Session 7: TBT and SPS in RTAs

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Presentation Structure

• Global context
• Rising trends of NTMs
• Regional context
  – Efforts to address them
  – Trade patterns
• Lao PDR exports to AMS
• Lessons learnt
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’
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
  - Plant Health – International Plant Protection Convention (IPPC) based at FAO
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?
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)

- As per WTO: 26%
- Blank/Not mentioned: 45%
- Commitment: 20%
- Cooperation: 9%
SPS and TBT provisions in AP Agreements (in force) 1991-2016

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NTM Provisions: Examples

• Singapore Australia FTA:
  – Australia allowed ‘accredited exporters’ of Singapore with reduced imports control.

• Thailand Australia FTA:
  – Standing Expert Group constituted for equivalence and fast-track resolution of disputes.

• China New Zealand FTA:
  – Joint Committee established.
NTM Provisions: Example (2)

• MERCOSUR:
  – Decision 6/93: Own agreement on SPS measures (harmonisation, equivalence etc.). Once these provisions got incorporated in WTO SPSA – they were dropped.
  – Decision 60/99: Principles and other issues relating to equivalence agreements were specifically built in.
NTM Provisions: Example (3)

• ASEAN (ATIGA):
  – WTO provisions retained.
  – Provisions for negotiation of sectoral equivalence, cooperation in developing international standards, harmonisation.
  – ASEAN Consultative Committee on Standard Conformance (ACCSQ): 3 WGs and 8 Product WG established.
  – Assessment results for Prepared Foodstuff.
  – MRA on recognition of conformance.
### Business (trade) process analysis findings among South/Southeast Asian Countries

<table>
<thead>
<tr>
<th>Country and Export Details</th>
<th>Number of days</th>
<th>Cost (USD)</th>
<th>Number of actors involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia (Maize/Cassava export to China)*</td>
<td>19/20</td>
<td>1250 - 1360</td>
<td>15</td>
</tr>
<tr>
<td>Lao PDR (Maize export to Thailand)*</td>
<td>16</td>
<td>735</td>
<td>11</td>
</tr>
<tr>
<td>Myanmar (Rice export via Yangon port)*</td>
<td>19-23</td>
<td>425</td>
<td>20</td>
</tr>
<tr>
<td>Bangladesh (Jute bag export to India)*</td>
<td>10</td>
<td>700</td>
<td>15</td>
</tr>
<tr>
<td>Thailand (rice export to Europe)*</td>
<td>12</td>
<td></td>
<td>15</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Stakeholders Involved</th>
<th>Bangladesh</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Nepal</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Exporter (or representative)</td>
<td>• Exporter</td>
<td>• Exporter</td>
<td>• Exporter</td>
<td>• Ministry of agriculture</td>
<td>• Clearing agent</td>
</tr>
<tr>
<td>• Department of Agricultural Extension (DAE)</td>
<td>• MAFF/GDA</td>
<td>• representative</td>
<td>• Vientiane Capital Agriculture Division - Agriculture Quarantine Section</td>
<td>• Exporter</td>
<td>• Food Quarantine Office</td>
</tr>
<tr>
<td>• Clearing and Forwarding (C&amp;F) Agent</td>
<td></td>
<td>• Vientiane Capital Agriculture Division - Agriculture Quarantine Section</td>
<td></td>
<td>• Customs Office</td>
<td></td>
</tr>
</tbody>
</table>

### Number of Days Required

<table>
<thead>
<tr>
<th>Country</th>
<th>Bangladesh</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Nepal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Days Required</td>
<td>4 days</td>
<td>2-5 days</td>
<td>At least 2 days</td>
<td>1-2 days</td>
<td>0.5 day</td>
</tr>
</tbody>
</table>

### Documents Required

<table>
<thead>
<tr>
<th>Country</th>
<th>Bangladesh</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Nepal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents Required</td>
<td>(i) Proforma invoice</td>
<td>(i) Phyto sanitary certificate application</td>
<td>(i) Packing list, Import license, Commercial contract among importer and exporter;</td>
<td>(i) Shipping instructions</td>
<td>(i) Letter from Customs to Food Quarantine Office</td>
</tr>
<tr>
<td></td>
<td>(ii) packing list,</td>
<td>(ii) Commercial invoice</td>
<td>(ii) Request for import of animal feed;</td>
<td>(ii) National Registration Card</td>
<td>(ii) Commercial Invoice</td>
</tr>
<tr>
<td></td>
<td>(iii) oil content</td>
<td>(iii) Packing lists</td>
<td>(iii) sealing case file from Customs head office</td>
<td>(iii) Sealed case file from Customs head office</td>
<td>(iii) Packing List</td>
</tr>
<tr>
<td></td>
<td>certificate,</td>
<td>Release</td>
<td>o Export Declaration</td>
<td>o Export License</td>
<td>o Invoice</td>
</tr>
<tr>
<td></td>
<td>(iv) COO</td>
<td>container,</td>
<td>o Invoice</td>
<td>o Packing list</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(v) Fumigation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>certificate</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ASEAN Economic Community

• ASEAN (ATIGA):
  – WTO provisions retained
  – Provisions for negotiation of sectoral equivalence, cooperation in developing international standards, harmonisation

• ASEAN Economic Community by 2015

• Free flow of goods through:
  i. Elimination of Tariffs
  ii. Elimination of Non-Tariff Barriers
  iii. Simple Rules of Origin (ROO)
  iv. Trade Facilitation
  v. Customs Integration
  vi. ASEAN Single Window
  vii. Standards & Technical Barriers to Trade
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

<table>
<thead>
<tr>
<th>Air-conditioners</th>
<th>Refrigerators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitors &amp; Keyboard</td>
<td>Motors &amp; Generators</td>
</tr>
<tr>
<td>Inductors</td>
<td>Loudspeakers</td>
</tr>
<tr>
<td>Video Apparatus</td>
<td>Telephones</td>
</tr>
<tr>
<td>Radio</td>
<td>Television</td>
</tr>
<tr>
<td>Parts of TV and Radio</td>
<td>Capacitors</td>
</tr>
<tr>
<td>Resistors</td>
<td>Printed Circuits</td>
</tr>
<tr>
<td>Switches</td>
<td>Cathode Ray Tubes</td>
</tr>
<tr>
<td>Diodes</td>
<td>Mounted Piezo-electric crystal</td>
</tr>
<tr>
<td>Rubber condoms</td>
<td>Medical Gloves</td>
</tr>
</tbody>
</table>

*Harmonisation as per ISO, ITU and IEC standards completed in 2003.*
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
Tariff profile of RCEP countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Bound Total</th>
<th>MFN Applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>10</td>
<td>2.8</td>
</tr>
<tr>
<td>Brunei</td>
<td>25.3</td>
<td>2.5</td>
</tr>
<tr>
<td>Cambodia</td>
<td>19.1</td>
<td>10.9</td>
</tr>
<tr>
<td>China</td>
<td>109.6</td>
<td>10.9</td>
</tr>
<tr>
<td>India</td>
<td>48.7</td>
<td>12.6</td>
</tr>
<tr>
<td>Indonesia</td>
<td>37.1</td>
<td>7</td>
</tr>
<tr>
<td>Japan</td>
<td>16.6</td>
<td>5.35</td>
</tr>
<tr>
<td>Korea Rep</td>
<td>12.1</td>
<td>35.3</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>18.77</td>
<td>9.7</td>
</tr>
<tr>
<td>Malaysia</td>
<td>23</td>
<td>6.5</td>
</tr>
<tr>
<td>Myanmar</td>
<td>83.4</td>
<td>5.59</td>
</tr>
<tr>
<td>New Zealand</td>
<td>10.1</td>
<td>2</td>
</tr>
<tr>
<td>Philippines</td>
<td>25.7</td>
<td>6.1</td>
</tr>
<tr>
<td>Singapore</td>
<td>10.3</td>
<td>2</td>
</tr>
<tr>
<td>Thailand</td>
<td>28</td>
<td>9.8</td>
</tr>
<tr>
<td>Vietnam</td>
<td>11.5</td>
<td>9.8</td>
</tr>
</tbody>
</table>

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TTRI and NTMRI profile of RCEP countries (WB 2009)
Removal of non-tariff trade cost for RCEP


• 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.
RCEP

China

ASEAN

Japan – Korea – China

India

Australia – New Zealand

FTA in force

FTA under negotiation
Case of Lao PDR
Lao PDR’s Maize Export to Thailand: Obtaining Phytosanitary and Fumigation Certificates

• Number of days taken to complete these two processes: 4 Days

• Documents Required: 8

• Cost: About 75% of total cost for these two processes
Lao PDR’s Maize Export to Thailand: Process for Obtaining Phyto Sanitary Certificate

Source: http://unnext.unescap.org/tools/business_process.asp

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Lao PDR’s Maize Export to Thailand: Process for Obtaining Completing Fumigation

Source: http://unnext.unescap.org/tools/business_process.asp
Case Study

• Few products were selected at 4 digit HS level out of 20 products where harmonisation took place in ASEAN.

• Selection – highest growth in global imports from 1997 to 2015.

• Major exporters from ASEAN were identified.

• Patterns of exports of Lao PDR to AMS - pre and post harmonisation were analysed.
AMS imports from Lao PDR (Thousand US $)

HS 8415 Air conditioning machines,

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AMS imports from Lao PDR (Thousand US $)

HS 8418 Refrigerators, freezers and others

[Bar chart showing imports from 1997 to 2015 for Philippines, Thailand, and Vietnam]
AMS imports from Lao PDR (Thousand US $)

HS 8536 Electrical apparatus for switching

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AMS imports from Lao PDR (Thousand US $)

HS 8541 Diodes, transistors and similar articles

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AMS imports from Lao PDR (Thousand US $)
AMS imports from Lao PDR (Thousand US $)
Discussions

• Do you think Lao PDR has gained?
• What went right?
• What went wrong?
• What needs to be done?
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
SORRY!