

TRAINING PROGRAMME ON “NEGOTIATING PREFERENTIAL TRADE AGREEMENTS”

Session 4: TBT and SPS in WTO and RTAs

29-31 August
Phnom Penh, Cambodia

Rajan Sudesh Ratna
Economic Affairs Officer
Trade, Investment and Innovation Division
UNESCAP, Bangkok
Email: ratna@un.org



Presentation Structure

- **Global context**
- **Rising trends of NTMs**
- **Regional context**
 - **Efforts to address them**
 - **Trade patterns**
- **Lessons learnt**

DISCUSSION POINTS



- **How many of you have experienced :**
 - **Formulating TBT regulations**
 - **Notification to WTO**
 - **Negotiated or discussed in WTO, Geneva or FTAs**
- **What problems have you faced?**

Global Rules

- **The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT) are part of Uruguay Round Agreement**
- **Article XX(b) of GATT**
- **Can apply to fulfill legitimate objectives**
- **Minimising negative trade effects or not to create ‘unnecessary obstacle to trade’**

Standards and safety: Objectives

- Article XX of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism.
- In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general. Both try to identify how to meet the need to apply standards and at the same time avoid protectionism in disguise:
 - Agreement on Technical Barriers to Trade (TBT Agreement.)
 - The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

- **Countries require certain standards for protection of the health and safety of their people.**

Two types of Standards :

- ☐ **Mandatory Standards**
- ☐ **Voluntary Standards**

Technical Barriers to Trade

Objective of the TBT Agreement

Recognizes

That **no country should be prevented** from taking measures (technical regulations, standards, conformity assessment procedures)

Ensures

That such measures **do not create unnecessary obstacles** to trade.

Should be based on scientific information and evidence.

TBT Agreement: the coverage

Art. 1.3

"All products, including **industrial** and **agricultural** products, shall be subject to the provisions of this Agreement."

TBT AGREEMENT

Standards

- International standards
- If standards are not based on international standards: notify to WTO members seeking their comments on draft regulation.
- Conformity assessment procedures
- For voluntary standards Code of good practices applies

Sanitary and Phytosanitary Measures (SPS)

What is the purpose of the SPS Agreement?

The right to protect
human, animal or
plant life or health



Avoiding
unnecessary
barriers to trade

SPS Agreement - Basic Right

“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”

SPS Measures

A measure taken to protect:

Human or
animal health

from

risks arising from additives,
contaminants, toxins or disease
organisms in food, drink, feedstuff

Human life

from

plant- or animal-carried diseases

Animal or
plant life

from

pests, diseases, disease-causing
organisms

A country

from

other damage caused by entry,
establishment or spread of pests

TBT measures typically deal with

- **Labeling of food, drink and drugs**
- **Quality requirements for fresh food**
- **Packaging requirements for fresh food**
- **Packaging and labeling for dangerous chemicals and toxic substances**
- **Regulations for electrical appliances**
- **Regulations for cordless phones, radio equipment etc.**
- **Textiles and garments labeling**
- **Testing vehicles and accessories**
- **Regulations for ships and ship equipment**
- **Safety regulations for toys**
- **Etc.....**

SPS measures typically deal with

- **Additives in food or drink**
- **Contaminants in food or drink**
- **Poisonous substances in food or drink**
- **Residues of veterinary drugs or pesticides in food or drink**
- **Certification: food safety, animal or plant health**
- **Processing methods with implications for food safety**
- **Labeling requirements directly related to food safety**
- **Plant / animal quarantine**
- **Declaring areas free from pests or disease**
- **Preventing disease or pests spreading to a country**
- **Etc.....**

Some terms and issues

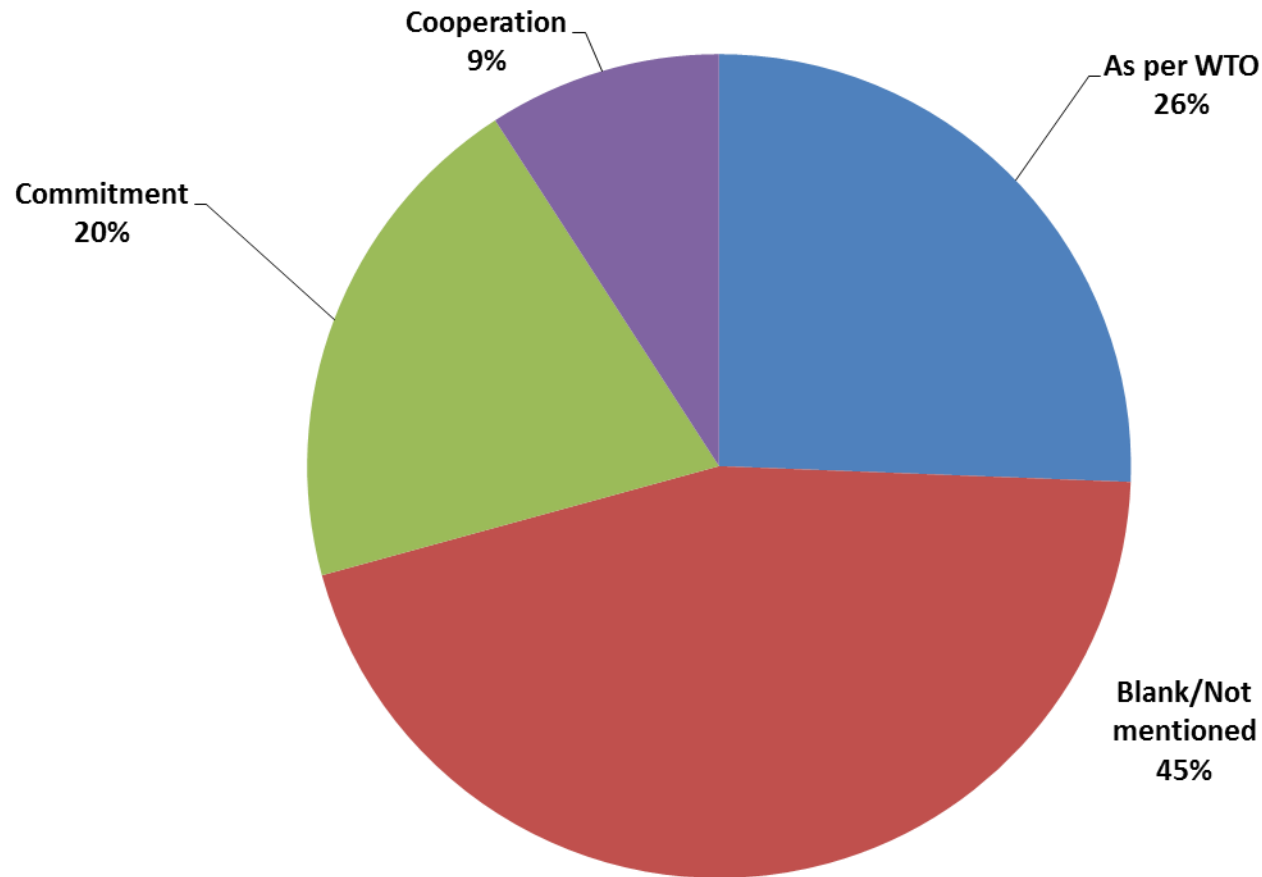
- **Transparency**
- **Harmonisation**
- **Equivalence**
- **Regionalization**
- **Accreditation Bodies**
- **Conformity Assessment Body (CAB)**
- **International standards vrs domestic standards**
 - Food safety – FAO/WHO/Codex Alimentarius
 - Animal Health – World Organisation for Animal Health
 - Plant Health – International Plant Protection Convention (IPPC) based at FAO

Provisions in FTAs

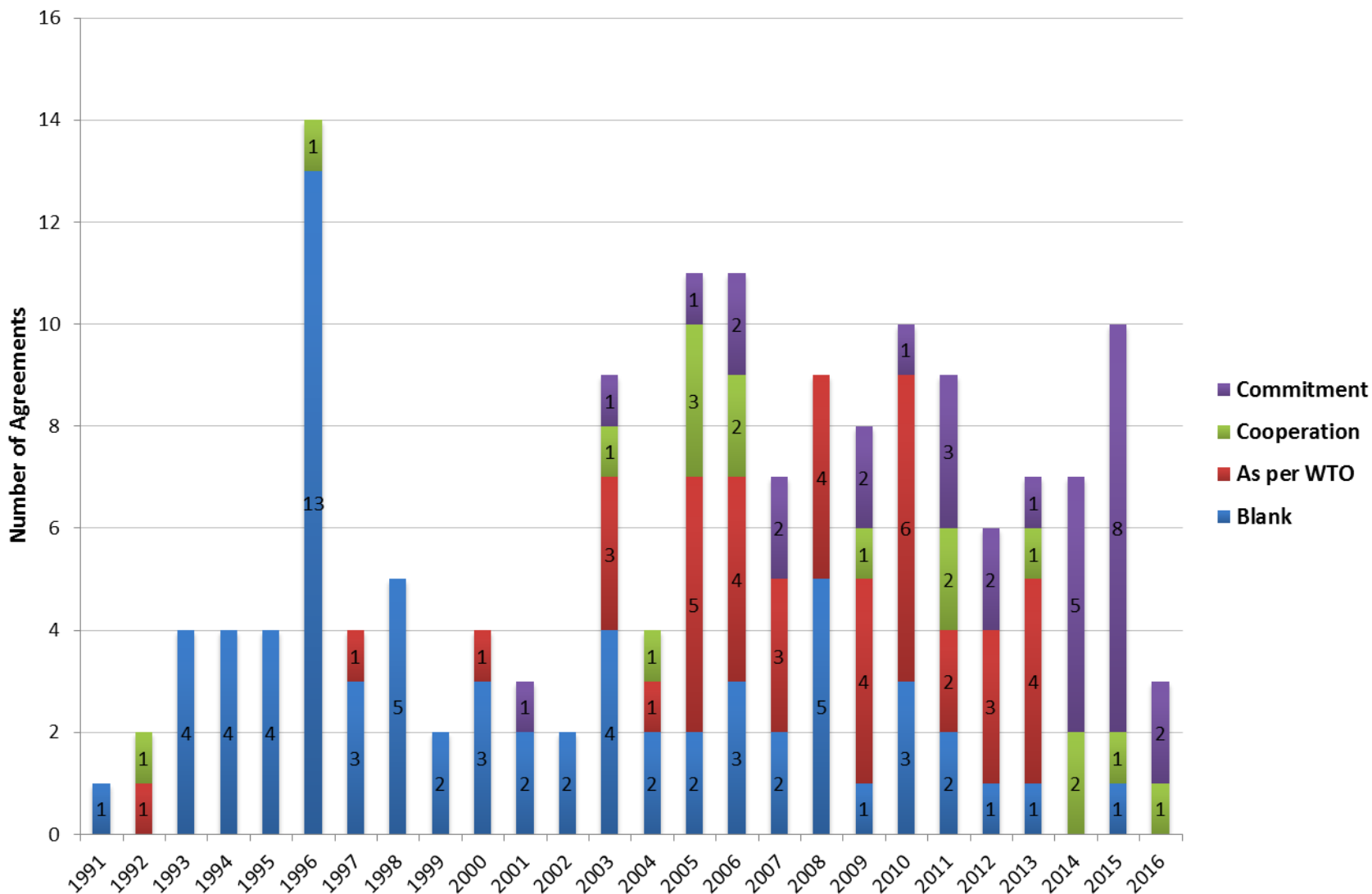
NTMs in FTAs

- **Mostly WTO rights and obligations are retained.**
- **SPS and TBT are dealt separately, with conditionalities in SPS more cumbersome.**
- **Mostly cooperation agreements(not subject to dispute), advance sharing of information, consultation and prompt resolution of disputes.**
- **Sometimes technical assistance provisions.**

SPS and TBT provisions in AP Agreements (in force) December 2016(164)



SPS and TBT provisions in AP Agreements (in force) 1991-2016



Business (trade) process analysis findings among South/Southeast Asian Countries

| | Cambodia (Maize/Cassava export to China)* | Lao PDR (Maize export to Thailand)* | Myanmar (Rice export via Yangon port)* | Bangladesh (Jute bag export to India)* | Thailand (rice export to Europe)* |
|---------------------------|--|--|---|---|--|
| Number of days | 19/20 | 16 | 19-23 | 10 | 12 |
| Cost | USD 1250 -1360 | USD 735 | USD 425 | | USD 700 |
| Number of actors involved | 15 | 11 | 20 | 15 | 15 |

* source: ESCAP BPA Study Reports available at:
http://unnex.unescap.org/tools/business_process.asp

Obtaining Phytosanitary Certificates for agro-food products in South and Southeast Asian Countries*

| | Bangladesh | Cambodia | Lao PDR | Myanmar | Nepal |
|--------------------------------|---|---|--|--|---|
| Number of Days Required | 4 days | 2-5 days | At least 2 days | 1-2 days | 0.5 day |
| Documents Required | <ul style="list-style-type: none"> (i) Proforma invoice (ii) packing list, (iii) oil content certificate, (iv) COO | <ul style="list-style-type: none"> (i) Phyto sanitary certificate application (ii) Commercial invoice (iii) Packing lists (iv) Release container, (v) Fumigation certificate | <ul style="list-style-type: none"> (i) Packing list, (ii) Import license, (iii) Commercial contract among importer and exporter; (iv) Request for import of animal feed; (v) Pro-forma invoice; | <ul style="list-style-type: none"> (i) Shipping instructions (ii) National Registration Card (iii) Sealed case file from Customs head office <ul style="list-style-type: none"> ○ Export Declaration ○ Export License ○ Invoice ○ Packing list | <ul style="list-style-type: none"> (i) Letter from Customs to Food Quarantine Office (ii) Commercial Invoice (iii) Packing List (iv) Customs Declaration Form (v) Sample |
| Stakeholders Involved | <ul style="list-style-type: none"> • Exporter (or representative) • Department of Agricultural Extension (DAE) • Clearing and Forwarding (C&F) Agent | <ul style="list-style-type: none"> • Exporter • MAFF/GDA | <ul style="list-style-type: none"> • Exporter or representative • Vientiane Capital Agriculture Division - Agriculture Quarantine Section | <ul style="list-style-type: none"> • Ministry of agriculture • Exporter | <ul style="list-style-type: none"> • Clearing agent • Food Quarantine Office • Customs Office |

ASEAN

Standards & Technical Regulations

- **ASEAN Consultative Committee on Standards & Conformance (ACCSQ)** was established in 1992. Aim was to implement mutual recognition arrangements (MRAs) of test reports, certifications & conformity and harmonise national standards, technical regulations & conformity assessment requirements. ACCSQ is supported by 3 working groups (WGs) and 8 product working groups (PWGs).
- **ASEAN Framework Agreement on Mutual Recognition Arrangements** was signed in 1998 – to develop sectoral MRAs and cooperative activities to facilitate elimination of TBT within ASEAN.
- **ASEAN has Guideline on Standards and Conformance (2005)** which aims to provide guiding principles for the implementation in the areas of standards and conformance in regulated and non-regulated sectors, for accelerating the integration towards AEC.

Working Groups

- Working Group on Standards and Mutual Recognition Agreements
- Working Group on Accreditation and Conformity Assessment
- Working Group on Legal Metrology
- the desired outcome is “one standard, one test, one certificate accepted everywhere”

20 Priority Products

| | |
|---|--------------------------------|
| Air-conditioners | Refrigerators |
| Monitors & Keyboard | Motors & Generators |
| Inductors | Loudspeakers |
| Video Apparatus | Telephones |
| Radio | Television |
| Parts of TV and Radio | Capacitors |
| Resistors | Printed Circuits |
| Switches | Cathode Ray Tubes |
| Diodes | Mounted Piezo-electric crystal |
| Rubber condoms | Medical Gloves |
| <i>Harmonisation as per ISO, ITU and IEC standards completed in 2003.</i> | |

ASEAN Arrangements (MRAs)

- **Memorandum of Understanding on Standstill and Rollback on Non-Tariff Barriers among ASEAN countries (1987)**
- **The Memorandum of Understanding on Standards and Quality (1996)**
- **ASEAN Framework Agreement on Mutual Recognition Arrangements (1998)**
- **ASEAN Telecommunication Regulators' Council Sectoral MRA (1998)**
- **ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment (2002)**
- **Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme (2003)**
- **Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (EEE) Regulatory Regime (2005)**
- **Pharmaceutical Good Manufacturing Practice (GMP) MRA (2009)**

Harmonization in ASEAN agriculture products

- Codex:
 - General Standards for Labelling of prepackaged foods, Food additives.
 - Guidelines on Claims and Nutrition labelling
- IPPC:
 - International Standards for Phytosanitary Measures (ISPMs)
- World Organization for Animal Health:
 - Guidelines for disease reporting; import-export risk analysis; and surveillance section.

Harmonization in ASEAN agriculture products

A. Codex

- i) Codex General Standards for the Labelling of Prepackaged Foods,
- ii) Codex General Standard for the Labeling of Food Additives;
- iii) Codex General Guidelines on Claims
- iv) Codex Guidelines on Nutrition Labelling.

B. International Plant Protection Convention (IPPC)

Standards Number:

- No. 6 (1997) - Guidelines for surveillance
- No. 7 (2011) - Phytosanitary Certification System
- No. 10 (1999) - Requirements for the establishment of pest free places of production and pest free production sites
- No. 12 (2011) - Phytosanitary Certificates
- No. 13 (2001) - Guidelines for the notification of non-compliance and emergency action
- No. 15 (2002) - Guidelines for regulating wood packaging material in international trade
- No. 17 (2002) - Pest reporting
- No. 19 (2003) - Guidelines on lists of

regulated pests

- No. 20 (2004) - Guidelines for a phytosanitary import regulatory system
- No. 23 (2005) - Guidelines for inspection
- No. 24 (2005) - Guidelines for the determination and recognition of equivalence of phytosanitary measures
- No. 25 (2006) - Consignments in transit
- No. 28 (2009) - Phytosanitary treatment for regulated pests
- No. 31 (2008) - Methodologies for sampling consignments

C. World Organization for Animal Health (OIE)

Harmonization of OIE Guidelines for disease reporting (Section 1.1-1.5), import-export risk analysis (Section 3.1), surveillance section (Section 3.4)

Benefits of MRAs

- **MRAs set the groundwork for regulatory coherence in ASEAN for them to harmonise their national standards with the international standards.**
- **Prepares them for regional collaboration in meeting international standards which ultimately helps in looking for the international markets.**
- **Supports the regional integration for free flow of goods.**

ASEAN:Lessons Learnt

- **Strong political commitment and top level support is essential to meet the goals on standards and technical regulations.**
- **Collaboration and commitment by regulators and CABs are essential.**
- **Members at various stages of development – brings challenges in consensus building.**
- **Technical assistance become important.**
- **ASEAN initiated dialogues with its dialogue partners – Japan, EU, USA etc.**
- **The basis for harmonisation – international standards.**

SAARC

SAARC: SAFTA

- **Article 3(d) - free movement of goods, between countries through, inter alia, the elimination of tariffs, para-tariffs and non- tariff restrictions on the movement of goods and any other equivalent measures.**
- **6(c) Arrangements relating to non-tariff measures.**
- **8(a) Harmonisation of standards, reciprocal recognition of tests and accreditation of listing laboratories of contracting states and certification of procedures.**

SAARC

- **Agreement on the Establishment of South Asian Regional Standards Organisation (SARSO) (August 2008).**
- **SAARC Agreement on Multilateral Arrangement on Recognition of Conformity Assessment (November 2011).**
- **SAARC Agreement on Implementation of Regional Standards (November 2011).**

SAARC

- **The Agreement on the Establishment of South Asian Regional Standards Organisation(SARSO) entered into force with effect from 25 August 2011 after ratification by all member States of SAARC.**
- **SARSO Sectoral Technical Committees (STCs) discussing harmonisation of standards on Refined sugar, biscuits, instant noodles, black tea, vanaspati, skimmed milk powder on food and agricultural products.**

SAARC: Lessons Learnt

- Focus is on exporting to India and how to reduce the transaction cost (Trade facilitating effect) and not real regional integration.
- However, the solution lies on trade policy and not mainly on trade facilitation (CAP, Equivalence, Regionalisation, Harmonisation).
- Prioritization of items of regional export interest, especially in the context of SPS and TBT measures is lacking.
- Institution building:
 - Laboratory and testing equipments
 - National Accredited Bodies for these items/sectors
 - Conformity Assessment Bodies
- Capacity building and technical assistance

ASEAN and SAARC

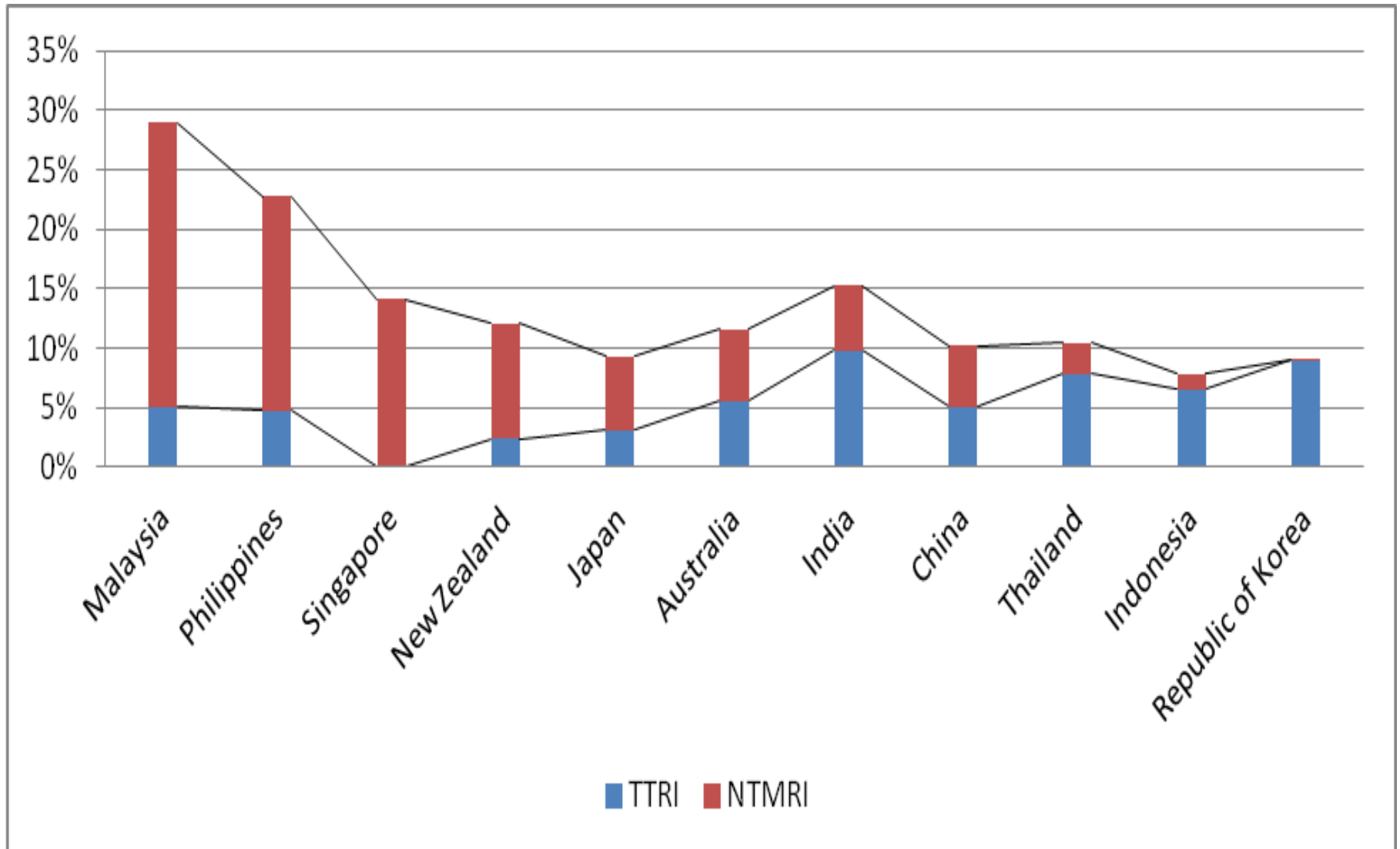
- **No effort for setting up regional standards and then taking them up for setting international standards.**
- **No effort taken for equivalence or regionalisation.**
- **Lack preparedness for driving the agenda for setting international standards.**
- **Not using very actively the STCs in WTO – perhaps a collective effort in Geneva is needed.**

Way Forward

- **Consider conducting studies and identify items:**
 - **Non sensitive: supplier's declaration scheme may be initiated.**
 - **Least sensitive: Accredited exporters scheme**
 - **Sensitive: CAB**
- **Explore Regionalization and Equivalence provisions.**

RCEP

TTRI and NTMRI profile of RCEP countries (WB 2009)



Removal of non-tariff trade cost for RCEP

- Study on “Regional Comprehensive Economic Partnership (RCEP) FTA: Reducing Trade Cost through Removal of Non-Tariff Measures” – available at [http://www.akes.or.kr/akes/downfile/17.2.3%20%20Ratna%20and%20Huang%20\(213-242\).pdf](http://www.akes.or.kr/akes/downfile/17.2.3%20%20Ratna%20and%20Huang%20(213-242).pdf)
- Using gravity model estimated the effect of removal of tariff and non tariff trade cost by using ESCAP-WB trade cost database.
- Found that full removal of non-tariff trade cost will increase intra RCEP trade by 55% with potential of US \$ 1.3 billion export growth.
- Process of harmonisation, CAP, MRA are important.

Way forward

- **Study and identify items**
 - Non sensitive: supplier's declaration
 - Least sensitive: Accredited exporters
 - Sensitive: CAB
- **Explore Regionalization provisions**
- **Build infrastructure – Labs, NABs, CABs.**
- **Then only look for:**
 - Harmonisation
 - Equivalence
- **Technical assistance**

THANK YOU