

Key Barriers to Trade with India
(17 November 2016)

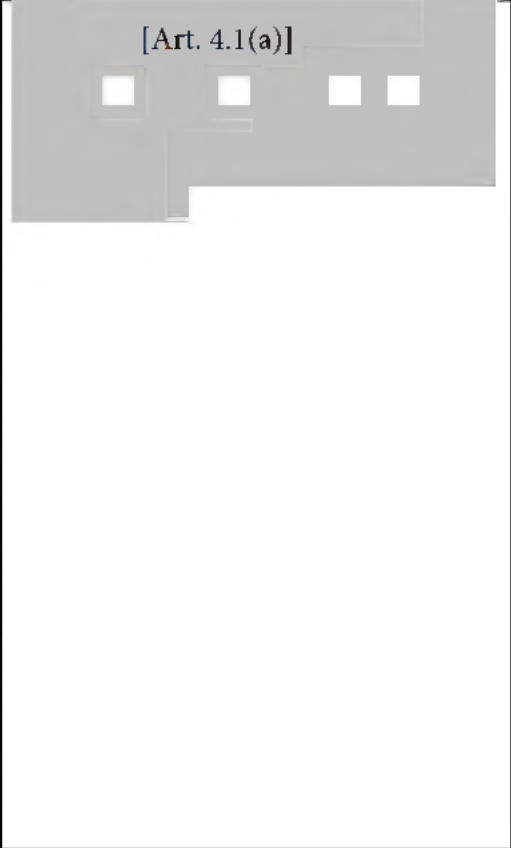
No.	Title and short description	Next steps
1.	<p>Burdensome import requirements for plants and animal products</p> <p><u>Vegetables, pulses, fruits, flower bulbs, timber and speciality wood:</u> India requires fumigation treatment for import (before export or upon arrival in India) of plant products with methyl-bromide (MB) (a substance banned in the EU under the Montreal Convention), which eliminates the presence of all kinds of plant pests but is harmful to the environment and humans. India requires that it is used also for imports of wood since 15 March 2016. As the use of it is banned in the EU, India already allows the use of alternative treatments and provides 6 months derogations for certain goods and sprays goods on arrival, but given the short nature of the derogation, traders do not have sufficiently long time horizon to concentrate/invest in the market. In addition, given the absence of a general list of targeted pests defined by India, it is difficult to demonstrate the efficacy of the alternative treatments. In November 2016, India agreed to approve new imports with the use of alternatives treatments to MB on the basis of the assessment – for new application and the same product – of the pests already included in Schedule VI of the <i>Plant Quarantine (Regulation of Import into India) Order, 2003</i>¹. India indicated that the mentioned list of pests will be used as a first step and that the final decision will depend on the pest profile of the exporting country and the guarantees received from the competent authority of the exporting country – which, in turn will have to demonstrate to the satisfaction of India whether all the pests included in Schedule VI are relevant and therefore can be mitigated with alternative treatments to MB, e.g. cold treatment.</p> <p><u>Pork meat and pork meat products (raw meat, salted, dehydrated and cooked pork products):</u> according to its 2015 import certificate, India exempts the cooking of pig meat at a temperature of 70°C, for at least 30 minutes (recognizing the curing processes) only for boneless hams. Unofficially, India has informed that a certificate presented together with the import certificate application declaring that the European Union is free from the foot and mouth disease would be sufficient to authorize cured hams with bones to enter without heat treatment. However, this intention has not been confirmed in writing and it is not explicitly foreseen in the text of the certificate. In general, the Indian certificate contradicts</p>	<p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p>

¹ The consolidated version of the Regulation can be found at http://plantquarantineindia.nic.in/pqispub/html/POO_amendments.htm#

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	<p>the relevant international standard of the OIE because it requires treatments for products originating in disease free zones, regions or countries. This is the case of FMD as well as for <i>Taenia solium</i>. For the latter, the certificate includes requirements from the OIE Code of 2015 (80°C) and not, as it should be, the one of 2016 (60°C). In November 2016, India undertook to reassess the EU's request by replying to the letters sent by the European and exporters.</p>	
2.	<p>Labelling requirements</p> <p>All packaged products which are subject to the provisions of the <u>Legal Metrology Act</u> from 2009 must be labelled with the <u>Maximum Retail Price</u> (MRP), already before they are imported to India. This requirement considerably increases the importers' burdens, as calculations are normally based on several factors including freight, insurance and internal taxes. The Legal Metrology (Packaged Commodities) amendment Rules 2015 will enter into force on 1 November 2016. This amendment introduces changes on the labelling of packaged products (name of manufacturer/packager/importer, net quantity of products, manufacturing date, retail sale price and consumer care contacts have to be displayed in a panel of 40% of the area of the package) and can affect all imported commodities, such as alcoholic beverages, cosmetics and textiles and clothing.</p> <p>Further, since beginning of 2016, the <u>BIS certificate for LED lights and fixtures</u> is required.</p>	<p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p>
3.	<p>Wine, spirits, beers, dairy products – Taxation and food additives</p> <p>The draft alcoholic beverage standards and food additives regulations need to include the maximum feasible list of permitted additives and to fully align its labelling provisions with international standards</p>	<p>[Art. 4.1(a)]</p>

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	<p>(CODEX STAN 1-1985). Further clarification is needed on applicability of legislation to ensure EU alcoholic beverages maintain their access to the Indian market. Despite some earlier improvements in certain Indian States, imported wines, spirits and beer still remain affected by taxation measures or by procedures/requirements, hindering their internal distribution and marketing, e.g. through licensing and pricing in various States (Delhi, Madhya Pradesh, Tamil Nadu, Himachal Pradesh, Haryana, etc.).</p> <p>The Food Safety and Standards Authority of India (FSSAI) is in a process of authorizing additives to be used in a wide range of products (wine, spirits, beers, dairy), which have been notified to the WTO SPS and TBT Committees. The authorization process started in 2015 and should continue in the years to come. The process can have a serious trade impact, given the uncertainty about the process to control the presence and quantity of approved additives (it is unclear how and when will India start enforcing the new rules), the absence of a consolidated version of the Indian legislation (it is not clear if old and new Regulations remain applicable), and the absence of a scientific justification to approve only certain additives and not others (several additives are approved by the <i>Codex Alimentarius</i> and the International Organisation of Vine and Wine (OIV) - to which also India is a member - or the EU legislation, but not by India). In recent notifications to the WTO, India has progressively been aligning its rules with the international or EU standards but the above-mentioned concerns about the trade impact of the India measures remain.</p>	[Art. 4.1(a)]
4.	<p>Telecommunications – burdensome licensing requirements, including mandatory testing and security certification, as well as requirements for the import and re-export of used equipment</p> <p><u>Duties on ITA products:</u> On 11 July 2014, India adopted Customs Notification No 11/2014 raising duties on ITA products classified under tariff lines 8417.62.90 and 8517.69.90 by 10%. This is contrary to India's GATT duty-free tariff concessions and its WTO obligations.</p> <p><u>Licensing requirements/mandatory testing:</u> Further to the earlier licence and Universal Access Service Licence Agreement amendments (which imposed internationally unprecedented and highly burdensome, security-related licensing requirements on network operators) on 31 May 2011 the Department of Telecommunications issued a new license amendment superseding all prior telecom</p>	<p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p>

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	<p>security-related policies dating back to December 2009. The changes addressed some EU concerns, but still raise some problematic policy issues, including inspection of hardware, software, design, development, and manufacturing facilities as well as supply chains or nationality conditions in the field of security. On 8 December 2011, the Ministry of Communications and Information Technology issued some clarifications in respect of the security amendments. Onerous security testing requirements are planned to be carried out in India as from 1 April 2017 (postponed several times from initially 1 April 2013) with regard to all telecom network equipment and products. Presently, such products can be tested and certified in laboratories globally, or at in-house laboratories of the manufacturers (self-certification). Mandatory testing and certification by Indian laboratories will trigger additional cost and unnecessary delays for companies. The availability of suitable laboratories in India on 1 April 2017 remains unclear. Furthermore, there are concerns on India's mandatory security certification.</p> <p><u>Local content requirements</u> (see point 6).</p> <p><u>Import and re-export of used equipment</u>: While since 4 April 2016 used electrical and electronic assemblies imported for testing, research and development and project work purposes, as well as for repair can be imported without a permit of the Ministry of Environment, Forests and Climate Change, other burdensome requirements still remain. These include e.g. the obligation to re-export this equipment after one year (repair) or three years (testing, R&D, project work), as well as a number of certificates and forms for customs inspection. This leads to the delay of imports and negatively affects both the repair of telecom networks and potential research cooperation projects.</p>	[Art. 4.1(a)]
5.	<p>Steel products - mandatory certification requirements and minimum import price</p> <p>Over a period of time India has been trying to bring steel products under the mandatory certification scheme operated by the Bureau of Indian Standards (BIS). These products are covered under different Steel and Steel Products (Quality Control) Orders. Initially, BIS brought 20 products under the mandatory certification scheme. Subsequently, 18 products were added through different Orders taking the total number of products to 38. The BIS certification procedure adds to additional burden and costs for EU steel companies for obtaining certification, which implies additional tests for products, which</p>	

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	<p>have already been tested.</p> <p>On 5 February 2016, India imposed a Minimum Import Price (MIP) on 173 iron and steel products. The measure was for a period of six months. On 4 August 2016, India notified a shortened list 66 products, which has been extended for two months till 4 October 2016, which has been extended until 4 December 2016 by notification on 4 October 2016.</p>	
6.	<p>Local content requirements:</p> <p><u>Electronics and telecom equipment manufacturing – preferential market access policies:</u> on 10 February and 5 October 2012 respectively, the Government of India published a new preferences policy to domestically manufactured electronic goods in procurement due to the security considerations and in Government procurement. After the suspension of this policy by the Prime Minister's Office on 8 July 2013, a new preference policy was adopted for electronic products in <i>Government procurement</i> on 23 December 2013, which eliminates security as a reason for preferences. Furthermore, this new PMA policy is limited to government procurement only, and not extended to private purchases. Local content and value addition requirements for government procurement, however, remain the same. A series of implementation notifications followed. A new preference policy for telecoms is still outstanding (together with implementing guidelines).</p> <p><u>Renewable energy – solar power plants:</u> the Jawaharlal Nehru National Solar Mission laid down local content requirements for solar power plants. The Solar Mission is to be implemented in three phases; the third phase will end in 2022. The first round of selection of projects took place in 2010-2011 based on certain local content requirements (e.g. use of cells and/or modules manufactured in India for solar PV projects). Phase 2 was launched in October 2013 mandating a domestic content requirement: out of the total capacity of 750 MW, 50% (so 375 MW) was kept for bidding with Domestic Content Requirement (DCR). Under DCR, 100% of the solar cells, modules and thin films used in the solar PV power plants must both be made in India. The US challenged this programme at WTO: in August 2015, the panel found that DCR measures were not justified. A notice of appeal has been filed by the Indian government. The DCR is also proving an obstacle to the development of local solar power production</p>	<p>[Art. 4.1(a)]</p> 

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	<p>process of creating Commercial Courts for the judgement on, among other, IPR disputes;</p> <ul style="list-style-type: none"> • EU stakeholders with standard essential patents face challenges in getting Indian ICT companies, in particular telecom equipment vendors, to pay due royalties; • Large number of locally produced infringing goods especially regarding patents and trademarks in the pharmaceutical (7.5% of all detained articles in 2015) and textile (9% over the same period) sectors. 	
8.	<p>Medical devices – unclear legal framework and prohibition to import 'refurbished' equipment:</p> <p>The current Indian legislation is unclear as medical devices are currently still regulated as "drugs" under the terms of India's Drug and Cosmetics Act (1940) and Rules (1945), even though very recently the Indian authorities decided to start working on new framework rules exclusively devoted to medical devices. In the meantime, separated implementing rules have been published for comments. The EU industry submitted comments that arise issues of compliance with the TBT Agreement when it comes to labelling provisions.</p> <p>In addition, exports of refurbished medical devices (products that have been completely renewed and that, as a consequence, cannot be considered as second-hand equipment) are prohibited in India. Moreover, the lifecycle of medical devices has been reduced from 10 to 5 years.</p>	
9.	<p>Radial tyres – mandatory certification requirements and testing</p> <p>By the Tubes for Automotive Vehicles (Quality Control) Order 2009, India placed pneumatic tyres (including tubes) under mandatory certification, not reflecting agreed UN-ECE standards. Applied since 13 May 2011, the new mandatory certification requirements put an extra administrative and financial burden on importers. On 1 October 2012, the Bureau of Indian Standards (BIS) clarified that foreign BIS licence holders can also sell tyres bearing the BIS mark outside India. However, a number of problems on the certification of tyres remain (fees charged per tyre produced, minimum fee amount, lengthy certification procedure, unnecessary factory inspections, bank guarantee). Moreover, the testing</p>	

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	of tyres is very burdensome for the EU-industry.	
10.	<p>Raw materials - export restrictions:</p> <p>India applies different trade restrictive measures, such as export duties and quotas, which severely hamper access to raw materials by foreign companies. Measures apply notably for the following products:</p> <p><u>Iron ore:</u> Export duty on iron ore and concentrates (agglomerated) other than iron ore pellets is 30%. Export duty of 15% is applied on ferrous waste and scrap, re-melting scrap ingots of iron and steel. Similarly, on bauxite (natural) calcined and not calcined export duty is 15%. Export duty on Ilmenite unprocessed is at 10% and on Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground) is 2.5%.</p> <p><u>Leather:</u> Export duty from 25% to 60% applied on raw hides and skins and certain semi-finished leather.</p>	<p>[Art. 4.1(a)]</p> <p>[Art. 4.1(a)]</p>