Sanitary and Phytosanitary Measures (SPS) and Technical barriers to Trade (TBT)

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March 30, 2005

Training Modules on WTO-related issues for government officials in the SAARC region
Barriers to world trade - tariffs and non-tariff barriers (NTBs).

Tariffs work through prices, by increasing cost of imports through customs duties.

As is understandable, unlike tariffs, NTBs are difficult to monitor, police, or even quantify. Even define!!!!

GATT seeks to address this through a series of negotiations known MTNs.
How does one decide on standards?
Firms often over comply
‘Race to the bottom argument’.
But buyers are conscious about the quality of the product and ready to pay a premium...
Hence the importance of consumer awareness and capacity building among small producers.
Several NTBs are covered by specific codes such as in the case of MTN agreements and arrangements.

NTBs not covered by such codes. For example, there are “voluntary” export restraints.

These were known as grey area measures, prohibited under the WTO.
Import licensing is prohibited under GATT/WTO disciplines and has been thus prohibited under Article XI of GATT since 1947.

However, there is an escape clause.

Under Article XVIIIIB of GATT, if a country has balance of payments (bop) problems, it is freed from this prohibition on quantitative restrictions (QRs).
What are Non-Tariff Barriers?

- **Non-Tariff Barriers:** all import restricting measures other than tariffs
  - *Quotas:* Established either on a first-come-first-serve basis or on a preferential basis to domestic/foreign residents, quotas bestow an economic rent equal in magnitude to its 'tariff equivalent' to the beneficiaries. Although superficially similar to tariffs, quotas differ in execution primarily due to their opaque nature and their discriminatory nature against the non-beneficiary potential importers.
  - *Voluntary Export Restraint (VER):* Quantitative restraints to reduce wasteful competition in principle, VERs are generally levied by the foreign country, often at demonstration of forced goodwill, to exports to the particular importing country.
  - *Domestic Production Subsidy:* Government bearing a portion of the cost of production, often for infant to help them sustain in the transitional period wherein the industries build their capacity to produce at competitive costs. This NTB has the effect of reducing the market price of such protected product in that period by the amount of the subsidy.
  - *Anti Dumping and Countervailing Duties:* To prevent uncompetitive market-share augmentation through prices lower than costs of production (Dumping), anti-dumping measures are levied as a counter measure. Similarly, countervailing duties are imposed to counter enterprise/industry-specific subsidies. However, these measures have potential, and arguably often exploited, power of acting as trade barrier themselves.
  - *Product Standard:* Although product standards are internationally accepted, especially while pertaining to quality, health and safety, they can nevertheless, act as NTBs when applied absurdly to regulations regarding packaging, labelling, etc.
  - *Sanitary and Phyto-sanitary Measures (SPS):* Imposed to improve the human health, animal health and phytosanitary situation in all countries, it defines a benchmark on the same. Currently practiced without due regards to the capacity of compliance of poor countries, it often deters market access for exports from these countries.
  - *Domestic content requirements:* Often in government procurement policies, though not limited to it, such requirements hinder market access for foreign goods that do not possess the required domestic content.
  - *Administrative Red Tape:* Generally discouraged as wasteful economies, administrative red tape hinders trade facilitation by both delaying and discouraging trade.
GATT provisions that allow restrictions

1. Restrictions that require specific GATT approval
   - Waiver, Article XXV;
   - Retaliation authorized under dispute settlement, Article XXIII
   - Special provisions in accession agreement, Article XXXIII
   - Release from bindings to pursue infant industry protection, Article XVIII.C, D
2. Provisions for renegotiating previous concessions and commitments
   - Periodic renegotiation, Article XXVII.1 and Article XXVIII.5;
   - Special circumstances renegotiation, Article XXVIII.4;
   - Increase of duty with regard to formation of a customs union, Article XXIV.6
   - Withdrawal of concession in order to provide infant industry protection, Article XVIII.A
3. Restrictions that can be imposed unilaterally
   - General exception, Article XX
   - Import and export restrictions or prohibitions necessary to standards or to apply regulations for classification, grading or marketing, Article XI.2.b
   - Import restrictions on agriculture or fisheries products necessary to enforce policies to restrict domestic output, Article XI.2.C
   - National security exception, Article XXI
   - Non-application at the time of accession, article XXXVII
   - Withdrawal of concession, Article XXVII
   - Restriction to safeguard the balance of payments, Articles XII and Article XVIII.B
   - Emergency actions, Article XIX
   - Anti-dumping duties, Article VI
   - Countervailing duties, Article VI

Source: Finger 1995 in (Pandey, 2003: 5-6)
NTBs faced by the exports of South Asian members of the WTO in their major destinations

- Frozen shrimp from Bangladesh: sanitary regulation by EU
- Readymade garments from Bangladesh: MFA quota and Child Labour regulation by the USA
- Mango pulp from India: process standard by EU
- Fabric, apparel and textiles from India: MFA quota by EU and USA
- Leather goods from India: technical standards by EU
- Coffee, tea and cigars from India: technical standards by the EU
- Pharmaceuticals from India: technical standards by the EU
- Electrical machinery from India: technical standards by the EU
- Inorganic and organic chemicals, manmade staple fibres, iron and steel bars or rods from India: subjected to anti-dumping by the EU
- Carpets and floor covering from India: restrictions on grounds of child labour by the EU
- Fish and tea from India: sanitary and phyto-sanitary measures by Japan
- Meat, fish, dairy products, vegetables and fruits from India: SPS measures by USA
- Diamonds and Jewellery from India: restricted import by Japan
- Tea from Sri Lanka: variable components by EU
- Natural rubber from Sri Lanka: anti-dumping by USA
- Fisheries products from Sri Lanka: subjected to referential prices and seasonal prices
- Fish Products from Sri Lanka: product characteristics requirement, global quota, labelling requirement for health protection and on grounds of authorisation of wild life protection by Japan; reference prices, prior authorisation and seasonal tariff rates by the EU, and anti-dumping, countervailing duties and quota unallocated by USA
- Textile and garments from Sri Lanka: by EU; MFA export restraint, MFA quota agreement, MFA consultation agreement, tariff quota, countervailing price undertaking import monitoring and bilateral quota by USA; import authorisation by Japan
- Rubber manufactures from Sri Lanka: anti-dumping duties by the USA; global quota by Japan
- Leather Manufactures from Sri Lanka: safeguard tariff rates and countervailing duties by the USA
- Non-metallic mineral products from Sri Lanka: anti-dumping duties, MFA restriction, MFA quota agreement, MFA consultation agreement and countervailing duties agreement by the USA
- Paper products from Sri Lanka: anti-dumping duties by USA
- Readymade garments from Sri Lanka: subjected to MFA quota and Child Labour prohibition
## Sectoral production coverage (in percentage) of South Asian NTBs in their major destinations

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Argi., Forestry &amp; fishing</td>
<td>18.8</td>
<td>7.2</td>
<td>11.3</td>
<td>7.0</td>
<td>5.5</td>
<td>2.8</td>
</tr>
<tr>
<td>2</td>
<td>Mining and Quarrying</td>
<td>0.0</td>
<td>6.7</td>
<td>3.5</td>
<td>0.4</td>
<td>0.3</td>
<td>0.4</td>
</tr>
<tr>
<td>3</td>
<td>Manufacturing</td>
<td>12.6</td>
<td>5.4</td>
<td>3.9</td>
<td>2.5</td>
<td>16.0</td>
<td>8.1</td>
</tr>
<tr>
<td>32</td>
<td>Textiles &amp; Apparel</td>
<td>9.5</td>
<td>4.1</td>
<td>1.1</td>
<td>0.7</td>
<td>13.5</td>
<td>5.5</td>
</tr>
</tbody>
</table>
### Export Facing NTBs at the major destinations for South Asia (percentage of total exports)

<table>
<thead>
<tr>
<th></th>
<th>Bangladesh</th>
<th>India</th>
<th>Pakistan</th>
<th>Sri Lanka</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EU</strong></td>
<td>91.01</td>
<td>55.45</td>
<td>71.30</td>
<td>83.41</td>
</tr>
<tr>
<td><strong>USA</strong></td>
<td>93.86</td>
<td>43.98</td>
<td>77.01</td>
<td>0.01</td>
</tr>
<tr>
<td><strong>Japan</strong></td>
<td>68.41</td>
<td>42.52</td>
<td>26.97</td>
<td>49.32</td>
</tr>
</tbody>
</table>
South Asia and SPS

- Losing out on opportunities due to neglect.
- Not been forthcoming in participating on the standard setting sessions at the WTO.
- Question on what range of chemicals would be acceptable, and CODEX does not feature any of our acceptable tests.
- Proactive approach to standard setting. Example – azodyes - we could easily chart out a time table for their passing out rather than an immediate ban.
South Asia and SPS…

- The region has an unmatched advantage in the use of vegetable dyes.
- And in being able to use non chemical dyes in the food sector.
- More than meat and diary products, our advantage is in the vegetable sector.
- ANSFA allows for determining food standards and with the use of such tools it is easy for us to develop our own standards.
Exports

- Example of the Sudan dye being used on Guntur chillies which is clearly acceptable on health grounds.
- Cut flower auctions in Maharashtra where the Dutch monopsony caused hurt to local farmers.
- Farmers be educated in the use of agents, like in the Gap method used by the grape farmers where the pesticide is given enough time to get washed off by the rains that come towards harvest time.
Exports…

- **Need for continuous monitoring and certification.** The use of critical points where producers could be evaluated so that the end product is easily certified.
- **Need to reach out to the small farmer with extension services.** Fair standards cannot be seen as being trade distortionary.
- **HACCP relies on careful record keeping thus ensuring that standards are met at all points.**
Tracing the Agreement’s Evolution

- GATT, 1948
  - Article XX
- The Tokyo Round, 1973 – 1979
- The Uruguay Round, 1986 - 1994
  - Punta del Este Declaration, 1986
- Agreement on Agriculture, 1994
  - Agreement on Technical Barriers to Trade
  - Agreement on Sanitary and Phytosanitary Measures
Agreement on Technical Barriers to Trade

Recognizes the right of a Member to adopt technical regulations and standards… for the purpose of national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.
The Coverage of TBT Agreement

Technical regulations and standards on *all* industrial and agricultural products:

- Product characteristics;
- Process and production characteristics;
- Terminology and symbols; and
- Packaging and labeling requirements
Agreement on TBT and SPS Measures

SPS is a *sub-set* of TBT

Specifically for dealing with products affecting Plant and Animal Life and Human Health
# TBT and SPS for Food Products

<table>
<thead>
<tr>
<th>Objective:</th>
<th>TBT</th>
<th>SPS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Packaging and Handling</td>
<td>Content Verification</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specifics:</th>
<th>TBT</th>
<th>SPS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weight, Size, Shape, Materials and Labeling</td>
<td>Contaminants (Microbial, Toxic and Physical)</td>
</tr>
</tbody>
</table>
Trade in Agriculture with World

1991 – 2004 Growth: 235%
Trade in Agriculture with EU


in Million USD
## Composition of Exports to the EU

<table>
<thead>
<tr>
<th>Item</th>
<th>1992</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marine products</td>
<td>173.2</td>
<td>226.8</td>
</tr>
<tr>
<td>Tea</td>
<td>98.6</td>
<td>Cashew</td>
</tr>
<tr>
<td>Cashew</td>
<td>86.5</td>
<td>Coffee</td>
</tr>
<tr>
<td>Tobacco</td>
<td>79.2</td>
<td>Castor oil</td>
</tr>
<tr>
<td>Oil meals</td>
<td>60.8</td>
<td>Basmati rice</td>
</tr>
<tr>
<td>Basmati rice</td>
<td>37.38</td>
<td>Tea</td>
</tr>
<tr>
<td>Coffee</td>
<td>33.33</td>
<td>Spices</td>
</tr>
<tr>
<td>Castor oil</td>
<td>26.08</td>
<td>Tobacco</td>
</tr>
<tr>
<td>Spices</td>
<td>20.6</td>
<td>Guargum meal</td>
</tr>
<tr>
<td>Fresh vegetables</td>
<td>19.91</td>
<td>Fresh fruits</td>
</tr>
</tbody>
</table>
Agreement on SPS Measures

“Reaffirming that no Member should be prevented from enforcing measures necessary to protect human, animal or plant life or health...”

“Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures...”
Member countries have the right to protect its citizens from unsafe products from abroad as well as their effect on plant and animal life.

This right overrides the concern over free trade.
The Coverage of SPS Measures

- Animal or plant life or health
  - *Pests or diseases; Disease-carrying organisms; or Disease-causing organisms*

- Human and animal life or health
  - *Food additives; Contaminants; Toxins in foods, beverages, or feedstuffs*

- Human life or health
  - *Diseases carried by Animals; Plants; and their products*

“Reaffirming that no Member should be prevented from enforcing measures necessary to protect human, animal or plant life or health...”
Constitution of the Agreement

- Harmonization
- Equivalence
- Assessment of risk and Determination of level of protection
- Transparency
- Consultations and dispute resolution
Constitution of the Agreement

- Control, Inspection and Approval Procedures
- Technical Assistance
- Special and Differential Treatment
Setting the Standards

- Codex Alimentarius Commission
- International Plant Protection Convention
- Office International des Epizooties
CODEX – General Committees

General Principles; Food Labeling; Methods of Analysis & Sampling; Food Hygiene; Pesticide Residues; Additives & Contaminants; Inspection & Certification; Nutrition; Residues of Veterinary Drugs

Horizontal Competence
CODEX – Specific Committees

Fish & Oils; Fish & Fishery Products; Milk & Milk Products; Fresh Fruits & Vegetables; Cocoa & Chocolate; Sugars; Processed Foods and Vegetables; Vegetable Proteins; Cereals, Pulses & Legumes; Processed Meat and Poultry; Soups & Broths; Meat Hygiene; Natural Mineral Water

Vertical Competence
Flagging Critical Issues

- The Question of Standards
  - Product versus Process Debate
  - Environmental Concerns

- Labelling and Traceability of Food
  - Positive
  - Neutral
  - Negative
Tackling Internal Problems

Standard Setting Organizations:
- Bureau of Indian Standards
- National Accreditation Board for Laboratories
- Ministry of Food Processing Industry
- Export Promotion Councils

Laws Governing Food Products
- Prevention of Food Adulteration Act
- Export Quality Control and Inspection Act
On the Path to Finding Solutions

Export Inspection Council's Certificate Recognized for:

- Basmati Rice by the European Union
- Black Pepper by the United States Food & Drug Administration
- Fish & Fishery Products by the European Union
- Fish and Fishery Products by the Australian Quarantine & Inspection Service
Domestic Processed Foods Market Size is Rs1440 billion

Source: Ministry of Food Processing Industries

SPS is a *domestic* health care issue!
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