

Consolidated & prioritised list of the Major generic trade barriers Among Asem partners

1. CUSTOMS PROCEDURES
2. STANDARDS AND CONFORMITY ASSESSMENT
3. PUBLIC PROCUREMENT
4. QUARANTINE AND SPS PROCEDURES
5. INTELLECTUAL PROPERTY RIGHTS
6. MOBILITY OF BUSINESS PEOPLE
7. DISTRIBUTION
8. Others

Objective and Mandate

When the ASEM Trade Facilitation Action Plan (TFAP) was adopted at ASEM II in London, it was envisaged that it would aim at reducing non-tariff barriers (NTBs) and transaction costs and promoting trade opportunities between the two regions while complementing and considering work being carried out in bilateral and multilateral fora. At the second Economic Ministers' Meeting in Berlin on 9-10 October 1999, Ministers specifically emphasised the importance of achieving substantive progress and of the need for the TFAP agenda to be more forward-looking, focusing on concrete steps towards implementing its objectives. In urging a more practical approach, Ministers thereby adopted a paper on the Future of TFAP.

In relation to the future orientation of the TFAP work programme, this paper urged partners to identify the most important generic obstacles to trade among ASEM partners, primarily within each of the agreed priority areas, paying particular attention to the costs and inconveniences that these imply for the business sector. In this context, partners prepared and submitted lists identifying the major barriers faced by their exporters.

On the basis of these lists, the Economic Coordinators, with input from the facilitators prepared this present Consolidated and Prioritised List of the Major Generic Trade Barriers among ASEM Partners for discussion and endorsement at SOMTI VI.

Methodology

The barriers identified by all ASEM partners are categorised according to the priority areas set out in TFAP. They include: customs procedures, standards and conformity assessment, public procurement, quarantine and SPS procedures, intellectual property rights, mobility of business people and distribution. A category entitled "Others" is also used to reflect barriers that are identified by partners and do not necessarily fall within the seven priority areas of TFAP.

Given the number of different barriers and examples of barriers identified by partners in all of the categories, those that appeared common and/or similar are grouped together as a general reflection of the responses.

Due in part to the fact that some partners did not prioritise their lists according to the level of importance they accorded to each of the barriers identified by them, prioritisation is based largely on the number of partners that identified each of the barriers concerned. While noting that the European Commission submitted one list for all of the member countries of the European Union, particular emphasis was placed on obtaining a balance between the barriers identified by both European and Asian partners.

Finally, given the nature and scope of the mandate, omitted from this present list are:

- Barriers appearing near or at the bottom of the lists of those partners that prioritised their submissions and could not be grouped;
- Barriers to investment identified by some partners; and

- Barriers identified by only one partner that appeared to be industry or country-specific as opposed to being "generic".

1. CUSTOMS PROCEDURES

- Lack of transparency (e.g., the existence of unofficial customs procedures, unwritten rules and unpublished changes, and the absence of information regarding customs regulations and procedures in English)
- Complex and/or costly regulations (e.g., additional levies and charges imposed on imports and tariffs imposed on samples and catalogues) - No streamlining of procedures
- Delays in customs clearance procedures due to, for instance, excessive and/or irrelevant paperwork, and the absence of after-hours customs services despite the provision for such services in the regulations, causing undue financial burden on traders (e.g., ongoing demurrage charges)
- Problems with customs valuation (e.g., lack of uniformity and frequent modifications) and customs reclassification
- Inconsistent interpretation and application of existing regulations
- Irregular, illegal and/or non-transparent practices in return for compensation - (e.g., requests for unofficial fees to accelerate the process), the existence of unofficial, simplified customs channels and/or uncertain special privileges for selected companies

2. STANDARDS AND CONFORMITY ASSESSMENT

- Existence of double standards in regulations (e.g., additional inspections required on certain products) and/or discriminatory treatment of foreign products through stricter standards and certification requirements than domestic products
- Complex and/or costly approval procedures (e.g., requirements for the testing of multiple samples and additional testing where production methods or technology differ from those used in the importing country) - No streamlining of licensing and certification procedures for consistency
- Restrictive, costly and/or complex packaging and labelling requirements exceeding the TBT dispositions for labelling
- Differences in national standards among ASEM partners, differences between national and international standards, differences in application of standards, and/or lack of recognition of international standards, including in the field of testing and approval
- Lack of consistency regarding the proper body to establish and administer standards, approval and certification requirements for imports and problems with non-recognition of conformity assessment procedures obtained in the country of origin
- Lack of transparency in regulations (e.g., through lack of translations into foreign languages or failure to publicise changes) and lack of information on standards and conformity
- Non-recognition of manufacturers' self-certification of conformity

3. PUBLIC PROCUREMENT

- Bidding restrictions (e.g., the process is open to companies with a minimum level of domestically-held shares or domestic content in products) and discriminatory treatment of foreign enterprises (e.g., preferential treatment of domestic companies or those with local partners)
- General lack of openness and transparency in the bidding process
- Circumvention of rules through splitting of contracts
- Short notice of tenders
- Requirements of technology transfer and counter trade

4. QUARANTINE AND SPS PROCEDURES

- Costly, lengthy and/or excessive quarantine and inspection requirements and procedures - Lack of simplification and consolidation of import requirements and procedures
- Discrepancy between national and international standards and lack of harmonisation - Discriminatory, complex and/or more stringent national standards which lead to arbitrary application of quarantine and SPS measures, superfluous testing and unnecessarily prescriptive important requirements
- Non-recognition of sanitary and phytosanitary certificates issued by the competent authority of the exporting country and/or the requirement to obtain separate import certification
- Restrictive, non-transparent, costly and/or complex import licensing systems
- General lack of transparency as regards, for instance, sanitary and phytosanitary measures, procedures to be followed and competent authority
- Non-recognition of competent authority, control procedures and relevant measures in the exporting country
- Restrictive labeling rules
- Abusive testing

5. INTELLECTUAL PROPERTY RIGHTS

- Widespread infringement of intellectual property rights (IPR) and insufficient measures protecting such rights
- Insufficient or unequal enforcement of existing IPR legislation and legal uncertainty about the interpretation of IPR agreements by the host country
- Absence of systems to enable SMEs to take advantage of intellectual property - obstacles faced by SMEs trying to benefit from intellectual properties (e.g., imposition of fees on certain products to protect the national cultural industry)

6. MOBILITY OF BUSINESS PEOPLE

- Complex, time-consuming and rigid procedures for the issuance of visas to business people (e.g., limits on the duration of visas and difficulties encountered upon re-entering a country)
- Lengthy and/ or restrictive work and residence permit procedures for business people on short-term/temporary assignments

7.DISTRIBUTION

- Limitations on foreign ownership (including requirements of domestic partnerships, joint ventures, etc.) for specific activities such as advertising, trading and/or retailing(e.g., limitations on large stores and shopping centers)
- Limitations on ownership and lease of real estate
- Ambiguity and lack of transparency in legislation and its implementation (notably licensing procedure and economic needs test)
- Other discriminations against foreign companies (e.g., in allocation of facilities and space at seaports and airports, in advertising rates or through public campaigns against foreign products or promotion of local products, obligation made to foreign large store retailers to buy local products for their supermarkets instead of imports)
- Limitations on the distribution of certain products
- Restrictive licensing terms and requirements for foreign companies
- Lack of competition regulations or lack of enforcement hereof

8.Others

- General lack of transparency and legal certainty (such as ambiguous or imprecise legislations, unpublished regulations at the local and provincial levels and other measures such as import licensing and import quotas) in the proceedings of some trade measures at borders
- Effects of measures on trade relating to issues such as animal welfare, GMOs, environment, food safety, trade-related waste management measures on trade (such as electronic waste and packing and packaging waste)
- Measures which may cause trade distortionary effects such as production support and export subsidies
- Excessive requirement of documentation, long delays, and discrimination against foreign companies and products.