

# **ARTNeT / WTO Research Workshop on Emerging Trade Issues in Asia and the Pacific: Meeting contemporary policy challenges**

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## **NON-TARIFF BARRIERS IN SOUTH ASIA ADDRESSING THE CHALLENGES**

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## NON-TARIFF BARRIERS: THE NEXT CHALLENGE FOR SAARC

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- ❑ With MFN tariffs coming down, NTBs are gaining in importance for South Asia, as with the rest of the world
- ❑ Whilst SAFTA has made some headway in moving towards duty-free access for tradable goods, NTB issues have tended to remain relatively less-addressed within the context of the SAARC
- ❑ If regional cooperation is to be deepened through vertical integration and promoting cross border supply-chains, NTBs in SA will need to be addressed adequately with due importance
- ❑ NTBs pose the next major challenges from the perspective of strengthened regional economic and trade cooperation in South Asia

# CONCEPTUAL ISSUES AND DEFINITION

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## DEFINITION

- ❑ Non-tariff barriers and measures (NTBs) include measures other than border tariffs that affect trade in goods, services, and factors of production

According to the UNCTAD, classification of NTBs falls into six broad categories:

- *Price control measures*: Para-tariffs, surcharges etc.
- *Finance measures*: Regulate access to and the cost of foreign exchange for imports, define the terms of payment.
- *licensing measure*: Restrain the quantity of imports of any particular good
- *Monopolistic measure*
- *Technical measure*: Measures referring to product characteristics such as quality, safety or dimensions, including the applicable administrative provisions, terminology, symbols, testing and test methods, packaging, marking and labeling requirements as they apply to a specific product

# NON-TARIFF BARRIERS IN SAARC

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## TYPES OF NTBS IN SOUTH ASIA

- ❑ SAARC countries have in place several *ad hoc* restrictions and NTBs on imports. The general consensus is that the SAFTA Agreement has not been able to address the NTB issues with due diligence

### Percentage Share of Specific NTBs to all NTBs in SAARC

Non-Tariff Measures	Share
SPS, TBT, and Other Related Measures	86.3
Tariff Quota	9.8
Anti-Dumping Measures	7.4
License Requirement	5.3
Countervailing Measures	1.2

*Source:* Quantification of South Asian Trade Benefits (ADB,2008)

# NON-TARIFF BARRIERS IN SAARC

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## SELECTED COUNTRY EXAMPLES (TRADE IN AGRICULTURE): INDIA

- ❑ Import and export subject to state trading is in existence for a number of items in India, especially agricultural trade.
- ❑ Food Corporation of India (FCI) is responsible for import of rice, wheat and other agricultural items.
- ❑ Import-licensing system also negatively impacts trade flows.
- ❑ The period of 2000s experienced more stiff trade restrictions under the provision of Sanitary and Phytosanitary Measures (SPMs).
- ❑ India continues to maintain State Trading Enterprises (STE) for importing fertilizer.
- ❑ Other non-tariff measures included reactivation of quarantine regulations, standard certificates and limiting number of entry ports; these are applicable for certain agricultural products.
- ❑ Occasional export ban is also evident.

# NON-TARIFF BARRIERS IN SAARC

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## SELECTED COUNTRY EXAMPLE (TRADE IN AGRICULTURE): BANGLADESH

- ❑ Some quantitative restriction and NTB measures still play an important role from the perspective of Bangladesh's trade in agricultural items, although at a lower extent compared to the 90s.
- ❑ Bangladesh also has QRs on some selected agricultural commodities.
- ❑ Bangladesh also has export ban on aromatic rice.
- ❑ Moreover, Bangladesh also provides various cash compensation and export subsidy for selected agricultural commodities such as frozen fish, fresh fruits, crushed bone, etc. which were geared towards stimulating the export sector.

# NON-TARIFF BARRIERS IN SAARC

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## NTBS IN BANGLADESH-INDIA BILATERAL TRADE

- ❑ According to a study conducted by the Bangladesh Tariff Commission , exporters of Bangladesh faces several non-tariff barriers by India that hinders trade growth between the two.
  - ❖ registration and membership certificate,
  - ❖ registration hassles for exporting medicines,
  - ❖ obtaining licenses from Indian standard and testing agency, non-acceptance of standard certificates or test reports issued by the Bangladeshi testing authorities
  - ❖ stringent packaging requirements.
  - ❖ lack of adequate storage facilities for BD's export to its land custom stations.
  - ❖ requirement of no-objection certificate.
- ❑ Bangladesh and India signed *Framework Agreement on Cooperation for Development* recently (Sept. 2011). Article 1 talks about removing NTBs. It remains to be seen how far the tow signatories can take it forward.



# NON-TARIFF BARRIERS IN SAARC

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## REGIONAL FOOD SECURITY AND NTBS

- ❖ It is well recognised that regional food security can benefit from increased trade in agriculture
- ❖ NTBs and the associated trade restrictive impact impacts negatively on regional food security in SA
- ❖ This is particularly true for crisis period
- ❖ Food availability and price volatility during natural disasters require countries of South Asia to go for immediate import
- ❖ Among others - Export ban
  - ❖ India imposed on rice export in 2007 when Bangladesh was affected by two consecutive floods and a cyclone.

# NON-TARIFF BARRIERS IN SAARC

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## TRADE FACILITATION AND NTB: AN EMERGING CONCERN

Recent developments in promoting connectivity - added importance to NTBs

- ❑ *Lack of Border Infrastructure and Traffic Planning*: Traffic congestion and delays in handling the shipments
- ❑ *Land Ports at the Border*: The storage dwell times has been increasing and the port storage is grossly inadequate. For example, at the Petrapole-Benapole border, it takes longer time to unload vehicles into the land port than the physical clearance time
- ❑ Some studies found (Minor P. & M. Tsigas 2008) a 50% reduction in time of export can generate benefits equivalent to 4% GDP of SA-LDCs.
  - 50% reduction in time to import: SA → 0.4% of GDP
- ❑ *Lack of Cross-Border Transport Agreements*: Due to lack of through-transport movement, formidable transport inefficiencies exist at the interface

# NON-TARIFF BARRIERS IN SAARC

- Trade facilitation and trade related infrastructure remains weak

## Bangladesh's performance in trading across border vis-à-vis Thailand

Indicators	Duration (days)		Cost (US\$)	
	Bangladesh	Thailand	Bangladesh	Thailand
<b>Nature of export procedures</b>				
Documents preparation	14	8	290	270
Customs clearance and technical control	3	1	120	50
Ports and terminal handling	5	3	420	58
Inland transportation and handling	3	2	140	220
Total for all	25	14	970	625
<b>Nature of import procedures</b>				
Documents preparation	20	8	455	300
Customs clearance and technical control	3	2	135	75
Ports and terminal handling	4	2	585	200
Inland transportation and handling	2	1	200	220
Total for all	32	13	1375	795

Source: World Bank (2010)

# NON-TARIFF BARRIERS IN SAARC

## WE ARE NOT ALONE

It is of interest to note that NTBs continue to remain a major issue of concern for the ASEAN member countries inspite of the long history of trade cooperation and integration

### Most Prevalent NTBs in ASEAN

Non-tariff Barrier	Number of Tariff Line Affected	Percentage
Customs surcharges	2,683	69.42
Additional Charges	126	3.26
Single Channel for Imports	65	1.68
State-trading Administration	10	0.26
Technical Measures	568	14.70
Product Characteristic Requirement	407	10.53
Marketing Requirements	3	0.08
Technical Regulations	3	0.08
Total	3865	100.00

Source: ASEAN Secretariat

# NON-TARIFF BARRIERS IN SAARC

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## POSSIBLE NON-TARIFF BARRIERS IN TRADE IN SERVICES

In view of the SAFAS, there is a possibility that NTBs will also emerge with regard to services trade in future

- ❖ Thresholds on the total value of service transactions
- ❖ Restrictions on the number of service operations
- ❖ Limits on the number of natural persons to be employed in case of supply for a particular service
- ❖ Measures which force a service supplier to supply a service through a particular set of legal means
- ❖ Limits on the percentage share of foreign investment, which may be accounted for by foreign shareholders

# DISPUTE SETTLEMENT MECHANISM TO DEAL WITH NTBS

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## THE COMMITTEE OF EXPERTS (COE )

The SAFTA Agreement stipulates formation of CoE to deal with NTB issues. The work of the CoE is carried out in the following manner:

- ❑ The Contracting States notifies the SAARC Secretariat of all non-tariff and para-tariff measures imposed on their exports on an annual basis
- ❑ The measures are then reviewed by the CoE, established under Article 10, in its regular meetings, to examine their compatibility with relevant WTO provisions
- ❑ The CoE then recommends the elimination or implementation of the measure in the least trade restrictive manner in order to facilitate intra-SAARC trade
- ❑ member countries submit their complaints in sub-group meetings on non-tariff barriers; responding countries give their responses; a majority of notifications and complaints are being dealt through bilateral negotiations.
- ❑ Last meeting of the CoE was held in February, 2012.

# DISPUTE SETTLEMENT MECHANISM TO DEAL WITH NTBS

## DISPUTE SETTLEMENT MECHANISMS IN OTHER RTAS

Whilst the SAFTA stipulates that CoE would act as the DSB for the purpose of settling NTB related disputes, other RTAs have their own modalities to address the attendant issues. In majority of the cases RTAs such as EU and NAFTA tend to follow the WTO DSM mechanism whilst ASEAN's DSM is somewhat different.

ASEAN	EU	NAFTA
<ul style="list-style-type: none"> <li>Any differences, as far as possible, should be settled amicably through <i>Consultation</i> between the Member States</li> <li>If the consultations fail to settle the dispute within 60 days, the matter can be raised at the <i>Senior Economic Officials Meeting</i> (SEOM), which may establish a panel</li> <li>The panel should be established no later than 30 days after the date on which the receipt of the dispute</li> <li>The panel must submit findings to the SEOM within 60 days of its formation</li> <li>The SEOM should consider the report and make a ruling on the dispute within 30 days</li> <li>An appeal on the ruling by the SEOM may be submitted to the ASEAN Economic Ministers (AEM) within 30 days of the SEOM's ruling</li> <li>Member States who are parties to a dispute are expected to comply with the ruling or decision</li> </ul>	<ul style="list-style-type: none"> <li>Request for consultations; 10 – 30 days</li> <li>Consultations; 60 days</li> <li>Appointment of panel; 45 days</li> <li>Panel deliberations and ruling; 6 months</li> <li>If there are no appeals, ruling must be adopted within 60 days</li> <li>An appeal to the appellate body can be made within 60 days of the ruling</li> <li>Appellate Body ruling must be adopted</li> </ul>	<ul style="list-style-type: none"> <li>Request for Panel Review filed</li> <li>Complaints to be filed within 30 days of Panel Review request</li> <li>Panel Selection to be completed by the Parties by Day 55</li> <li>Final Determination, Reasons, Index and Administrative Record to be filed within 15 days after filing of Notice of Appearance</li> <li>Briefs by Complainants to be filed within 60 days after filing of Administrative Record</li> <li>Briefs by Investigating Authority or Participants in support to be filed within 60 days after receipt of Authority's Briefs</li> <li>Reply Briefs to be filed within 15 days</li> <li>Oral Argument to begin within 30 days after Reply Briefs</li> <li>Panel Decision Due 315 days after</li> </ul>

# POLICY RECOMMENDATIONS

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## STANDARDS AND CERTIFICATION

A majority of NTBs and perceived NTBs relate to SPS-TBT, and health-hygiene related standards. Many of these concern national standards. The best way to go forward would be to :

- (a) ensure that these are not country-specific but of general/common nature;
- (b) ascertain that whether the requirements are beyond internationally recognised standards e.g. Codex *plus*;
- (c) strengthen national standard setting institutions to meet compliance requirement;
- (d) strengthening of technical laboratories, standardisation, testing, quality management, certification authorities and inspection bodies, which ought to be perceived as an investment priority by the SAARC members;



# POLICY RECOMMENDATIONS

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## STANDARDS AND CERTIFICATION (CONT..)

- (e) signing of mutual recognition framework agreements;
- (f) strengthening of regional institutions such as SARSO;
- (g) raising the technical capacity and strengthening the ability of CoE in SAARC to deal with NTBs; and,
- (h) designing a programme of technical support in order to strengthen capacity of low income SAARC members, with support from both SAARC developing members and multilateral institutions.

## POLICY RECOMMENDATIONS

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### DEALING WITH NTBS: MUTUAL RECOGNITION AGREEMENTS

One way of dealing with NTBs is to set up a mutual recognition framework – particularly for the SPS measures

- There has been an agreement that developing SAARC members will provide support in the form of technical assistance and capacity-building to other members of SAARC
- The SAARC members have set up SAARC Standardisation Organisation (SARSO) in Bangladesh, which is an important step in this direction

# POLICY RECOMMENDATIONS

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## MUTUAL RECOGNITION AGREEMENTS (MRAS)

- ❑ Developing MRAs is also critically important for delivery of services particularly through Mode 4 (Movement of Natural Persons)
- ❑ Lack of recognition of qualifications, skills, or experience is one of the most common barriers affecting Mode 4 (Chanda 2005)
- ❑ Zarrilli (2005) suggests two basic approaches as the basis for mutual recognition
  - vertical approach: recognition is provided on a profession-by-profession basis
  - horizontal approach: mutual recognition is provided without prior harmonization of curricula and training requirements, on the basis of a broad equivalence of qualifications.

## POLICY RECOMMENDATIONS

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### *Border Measures:*

(a) A targeted programme needs to be designed to facilitate cross-border trade through development of border infrastructure, and if required, coordination of infrastructure development at border points; (b) harmonisation of customs rules and regulations, valuations and customs procedures; (c) building of capacities to deal with the most prevalent SPS-TBT related NTBs at particular border points

### *Strengthening the Financing of Intra-SAARC Trade*

To facilitate trade among SAARC countries, financial intermediation is also emerging as an important constraint. These relate to presence of adequate banking facilities, honoring of L/Cs, L/C margins, time required for verification of bank documents etc. The central banks of the SAARC countries will need to coordinate the respective regulations.

# POLICY RECOMMENDATIONS

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## DEALING WITH PARA-TARIFFS AND SURCHARGES

- ❑ Many of the perceived NTBs relate to state taxes, surcharges, VAT etc.
- ❑ These are, as a rule, general in nature and not country-specific.
- ❑ Since zero-tariff preferential access provided under SAFTA relates to only customs duties at border points, these continue to remain in case of products that enter under SAFTA Duty Free facilities.
- ❑ However, SAARC member countries may think about providing preferential treatment that covers such non-border barriers, on a mutual basis, to address at least some of these concerns.

# POLICY RECOMMENDATIONS

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## MAKING THE COE MORE EFFECTIVE

- ❑ The CoE is the main focal point for arbitration with regard to discussions and disputes in the context of NTBs in SAARC.
- ❑ Steps should be taken to strengthen the capacity of CoE in terms of data generation on NTBs and settlement of disputes.
- ❑ Whilst periodic meetings are the institutional modalities of work of CoE at present, more needs to be done to invest the CoE with appropriate capacities to deal with NTBs on a continuing and permanent basis.

# POLICY RECOMMENDATIONS

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## USING WTO DSM

- Although the SAARC countries, as a rule, should try to deal with NTB related disputes in the CoE, as members of the WTO they can also resort to WTO-DSM to settle issues which can not be appropriately addressed in the CoE.
- This route should not be seen as something which undermines SAARC solidarity. It may well be a better strategy, in specific cases, to come to a resolution through the WTO-DSM than to keep alive a conflict in the CoE for a protracted period.
- More meaningful participation in global standard setting bodies
- Leverage AfT to address NTBs in South Asia

## CONCLUDING OBSERVATIONS

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- ❑ Given the lowering of classical import barriers such as tariffs, non-tariff measures (NTMs) are becoming an increasingly important instrument governments use to safeguard domestic societal concerns.
  - ❖ NTM replacing tariffs?
- ❑ Between January 1995 and October 2011, 10,366 regular and emergency measures had been notified to the WTO.
- ❑ According to WTO, 2010 saw the largest number of notifications in a single year so far, at 1,436.
  - ❖ Crisis response?

These issues will make the task of addressing NTBs in the region more challenging.



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**THANK YOU**  
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