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ANALYSIS OF NON-TARIFF BARRIERS OF CONCERN TO DEVELOPING COUNTRIES

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ABSTRACT

This study identifies non-tariff barriers (NTBs) that developing countries face in their trade with developed countries and with respect to South-South trade. The work seeks to contribute to the discussions in NAMA and other WTO bodies while also raising awareness of NTBs which interfere with the ability of developing countries to trade with each other and to build up South-South trade. Data collected and analysed consist of the academic literature, notifications by 21 non-OECD countries to the Negotiating Group on Market Access for Non-Agricultural Products (NAMA) of the Doha Development Agenda (DDA), business surveys and records relating to trade disputes brought before the World Trade Organisation (WTO) and regional settlement mechanisms. The study identifies categories and types of measures that are most reported and products affected by the reported measures. Attention is also drawn to developing countries' forward-looking export strategies and related potential barriers. Overall, the paper highlights similarities and differences in NTB concerns documented by the different sets of data reviewed and compares NTB concerns for trade with developed countries and for trade among developing countries.

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Executive summary

This paper collects and analyses data that identify non-tariff barriers (NTBs) of concern to developing countries (DCs) in trade with developed countries and among themselves.

The reduction or elimination of NTBs is included in the Doha Development Agenda (DDA) and is under consideration in regional and other arenas discussing trade liberalisation. This research aims to help identify possible negotiating targets. Moreover, it can provide input into ongoing discussions on how to make special and differential treatment (SDT) more effective. More generally, a clearer idea of these barriers should enable WTO Members to understand better DC concerns in this area and their implications so that they can respond with a positive agenda. The study also aims at raising general awareness of NTBs which developing countries themselves maintain and which interfere with their ability to trade with each other.

To understand the importance of trends that can be identified, a brief overview is provided of DC trade flows. These countries rely heavily on developed-country markets for their merchandise exports. Developing-country share of world manufactured exports increased significantly over the last decade and, while developed countries still make up the main destination for these exports, trade with other developing countries is becoming increasingly important and dynamic. As for the sectoral composition of DC exports, manufactured products have become dominant and there has been a noticeable shift within this commodity group towards higher-value added products.

Although data on NTBs faced by DCs are limited and have shortcomings, the study draws on several main sources of information to provide insights as full and useful as possible for traders and trade negotiators. The elements of research consist of a review of the literature on NTB issues, an analysis of DC interests in the WTO Negotiating Group on Market Access (NAMA), an analysis of disputes brought by DCs under WTO and regional dispute settlement mechanisms, and a review of private sector perceptions through available business surveys.

Though there are variations in the main findings resulting from each element of analysis, certain broadly defined categories of NTBs have consistently shown up as a source of concern to DCs:

In their trade with developed countries, customs and administrative procedures and technical barriers to trade (TBTs) emerge as the leading NTBs of concern to developing countries.

For trade among developing countries, technical barriers are less prominently reported. However, customs and administrative procedures also rank very high among reported concerns in the four components of analysis. Issues identified under this category of measures include difficulties relating to import licensing procedures and rules of origin and generally appear to be more pervasive in trade with other developing countries than with developed countries.

In addition, the literature, dispute settlement cases and business surveys provide evidence that para-tariff measures, such as fees and charges on imports, are also important barriers in particular for trade with developing countries. Other reported impediments of a more regional character include transportation regulations and costs.

As far as product-specific issues are concerned, it appears that live animals and related products are a commodity category - and within that category, fisheries - that deserve particular attention for reported sanitary and phytosanitary measures and customs-related problems. Among the NTBs reported for items of machinery and electronics, TBT issues are dominant. The same holds for pharmaceutical products, which also are subject to relatively many DC notifications to NAMA. National export strategies and programmes reviewed separately for a sample of DCs confirms that these are sectors and products of key interest to developing countries in their pursuit of export growth and diversification over the longer term.

ANALYSIS OF NON-TARIFF BARRIERS OF CONCERN TO DEVELOPING COUNTRIES

I. Introduction

1. For developing countries (DCs), integration into global markets offers the potential of more rapid growth and poverty reduction.¹ Yet tariff and non-tariff barriers may exist that hamper key developing-country exports, making it difficult for them to take full advantage of this opportunity.

2. The issue of improved market access for goods has been taken up by successive GATT rounds. Significant progress in reducing tariff barriers overall has been counterbalanced by non-tariff barriers (NTBs) that persist and may even be on the increase in new and possibly more discrete forms.² It is often hard to evaluate the importance of the NTBs due to the lack of transparency concerning their scope and effects. In addition, measures that traders encounter may or may not be legitimate under WTO agreements.

3. With the Doha Development Agenda (DDA), the use of NTBs is once again the subject of multilateral negotiations.³ Opportunities for addressing DC concerns relating to NTBs are also provided by regional and other fora pursuing trade liberalisation.

4. Against this background, this study collects and analyses data that identify NTBs of concern to developing countries in trade both among themselves and with developed countries. A clearer idea of these barriers should allow WTO members to understand better DCs' concerns in this area and their implications, so that they can respond with an appropriately proactive and positive agenda. More specifically, consideration could be given to attaching priority to NTBs found to affect products in which DCs have a comparative advantage when market access commitments are negotiated in the WTO Negotiating Group on Market Access for Non-Agricultural Products (NAMA) and other WTO bodies.

5. Similarly, identification of NTBs that are of particular concern to DCs could help determine priority targets for strengthening special and differential treatment (SDT). To help boost their exports, DCs have requested SDT, including in the field of NTBs. A review of SDT-related assistance is also called for by the Doha Ministerial Declaration.

6. Also, the study can help raise general awareness of NTBs which developing countries themselves maintain and which interfere with the ability of DCs to trade with each other and to build up

¹ Developing countries are those considered as such in the World Trade Organization (WTO).

² For example, developing countries report having difficulties in meeting what they perceive are increasingly complex new technical regulations, product standards and SPS measures implemented by developed-country trading partners (OECD, 2002; Henson et al, 2000).

³ WTO Ministers meeting in Doha in 2001 agreed "to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions." Besides in NAMA, issues related to NTBs are supposed to be addressed also in negotiations focusing on agriculture and on WTO rules regarding anti-dumping, subsidies and countervailing measures, and are a matter of examination also under the regular work programmes of various WTO bodies that are not directly involved in the DDA process.

trade among themselves. In an overall sense, the results of the study can serve as benchmarks against which policymakers in developing countries may wish to examine the particular situation of their economies and their negotiating objectives.

A. *Background: Recent trends in DCs' export performance*

7. As background for the examination of NTBs of concern to developing countries (DCs) it is useful to review recent trends in these countries' exports. Recent export data show that DCs are increasingly important players in world trade. In the last decade, their share in world merchandise exports increased from 17% to 27%.

8. Most of developing-country exports go to high income countries, but trade with other developing countries is becoming increasingly important and dynamic. That said, trade between developing countries is becoming more concentrated on regional markets. This is particularly noticeable in Sub-Saharan Africa, for instance, where intra-regional exports increased from approximately 20 % in 1993 to almost half of that region's total exports to developing countries.

9. In terms of the export structure, the share of manufactured products has steadily grown over the past two decades, whereas the share of primary commodities has declined. Developing countries are clearly striving to diversify their export activity, which can be seen from the shift in the export pattern from low value-added manufactured goods towards higher value-added goods such as electrical and electronic products, industrial equipment and machinery. The exception is the group of Least Developed Countries (LDCs), which have not seen their export structure evolve to the same extent.⁴

10. **Annex I** provides a detailed statistical overview describing DC's export performance over the last decade.

B. *Analysis of NTBs: Data availability and methodology*

11. Data on NTBs are extremely limited, particularly in developing countries. One source of fairly comparable and comprehensive data is the UNCTAD Database on Trade Control Measures, which however contains a number of well-known definitional and methodological problems. A few regional groupings with developing-country members (e.g. ALADI, SIECA, ASEAN, SAARC, ICDT) and individual countries (e.g. Argentina) maintain their own databases of trade measures or barriers of various types. Particularly lacking are data on NTBs especially affecting low-income countries, including least developed countries (LDCs).

12. Besides these databases, there exists no widely accepted tools or approaches for capturing non-tariff measures that curtail market access. Researchers and analysts have resorted to varying methodologies in an effort to identify and assess the most prevalent and restrictive barriers, including frequency measures derived from the databases, as well as empirical analyses based on surveys of exporters or data drawn from WTO Trade Policy Reviews. The advantages and shortcomings of each of these approaches have been well documented in the literature (Andriamananjara et al, 2004; Dean et al, 2003; Bora et al, 2002; McGuire et al, 2002; Michalopoulos, 1999; Deardorff and Stern, 1998; OECD, 1997).

⁴ Least developed countries (LDCs) refers to countries on the UN list of LDCs. As of October 31, 2004, 50 countries were on the UN's list of LDCs.

13. Acknowledging data and methodological shortcomings, this study draws on several sources of information in an attempt to provide useful insights for traders and trade negotiators. The result is an analytical framework composed of four elements of research that use different types of available data:

- a brief review of literature on the existence of NTBs;
- analysis of recent NTB notifications by DC governments to the WTO;
- a review of private sector perceptions on NTBs through available surveys; and
- analysis of trade disputes involving NTBs brought before multilateral and regional dispute settlement mechanisms.

14. These approaches to NTB identification are combined to provide a unified basis for analysis. The term NTBs will be used to refer broadly to all measures (public and private) other than tariffs that have the potential for distorting international trade flows in goods.⁵

15. Section II of this paper reviews some of the main research that has been carried out to date relating to NTBs affecting DCs, both at the aggregate level of intra-developing country trade and trade between developing and developed countries, as reflected in available literature. Section III presents an analysis of the NTB notifications to date made by non-OECD countries to the WTO Negotiating Group on Market Access for Non-Agricultural Products (NAMA). Section IV reviews disputes brought to the WTO and to tribunals of regional trade arrangements (RTAs) among developing countries. As a final element of the research framework, Section V reviews available surveys reporting private sector perceptions of NTBs. Various materials supporting this analysis is compiled in Annexes contained in companion document TD/TC/WP(2004)47/ANN/FINAL.

II. Literature review

16. A great deal of research has documented that there is still an important market access agenda of interests for DCs in the aftermath of widespread tariff liberalization undertaken by developed and developing economies. This section offers an overview of the available literature on **non-tariff market issues** that seem to affect DCs, both in a **intra-developing country** and **extra-developing country** trade perspective. The review begins at a global level, complemented by a region-based overview of non-tariff barriers affecting intra-regional trade among developing countries. Relevant literature and case studies undertaken by scholars, trade analysts, governments, and international organisations form the basis of this review. This exercise excludes studies based on private sector perceptions, as these are reviewed separately in Section V.

A. *Global trends in NTBs affecting DCs*

17. Globally, the existing body of literature conveys a few key findings and trends pertaining to DCs. Most analysts observe that the utilization of certain types of NTBs affecting DCs, such as quantitative restrictions, have markedly decreased in the post-Uruguay Round setting (McGuire et al, 2002; Stephenson, 1999; PECC, 1995; Estevadeordal and Robert, 2001; Alexander and Yeats, 1995⁶). The remaining post-Uruguay NTBs, according to the frequency ratio analyses conducted by Michalopoulos (1999) and others, appear to be more prevalent in developing than in developed-country markets, although they have decreased over time. Michalopoulos (1999) notes that frequency ratios of quantity and price control measures tend to be higher in countries with lower levels of per capita income and lower degrees of

⁵ Similar definitions are often used in the literature. See for example Don P. Clark, Non-tariff measures and developing country exports, *The Journal of Developing Areas*, 27, January 1993, pp. 163-172.

⁶ The authors and literature review vary in their classification of developing countries, at times do not specify the classification used.

openness. A seemingly greater prevalence of these NTBs in trade among developing countries is however difficult to demonstrate given that the existing literature focuses predominantly on barriers to DC trade in their major export markets, which generally are OECD markets. (Bhattacharyya 2002; COMESA 2003; ECLAC 2001; Haveman and Shatz, 2004).

18. Although existing literature relies on a range of different, not always transparent approaches for identifying measures of concern to DCs, it frequently focuses on **quantity control measures—non-automatic import licensing, quotas, and tariff rate quotas**. These measures may also attract attention because their effects are by nature easier to quantify and analyse than is the case for most other types of NTBs. Researchers report that post-UR, the frequency of NTBs for processed goods far exceeds those applied to primary commodities.

19. Laird (1999) finds that the primary NTBs affecting DC market access to **both OECD and non-OECD markets** are essentially the same, consisting primarily of: **import licensing** systems (including allocation of tariff quotas); **variable levies** and production and export **subsidies** (in the agricultural sector); import/export **quotas** (in textiles and clothing sector) and **local content and export balancing requirements** (automotive industry); **export subsidies** to develop non-traditional manufacturers (administered as tax breaks or subsidized finance, as direct subsidies have almost disappeared under fiscal pressures); and **state trading operations**.

20. Another perspective comes from other available research that identifies a different prevalence of various types of NTBs according to whether the trade is among developing and developed countries or among developing countries, as described below.

1. *Observations regarding NTBs in trade with developed countries*

21. A review of the existing literature suggests that technical regulations, price control measures and certain other measures are particularly frequently subject to concerns voiced about access to developed-country markets.

22. Issues involving technical barriers to trade and sanitary/phytosanitary measures are frequently cited by developing countries. The existence of some non-tariff measures is justifiable under the WTO Agreements. There are two challenges with respect to these types of measures. First, measures exist which, because of protectionist capture, have become actual non-tariff barriers that are WTO inconsistent and should be removed. This is the purview of the WTO TBT and SPS Agreements. Second, measures exist which, while justifiable under the WTO Agreements, may identify opportunities for facilitation of trade through encouraging greater use of international approaches.

23. **Technical barriers to trade (TBTs)**: While recognizing that technical measures may serve legitimate purposes, it is also evident that they can be important obstacles to exports to developed countries whose technical regulations, standards and conformity assessment procedures may effectively serve as border-protection instruments (Wilson, 1996; Stephenson, 1997; Michalopoulos, 1999). Despite their adverse effects, Nixon (2004) argues that these measures can also have a positive effect for DCs by spurring new competitive advantages and investment in technological capability, should enterprises in DCs act offensively. This scenario is less likely to materialize in LDCs, given the significant technological and financial constraints they face.

24. **Sanitary and phytosanitary measures (SPS)**: The literature also reveals that animal health and plant protection measures may, in some cases, appear to be unnecessarily protectionist. These measures are of special importance to DCs given the share of their agricultural exports. A quantitative analysis of the impact of a specific SPS standards implemented in the EU found a decrease in African exports to this

market of 64% or USD 670 million (Otsuki, Wilson and Sewadeh, 2001). The emergence of biotechnology, and international trade in biotechnology, has recently spurred the use of restrictive measures that are costly and burdensome for developing countries (Zarrilli and Musselli, 2004).

25. **Other measures:** The literature shows a growing concern about measures in developed-country markets that may have trade-restrictive effects. At issue are rules and regulations associated with environmental, national security, labour and other social standards (Michalopoulos, 1999; Bhattacharyya 1999; Bhattacharyya and Mukhopadhyaya, 2002; Dasgupta, 2002; Chatuverdi and Nagpal, 2003; Bharucha, 2000). While these are legitimate areas for regulation, bioterrorism rules, child labour clauses, and environment standards are at times perceived as being more trade restrictive than necessary to achieve intended goals. Discussion of this arena is highly politicised: few objective studies exist that quantify or thoroughly examine the impact of these measures on DCs' exports.

2. *NTBs in trade among developing countries*

26. As mentioned above, there is a dearth of studies that examine intra-developing country trade from an NTBs perspective. There is a growing tide of research interest directed at issues affecting trade among developing countries; however, the existing analyses still focus on tariffs and tariff liberalisation (Lucke, 2004; Priyadarshi, 2003; Australian Government, 2004) or more generally on avenues for cooperation among developing countries (UNCTAD, 2004; South-South Centre, 1996).

27. Given this void with respect to NTBs, the best sources of information are studies on barriers to trade taking place among developing countries belonging to regional trade agreements (RTAs) (eg., Berlinski, 2002; ACS, 2003; Soontiens, 2003; Bhattacharyya and Mukhopadhyaya, 2002). However, a caveat is that the findings drawn from these studies reflect barriers to these intra-regional exports (which are concentrated on Asia and Latin America) and not barriers to trade with developing countries in other regions (which is a significant portion of trade for the Middle East and Africa).

28. A few general observations can be made and are noted here. More specifically, customs procedures, para-tariff measures, and some other forms of NTBs are observed to slow the pace of liberalization and market access improvement in intra-developing country trade.

29. **Customs and administrative procedures:** The literature on intra-developing country trade reports significant problems associated with cumbersome and inefficient customs and administrative bureaucracy. Customs procedures are generally not automated; customs valuation tends not to be based on market prices; the customs clearance process is long and complex; and weak customs administration leads to border smuggling. Combined, inefficient procedures and excessive formalities may result in a high degree of non-official trade that is not reflected in South-South trade statistics (Daly et al., 2001).

30. **Para-tariff measures:** Where intra-regional tariffs have been lowered or eliminated as a result of regional co-operation, RTAs among developing countries witness an upsurge of import surcharges and other additional charges. This seems to reflect the problem of fiscal dependence of DC and LDCs on imports and their need to erect new charges to compensate for the loss of tariff revenue. This type of NTB is particularly prevalent among smaller DCs and LDCs (Daly et al., 2001).

31. **Other obstacles:** The existing literature identifies other barriers that are not considered conventional NTBs. Geographical and infrastructural features emerge as sizeable barriers to trade among developing countries, particularly in landlocked countries (Coulibaly and Fontagne, 2003). Progress in intra-developing country trade depends also on improvements in property rights, good governance, and sound institutions (Agatiello, 2004).

B. Regional trends in the use of NTBs

32. The NTBs that a country faces are determined by who its major trading partners are and the composition of exports to those markets. Therefore, the identification of NTBs warrants a detailed analysis, as is exemplified by the large number of region-specific studies in existence.

33. Findings from regional studies point to subtle differences among the NTBs that affect the exports of each region:

- For **Asia and the Pacific** region, whose trade has been characterized by labour-intensive products, particularly **textiles and garments**, **tariff quotas** applied under the MFA, which has since expired, and **technical regulations** (especially labelling) emerge in the literature as being the most significant NTBs in terms of the volume of exports affected (ESCAP, 2000; Bhattacharyya, 2002; Bhattacharyya and Mukhopadhyaya, 2002; Bhattacharyya, 2002).
- In the case of **Latin America and the Caribbean** countries, which are competitive **agricultural** exporters, **sanitary and phytosanitary** standards and agricultural **export subsidies** emerge as the main issues impeding market access to major OECD markets (ECLAC 2003, 2001, 1999). A quantitative analysis of the incidence of NTMs in Latin American countries shows a growing trend in the incidence of technical measures (Inter-American Development Bank, 2002). Also issues relating to antidumping, particularly for steel, are reported to affect the larger economies of the region (Brazil, Mexico, Argentina, Chile) (Scandizzo).
- Studies on **Africa and the Middle East** indicate that key NTBs faced by exports from these regions—such as **quantitative restrictions** and **special import charges**—do not have a significant restrictive effect but instead reveal that certain NTBs—notably MFA quotas and VERs—have helped their exporters by shielding them from competition from other developing regions (Gugerty and Stern, 1997; Arnjadi and Yeats, 1995; Yeats, 1994). More than complaining about a particular effect of an NTB, these documents reflect concern about the heavy concentration of an array of NTBs on strategic products of export interest to the region, namely the energy sector.
- Finally, focusing on the EU as the principal export market and the possibility of future accession, studies covering **Europe and Central Asia** register strong concerns about barriers pertaining to stringent TBT and SPS rules (Hanspeter et al, 2001). For this region, literature is extremely limited.

Annex II offers a more detailed overview of the findings from the literature addressing NTBs by developing region.

III. Analysis of notifications of NTBs to NAMA

34. A more telling view of WTO Members' perceptions of non-tariff barriers currently of concern to developing countries comes from the notification process established under the auspices of the Negotiating Group on Market Access for Non-agricultural Products (NAMA). Countries were invited to submit notification on NTBs that directly affect their exports. From March 2003 through October 2004, a total of 11 OECD countries and 21 non-OECD countries submitted a list describing barriers to their exports in

foreign markets.⁷ Notifications were made according to the NAMA Inventory of Non-tariff Measures, which provides for a broad and comprehensive coverage of NTBs (see **Annex III**).⁸

35. The following section analyses the notifications made by a sample of developing countries, with a view to identifying frequently reported barriers and the products affected.

A. Data set

36. A total of 21 non-OECD countries made 1,200 notifications that, in their view, represent NTBs affecting various sectors of their export structure.⁹ These countries represent a geographically and economically diverse and balanced sample of DCs. In terms of income level, 19% of these countries are high-income economies; 28% upper-middle income; 28% lower-middle income; and 24% low-income (of the latter, one country – Bangladesh -- is a least developed country (LDC).)¹⁰ In 2002, the total value of merchandise exports from these 21 countries was 1,132,567 million USD, representing approximately 56.80% of total DC exports and 17.54% of total global exports.¹¹

37. While the data set is fairly representative in terms of DCs and their aggregate exports, it must be viewed in the context in which it was collected. Moreover, some notifications lack precision or clarity, and have missing or incomplete information. The methodology that countries used to identify their NTBs is not documented. The inventory itself has certain shortcomings, namely the lack of clear definition and demarcation of some types of NTBs (for example, in the areas of import licensing and rules of origin). Furthermore, as some potential types of barriers are not explicitly listed in the Inventory, countries may not have reported on them. The present report does not imply making any judgement about whether the policies or measures notified are legitimate or not.¹²

⁷ In the July 2004 Framework Agreement, countries were urged “to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs” (Annex B, paragraph 14). This analysis takes into consideration all notifications submitted until November 1st 2004.

⁸ The Inventory of Non-tariff Measures groups barriers into seven broad categories (see Annex III). A possible weakness in this inventory is the lack of clear definition and demarcation of some types of NTBs (e.g., discrimination resulting from bilateral agreements; discriminatory sourcing; distribution constraints; and others). Furthermore, as some NTBs—such as environmental and security-related measures—are not directly captured in the Inventory, countries do not report on these types of barriers. For the purpose of this analysis, certain adjustments mainly to the structure of the classification employed by this inventory were made. These are also shown in Annex III.

⁹ The sample of developing countries used in this analysis are non-OECD countries that submitted notifications as of 1 November, 2004. These are from Africa and the Middle East: Egypt, Jordan, Kenya, and Senegal; from Asia and the Pacific: Bangladesh, China, Hong-Kong, India, Macao, Malaysia, Pakistan, Philippines, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Singapore, and Thailand; from Latin America and the Caribbean: Argentina, Trinidad and Tobago, Uruguay, and Venezuela; and from Eastern Europe: Bulgaria and Croatia. Countries from Asia and the Pacific are the most represented (87.7% of NTB notifications), with Latin America & the Caribbean and Africa & the Middle East following in the number of barriers reported.

¹⁰ Based on the World Bank classification of countries by levels of income.

¹¹ World Merchandise Exports by Region and Selected Economy 1992-2002, *International Trade Statistics 2003*, WTO.

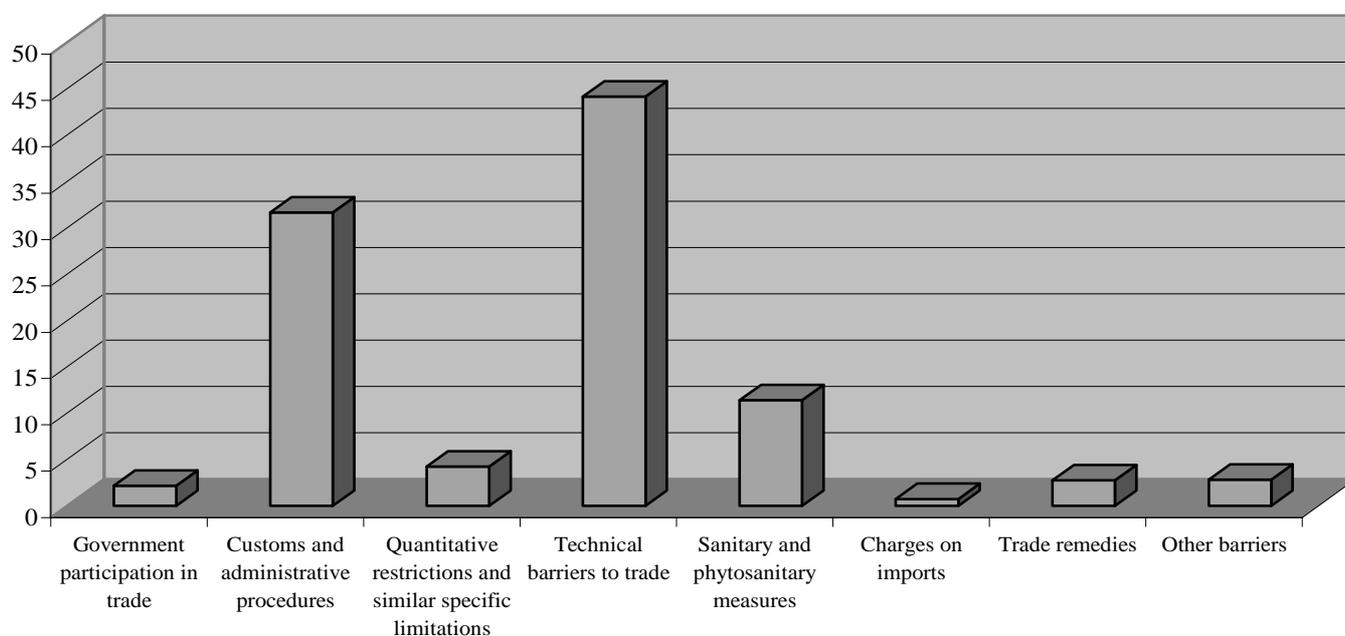
¹² Some of the measures in the NTB inventory can clearly serve legitimate purposes (for instance, technical barriers to trade, rules of origin, and charges on imports).

38. There is insufficient information to ascertain whether notifications are made with regard to developed or developing-country markets.¹³ To the extent that most DC exports are destined for developed markets, it would seem reasonable to view this market access analysis in that perspective. Regardless, the sample of countries notified as maintaining these barriers is confined to WTO Members.

B. Types of barriers reported

39. As shown in **Figure 1**, NTB categories with the highest incidence of notifications are **Technical Barriers to Trade** (TBTs, with 530 NTB entries, or almost half of the total), **Customs and Administrative Procedures** (380 entries), and **Sanitary and Phytosanitary Measures** (SPS, 137 entries). Amounting to less than 5% of total NTB entries were: quantitative restrictions, trade remedies, government participation in trade, charges on imports, and barriers that fall under the other groups.

Figure 1. Frequency of notifications by NTB category
(percentage of total notifications)



Source: OECD, based on submissions to NAMA (TN/MA/W*).

Technical Barriers to Trade

40. TBTs were the primary reported barrier for 12 of the 21 reporting non-OECD countries, and the second most reported barrier for five other countries. Almost half of the complaints in this area concern technical regulations and standards (46%), followed by testing and certification arrangements (26%) and by marking, labelling and packaging requirements (16%). A commonly reported trade impact of these barriers is the unnecessary (and often significant) increase in costs that effectively impedes exports.

¹³ While countries analyzed here were invited to specify the “Maintaining Participant” of the barriers notified, none provided this information.

41. Several notifying countries comment that **technical regulations and standards** applied by certain WTO members are more stringent than those specified by relevant international bodies and that no legitimate explanation has been provided. Moreover, the upward revision of these standards at regular intervals makes it difficult for DCs to keep up with and adapt to changing requirements. Another complaint relates to the differing technical requirements among members due to the non-adoption of common international standards, thus raising compliance costs and discouraging DCs from diversifying their export markets. Countries indicate that equivalence agreements of standards across WTO members would benefit DC exporters by reducing financial burdens as well as the risk of uncertainty.

42. Many complaints pertain to the area of **testing and certification**. Reported concerns are a general absence of information and lack of transparency on the procedural norms and regulations regarding specifications as well as methods of sampling, inspection, and testing.

43. Notifying countries maintain that testing methods specify exceedingly high levels of sensitivity that may not be justified on the grounds of health and safety issues, thereby making testing costs disproportionately high and even prohibitive. Sometimes levels of sensitivity are raised only because better technology or testing equipment becomes available, and not due to any specific evidence that a higher sensitivity is required to meet a health objective. Aside from cost concerns, countries report that they lose customers simply due to the time required for further testing by laboratories of the importing country before the required certificates are completed for shipments to be released from customs departments.

44. Other reported problems in conformity assessment procedures include: applying exhaustive pre-inspection measures at national boundaries, thereby consuming large amounts of time and money; providing quality certificates that are valid for only one year and renewable on only a yearly basis; examining the production process in the country of origin by experts of the importing country, having the DC manufacturer (exporter) pay for travelling expenses and accommodation of experts; and registration being costly, time-consuming, arbitrary, and not always granted.

45. The other TBTs subject to a significant number of notifications constitute **marking, labelling, and packaging requirements** that are noted as being burdensome, complicated to implement, and often not equally applied to similar products of domestic origin. It is claimed that such requirements may require highly developed technological systems that DCs cannot afford. Genetically modified organism (GMO) labelling, in particular, increases costs for DC producers due to more stringent procedures--in the absence of solid scientific evidence on the risks to humans of consuming GMOs. Other countries report that abrupt changes in packaging requirements result in entire shipments being held back at the distributor's warehouse.

46. Overall, the fact that developing-country suppliers may have more difficulty adapting to new, legitimate requirements argues for technical assistance and capacity building. WTO Members can also explore avenues for reducing the effects of these different TBT-related measures through international standards, more common approaches to test methods and conformity assessment, etc.

Customs and Administrative Procedures

47. The NTB reported with second greatest frequency is customs and administrative procedures, which accounts for almost a third of the total notifications. For nine countries, these are the primary barrier, and for six other countries the second most reported barrier. Within this broad category, the two most prominent barriers are rules of origin and import licensing (both automatic and non-automatic), each responsible for more than one-third of notifications. Other areas exhibiting a high to moderate number of notifications under this category are customs valuation, formalities, and to a lesser extent, classification.

There are also notifications pertaining to pre-shipment inspection and consular formalities and documentation.

48. Some notifying countries report that **rules of origin** are discriminatory, unreasonable, or inconsistent. This entails extra formality and cost, or administrative hassles. Rules of origin can be preferential or non-preferential. While most notifications do not elaborate on the type of rules of origin at issue, there seems to be some concern on the part of countries failing to obtain originating status under preferential rules of origin, with the result that their products are not covered by the preferences.

49. Notifications testify that **import licensing procedures** frequently bear the effect of delaying or hampering imports. Some notifying countries complain about the introduction of additional requirements, such as supporting documents, for automatic licenses issued by the importers. Other complaints hold that much of the time, the issuing of import licenses is not expressly stipulated and lacks transparency.

50. **Customs valuation rules** are also perceived to act as trade barriers on some occasions. Most complaints describe overestimation of prices for customs purposes, particularly through the use of discriminatory and arbitrary valuation methods. The use of minimum and reference prices, rather than transaction prices, is widely condemned. Notifying countries also report that the requirement of a minimum amount of imports for customs valuation prohibits DC producers from exporting small volumes.

51. Other complaints relate to inconsistent and varying **customs classification**, including the right of customs officers to exercise excessive discretion when classifying goods. In some countries **customs clearance** is reported to be deliberately delayed to increase the transaction cost and thus reduce competition for similar domestic products. Notifications also reveal excessive requirements for **customs formalities**, another factor that contributes to delaying trade and increasing costs.

Sanitary and Phytosanitary Measures

52. Sanitary and phytosanitary (SPS) measures is the third most frequently reported barrier for non-OECD exports. A large number of these notifications were made by one country (the Philippines). Complainants recognise that risk to consumers is an important concern at an international level, but they claim that certain countries tend to establish onerous standards without first conducting comprehensive risk assessment work. These measures include chemical residue limits, disease freedom, and specified product treatment, amongst others (74% of SPS entries). Approximately 17% of complaints in this area pertain specifically to testing, certification and other conformity assessment related to SPS.

53. While SPS measures may serve legitimate purposes, the notifying countries report extra formalities, time, and costliness that restrict or inhibit exports. Obtaining SPS approvals also reportedly involves tedious and substantial documentation and bureaucratic procedures. For instance, one notifying country reported that its exports for a specific product were reduced by 70% in both value and volume because a detector required to comply with SPS measures was too expensive to purchase.

54. The fact that countries may maintain different and legitimate SPS measures to deal with the same perceived risk can create market segmentation and thus represents a barrier to freer trade. In such cases, WTO Members can explore avenues for reducing the effect of these different SPS measures through international standards, more common approaches to test methods and conformity assessment, etc.

Quantitative Restrictions

55. Quantitative restrictions and specific limitations account for 51 notifications (4.2% of total notifications). Half of the barriers reported under this category represent strictly quantitative restrictions (QRs). Other measures in this category that are reported relatively often include embargoes and similar

restrictions (20%), exchange controls (12%), tariff rate quotas (10%), and discrimination resulting from bilateral agreements.

Government Participation in Trade

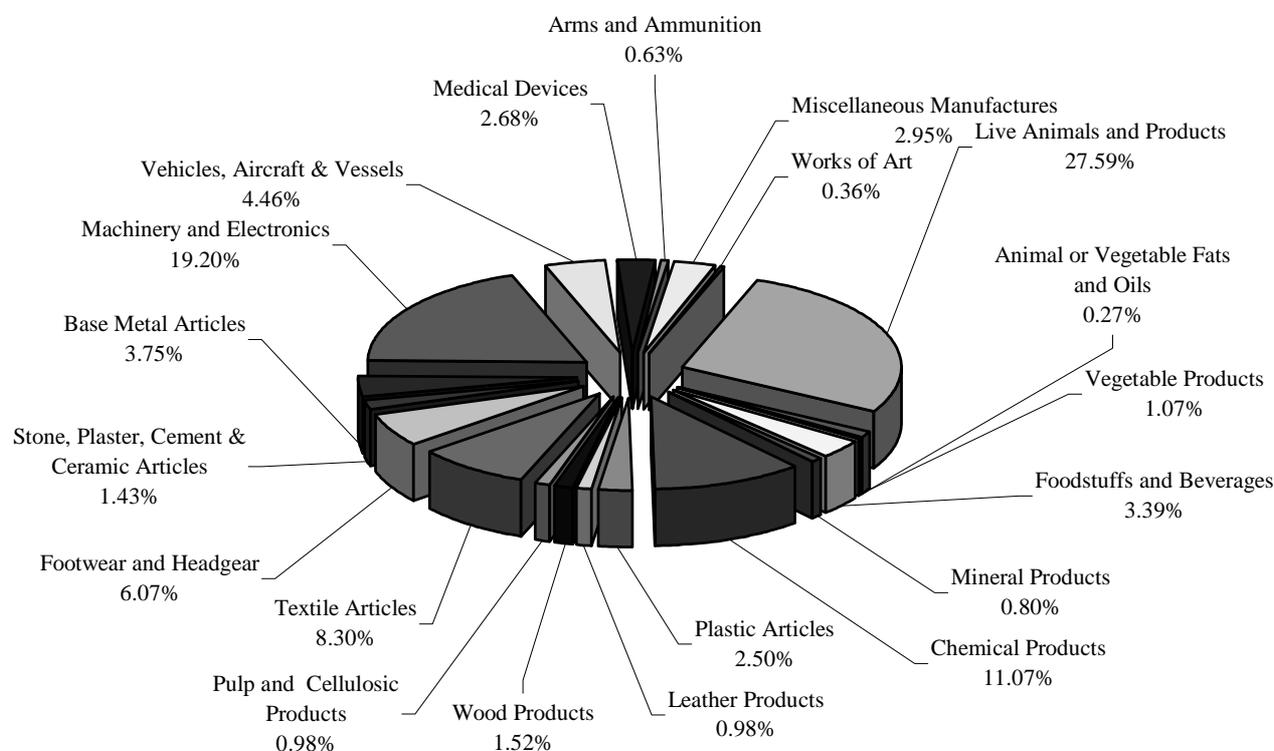
56. Instances of government participation in trade account for 26 of total notifications (2.1%). The bulk of these notification falls into the Inventory's category of restrictive practices tolerated by governments (65%), which often are not further specified but which are reported to protect domestic producers from foreign competition and to distort trade. Other complaints that have similar effects regard government assistance, state trading and monopolistic practices, and government procurement.

Charges on Imports

57. Charges on imports represent the distinct category of NTBs subject to the fewest number of NAMA notifications by the sample of developing countries (0.8%). Myriad import surcharges in this category include: high taxes for border passage; high storage taxes; port taxes; statistical taxes; variable taxes; cargo and maritime transport taxes; attestation fees and legalisation fees; and fees for authentication of export documents. Countries report that the imposition of high fees and fluctuating taxes significantly adds to export costs and results in uncertainty, and may create preconditions for corruption.

C. *Products affected by reported NTBs*

58. For the sample of developing countries, the product groups most frequently notified as being hampered by NTBs are live animals and products (309 notifications), machinery and electronics (215 notifications), chemical and allied industry products (124 notifications), and textile and textile articles (93 notifications). **Figure 2** displays the percentage of notifications by product group. In a more detailed analysis, **Annex IV** provides a more detailed account of reported barriers and products falling under each of the broad commodity groups.

Figure 2: NTB notifications by product group

Source: OECD, based on notifications to NAMA (TN/MA/W*).

59. The product group with most reported NTBs, **live animals and products**, is primarily affected by **SPS measures** (114 notifications) and **customs and administrative barriers** (106 notifications), in particular **rules of origin** (79% of total notified customs problems)¹⁴ Within this product category, reported measures are highly concentrated on range of fish and fisheries products, including shrimp and prawns, octopus, crab, and tuna. These products capture the highest number of NTB notifications in the data set.¹⁵

60. **Machinery and electronics**, on the other hand, is the product category recording the highest incidence of **technical barriers to trade** (142 notifications), most of them relating to **technical regulations and standards**. Affected products consist mostly of electrical apparatus (e.g., telephones, televisions, calculators, microwaves); the rest are mechanical machinery (e.g., computer and parts of computers, palm mould milling machinery) and accessories such as various kinds of cables. These products also show the largest number of complaints about **import licensing** procedures (a total of 40 notifications or 69% of the notifications that relate to customs-related problems).

¹⁴ There is also a significant number of notifications of TBTs (79 notifications); this may in part reflect the methodological difficulty of determining whether a technical regulation applied to this product category is in fact a TBT or SPS measure.

¹⁵ Of the 11 developing countries that have made notifications with respect to fisheries, one country (the Phillipines) has submitted the majority of individual notifications on this item.

61. Under the category of **chemical products**, the exports of concern to developing countries as reflected in their notifications are mostly pharmaceuticals products (23%) and perfumery, cosmetics and toilet preparations (20%), followed by fertilisers, inorganic and organic chemicals, explosives and matches, and soap and washing preparations. This category of exports is significantly affected by **TBTs** (77 notifications), and to a lesser extent, by **import licensing procedures** and **customs formalities**.

62. Another important export sector for the sample of DCs, **textiles and textile articles**, is also the subject of a significant number of notifications, relating particularly to **TBTs** (42 notifications) and customs procedures (37 notifications). In the latter NTB category, there are many complaints about **customs valuation** (43% of notified customs problems), second only to the still higher number of notifications of valuation problems affecting footwear, handbags and related products (where customs valuation is 89% of customs-related barriers). In addition, textiles receive the highest number of complaints concerning **quantitative restrictions** (9 notifications), which may in part be related to the complaints on import licensing. The main commodities reported to be subject to these restrictions are apparel and clothing accessories.

63. The list of products mentioned in the above findings is not exhaustive. Other notified manufactures are vehicles and ships; wood and wood products; optical, medical and surgical supplies; and prepared foodstuffs. Most of these product sectors face primarily **technical barriers to trade**, although the nature of the TBTs varies from one product category to the other. For instance, **prepared foodstuffs and beverages** are notably affected by **marking, labelling and packaging requirements**, which make up 46% of TBTs complaints. This is not the case for **vehicles** and for **wood products**, which record few notifications relating to marking and labelling requirements (4 and 5%, respectively) but many notifications concerning **testing and certification arrangements** (34 and 35%, respectively), followed by notifications about technical regulations and standards (31 and 30%, respectively). Notifications regarding the export of **optical, medical and surgical equipment**, in contrast, pertain exclusively to the issue of enforcement of **technical regulations and standards** (86% of TBTs notifications).

64. In several other product categories, however, **customs and administrative procedures** register more notifications than TBTs: this is the case for the categories of **miscellaneous products** (where 45% of the reported barriers relate to customs), **plastic and plastic products** (46% of reported barriers), and **metals and metallic products** (41% of reported barriers). For plastics and rubber articles the main complaint pertains to rules of origin (46% of reported customs-related problems), while in the general category of manufactured goods (comprising furniture, toys, etc) notifications refer mostly to the excessive use of import licensing (43%). With respect to **metal exports** (mostly iron and steel) one can further note a relatively high number of references to **trade remedies**, in addition to customs and administrative barriers.

Table 1: NTBs reported for specific product groups¹⁶

	Government Participation in Trade	Customs and Administrative Procedures	Quantitative Restrictions & Similar Specific Limitations	Technical Barriers to Trade	Sanitary and Phytosanitary Measures	Charges on Imports	Trade Remedies	Other Barriers	Total
Live Animals and Products	2	106	5	79	114	1	0	2	309
Vegetable Products	0	1	0	4	6	1	0	0	12
Animal or Vegetable Fats and Oils	0	1	0	0	2	0	0	0	3
Prepared Foodstuffs & Beverages	2	12	4	17	2	1	0	0	38
Mineral Products	1	2	1	4	1	0	0	0	9
Chemical/Allied Industry Products	3	24	6	77	1	1	5	7	124
Plastics and Rubber Articles	0	13	2	10	0	0	2	1	28
Leather Products	1	5	1	3	1	0	0	0	11
Wood and Articles of Wood	0	3	0	13	0	0	0	1	17
Pulp of Wood / Fibrous Celluloid Material	0	2	1	7	0	0	0	1	11
Textile and Textile Articles	0	37	9	42	4	1	0	0	93
Footwear, Headgear & Related Articles	2	19	0	41	0	1	5	0	68
Articles of Stone, Plaster, Cement, Ceramic	1	5	1	8	0	0	1	0	16
Pearls and Precious Stones and Metals	0	0	0	0	0	0	0	0	0
Base Metals and Articles of Base Metal	2	17	3	6	0	1	13	0	42
Machinery and Electronics	0	59	3	142	2	2	3	4	215
Vehicles, Aircraft, Vessels	2	17	3	26	0	0	2	0	50
Optical, Photographic, Medical/Surgical	0	7	0	22	0	1	0	0	30
Arms and Ammunition	0	3	2	2	0	0	0	0	7
Miscellaneous Manufactured Articles	0	13	2	12	2	0	2	2	33
Works of Art & Pieces and Antiques	0	3	0	0	0	0	0	1	4
All Products & Many Products	8	25	5	11	0	3	2	10	64
Not Classified	1	2	1	5	0	0	0	3	12
Total	25	376	49	531	135	13	35	32	1196

Source: OECD, based on notifications to NAMA (TN/MA/W*).

¹⁶ There is a slight mismatch between the number of notifications recorded in this table (1196) and the total notifications reported in Table 1 (1191). This difference is due to the fact that in a few instances countries reported a barrier but did not specify the products affected by the barrier.

D. NTBs and products identified in national export strategies

65. Most developing countries make export promotion and development a priority in order to achieve economic development goals. This involves typically identification of existing and new products that have a potential to emerge as growth drivers of a nation's exports.

66. While the success of export strategies is affected by many domestic factors, it is also affected by conditions of world trade, including market access barriers.¹⁷ Therefore, to provide a forward-looking perspective to the analysis of potential barriers to trade, an effort is made here to identify the products and sectors that feature particularly in DC export sectors. The objective is to draw attention to specific NTBs that are associated with these sectors or products and therefore may stymie the realization of DCs' export goals.

67. Data were collected from available national export strategies or programs from non-OECD countries, as well as from additional sources, in order to construct an indicative, non-exhaustive list of products and sectors that captures the export interest of an important segment of DCs. The inventory compiled is shown in **Annex V**.

68. The merchandise products/sectors identified relatively frequently as having potential for helping spur and sustain future export growth are **textiles and apparel, fish and fisheries products, chemicals and pharmaceuticals, information technology (IT) products, and electrical and other heavy machinery**. In addition, the data reviewed suggest that countries are increasingly looking to the provision of services as an activity with a potential to drive their export performance.

69. Drawing on this information and the data about NTBs contained in the notifications made to NAMA, the following observations can be made about strategic sectors and potential barriers to their export.

Textiles and Apparel

70. Reported NTBs affecting exports are essentially of three types, namely technical barriers to trade, customs and administrative procedures, and quantitative restrictions. Technical regulations and standards as well as testing and certification arrangements are the main problems reported for TBTs, while customs valuation is the predominant problem reported in the area of customs and administrative procedures. For details see **Section C in Annex IV**.

Fish and Fisheries Products

71. Reported NTBs in this sector consist of SPS measures, customs-related procedures, and TBTs. While some SPS measures take the form of conformity assessment requirements, other measures cannot be further specified. Most reported problems related to customs-related procedures refer specifically to rules of origin; the rest relates mainly to import licensing. For details see **Section A in Annex IV**.

Chemicals and Pharmaceuticals

72. The majority of reported NTBs affecting exports concern a broad range of TBTs, covering technical regulations and standards, testing and certification arrangements, and marking, labelling and

¹⁷ For many developing countries, poor infrastructure, limited access to finance and marketing and other domestic factors are major obstacles to export success, especially for smaller firms, and formidable challenges for governments that seek to help develop and promote export activities. They are not the focus of this inquiry.

packaging requirements. Various problems with customs and administrative procedures – with import licensing, customs formalities, valuation, and consular fees and documentation – are also reported. For details see **Section D in Annex IV**.

Information Technology (IT) Products

73. While notifications to NAMA offer little information on IT products, data on barriers to trade in IT products have been collected by the WTO Secretariat through submissions made by the Committee of Participants on the Expansion of Trade in Information Technology in the context of their Non-Tariff Measures Work Programme. The responses from the four developing members that have participated in these submissions¹⁸ indicate that the barriers that obstruct market access in IT products most seriously are standards and conformity assessment (including testing and certification). Other reported NTBs in this sector relate to rules of origin, lack of transparency and availability of information, process and production methods, and on-site service by IT professionals.¹⁹

Electrical and Other Heavy Machinery

74. The main NTB reported for this sector is TBTs, with a prevalence of technical regulations over other forms of TBTs. Customs and administrative barriers are also frequently reported for this sector, and pertain primarily to import licensing requirements and procedures. For details see **Section F in Annex IV**.

IV. Analysis of dispute settlement cases concerning non-tariff import measures

75. Over the past several years, developing countries have filed a growing number of cases under the WTO's Dispute Settlement Understanding (DSU), some of which voice important market access concerns in areas of NTBs. The true number of grievances could be still higher: for many DC complainants, preparing and presenting a case at the WTO represents a significant task.²⁰ Filing of legal challenges is often constrained by a lack of financial resources and technical expertise in working through the process of settling disputes.²¹ Therefore, NTBs introduced into a dispute settlement mechanism are likely indicative of serious trade-impeding effects.

76. The following analysis examines trade dispute activity with the goal of identifying those barriers and affected products that have posed strong concerns to DCs.²² It sets out with a review of cases brought to the DSU (1995-2004) by non-OECD countries, i.e. requests for consultations under Article 4 of the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

¹⁸ The four participants are India, Hong-Kong, Chinese Taipei, and Mauritius.

¹⁹ For a compilation of submissions reporting NTMs in IT products, see G/IT/SPEC/Q2/11/Rev.1.

²⁰ Moreover, those NTB areas that are not covered by the legal multilateral framework are not captured in the record of disputed cases.

²¹ The Advisory Centre on WTO Law (ACWL) corroborates the resource implications of preparing for the process of filing a dispute, even at the initial stage of consultations. Depending on the degree of the complexity of the case, a DC requests on average from 42 to 127 hours of legal assistance for the consultation stage, which are charged at the sponsored rate of 162 to 324 CHF per hour if the country is a member to ACWL (www.acwl.ch, ACWL/MB/D/2004/3). The rate is higher if the DC is not a member.

²² The sample of developing countries referred to in the analysis of dispute settlement cases are the non-OECD countries that have submitted requests for consultation on non-tariff measures. These are: Argentina, Bangladesh, Brazil, Chile, China, Chinese-Taipei, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Hong-Kong, India, Indonesia, Malaysia, Nicaragua, Pakistan, Panama, Peru, Philippines, Singapore, Taiwan, Thailand, Sri Lanka, Venezuela.

presented by DCs. In order to gain further insights in particular about NTBs-related concerns in developing-country fora, the review is followed by an examination of complaints raised amongst Parties to the Andean Community (1997-2004). This forum was chosen over other existing regional dispute mechanisms set up among developing countries – the Arbitral Tribunal of Mercosur and Court of Justice of COMESA – due to the large number of complaints submitted to this standing tribunal.

A. *WTO cases concerning non-tariff import measures*

77. During the 10-year period of existence of the WTO's DSU, 24 non-OECD countries have filed a total of 90 cases pertaining to non-tariff barriers.²³ Of these complainants, 50% are lower middle income economies, and 16.6% are low-income economies. Only one least developed country (Bangladesh) submitted a complaint on NTBs in 2004. Half of the complainants are Asian countries while the other half are countries in Latin America. No cases on NTBs have been filed by DCs in Africa, Europe and Central Asia, or the Middle East.²⁴

78. While two thirds of total NTB cases have been filed against OECD members (hereafter referred to as South-North disputes), there is a noteworthy upsurge in complaints filed against other non-OECD countries (hereafter referred to as South-South disputes). As **Table 2** shows, during the second half of DSU's existence, South-South disputes over NTBs have increased nearly fourfold (187.5%), in sharp contrast to the increase in recorded South-North disputes (18.5%). **Annex VI** shows the trend in NTBs complaints filed by non-OECD countries chronologically, both against OECD members and other DC members.

Table 2. Number of NTB cases initiated by non-OECD countries

Respondent	DSU First Period 1995-1999	DSU Second Period 2000-2004	Percent Increase
Non-OECD Countries	8	23	187.50
OECD Countries	27	32	18.52
Total	35	55	57.14

Source: OECD, compiled from WTO Dispute Settlement Understanding.

79. The NTBs that register the highest number of disputes presented by DCs are **trade remedies** (43 cases), **quantitative restrictions** (18 cases), **customs and administrative barriers** (13 cases), and **charges on imports** (12 cases). There are also a not insignificant number of cases in the area of **technical barriers to trade** (TBTs, 9 cases) and **government participation in trade** (7 barriers).

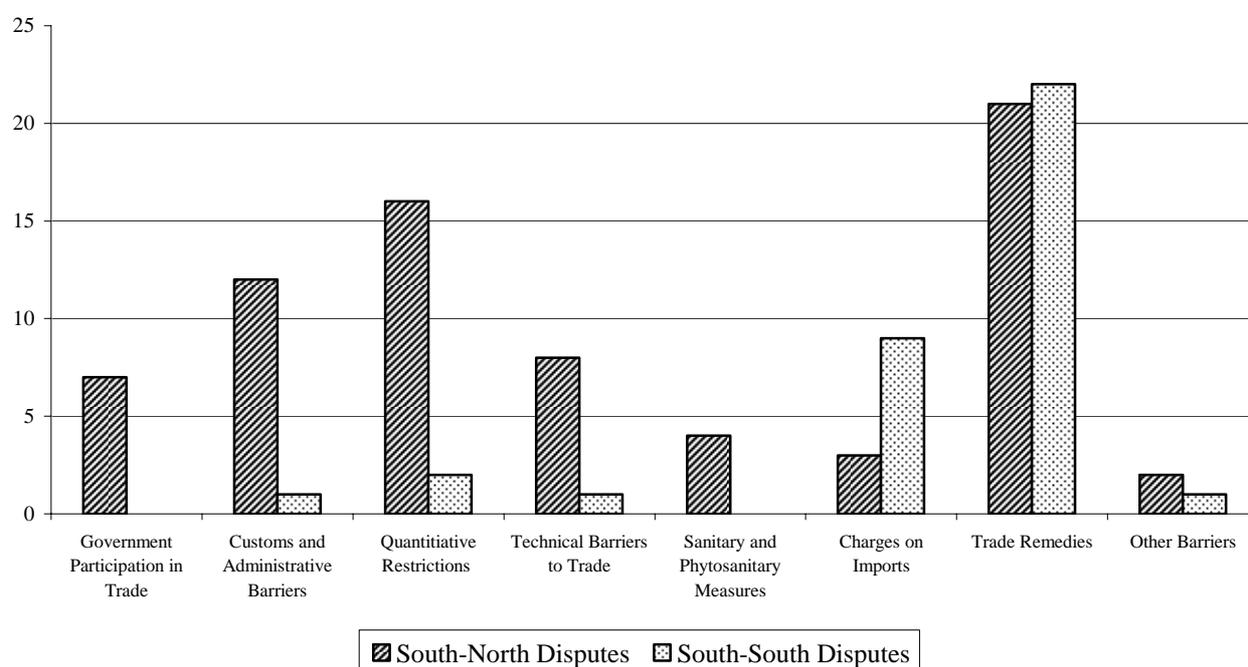
80. The number of cases against **customs and administrative procedures** increased fourfold in the period 2000-2004 with respect to the period 1995-1999. Substantial increases are also evident for cases on **trade remedies** (50%), **charges on imports** (50%), and **sanitary and phytosanitary (SPS) measures** (100%). By contrast, cases regarding **quantitative restrictions (QR)** decreased significantly (by two thirds) during this period of time.

²³ The analysis includes all cases initiated by non-OECD countries until October 31, 2004. Of the 90 cases initiated by these countries, 48 have led to the establishment of a panel; of these, 21 have reached the Appellate Body.

²⁴ This analysis does not capture DC requests to join consultations. DCs are frequently "interested third countries" in dispute settlement negotiations, indicating their substantial interest in the NTB proceedings of other trading partners.

81. Noticeable distinctions exist in the types of NTBs subject to **South-North** versus **South-South** disputes. Contrary to the traditional association of trade remedies as measures erected by OECD countries against DCs, the WTO dispute record shows non-OECD countries as increasingly applying these measures against each other. In fact, the frequency of these occurrences warrants describing this more of a phenomenon characterising trade relations among developing countries. Disputes over surcharges also have a high incidence in trade among developing countries, which may partly reflect DC dependence on alternative revenues in the aftermath of tariff erosion. On the contrary, disputes over quantitative restrictions, customs and administrative-related procedures, and technical barriers to trade are primarily (though not exclusively) directed against OECD countries, whereas government aids and SPS measures feature only in South-North disputes.

Figure 3. Number of DSU cases 1995-2004, categorized by NTBs



Note: Disputes refer to instances where countries have requested consultations under Article 4 of the DSU.
Source: OECD, compiled from records of WTO Dispute Settlement Understanding.

82. A close examination of legal cases reveals that the concerns are often directed toward **procedural aspects** of a measure's application. For example, in the case of **trade remedies** complaints gravitate around the process of the investigation, including determination of dumping, increased imports, serious injury and threat thereof, and causal link. In the case of safeguards, complaints concern both procedures and the extent of the measure, which in some cases are tantamount to an import prohibition. One DC complained of a safeguard blocking the country's ability to register any imports in the desired export market.

83. Similarly, important procedural barriers are sometimes perceived in the application of **quantitative restrictions**. In particular, notification procedures and import licensing systems create unpredictability and uncertainty for DC exporters. Grievances also frequently reference discriminatory allocation of quotas, as well as problems in the administration of tariff rate quotas. The incidence of cases

in this area, however, will significantly decrease with the elimination of quotas on trade in textiles and clothing in 2005.

84. In the area of **customs and administrative barriers**, import licensing presents procedural obstacles such as unnecessary delays and unpredictability in license issuance. Also subject to dispute have been customs-related complaints regarding the measure that customs procedures are implementing, such as cases where customs reclassification rules have allegedly forced DC exports to be subject to higher tariff rates than the bound rates. Similarly, complainants take issue with OECD countries' application of certain rules of origin that are perceived to protect their markets from import competition.

85. Various types of **charges on imports** are implicated in disputes, particularly when higher than surcharges applied locally. Plaintiffs testify to the existence of an equalizing excise tax (EET) in some OECD markets which, applied discriminatorily, protects national products and restricts imports of key DC products. Among developing-country trading partners, disputes revolve around discriminatory and unfavourable treatment in the form of selective consumption taxes, general sales taxes, and specific internal taxes. Other practices deemed restrictive include a requirement of stamps to be affixed in the importing country, or posting of a bond as a prerequisite to importation of specific products.

86. With the exception of one case involving intra-developing country trade, complaints regarding **technical barriers to trade** are largely aimed at regulations maintained by OECD countries. Complainants argue that OECD members are adversely affecting competitive conditions for DCs by applying less favourable technical regulations and standards to imports than to products of domestic origin. Some disputes refer to the introduction of stringent restrictions in the trade descriptions that can be used for marketing imports, relegating DC products to a trade description associated with lower quality and market price. Other cases report the existence of unduly burdensome packaging and labelling requirements unjustified on environmental or safety grounds.

87. It is worth noting that TBTs' lack of prominence in legal cases, versus their role in the NAMA notifications exercise, may result from the difficulty of assessing whether a particular technical regulation or standard is lawful. It may be difficult for a country to challenge the validity of a TBT justification, even when it entails significant trade restrictive effects, and countries tend not to initiate cases where there is little likelihood of liberalisation of the measure through a dispute resolution process (Bown, 2004).

88. Similarly, in cases against **sanitary and phytosanitary measures** it is difficult for plaintiffs to challenge a respondent's right to regulate matters of human health and safety. The few cases submitted by non-OECD countries in this area allege that SPS measures prohibit their exports to OECD markets without any prior assessment of risks or scientific principles, and/or are unnecessarily restrictive. The cases also often claim that SPS measures are applied discriminatorily. In addition, there are concerns regarding procedural aspects of applying SPS measures, such as alleged difficulties in obtaining an administrative document, lack of transparency in the publication of SPS requirements, and authorities' failures to furnish the pertinent information.

89. Complaints brought in respect of **government participation in trade** question OECD countries' export subsidies, applied to primary products, as well as export credits and guarantees, applied generally to higher value-added products.

90. In many of the preceding cases, complainants hold that a measure has been applied without due consideration of their **special situation as a developing country**. Further examination of special and differential treatment (SDT) in relevant NTB areas seems therefore warranted.

91. **Table 3** lists the export products of the sample of 24 developing countries subject to the disputes. The sectors most frequently affected are **agriculture and textiles**.

Table 3. Products subject to NTBs cases, DSU 1995-2004

Government Participation in Trade		
Export Subsidies & Subsidies	South-North (6 cases)	Sugar, cotton, and other agricultural products; civilian aircraft.
Export Credits & Loan Guarantees	South-North (1 case)	Regional aircraft
Customs and Administrative Procedures		
Customs Valuation	South-North (2 cases)	A wide range of products
Customs Classification	South-North (2 cases)	Frozen boneless chicken
Customs Clearance	South-North (1 case)	Matches (safety matches)
Rules of Origin	South-North (1 case)	Textile and apparel products.
Import Licensing	South-North (6 cases)	Fresh fruits (banana, papaya, plantain) and vegetables; black beans; poultry products; safety matches; fishing vessels.
Quantitative Restrictions and Similar Specific Limitations		
Tariff rate quotas, prohibitions, and similar import restrictions	South-North (13 cases)	Fresh fruits (bananas) and vegetables; ground nuts; poultry products; shrimp and shrimp products; textile and clothing products; cotton products; automobiles
	South-South (2 cases)	Canned tuna with soybean oil
Technical Barriers to Trade	South-North (7 cases)	Sardine and scallops; wine; safety matches; gasoline
	South-South (1 case)	Pharmaceutical products
Sanitary and Phytosanitary Measures	South-North (4 cases)	Fresh fruits (banana, pineapple, others) and vegetables; black beans
Charges on Imports	South-North (9 cases)	Processed orange and grapefruit products; bananas; rice
	South-South (3 cases)	Apples, grapes, and peaches; beverages; tobacco and cigarettes; lubricants and fuels; automobiles
Trade Remedies		
Anti-dumping Duties	South-North (10 cases)	Iron and steel products (steel plates, steel and iron pipe fittings, iron tube or cast fittings, oil country tubular goods); silicon metal; electric transformers; paper; cotton typed bed linen; unbleached cotton fabrics
	South-South (8 cases)	Vegetable oils; poultry; pasta (macaroni and spaghetti); jute bags; batteries; pharmaceutical products.
Countervailing	South-North (3 cases)	Carbon steel products, steel plates; salmon
	South-South (3 cases)	Desiccated coconut and coconut milk powder; footwear; buses
Safeguard Measures	South-North (8 cases)	Steel products; poultry products; cotton yarn; brooms and corn brooms; woven wool shirts and blouses; wool coats
	South-South (11 cases)	Sugar and fructose; agricultural products; mixed edible oils; preserved peaches; medium density fibre; polyester filaments; woven fabric of cotton and cotton mixtures; footwear

Other Barriers		
Pricing Measures	South-North (1 case)	Many products
Approval and Marketing Measures	South North (1 case)	Agricultural biotechnology products
Environmental Measures	South-North (1 case)	Safety matches
Intellectual Property Rights	South-North (1 case)	Not specified

Source: OECD, compiled from records of WTO Dispute Settlement Understanding (http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm), as of 31/10/2004.

92. **Agricultural products** are subject to QRs and import licensing, SPS measures, and charges on imports. Sugar, among other agricultural products, is prone particularly to safeguards, export and other types of subsidies applied by OECD countries.

93. Export of **textiles and cotton products** is also hindered by multiple NTBs, particularly rules of origin, quantitative restrictions, antidumping duties and safeguards. Of note, **safety matches** feature frequently in the dispute record, facing barriers such as customs clearance procedures, import licensing, TBTs, and environmental measures.

94. Differing product groups are affected by a particular NTB depending on the market maintaining the measure that is challenged, whether this concerns intra-developing country or extra-developing country trade. This appears to be the case for trade remedies, which are applied mainly to **steel and iron DC exports** to OECD markets. Non-OECD markets, in contrast, apply trade remedies to agricultural products and foods, textiles and footwear, and pharmaceutical products.

95. Certain products of interest to DCs are subject to disputes primarily among non-OECD countries. **Tobacco and cigarettes** allegedly face significant surcharges applied by other DCs. In the case of **pharmaceuticals**, barriers are encountered exclusively in trade among non-OECD countries and relate to conformity assessment procedures and antidumping duties.

B. Cases on non-tariff import measures in trade among developing countries: Andean Community

96. In order to elucidate the nature of NTBs disputed among developing-country trading partners, this section analyses legal cases submitted to the Court of Justice of the Andean Community (AC).²⁵ In particular, it reviews the complaints of non-compliance (*Dictamen de Incumplimiento*), which represent the pre-litigation phase before an action may be brought to Court.²⁶

97. Compared to the process of settling disputes pursuant to the DSU in the WTO, this procedure is much less costly for countries to engage in and does not bear the burdensome demands with regards to technical expertise, given that the General Secretariat of the AC is charged with the administrative (i.e.,

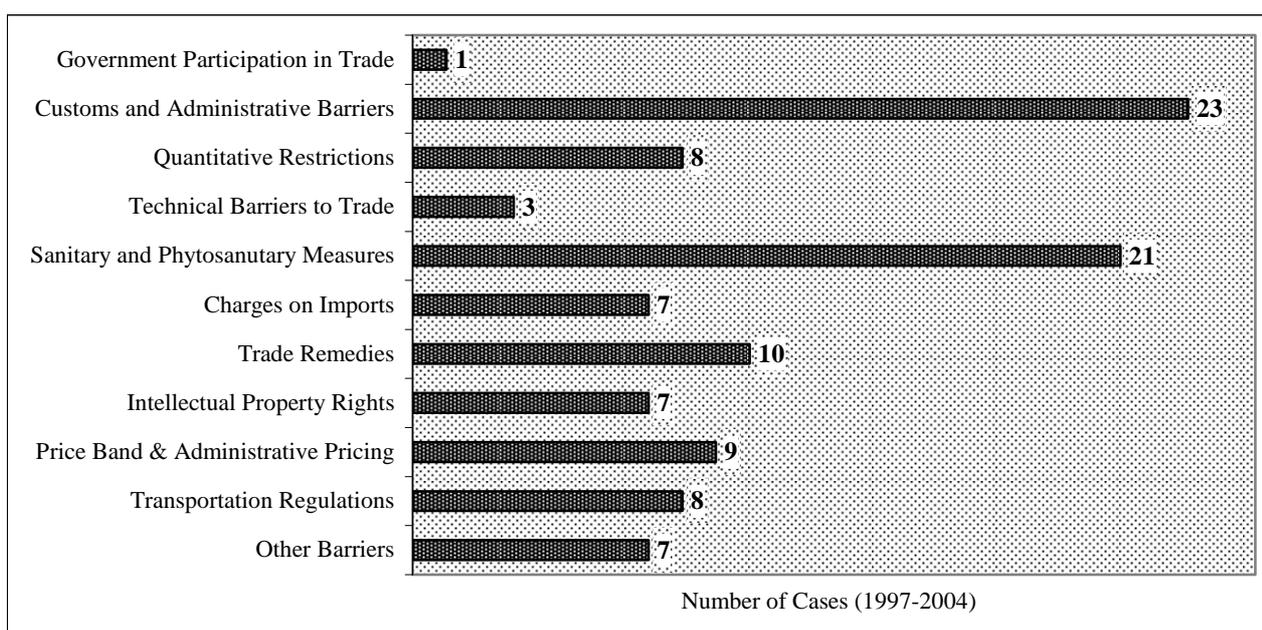
²⁵The AC is a customs union formed by Bolivia, Colombia, Ecuador, Peru, and Venezuela. Trade in goods between Bolivia, Colombia, Ecuador and Venezuela is completely free of tariffs for all products; Peru is joining the free trade area gradually through a Liberalization Program. Intercommunity trade is broadly diversified (4276 Nandina sub-items) and represents approximately 5 billion 680 million dollars. The Court of Justice was established as a permanent and supranational body in 1979, and thereafter modified in 1996 to broaden its sphere of competences.

²⁶ The Dictamen de Incumplimiento is the Secretariat's judgement on the complaint filed by countries; since the complaints are not readily available, the Dictamen de Incumplimiento/Cumplimiento is the first official published report on members' complaints.

pre-litigation) investigation. This may explain the more frequent use of this mechanism by Members. Furthermore, the scope of intra-regional activity regulated by the AC is broader than that of multilateral trade rules; hence a broader set of NTB-related complaints are captured in the set of disputes.

98. During the period 1997-2004, a total of 104 legal cases covering NTBs have been initiated among members of the AC. **Figure 4** shows the incidence of various types of barriers that have been subject to complaints. Although tariffs among AC members were eliminated in 1993, the rise of intra-regional exports has been a modest 0.1%.²⁷ This draws attention to the potentially significant role of NTBs and possibly other factors in inhibiting trade in a tariff-free environment.

Figure 4. NTB cases in the Andean Community



Source: OECD, compiled from records of the Andean Community (<http://www.sieca.org.gt/SIECA.htm>), as of 31/10/2004.

99. As shown in **Figure 4**, intra-AC trade appears to be consistently hampered by **customs and administrative procedures**, the most frequent legal complaint among the AC's six member countries. **Import licensing** alone accounts for 48% of these cases, capturing complaints on consistent overuse of licenses and procedural problems in obtaining them, including delays and arbitrary decision-making. Following this sub-category, 27% of the cases reveal problems with proper **certification and determination of origin** of a wide variety of products. Other areas that generates problems is **customs valuation** (17% of cases) and classification (4%), where complaints tend to highlight authorities' lack of technical expertise in complying with requisite customs regulations and procedures.

100. Many complaints concerning **sanitary and phytosanitary measures** have been lodged, despite the absence of South-South disputes in this area at the multilateral level. The AC's South-South disputes on SPS raise issues of a procedural nature, e.g. arbitrary granting of certificates and permissions. Commonly noted procedural issues include:

²⁷ ECLAC (Economic Commission of Latin America and the Caribbean), *Statistical Yearbook for Latin America and the Caribbean 2002*.

- Delays of more than 5 months in granting SPS permissions, while the maximum timeframe to grant a permission is 10 days
- Granting an SPS permission with a validity limited to 60 days, when the minimum validity period established by AC regulations is 90 days
- Establishing complementary requirements for granting an SPS permission, not provided for in AC legislation
- Granting permissions to only a small portion of the products, with other products subject to indefinitely pending approval without any stated objections on SPS grounds.

101. In some instances, the complainant perceives the procedural problem in granting SPS approvals as being intentional or a hidden restriction.

102. Consistent with the high number of South-South cases concerning **trade remedies** observed for the DSU, these kinds of complaints rank third for the AC cases. As in the DSU context, at issue is particularly **safeguards** (70%), here particularly involving sugar and centering on complaints that countries maintain safeguards without showing proof for or documenting injury of national producers. Concerning anti-dumping measures, the intra-regional cases (30%) differ from those brought before the DSU: AC members charge each other with not applying duties to imports of steel and metal from non-member countries, thereby allowing extra-regional partners to engage in dumping practices to the detriment of the competitiveness of regional production.

103. Similarly, one finds relatively many cases challenging **quantitative restrictions**, mostly quotas on agricultural products. As already reflected in the DSU analysis, there are considerable problems in governments' use of **surcharges** in the AC's intra-regional trade. These refer mainly to a large number of customs fees. In contrast, very few cases involve TBTs and only one case involves government assistance, which supports the conclusion derived from the DSU analysis that these are measures that become issues mainly in developing-country trade with developed countries.

104. Several NTBs that did not appear frequently, if at all, in the review of DSU cases do however appear to pose significant challenges in South-South trade relations. This is reflected for example in the number of AC cases involving **intellectual property rights**, affecting mostly pharmaceuticals and relating to such issues as the lack of protection granted for essential medicines or unclear provisions for patent registration. There are also many cases involving **administrative price fixing**, particularly in agricultural products, although most are related to the administration of the Andean Price Band. Other cases in this area challenge the practice of fixing minimum import price at a level that exceeds the price of similar domestic products on grounds of violation of national treatment. Finally, serious problems of intra-regional market access are attributed to the existence of **transportation barriers**, partly because infrastructure is poor and use costly, and partly because government regulations allow only certain cargo carriers to operate in a market.

C. Other regional dispute settlement bodies

105. There are very few permanent regional trade dispute settlement bodies. Among the regional trade agreements of developing countries, only the Common Market of the South (MERCOSUR) and the Common Market for Eastern and Southern Africa (COMESA) have bodies similar to the one in operation in the Andean Community.

106. In the case of MERCOSUR, a total of nine commercial disputes among State Parties have reached the arbitration stage of the dispute resolution mechanism established under the Protocol of Brasilia. While these are the only arbitral panels that have actually issued rulings to date, there are hundreds of other disputes among members that have entered the system, but cases at early stages of

proceedings are not published on the Internet and information about them can only be obtained directly from the Secretariat.

107. As Table 4 shows, all except one (concerning tariffs) of the nine cases challenge alleged NTBs interfering with the free flow of intra-regional trade. As the sample of cases is small and target a variety of measures—ranging from import licensing and quantitative import restrictions to subsidies and trade remedies—these cases are not analysed further. Consistent with the profile of AC and DSU cases, one interesting observation is that there are no cases involving technical barriers to trade.

Table 4. Controversies submitted to arbitration panel of MERCOSUR

Date	Complainant	Respondent	Measure	Products
04/04/03	Argentina	Uruguay	Incentives to exports	Wool products
21/05/02	Paraguay	Uruguay	Specific internal tax ('Ímesi')	Cigars
19/04/02	Argentina	Brazil	Obstacles to imports of phytosanitary products (registration system)	Phytosanitary products
09/01/02	Uruguay	Brazil	Import ban (prohibition on the issuance of import licenses)	Remolded tyres
29/09/01	Uruguay	Argentina	Restrictions: tariffs (involved controversy over certificate of origin)	Bicycles
21/05/01	Brazil	Argentina	Antidumping duties	Chicken
10/03/00	Brazil	Argentina	Safeguards	Textile products
27/09/99	Argentina	Brazil	Subsidies for production and exports	Pork meat
28/04/99	Argentina	Brazil	Automatic and non-automatic import licensing	Lactate products

Source: OECD, compiled from MERCOSUR Secretariat (<http://www.mercosur.org.uy/pagina1esp.htm>), as of 31/10/2004.

108. While the cases submitted to the Court of Justice of COMESA were reviewed, it was found that the issue covered in the cases are often not confined to trade measures. For instance, there are cases of alleged defamation (Ref. No. 1/2003) or compulsory acquisition of land (Ref. No. 3 of 2001), and other like cases unrelated to trade relations that do not provide insights into the kinds of barriers that might exist within the region. Perhaps the only judgement of the court relevant for an intra-regional analysis of NTBs refers to a case on the alleged detainment of goods at ports and damages arising from these customs procedures (Ref. No.1/99).

V. Analysis of business surveys

109. Another body of evidence on non-tariff barriers in developing countries consists of **survey data** on barriers faced by DC **exporters of goods** in a range of markets. For the purpose of this analysis, a survey is defined as a study that utilizes *enterprise-level data* or a *broad consultation with enterprises*. This section compiles and examines **private/business sector** concerns in order to balance the more public sector-based analyses of the preceding sections.

110. **Annex VII** presents a selection of surveys representative of private sector responses from all developing regions. Concerns about NTBs involve exporters and regions across the spectrum, and pertain to OECD markets and global markets (Annex VII, A and B), and intra-developing country trade in regional groupings in Asia (Annex VII, C), South America (Annex VII, D), Central America and the Caribbean (Annex VII, E), Africa and the Middle East (Annex VII, F), and South East Europe (Annex VII, G). In total, this selection reflects responses from over 6,000 exporters of goods from developing countries.

111. Comparisons of survey data must be made with caution due to differences across data sets, methodologies, and scope of barriers surveyed. Some surveys are open-ended whereas others involved predefined questions focusing on a more limited set of barriers. The number and profile of respondents varies. However, despite the heterogeneity of these surveys, some clear patterns in NTBs concerns are evident.

A. Barriers reported by firms: Global markets

112. One common denominator among survey findings -- consistent with our analyses of NAMA notifications and the intra-regional AC legal cases -- is problems reported with **customs and administrative procedures** (see synthesis of surveys in the Annex). The business community in DCs cites concerns regarding bureaucracy, delays, and high costs involved in these procedures.

113. In 2001, the *Superintendencia Nacional de Aduanas* of Peru conducted a detailed survey of 253 of its users (122 of whom were exporters/importers). The survey revealed that more than half (56%) of exporters/importers were not well informed on customs rules and procedures.²⁸ About two-thirds (67%) of polled exporters/importers, moreover, affirmed that custom procedures were not modern or were inefficient, with insufficient personnel, inadequate capacity, and nonexistent or inefficient controls against corruption and/or arbitrariness. In line with these findings, various other surveys covering trade among developing countries reflect concerns about the lack of business ethics among customs officers and limited computerisation.²⁹

114. Also as in preceding analyses, **import licensing** looms as a frequent concern across surveys. Moreover, the surveys indicate a frustration with excessive use of **documentation and formalities**, which further exacerbate the bureaucratic obstacles of customs and administration. Looking at specific customs-related barriers by markets, it can be observed that **rules of origin** and **pre-shipment inspection** are more frequently reported to cause obstacles for trade among developing countries than for access the markets of developed countries. Of note, all surveys on intra-regional trade in Africa signal **customs clearance** as a significant hurdle.

115. The surveyed business community corroborates that **technical barriers to trade (TBTs)** are a major detriment to exportation. Concerns abound regarding divergent and non-harmonized standards, delays and discrimination in TBT application, non-transparency and lack of general information on TBT regulations. In testing and certification arrangements, surveyed companies often complain about the lack of mutually recognised certification bodies and insufficiency of national certificates.

116. The **World Bank Technical Barriers to Trade Survey**, administered in 2002 to 698 firms in 17 developing countries, indicates the primacy of technical regulations as a hurdle in major OECD export destinations.³⁰ The survey findings show that performance standards, product quality standards, and testing and certification are perceived to be the most important TBTs, followed closely by consumer safety, labelling, and health and environment measures. Surveyed firms report that necessary actions for TBTs compliance involve investment in: additional plant or equipment (38% of firms), one-time product redesign (31%), additional labour for production (30%), product re-design for each export market (26%), additional labour for testing and certification (18%), and laid of workers because of higher costs (11%).

²⁸ *Evaluación de Servios de Aduanas. Estudio Cuanitativo: Principales Resultados, Apoyo Opinión y Mercadeo* on behalf of *Superintendencia Nacional de Aduanas*, November 2001.

³⁰ The countries surveyed are: Bulgaria, Czech Republic, Poland, Argentina, Chile, Honduras, Panama, Iran, Jordan, India, Pakistan, Kenya, Mozambique, Nigeria, Senegal, South Africa and Uganda. The main sectors surveyed are: raw foods; processed foods, tobacco, drug and liquor; equipment; textile and material; and other.

117. In a specialized **survey on packaging and labelling** conducted in 2001 by Costa Rican Export Promotion Agency (PROCOMER), it is striking to see that a significant amount (34%) of the 215 surveyed businesses state that they are unfamiliar with the packaging requirements for their products in markets to which they are currently exporting; and 63% have no knowledge of these requirements for markets identified as potential export destinations.³¹ As for environment-related rules and requirement regulating packaging/labelling arrangements, 57% indicate lack of information for their current markets--a percentage that increases to 73% in regard for potential markets. Against this background, 89% of firms express their interest in receiving capacity-building and practical assistance with packaging and labelling.³²

118. While **customs and administrative procedures and TBTs** are clearly the most prevalent non-tariff barriers, there is a notable difference in their **relative perceived importance** depending on whether the surveyed companies are exporting to OECD or non-OECD markets. In surveys covering trade between developing and developed countries, TBTs rank higher as a market access obstacle. In the surveys on barriers affecting intra-developing country trade, on the other hand, customs and administrative-related barriers invariably rank higher. The findings of the Western Balkans Survey (Table 5) is representative of this picture.

Table 5. Ranking of barriers by market

Ranking (by importance of barrier)*	EU (extra-DC trade)	South-Eastern European Countries (intra-DC trade)
1	Technical standards and certification	Customs procedures
2	Quality control and consumer protection	Bureaucratic registration
3	Customs barriers	Technical standards and certification
4	----	Quality control and consumer protection
5	Bureaucratic registration	----

Note: *In descending order by degree of importance Items in the survey not related to TBTs, customs and administrative procedures are omitted from this table (as indicated by ---).

Source: OECD, based on Western Balkan Survey (2004).

119. The surveys also illustrate certain problems related to **sanitary and phytosanitary measures** for DCs, particularly in exporting to OECD markets. A major problem faced by some firms, especially small and medium-sized enterprises, seems to be access to the resources required to comply with SPS standards, given that they are often not available locally. These include information on SPS standards themselves, scientific and technical expertise, appropriate technology, skilled labour, and general finance, amongst others. In a survey of SPS contact/inquiry points in low and middle-income countries that are members of the WTO and/or Codex Alimentarius, Table 6 reports problems related to SPS requirements that were judged to be significant or access to the EU market.

³¹ *Capacidad Exportadora en Costa Rica: Principales Resultados*, PROCOMER, 2001.

³² The areas suggested by businesses for capacity-building relating to labelling and packaging, in order of perceived importance: technical and environmental requirements; suppliers and types of packaging/labelling; costs of packaging/labelling; methods for quality control; effects of packaging/labelling on sales of product; containers; port management, amongst others. The products identified as most important are: machines and equipment, tubes and tube products, furniture, fragile products, fruits, and confectionary.

**Table 6. Problems in meeting SPS requirements in the European Union
(SPS Survey of Developing Countries, 2000)**

Mean Score*	Factor
1.6	Insufficient access to scientific/technical expertise
2.1	Incompatibility of SPS requirements with domestic production/marketing methods
2.6	Poor access to financial resources
3.0	Insufficient time permitted for compliance
3.1	Limitations in own country's administrative arrangements for SPS requirements
3.1	Poor awareness of SPS requirements amongst government officials
3.5	Poor awareness of SPS requirements within agriculture and food industry
3.9	Poor access to information on SPS requirements

Note: *Score ranges from 1='very significant' to 5='very insignificant' Survey is based on 65 fully completed questionnaires applied to a total of 44 low and middle income countries, as classified by the World Bank.

Source: *Impact of Sanitary and Phytosanitary Measures to Developing Countries*, Survey Conducted by The University of Reading (2000).

B. Barriers reported predominantly for trade among DCs

120. All of the surveys on **intra-regional trade**, and particularly in Africa and the Caribbean, record concerns regarding an impressive number and variety of **additional charges**, ranging from customs service and harbour and aircargo fees, often deemed to be excessively high, to an array of additional taxes and charges such as foreign exchange tax; stamp duty; environmental tax; statistics, consent and inspection fees; and others. Apart from these border and transit charges, companies also report problems with regards to internal taxes and additional charges such as consumption, value added and excise. **Differences in tax regulations** and their lack of transparency are frequently cited as a problem area across members of regional groupings.

121. An interesting finding across the surveys is that companies attach considerable importance to barriers not generally captured in a traditional listing of NTBs, particularly in the context of a South-South exchange. Amongst these, respondent firms frequently denounce **transportation regulations and costs**, which also featured prominently in the legal analysis of trade in the AC. These concerns relate to poor or unfair regulation of goods transportation in the importing country, in addition to various problems pertaining to the quality, frequency, and insecurity of road and ship transportation. Moreover, surveyed companies indicate that the costs of international air and maritime transportation are high and impede access to foreign markets.

122. The surveys also indicate that trade is further hampered by **restrictive finance measures**, including the shortage of foreign exchange within developing regions. Private sector entities underscore the challenges posed by barriers such as banking system weaknesses and restrictive government regulations on exchange requirements, capital controls, and finance and payment mechanisms. These seriously affect the export potential of small and medium sized enterprises that lack easy access to external financing sources.

Table 7: Non-tariff barriers cited in business surveys

	Asia and the Pacific						Latin America and the Caribbean						Africa and the Middle East				South East Europe				
	India – OECD Markets (2004)**	India-non-OECD Markets (2004)***	China (2001)*	Thailand (2001)***	Vietnam (1999)**	ASEAN (date unspecified)**	Chile (2000)***	Argentina (1999)*	ALADI (2001)**	MERCOSUR (2000)**	Andean Community (1997)**	Central America (1999)**	Assoc. Caribbean States (2003)**	CARICOM (2002)**	SADC (2004)**	Morocco (2001)**	MENA (2000)**	COMESA (1999)**	Western Balkans (2004)***	European Commission (2005)	Moldova (2004)
Government Participation	√	√		√	√	√		√		√			√	√	√				√		
General				•				•						•	•					•	
Subsidies & Export Subsidies	•													•	•					•	
State-trading & Monopolistic Practices		•			•	•			•				•							•	
Public Procurement										•				•						•	
Customs and Administrative Procedures	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
General		•	•						•	•	•	•		•	•				•	•	
Customs Valuation						•									•					•	
Customs Classification						•														•	
Customs Clearance	•														•	•	•			•	•
Documentation & Formalities		•		•	•	•					•	•			•		•			•	
Import Licensing	•		•		•	•	•	•			•		•		•					•	•
Rules of Origin	•								•											•	
Pre-shipment Inspection									•						•					•	
Quantitative Restrictions	√		√		√		√		√				√	√			√		√	√	√
General	•								•												
Prohibitions and Bans	•				•								•				•			•	•
Quotas	•		•		•		•						•	•						•	
Tariff Rate Quotas	•																			•	
Embargoes	•																				
Technical Barriers to Trade	√	√	√	√		√	√	√	√	√			√		√	√	√	√	√	√	√
General			•				•														
Technical Reg. & Standards	•					•		•	•	•	•		•					•	•	•	•
Testing & certification	•	•							•								•		•	•	
Labelling & packaging	•	•		•					•						•					•	•
Sanitary and Phytosanitary	√		√					√	√	√		√		√			√		√	√	√
General	•		•					•	•	•		•		•			•			•	•
Testing and Certification																				•	
Quarantine Procedures	•																				
Charges and Fees	√	√			√	√	√		√	√			√	√	√	√	√	√	√	√	√
Various Charges	•	•			•	•	•		•	•			•	•	•	•	•	•		•	•
Trade Remedies						√						√									
General							•														
Antidumping Duties	•																				
Countervailing Duties									•				•								
Safeguards																					

	Asia and the Pacific						Latin America and the Caribbean						Africa and the Middle East				South East Europe				
	India – OECD Markets (2004)*	India-non-OECD Markets (2004)**	China (2001)*	Thailand (2001)***	Vietnam (1999)**	ASEAN (date unspecified)**	Chile (2000)***	Argentina (1999)*	ALADI (2001)**	MERCOSUR (2000)**	Andean Community (1997)**	Central America (1999)**	Assoc. Caribbean States (2003)**	CARICOM (2002)**	SADC (2004)**	Morocco (2001)**	MENA (2000)**	COMESA (1999)**	Western Balkans (2004)***	European Commission (2005)	Moldova (2004)
Other Barriers	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Import Restrictions	•	•			•	•															
Unilateral Sanctions	•																				
Registration	•	•							•										•	•	
Intellectual Property Rights							•		•												
Environmental Measures								•												•	
Minimum Pricing & Price Control Measures					•				•				•								•
Finance Measures				•	•				•	•			•	•	•		•	•	•	•	
Access to Final Users																			•		
Extraterritorial Application of the Law	•	•																			
Legal Differences	•										•										
Lack of Information on foreign markets			•	•	•				•			•							•		
Competition from other countries				•					•			•									
Transportation Costs and/or Regulations									•	•	•	•	•				•	•		•	
Corruption and Theft			•									•		•		•					
Political, Social, and/or Economic Instability									•			•		•	•						
Inadequate Infrastructure																		•			
Low Demand in Export Markets												•									
Cultural Differences			•																		
Linguistic Barriers			•	•														•	•		
Unclassified	•	•	•	•			•	•	•			•	•	•		•	•				•

•: Barrier is reported in survey (note: not all surveys include all listed barriers). √: At least one kind of barrier is reported under the NTB category. *: Extra-DC Surveys; **: Intra-DC- Surveys; ***: Global Surveys

Source: OECD, compiled from a selection of business surveys.

123. Most of the surveys also reflect that enterprises have **limited information on foreign markets** in general and on applicable regulations. In the Western Balkan survey, for instance, nearly half (48%) of 2,166 polled companies affirm that they are not familiar with the EU market, with only 9% fully informed of its relevant laws and regulations.³³ With respect to intra-regional market access opportunities, over a third (37%) of respondents note a lack of familiarity with South Eastern European markets. This would

³³ The survey reveals that the most important areas of EU legislation in terms of relevance to companies' operations are, in this order: product certification and technical standards; rules of origin; consumer protection and producer liability; labels, trademarks, and patents; environmental protection; and food quality and safety.

appear to be a very high number in light of the numerous bilateral free trade agreements between countries of the region and the current discussions towards a common free trade area.

124. Finally, in the context of the dynamics of trade among developing countries, the sample of surveys examined reveals **political, social and economic factors** inherent to the environment of the export market that act as obstacles to trade. Exporters participating in these surveys cite various kinds of problems relating to corruption, theft, social unrest, and economic volatility.

VI. Conclusions

A. *Review of sources*

125. This study has sought to identify NTBs of concern to developing countries by drawing on four sources of data providing different perspectives. Each of these sources contributes to a better understanding of the market access concerns of DCs by documenting various kinds of NTBs. Together, they represent a rich source of information.

126. The **review of the literature**, while not generating accurate measures of the extent and effects of NTBs, provides an insightful picture of the trends in NTBs use across time, particularly in the aftermath of the Uruguay Round. Most research shows that ‘core NTBs’ (i.e., quantity and price control measures) have decreased significantly. At the same time, this analysis has identified other measures that have come to the forefront of DCs’ concerns. Furthermore, among the sources consulted, the literature provides a differentiated picture of market access barriers by developing regions.

127. The **NAMA notifications** represent the most recent and direct reporting exercise undertaken by governments in this field. The set of notifying WTO members is representative of developing countries, given that their aggregate exports account for 57% of total DC exports. It is the only source of data for identifying not only the barriers but also the products affected, thereby generating commodity-specific information on NTBs. These notifications provide a solid foundation for some limited empirical analysis.

128. The examination of **dispute settlement cases** has provided a limited data set of DC concerns on NTBs. The analysis shows that NTBs are a source of significant and in fact growing friction, both in South-North trade relations and increasingly in South-South trade. In particular, compilation of cases from regional dispute settlement mechanism provides a good account of market access barriers encountered in intra-regional developing-country trade.

129. Finally, an investigation into **private sector perceptions** spanning all developing regions complements the earlier analyses by offering the testimonies of difficulties that exporters experience. This analysis reveals that market access challenges faced by DC exporters extends beyond traditional NTBs to include other factors obstructing trade (eg. transportation and regulations) that may warrant more attention. This component also contributes to the identification of barriers affecting DCs’ intra-regional trade.

B. *Findings on barriers of concern to DCs*

130. While there are variations in the main findings resulting from each element of analysis, certain broadly defined categories of NTBs consistently show up as a source of concern and are summarised below.

Trade with developed countries

131. In trade with developed countries, **customs and administrative procedures** and **technical barriers to trade** emerge as the main NTBs of concern to developing countries. These two categories record the highest frequency of notified barriers in the NAMA analysis. TBTs also received considerable attention in the literature reviewed. In the analysis of disputes brought to the WTO, there are a considerable number of cases involving customs issues. In contrast, there is a much smaller number of cases pertaining to TBTs, reflecting perhaps the greater difficulty to legally challenge these measures.

132. As for other barriers, there is less consistency across the analyses. **SPS measures** follow in importance in the NAMA notifications, and are cited also frequently in business surveys focusing on access to OECD markets, in particular in instances when developing countries are agricultural exporters. This is identified as one of the main sources of concern in the literature review for Asia and Latin America.

Trade among developing countries

133. In intra-developing country trade, **customs and administrative procedures** also rank very high among reported concerns in the four components of analysis. In fact, these problems appear to be more pervasive in market access to developing countries than to developed-country markets. Of particular note, the 15 business surveys compiled on barriers to intra-regional trade all report at least one, and normally numerous, kinds of customs and administrative hurdles. These include (often procedural) problems encountered with import licensing. Furthermore, the analysis of NTB cases in the Andean Community reveals that customs and administrative procedures are subject to the largest number of complaints brought under the dispute settlement mechanism established by the Andean Community.

134. The data sets also provide a rich documentation that identifies **charges on imports** as the next important barrier in trade among developing countries. The literature draws attention to the fact that as DCs have reduced their tariffs as a result of multilateral and regional liberalisation, they have resorted to an array of import charges to compensate for the loss of their tariff revenues. In the analysis of disputes brought to the WTO, the second highest number of disputes among DCs consists of these measures. A telling instance where DCs have removed tariffs intra-regionally, but maintained or even increased their resort to para-tariff measures, is the Central America Common Market (CACM). Half of the complaints brought against other CACM members during 2003-2004 involved various fees and charges. This phenomenon is not confined to Latin America. The literature and business survey report widely on charges in use in other regions, particularly Africa, the Middle East, and the Caribbean islands.

135. As for other measures, like in the analysis of market access to developed countries, there is less consistency in the findings. Technical barriers are less prominently reported for trade among developing countries. The literature review and business survey analysis suggest that these measures are more prevalent for intra-regional trade in Asia. This may be partially explained by a higher value added content of exports from Asia relative to exports from Africa or Latin America. More generally, concerns related to TBT issues in trade among DCs evolve more around issues of weak infrastructure and procedural hurdles. In contrast, TBT complaints focusing on developed countries tend to refer more to the costliness of compliance requirements.

136. This study also shed light on impediments to access foreign markets that are generally fall outside the discussions on NTBs. In particular, business surveys report many of such issues. These surveys as well as the disputes brought to the Andean Community underscore the importance of transportation costs and regulations. There are also geographic constraints for trade with neighbouring and other countries, for instance in Africa. Finally, other concerns documented relate to various restrictive finance measures, including resulting shortages of foreign exchange and capital controls.

C. *Findings on products of interest to DCs*

137. A further objective of this study has been to identify what types of NTBs affect the products of export interest to developing countries. The most comprehensive data set to identify NTBs by products has been the NAMA notifications, supported and reinforced in the findings by the review of literature, disputes and business surveys.

138. To the extent that the NAMA notification is representative of the export profile of developing countries, **live animals and related products** are the commodity category most deserving attention. For this category, the most often reported NTBs relate to **sanitary and phytosanitary measures**, including testing, certification and other requirements of proof of conformity. Customs-related problems, particularly in respect **rules of origin** certification, are also mentioned relatively often.

139. The highest number of notifications submitted to NAMA identified NTBs affecting **fish and crustacean, molluscs, and other fisheries** (e.g., tuna, trout, octopus, shrimps and prawns). The review of eight DCs export strategies and promotion programs reveals that this would be a competitive sector of current and future export interest. From the review of legal cases filed in the multilateral and the regional fora for settling disputes, sugar & fructose and fresh fruits & vegetables are other sectors where DC exports face considerable market access difficulties.

140. Machinery and electronics, notably **electrical machinery and equipment** (e.g. radios, televisions, cables), are other products that are very often mentioned in DC notifications to NAMA. The literature on Asia emphasises that electrical appliances and machinery constitute the product most affected by NTBs. **Technical regulations and standards** are reported to be the most significant obstacle facing DC exports in this sector. In fact, most of the TBTs complaints in the notification to NAMA fall into this product category. There is also a high incidence of reported import licensing problems.

141. NAMA notifications also refer particularly often to **chemical products** and especially to **pharmaceutical products**. The sector also receives attention in the literature. Moreover, pharmaceutical products have been subject to disputes among developing countries, as documented by the legal cases brought to the Andean Community. Among the NAMA notifications for this sector, there is a high incidence of complaints focusing on **technical regulations**.

142. The importance of textiles for DC trade documented by a large pool of studies is reinforced by the number of multilateral and regional dispute cases involving **woven cotton and cotton products or textile and apparel products in general**. Some of the literature on NTBs, mostly in the context of Asia and the Pacific, point to a situation where DC access to foreign markets in this area is obstructed by multiple NTBs. While the literature describes the Multi-Fibre Agreement as the most important barrier, some work (especially for India) draws attention to labelling requirements and a very large number of NAMA notifications by DCs suggest the presence of various **technical barriers to trade**. The NAMA notifications include also many references to **customs valuation**.

143. Although not as important an export sector for DCs, **automobiles and auto parts** are pointed to by the literature as the object of many NTBs. Many of the DC notifications to NAMA in this sector are specifically about **technical regulations**. They also express DC concerns about **rules of origin** issues.

144. The importance of addressing NTBs in the above sectors is underscored by the analysis of developing countries' export strategies, many of which identify the above-mentioned product groups as being strategic to their efforts to develop and strengthen their export performance.

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For this study, consultations have been held with various officials from developing countries and international organizations, including from:

Regional Secretariats (Andean Community, Association of Caribbean States, ALADI, others);

Ministries of Trade and Economy (India, Peru, Uzbekistan, the Kyrgyz Republic, Russia, others);

Think tanks/academic institutions (Southern African Institute for Economic Research, Botswana Institute for Development Policy Analysis, others);

International organisations (World Trade Organization, International Trade Centre, South Centre, Organization of American States, UN Economic Commission for Latin America and the Caribbean, UN Economic and Social Commission for Asia and the Pacific).