay, Columbia, Chile, Brazil, Peru, Bolivia, Australia, New Zealand.		
India , Indonesia, Vietnam, Cambodia, Singapore, Sri Lanka, Thailand, Taiwan, China, Bangladesh, East Timor, Philippines, Brunei, Hong Kong, Malaysia, Myanmar, Laos, Africa, North America (excluding Canada but including West Indies), South America, Australia, New Zealand, Papua New Guinea, Hawaiian Island, Polynesia, Micronesia, melanesia.	Live vines, leaves, tuberous roots and other underground portions of plants of the genera <i>Ipomoea</i> , <i>Pharbitis</i> , and <i>Calystegia</i> , live tuberous roots and other underground portions of casseva.	Sweet Potato weevil (<i>Cylas formicarius</i>)
China, North America (excluding Canada but including West Indies), South America, New Zealand, Hawaiian Island, Polynesia, Micronesia, melanesia.	Live vines, leaves, tuberous roots and other underground portions of plants of the genera <i>Ipomoea</i> , <i>Pharbitis</i> , and <i>Calystegia</i> .	West Indian Sweet Potato weevil (<i>Euscepes postfasciatus</i>)
India , Europe (excluding Albania and Greece), former USSR, Republic of South Africa, USA, Canada, Uruguay, Ecuador, Chile, Falkland, Peru, Bolivia.	Live halms, leaves, tubers, and underground portions of plants of the family Solanaceae.	<i>Synchytrium endobioticum</i>
Turkey, Italy, Austria, Netherlands, Greece, Switzerland, Spain, Denmark, Germany, Hungary, France, Belgium, Portugal, Luxembourg, UK, former	Live halms and leaves of cabbage, and of plants of the genera <i>Cirsium</i> and <i>Verbascum</i> , and of plants of the family Solanaceae.	Colorado potato beetle (<i>Leptinotarse decemlineata</i>)

Czechoslovakia, former Yugoslavia, USA, Canada, Mexico.		
Israel, India , Iceland, Ireland, Italy, Austria, The Netherlands, Greece, Switzerland, Sweden, Spain, Denmark, Germany, Norway, Finland, France, Belgium, Poland, Luxembourg, UK, former USSR, Algeria, North America (excluding West Indies), Argentina, Peru, Bolivia.	Live tubers and other underground portions of plants of the genus <i>Chenopodium</i> , and of plants of the family Solanaceae.	Potato cyst nematode (<i>Globodera rostochiensis</i>)
India , Iceland, Italy, Austria, The Netherlands, Greece, Switzerland, Sweden, Spain, Denmark, Germany, Norway, France, UK, former USSR, Panama, Canada, Peru, Bolivia.	Live tubers and other underground portions of plants of the family Solanaceae.	White Potato cyst nematode <i>Globodera pallida</i>
Israel, Iraq, Iran, Syria, Turkey, Lebanon, Europe (excluding Netherlands), former USSR, Algeria, Tunisia, Morocco, USA, Canada, Cuba, Guatemala, Jamaica, Nicaragua, Mexico, Argentine, Brazil, Australia (excluding Tasmania).	Live halms, leaves and fresh fruits of plants of the family Solanaceae.	<i>Peronospora tabacina</i>
USA, Hawaiian Island	Underground portions of live plants of avocado, Alfalfa, kidney bean, <i>Indigofera hirsute</i> , okra, pepper, sweet potato, sugarcane, water melon, radish, soybean, <i>loblolly</i> , pine, red pepper, corn, tomato, balsam pear,	Citrus burrowing nematodes (<i>Radopholus citrophilus</i>)

	pineapple, <i>Pinus elliotii</i> , summer squash, melon, peanut (excluding seeds without pod), leek and litchi, and of plants of the genera <i>Anthurium</i> , <i>Musa</i> and <i>Beta</i> , and of plants of the family Rutaceae.	
Iran, Turkey, Europe, Former USSR, North America (Excluding West Indies), New Zealand.	Culms and leaves of the plants of the genera <i>Hordeum</i> , <i>Triticum</i> and <i>Secale</i> (including straw packing materials and straw goods similar thereof) and culms and leaves of the plants of the genus <i>Agropyron</i> .	Hessian fly (<i>Meyetiola destructor</i>)
Foreign countries excluding North Korea, Korea and Taiwan.	Rice plants, Rice straw (including rice straw bags, mats and other rice straw goods similar thereof), unhulled rice and rice hull.	Rice stem nematode (<i>Ditylenchus angustus</i>), <i>Trichoconis caudate</i> , <i>Balansia oryzae</i> , and other quarantine pests not existing in Japan
Israel, Iran, Cyprus, Jordan, Turkey, Labanon, Ireland, Italy, Austria, the Netherlands, Greece, Switzerland, sweden, Denmark, germany, norway, hungary, france, bulgaria, belgium, poland, Luxembourg, romania, UK, former Czechoslovakia, former Yugoslavia, egypt, US, Canada, Guetamala, Bermuda, Mexico, New Zealand.	Live plants and plant parts (including fruit, flower and pollen, other than seed) of <i>Pseudocydonia sinensis</i> , <i>Mespilus germanica</i> , <i>Eriobotrya japonica</i> , <i>Cydonia oblonga</i> and plants of the genera <i>Aronia</i> , <i>Photinia</i> , <i>Crataegomespilus</i> , <i>Amelanchier</i> , <i>Crataegus</i> , <i>Cotoneaster</i> , <i>Raphiolepis</i> , <i>Stranvaesia</i> , <i>Osteomeles</i> , <i>Dichotomanthes</i> , <i>Pyracantha</i> , <i>Docynia</i> , <i>Pyrus</i> , <i>Sorbus</i> , <i>Heteromeles</i> , <i>Peraphyllum</i> , <i>Choenomeles</i> and <i>Malus</i> .	<i>Ervinia anylovora</i>

ANNEXURE 3 UNCTAD's Classification of NTBs affecting primary products

Code	Description
1400	Tariff quota duties
1720	Urgency and safeguard duties
1900	Preferential duties under trade agreements
1930	Bilateral agreement
2230	Import Licence fee
3110	Minimum Import prices
3310	Variable levies
3400	Anti-dumping measures
3410	Anti-dumping investigations
3420	Anti-dumping duties
3500	Countervailing Measures
3510	Countervailing investigations
3520	Countervailing duties
4110	Advance import deposit
4130	Advance payment of customs duties
4170	Refundable Deposits for sensitive product categories
4300	Restrictive official foreign exchange allocation
4500	Regulations concerning terms of payment for imports
4600	Transfer delays, Queuing
5200	Import monitoring
6000	Quantity Control Measures
6200	Quotas
6270	Quotas for sensitive product categories
6300	Prohibitions
6310	Total Prohibition

6320	Suspension of issuance of licence
6330	Seasonal Prohibition
6340	Temporary prohibition
6360	Prohibition on the basis of origin (embargo)
6370	Prohibition for sensitive product categories
8000	Technical measures
8100	Technical regulations
8120	Marking requirements
8130	Labelling requirements
8140	Packaging requirements
8150	Testing, Inspection and quarantine requirements
8200	Pre-shipment inspection

Source: UNCTAD (1994), 1994, *Directory of Import Regimes, Part I*

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