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Chanchal C. Sarkar

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Centre for Studies in International Relations and Development (CSIRD)

167-B, S. P. Mukherjee Road, Kolkata 700026, India

Phone: (9133) 24630884, 22483769, Fax: (9133)24630884, 22483769

Email: csirdindia@yahoo.co.in, Website: www.csird.org.in

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Role of Standards and the Agreement on Application of Sanitary and Phytosanitary (SPS) Measures towards Comprehensive Economic Partnership between BIMSTEC and Japan

Chanchal C. Sarkar*

Executive Summary

Although the WTO provides the central features of the global trade regime, there has been an increasing number of regional and bilateral free trade zones and agreements as these accrue certain explicit trade benefits to the parties. Today, more than 300 RTAs are at different stages of implementation in the world. More than 50 percent of the world trade takes place under preferential and not MFN basis. BIMSTEC, comprising 2 ASEAN and 3 SAARC countries has lots of potential. In the context of possible Japan-BIMSTEC Comprehensive Economic Co-operation, agriculture and allied sectors would be of immense interest to all BIMSTEC countries. Stringent standard requirements by importing countries however, may be major hurdle before the developing country members. While standards in agriculture and food sector are important, there are growing concerns among developing countries that these standards would be used as new-protectionist measures.

WTO-SPS Agreement prescribes broad frameworks for members to use or adopt SPS measures supposed to be non-trade restrictive. As per the SPS Agreement, members can adopt any SPS measures for protection of human, animal and plant life provided the same are based on scientific principles and also not unnecessary trade distortive. In order to ensure that members do not use SPS measures in a discriminatory manner, transparency provisions have been built-in.

Members are also encouraged to harmonize their standards with the stands of the relevant international organizations namely, Codex Alimentarius Commission (Codex), International Office for Animal Health (OIE) and Plant Protection Convention. While following and implementing SPS Agreement has certain desirable advantages, it involves a lot of costs also. Most developing countries are struggling to follow and implement SPS Agreement not only on account of lack of financial resources but also due to inadequate institutional, administrative and their basic infrastructural capacities.

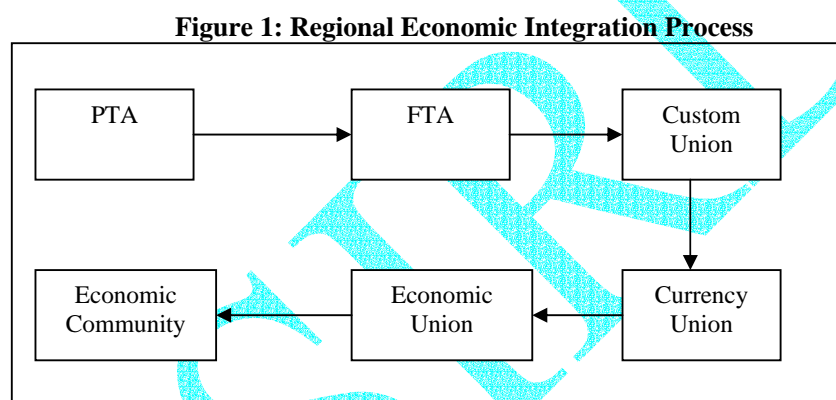
The developing countries are to develop their own SPS standard and take effective role in the standard setting organizations and also to put a system in place that would ensure that in the event their export face market access barriers abroad, the same are appropriately addressed.

Now the success of possible co-operation between BIMSTEC and Japan would to a large extent, depend on how effectively Japan can participate in the programmes addressing all the problems of BIMSTEC countries. BIMSTEC countries would not only look for Japanese market, they would also eye for other developed nations' markets. Japan would therefore, need to ensure greater market access of items originating from BIMSTEC countries. Last but not least, Japan would need to adopt more proactive role with greater commitments as compared to the BIMSTEC countries.

*The author is Deputy Director, Department of Commerce, Ministry of Commerce & Industry, Government of India. Email: chanchal.sarkar@gmail.com Author is thankful to one anonymous referee for his useful comments. An earlier version of the paper was presented at the 1st International Conference on 'Towards BIMSTEC – Japan Comprehensive Economic Cooperation: Vision and Tasks Ahead', organized by the Centre for Studies in International Relations and Development (CSIRD), held at the Taj Bengal, Kolkata during 16-17 December, 2005. Views expressed in this paper are strictly of author's own and not necessarily of the Department he belongs. Usual disclaims apply.

1. Introduction

Although the WTO provides the central architecture of the global trade regime, there has been an increasing number of regional and bilateral trade agreements (RTAs) throughout the world. The number of these agreements has more than quadrupled since 1990, rising to around 230 by late 2004.¹ Trade between RTA partners now makes up nearly 40 percent of total global trade. A Regional Trading Arrangement (RTA) is broadly defined as an arrangement between two or more countries or trading blocs for entering into an agreement for reducing/removing barriers to trade in goods, services and investments with a view to fostering economic integration between/among themselves. While basic structure of RTAs remains more or less same, they differ considerably in scope and intensity. In their simplest form, RTAs provide for preferential market access in goods by means of tariff concessions on a limited scale, commonly known as Preferential Trading Arrangements (PTAs). At higher levels, they liberalize “substantially all trade” within a reasonable period of time under a Free Trade Area (FTA), align the external tariff regime under a Customs Union (CU) and remove/eliminate all trade barriers in goods, services, investments and finally, synergies and integrate their economic, financial, monetary and labour policies (Economic/Monetary Union). Figure 1 shows the evolving structure of regional economic integration.



BIMSTEC is a sub-regional cooperation comprising two ASEAN (Thailand and Myanmar) and three SAARC (India, Bangladesh and Sri-Lanka) countries. Thailand took the initiative in 1994 to establish Bangladesh-India-Sri Lanka – Thailand Economic Cooperation (BIST-EC) to explore and build-up economic cooperation on a sub-regional basis among countries of Southeast and South Asia grouped around the Bay of Bengal. With the inclusion of Myanmar in 1997, the initiative was renamed as BIMST-EC. In 2004, Bhutan and Nepal also added as new members in the group. During its Fifth Economic Minister’s Meeting, the Framework Agreement on the BIMSTEC FTA was signed by Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand on 8th February, 2004 in Phuket (Thailand) While Bhutan and Nepal formally joined as new members during the signing of the Framework Agreement in February 2004, Bangladesh acceded to the Framework Agreement in June 2004. With Signing of Framework Agreement in February 2004, the grouping has now again been renamed as the Bay of Bengal Initiative for Multisectoral Technical & Economic Co-operation (BIMSTEC).

So far, intra BIMSTEC trade has improved but certainly not to its fullest extent (see, Table 1 at the Annexure). Barring 2000, both export and import have not shown any significant improvements within the region. And perhaps for this reason, Article 6 of the Framework Agreement on the BIMSTEC FTA clearly mentions on the possible areas of economic cooperation to increase intra-BIMSTEC trade by many folds. Article 6 of the Framework Agreement also identifies areas of economic cooperation including addressing issues of sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT), like Mutual Recognition

¹ According to World Bank (2005a)

Arrangements (MRAs), conformity assessment, accreditation procedures, and standards & technical regulations.

Apart from Bhutan,² other BIMSTEC countries are member of the WTO. Therefore, being WTO member each BIMSTEC country needs to fulfill certain obligations, posed by the WTO. As per the WTO-Agreement on the application of Sanitary and Phytosanitary Measures (SPS), members are obliged to provide at least 60 day's notice³ to other members through WTO for comments before adopting SPS measures⁴. It would be wise therefore, for all the BIMSTEC member countries, as a group, to go for greater economic cooperation not only to enhance their mutual trade but also to build up capacities to deal and discharge obligations posed by multilateral organizations like the WTO. Improved capacities would certainly help BIMSTEC countries to gain market access beyond BIMSTEC region. In respect to agricultural products, the objective of BIMSTEC countries should be to gain market access in all the major markets, like the US, the EU and Japan. Japan is considerably dependent of imported agricultural and food products. In fact, Japan is the largest net food importing country in the world. In 2001, agriculture and related products accounted 16.3 percent of Japan's total import of US\$ 349.3 billion. In 2003, this share was 15.2 percent of total import of US\$ 383.5 billion.⁵ As Japan imports bulk of food and agriculture products, it would be economical for it to source them from BIMSTEC countries. BIMSTEC countries can produce and supply food and agricultural products at a lesser price⁶ as compared to the other developed countries⁷. Thus in principle, there shall not be any problem towards building greater economic cooperation between BIMSTEC countries and Japan at least in the area of agricultural and related products.

With respect to agricultural products, most developed countries are having lower tariff rate (both bound as well as applied) as compared to the developing world (see Table 2 at the Annexure). Now the question is "does lower tariff rate in agriculture and food related sectors in developed countries like Japan automatically ensure market access or greater market access for these products originating from the developing and least developed countries like BIMSTEC members?" The answer is "not necessarily". Developed countries like Japan have set in place a strong standard and food safety, hygiene and other import related requirements in the agriculture and food sectors. As on 2003, number of Japan's mandatory technical regulations with respect to "Food Sanitation Law" alone was 515⁸. The number of voluntary Japan Agricultural Standards (JAS) was 243 in 2003. Japan adopted the Food Safety Basic Law in July 2003. Under this Law the Food Safety Commission has been established. The primary role of the Commission is, among others, to conduct risk assessments and making recommendations, implementing risk communicating among stake holders.

In many cases, developing countries are not capable of meeting the standards and other import requirements of the developed countries on account of lack of requisite administrative, institutional capacities and technical manpower to conduct tests and surveys combined with other

² Bhutan is in the process of becoming member of WTO.

³ Only those SPS measures which are not in line with the standards/recommendations/guide lines of the relevant international organizations or in those areas where no standards/recommendations/guide lines exist or which may have significant trade effect are subject to such notice. This is known as transparency obligation under SPS Agreement. This is discussed in the later part of this paper.

⁴ SPS measures include all those measures which are adopted to protect human health or life or animal and plant life or health. For example, pesticide residue limits in food items or fumigation requirements for entry of any product or item of plant origin or import ban of poultry products on account of bird flu etc.

⁵ Figures are from the WTO (2004).

⁶ Price of agricultural products in BIMSTEC countries would be much less as against the same of developed countries like the EC and Japan provided the later countries reduce domestic support and other forms of subsidies they normally provide for the agri and related products.

⁷ While developing countries like India provide agricultural subsidies not even 10 percent (de-minimis level) other developed countries like the US, EU and Japan gives agricultural subsidies much beyond the de-minimis level of 5 percent. In some cases these countries subsidies go beyond 100 percent.

⁸ According to WTO (2004)

infrastructural support. This, therefore, is the major hurdle to developing countries to gain market access in the developed world at a time when the tariff barriers are significantly less. While standard and safety related requirements in agricultural and food related products are extremely important, there are instances that these standards and related regulations have been put in place by countries with the implicit objective to protect their respective domestic industry⁹. This therefore, has created unnecessary trade barriers violating basic spirit of the WTO.

All BIMSTEC countries, being predominantly agricultural economies, have potential to export agricultural products. Clearly, therefore, agricultural and related sectors are area of interests to BIMSTEC countries in the context of deepening cooperation between BIMSTEC and Japan. In view of above, this paper concentrates on how the standards and the sanitary and phytosanitary (SPS) related measures can play a crucial role in building closer cooperation to facilitate trade especially with respect to agricultural and related sectors between BIMSTEC and Japan.

2. Standards in Trading Frameworks

Instance of use of standards in agricultural trade and commerce can be traced back to history. Regulations related to food quality and safety were introduced by the industrialized nations from the very inception of the 20th century. However, wider system of national standards for food and manufactured finish goods were developed during and after the World Wars I and II.

The specific functions that standards fulfill are very diverse. Two of the most important are providing compatibility and information. With respect to the food safety and agricultural health, standards are designed to manage risks associated with the spread of plant and animal pests and disease, and the incidence of microbial pathogens or contaminants in food. It is through sharing a common standard that anonymous partners in a market can communicate, can have common expectations on the performance of each other's product, and can trust the compatibility of their joint production. Thus, standards are necessary for the smooth functioning of anonymous exchanges – and therefore, for the efficient functioning of the market¹⁰.

Although standardization is necessary, it does not mean that all variety is undesirable. Standards reflect the needs of the groups that express them, and as long as groups differ, their optimal standards would also do. Therefore, while the standardization is important, the scope of variety or heterogeneity of standards cannot be ignored as the same serves a very special purpose in the international trade. Standards can be differentiated in many ways, such as, vertical versus horizontal differentiation, private versus public standards, mandatory standards versus voluntary standards, and process standards.

While safety standards in the food and agricultural sectors are supposed to manage risks associated with the spread of plant and animal pests and diseases and the incidence of microbiological pathogens or contaminants in food, standards also can be used as a trade protection measure. There is growing concern within the international development community that standards which undermine the competitive progress already made by some developing countries and present insurmountable barriers to new entrants into the high value food trade¹¹. Many economists and international commentators are with the opinion that standards are absolute barriers to trade for least developed and developing countries on account of high costs involve in meeting them. According to these groups, in most cases, meeting food safety and to agricultural health related standards of developed nations are prohibitively high for best developed and developing countries. In this context, concerns have been voiced by most least developed and developing countries which, *inter alia*, includes following.

⁹ The WTO Dispute Settlement Body (DSB) has given a few verdicts declaring a particular SPS measure of Members is not WTO compatible. For example, Japan's import ban on American apple on account of fire blight bacterium was declared WTO incompatible by the DSB.

¹⁰ See, WTO (2005a)

¹¹ Refer, World Bank (2005b)

- (a) Most developing and least developed countries lack technical, administrative and other related infrastructural capacities to comply with emerging standard of developed nations in food and agricultural sector as these requires a lot of financial and other commitments.
- (b) High cost of compliance with the emerging standards and related requirements of developed nations in food sector would at least in initial phase undermine the competitive advantage of developing countries in the international food market.
- (c) Institutional weakness and resource constraints in the smaller and weak countries may not support compliance with these standards resulting further marginalization of such economies in the international trade.
- (d) Even under the WTO regime, food safety and agricultural health related standards and measures would be applied in a discriminatory manner. Even when there are provisions to approach WTO-Dispute Settlement Body (DSB) in the event of such discriminations most developing countries would find approaching DSB difficult as the same involve costs that are too high for them.
- (e) Inadequate support system for capacity building especially with respect to the food and agriculture sector along with the paucity of technical manpower.

Since countries differ in terms of development, technology, environmental requirements and preferences, it is natural that optimal national standards (i.e. the type of a specification of the standard that solves a market failure) differ across countries. Standards may therefore have a negative impact on trade even, if they have been designed to help certain markets to operate more efficiently¹². Policy options, in the event of standards, differ across countries, and are essentially three types. First, countries or parties would be better off, if they adopt a common standard. Second, mutually recognize each other's standards. Third, need to harmonize essential requirements across countries.

Food safety, human, animal and plant health or life and related standards or regulations are commonly known as sanitary and phytosanitary (SPS) measures. In the absence of proper common guidelines there are chances that these measures including standards in food and agricultural sectors, which are of interests to developing countries, would be used as protectionist measures by the importing or potentially importing countries. The SPS Agreement is one such effort for the first time, in the international trade environment, which provides a broad framework for WTO Members how to use SPS measures including standards so that the same do not become unnecessary obstacle to trade.

3. The SPS Agreement

SPS measures are guided or regulated by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) under the current multilateral trading system. The SPS Agreement encourages Members to harmonize their SPS measures on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission (Codex) for food safety related issues, the International Office of Epizooties (OIE) – for animal health related issues, and the International Plant Protection Convention (IPPC). SPS Agreement also permit (Article 3.3) Members to adopt SPS measures, which result in a higher level of SPS protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justifications.

¹² Ibid

WTO-SPS Agreement recognizes Codex, OIE and IPPC as the nodal international standard making organizations. As these three International Organization/Bodies are the designated for developing SPS related standards/guidelines/recommendations, it is important to know how these organizations operate/function and develop standards and how these are linked with the WTO-SPS-Agreement. What is even more important that developing countries do take part effectively in the standard setting procedures of these organizations. Developing countries would also need to develop their own domestic standards and regulations, which are based on standards/guidelines/recommendations of these three international organizations. They would also need to keep a track on the latest developments and discussions with respect to agriculture and food safety related standards and regulations at these international organizations and make the domestic stakeholders updated on the same.

Let us now see what are the other major elements of the SPS Agreement, and what are the major obligations that it would pose on all WTO members. The basic purpose of the SPS Agreement is to ensure that WTO members do not use SPS measures in an unnecessary trade restrictive manner. Members shall ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life, or health, is based on science. The SPS Agreement recognizes that, due to differences in climatic, geographical, epidemiological and related conditions prevailing in different countries or regions, it would often be inappropriate to apply the same rules to products coming from different regions or countries. In this context, the SPS Agreement allows, countries to apply different SPS measures, even if these measures result in a higher level of protection than the ones prescribed by the relevant organizations (Article 3.3). These measures however, would need to be based on scientific principles.

Equivalence is an important element of the SPS Agreement. As per this provision (Article 4), Members shall accept the SPS measures of other members as equivalent, even if these measures differ from their own, if the exporting member objectively demonstrates to the importing members that its measures achieve the importing member's appropriate level of SPS protection. Members, also shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified SPS measures.

Appropriate level of SPS measures shall be determined and adopted by the Members after undertaking appropriate risk assessment to the circumstances. The SPS agreement also recognizes the concept of pest or disease free areas and areas of low pest or disease prevalence.

Recognizing the special difficulties that may be encountered by the developing countries in complying with the SPS measures of importing members, the SPS Agreement has made provisions of technical assistance and special and differential treatment for these countries. As per Article 9 developing country members may be provided with the technical assistance either bilaterally or through the appropriate international organizations.

Article 10 of the SPS Agreement permits developing country members to get time-limited exceptions in complying SPS Agreement. Administration of the Agreement and conducting periodical review on the operation and implementation are also important part.

Transparency provision is one of the most important features of the SPS Agreement. As per this provision (Article 7 and Annex B) of the SPS Agreement, member countries are obliged to notify at the draft stage of standards/regulations which are either more stringent than the existing international standards/regulations or in respect of which no international standards exist and, in either case if there is a significant trade effect (positive or negative). Sixty days' notice for comments of other members has to be given, and the same would need to be considered before the regulations/standards are finally put in place.

Members shall also establish appropriate enquiry point. As per the SPS Agreement (Article 10), each WTO-Member shall ensure that an (or more) enquiry point exists which is able to answer all

reasonable enquiries from other WTO-Members and interested parties in other Members as well as to provide the relevant documents regarding any SPS related standards/regulations or risk done and the conformity assessment procedures adopted or proposed within its territory by central or local government bodies.

Therefore, in view of above discussion, apparently, the success of BIMSTEC-Japan Economic Cooperation with respect to agriculture, fisheries, food and related sectors would largely depend on how effectively and efficiently BIMSTEC members can implement the SPS Agreement in their respective countries.

4. Concerns of BIMSTEC Countries in Implementing SPS Agreement

Let us now see how effectively the BIMSTEC countries are implementing the SPS Agreement. Are there any difficulties faced by these countries to discharge the obligations as posed by the SPS Agreement?

All least developed countries (LDCs) and most of developing countries find difficulties in meeting the obligations under the SPS Agreement. Obligations involving least costs and infrastructure are also often not being met by the developing countries. Meeting the notification and establishing enquiry point obligations under these agreements is relatively less costly. But even in this count, most developing countries have failed to perform satisfactorily. From 1995 to 31st December 2004, the total number of SPS notifications (without addenda, corrigenda and revisions¹³) made by all the Members to the WTO are 4163. A lion's share (more than two third¹⁴) of these notifications is from the developed nations. Table 1 shows the number of SPS notifications made to the WTO by the BIMSTEC countries and Japan. Apart from Thailand, no BIMSTEC countries have any significant number of SPS notifications to the WTO. While Japan has the share of about 4 percent of total SPS notifications made so far to the WTO, the same for all the BIMSTEC countries put together, excluding Thailand, is around 2 percent only. This shows that till date, the LDCs and most developing countries in BIMSTEC could not develop or build up their basic SPS related capacities through which they can ensure effective implementation of SPS Agreement along with instituting their own domestic SPS related standards/regulations and notifying them appropriately to the WTO. The WTO prescribes a format through which each Member should notify their SPS related measures. The close look of the requisite notification format as prescribed by the WTO would make it clear that a considerable amount of scientific and other related information would need to be provided in a precise and comprehensive manner. Most of least developed and developing countries may find it difficult filling up the format with relevant information¹⁵ due to lack of administrative set up and inadequate technical manpower.

Another area of concern for developing countries is effective participation in the standard setting activities of the relevant international standard organizations namely, Codex, OIE, IPPC for SPS related issues and ISO & IEC for TBT issues. In most cases, LDCs and developing countries take part in these standards setting organizations under the respective organization's technical assistance programme and often are limited to only one participant from each country. This virtually denies the relevant industry, the main stakeholder, to participate in the standard setting process of these organizations. Unless the participation of main stakeholders including the concerned domestic industry in Codex, OIE and IPPC are ensured, it may be difficult to ensure

¹³ Apart from the normal notification, countries are also required to notify to the WTO any addition to the already notified existing standards/regulations or corrections of the same or revisions in the form of addendum, corrigenda and revision respectively.

¹⁴ Calculated by the author taking data from WTO.

¹⁵ The requisite SPS notification format is given in Table 3. Serial Number 8 requires information with respect to Codex, IPPC, OIE, etc. Unless countries are capable of following the standard setting procedures and the latest development in such organizations it may be difficult for them to provide appropriate information to the WTO.

effective participation of developing countries in the standard setting procedures of these international organizations.

Table 1: Number of SPS Notifications Made to WTO by BIMSTEC Countries and Japan

Country Name	Number of Notifications*	As a Percentage of Total Notifications made to the WTO#
Bangladesh	0	0
Bhutan	n.a.	n.a.
India	35	0.84
Myanmar	0	0
Nepal	2	0.05
Sri Lanka	3	0.07
Thailand**	135	3.24
Total BIMSTEC	175	4.2
Japan**	152	3.65

Notes: *Including addenda, corrigenda and revisions from 1995 till December 2005. **Actual numbers may differ marginally. # Percentage figures have been arrived at by taking total SPS Notifications without addenda, corrigenda and revisions while the country-wise notifications are including addenda, corrigenda and revisions. Therefore, the percentage figures would be a bit upwardly biased. n.a. stands for data not available
Source: Compiled by the author from WTO

In many cases, the SPS and related requirements of importing countries may not be justifiable under the Agreement, but it may be too costly for developing countries to approach the dispute settlement body (DSB) and get a judgment favourable to them. Table 2 provides country-wise (BIMSTEC countries and Japan) accounts of total number of WTO dispute settlement cases (not necessarily with Japan), where each BIMSTEC country has been involved. From Table 2 it is seen that apart from India and to some extent Thailand, most BIMSTEC countries have not at all approached the Dispute Settlement Bodies (DSB) of the WTO. Japan, of course, has made use of DSB in a number of occasions.

Table 2: WTO-Dispute Cases involving BIMSTEC Countries vis-à-vis Japan

Country	As Complainant	As Respondent	As Third Party
Bangladesh	1 cases	0 cases	1 cases
Bhutan *	n.a.	n.a.	n.a.
India	16 cases **	17 cases	46 cases
Myanmar	0 cases	0 cases	0 cases
Nepal	0 cases	0 cases	0 cases
Sri Lanka	1 cases	0 cases	3 cases
Thailand	11 cases	1 cases	25 cases
Japan	12 cases	14 cases	69 cases

Notes: * Yet to become WTO Member. ** Mostly in anti-dumping cases. N.a. means data not available

Source: Compiled by the author from WTO

LDCs and developing countries also do find difficulties in attending regular SPS Committee meetings that take place thrice every year on account of financial constraints. The regular SPS Committee meeting does provide all members to raise specific trade concerns against any one country or group of countries with prior appropriate intimation to the SPS Committee.

5. Conclusions and Policy Agenda

Recognizing the special difficulties on account of implementing SPS Agreement and complying with the SPS requirements in their importing markets the SPS Agreement has made provisions for

Technical Assistance (Article 9) and Special & Differential Treatment (S&DT) (Article 10) for developing countries. Article 10.1 of the SPS Agreement says: “In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members”. Members also provide technical assistance to other members, especially developing country members, either bilaterally or through the appropriate international organizations (Article 9). But, these provisions being best endeavor in nature are not necessarily followed appropriately. In fact, this is one area where developing countries would need to spend time and explore the possibilities how best these provisions can be made used by them. The WTO Secretariat also would need to undertake further work in this area so as to find out clear cut directions/framework through which S&DT and the issue of technical assistance can be extended to its developing members in an efficient way.

Much of the assistance including technical assistance provided by national and the relevant multilateral agencies so far, in building SPS and related capacity has been fragmentary and has not been effectively integrated with national activities in the most recipient developing members, in particular the least developed countries.

The WTO along with other four developmental organizations namely, World Health Organization, World Bank, Office International des Epizooties (OIE) and Food and Agriculture Organization (FAO) has established Standards and Trade Development Fund (STDF) in September 2002. The STDF is now fully operational. The STDF provides grant financing for projects and the preparation of projects that aim to enhance the capacity of developing countries to meet SPS standards. So far, demands for funds under this STDF Scheme although have increased, but not at all significantly. Many developing countries either are not fully aware of the procedures or not fully equipped with resources by which they can get hold of this fund for appropriate use for developing SPS related capacity. For getting technical assistance under this program, a broad project proposal along with other specific details such as cost involve with it, time required for the project, anticipated benefit and whether the supporting infrastructural facilities would be made available, would need to be clearly mentioned. Also, 25 percent of total costs would need to be contributed by each developing country member. In many occasions, weak institutional, administrative and infrastructural support systems of developing countries work as a major constraint to even get access to the technical assistance under WTO-STDF funds.

Clearly, therefore, there is a need for a coordinated approach on the part of all developing countries. Given the nature and extent of capacity related constraints in the developing countries formed BIMSTEC requires more assistance. There is also clear need of adopting approaches or means, which are cost effective and problem based, addressing the real capacity constraints of these countries.

SPS related measures as such are multi disciplinary and complex in nature. Such regimes need an adequate legislative base and institutional structures (often the most serious areas of deficiency in developing countries’), as well as standards, protocols and procedures, trained administrative, technical and field staff, risk analysis capability, technical infrastructure like analytical laboratory capacity, monitoring and surveillance mechanisms, information and communication systems conformity assessment and certification procedures, and many other elements. As for many areas of economic development, the programming of provision of SPS/TBT capability is complex because of interdependencies and complementarities between the different component elements, timing/sequencing issues, misconceptions about what is genuinely needed and/or is of the most importance, and so forth.

Developing countries may benefit most from technical assistance if the provision of assistance is planned in the light of two related perspectives: the recipient country’s ambitions and objectives concerning trade (particularly exports), and the recipient country’s exposure to risk of harm if SPS measures and technical regulations are not effectively applied.

In light of the foregoing discussions, the tasks ahead for BIMSTEC countries to ensure improved market and better cooperation with Japan are broadly three in nature. First, institute own SPS measures based on international ones so that the same may be defended. Second, participate effectively in the standard setting activities of Codex, OIE and IPPC and making domestic stakeholders aware of the same. Third, in the event of any discrimination against the export abroad, taking them up and address appropriately.

It has been seen that implementation of the SPS Agreement is necessary for gaining greater market access of agricultural and food related products in the major markets. Who then among the BIMSTEC countries can fully comply with the SPS requirements necessary for getting market access in the developed nations including Japan? Can India or Thailand or Sri Lanka do it? The answer would perhaps be 'no'. Now, the second question, can any member from BIMSTEC help strengthen SPS-related capacity in developing and smaller economies in the region? The answer would be again 'no'. Therefore, there exist ample opportunities for Japan in strengthening SPS-related capacity in BIMSTEC. Naturally, success of BIMSTEC-Japan Cooperation would thus depend to a great extent on how effectively Japan can take part in programs addressing SPS-related problems of BIMSTEC countries. To deepen further the BIMSTEC-Japan Cooperation, perhaps, Japan would need to take greater responsibilities in strengthening SPS-related capacities in the region.

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References

- Aksoy, A., and J. Beghin, (eds.) (2005), *Global Agricultural Trade and Developing Countries. Trade and Development Series*, World Bank, Washington, D.C..
- Exim Bank of India (2005), Occasional Paper No. 100, Mumbai
- Jha, V. (2002), “Strengthening Developing Countries’ Capacities to Respond to Health, Sanitary and Environmental Requirements: A scoping Paper for Selected Developing Countries”, UNCTAD, Geneva
- Josling, T., D. Roberts, and D. Orden (2004). *Food Regulation and Trade: Toward a Safe and Open Global System*, Institute for International Economics, Washington, D.C.
- Maskus, K.E. and J.S. Wilson (2001), *Quantifying the Impact of Technical Standards to Trade: Can It Be Done?*, University of Michigan Press, Ann Arbor.
- Roberts, D. (2001). “The Integration of Economics into SPS Risk Management Policies: Issues and Challenges.” In *The Economics of Quarantine and the SPS Agreement*, K. Anderson, C. McRae, and D. Wilson (eds.), Adelaide and Canberra, Australia: Centre for International Economic Studies, AFFA Biosecurity.
- Wilson, John, S.(2002), “Standards, Regulation and Trade” in, Bernard Hoekman, Aaditya Mattoo and Philip English edited, Development, *Trade and the WTO: A Handbook*, The World Bank, Washington, D.C
- World Bank (2005a), *Global Economic Prospects: Trade, Regionalism, and Development*, Washington D.C.
- World Bank (2005b), *Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports*, Report No. 31207, Washington D.C.
- WTO (2002), The Legal Texts, The Results of the Uruguay Round of Multilateral Trade Negotiations, Agreement on the Application of Sanitary and Phytosanitary Measures and Agreement on Technical Barriers to Trade as part of Annex 1A, Multilateral Agreements on Trade in Goods, Geneva.
- WTO (2004), *Trade Policy Review of Japan*, Geneva
- WTO (2005a), *World Trade Report: Exploring the Links between Trade, Standards and the WTO*, Geneva.
- WTO (2005b), *Annual Report 2005*, Geneva.

Annexure

Table 1
Total Exports of BIMSTEC Countries during 1999-2003 (US\$ million)

Country Name	1999	2000	% change	2001	% change	2002	% change	2003	% change
Bangladesh	5,458	6,399	17	6,084.70	-5	6,065.70	-0.31	6,635.00	9.39
India	36,877	45,636	24	45,399.00	-1	52,743.00	16.18	55,417.60	5.07
Myanmar	1,281	1,619	26	2,291.60	42	2,888.10	26.03	3,067.00	6.19
Sri Lanka	4,596	5,440	18	4,759.00	-13	4,933.00	3.66	5,597.60	13.47
Thailand	56,775	67,894	20	63,202.00	-7	66,796.00	5.69	72,530.00	8.58
Total	104,987.60	126,987.40	21	121,736.30	-4	133,425.80	9.60	143,247.20	7.36

Total Imports of BIMSTEC Countries during 1999-2003 (US\$ million)

Name	1999	2000	% change	2001	% change	2002	% change	2003	% change
Bangladesh	7,535.30	8,052.90	7	8,133.40	1	7,709.10	-5.22	8,690.40	12.73
India	45,556.00	60,268.00	32	58,231.00	-3	65,160.00	11.90	71,637.80	9.94
Myanmar	2,159.60	2,134.90	-1	2,587.70	21	2,186.20	-15.52	2,366.60	8.25
Sri Lanka	5,365.50	6,483.60	21	5,679.50	-12	5,873.80	3.42	6,527.70	11.13
Thailand	42,763.00	56,194.00	31	54,620.00	-3	57,020.00	4.39	63,186.00	10.81
Total	103,379.40	133,133.40	29	129,251.60	-3	137,949.10	6.73	152,408.50	10.48

Source: Exim Bank of India Occasional Paper No. 100

Annexure

Table 2
Average MFN Applied and Bound Tariffs for Agricultural Products by Category

Country	Fruits and Vegetables		Coffee, tea cocoa & preparation		Sugar & Sugar confectionary		Spices, cereal & other food preparations		Animal & Products		Cut flowers, plants, veg materials etc		Dairy Products	
	App- lied	Bound	App- lied	Bound	App- lied	Bound	App- lied	Bound	App- lied	Bound	App- lied	Bound	App- lied	Bound
Bangladesh	25.3	189.2	29.2	187.5	30.0	190.6	23.9	195.6	20.7	192.6	12.8	200.0	29.3	149.8
India	32.4	105.4	56.3	133.1	48.4	124.7	34.6	126.5	33.0	105.0	25.9	85.1	35.0	65.0
Myanmar	13.1	152.0	14.0	151.3	7.3	89.4	7.9	98.1	14.4	127.3	4.5	52.8	3.3	40.1
Sri Lanka	27.1	50.0	28.0	50.0	19.4	50.0	24.6	49.7	26.1	49.9	9.2	48.8	23.6	48.5
Thailand	43.9	x	31.3	x	26.6	48.9	29.2	x	31.4	29.6	22.8	27.0	23.9	34.0
Nepal	13.6	42.9	23.8	40.8	16.6	45.0	15.2	42.5	10.9	35.9	9.9	32.1	14.3	45.8
Bhutan	49.3	-	38.3	-	30.0	-	37.0	-	30.0	-	31.8	-	50.0	-
Japan	8.4	8.4	11.7	11.4	x	x	12.6	11.1	7.0	8.8	1.4	1.4	28.0	x
USA	x	x	2.6	2.6	x	x	3.3	3.1	3.3	x	1.2	1.2	x	x

Notes: - means not applicable, not bound. X means Simple average not calculated because more than 40 percent of HS 6 digit sub headings contain at least one non-ad valorem duty

Source: WTO (2005b)

Annexure

Table-3

SPS Notification Format

**WORLD TRADE
ORGANIZATION**

**G/SPS/N/COUNTRY/
date of distribution
(##-####)**

Committee on Sanitary and Phytosanitary Measures

Original:

NOTIFICATION

1.	Member to Agreement notifying: If applicable, name of local government involved:
2.	Agency responsible:
3.	Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers should be provided in addition, where applicable):
4.	Regions or countries likely to be affected, to the extent relevant or practicable:
5.	Title, language and number of pages of the notified document:
6.	Description of content:
7.	Objective and rationale: <input type="checkbox"/> food safety, <input type="checkbox"/> animal health, <input type="checkbox"/> plant protection, <input type="checkbox"/> protect humans from animal/plant pest or disease, <input type="checkbox"/> protect territory from other damage from pests
8.	International standard, guideline or recommendation: <input type="checkbox"/> Codex Alimentarius Commission, <input type="checkbox"/> Office International des Epizooties, <input type="checkbox"/> International Plant Protection Convention, <input type="checkbox"/> None If an international standard, guideline or recommendation exists, give the appropriate reference and briefly identify deviations:
9.	Relevant documents and language(s) in which these are available:
10.	Proposed date of adoption:
11.	Proposed date of entry into force:
12.	Final date for comments: Agency or authority designated to handle comments: <input type="checkbox"/> National notification authority, <input type="checkbox"/> National enquiry point, or address, fax number and E-mail address (if available) of other body:
13.	Texts available from: <input type="checkbox"/> National notification authority, <input type="checkbox"/> National enquiry point, or address, fax number and E-mail address (if available) of other body:

Source: WTO