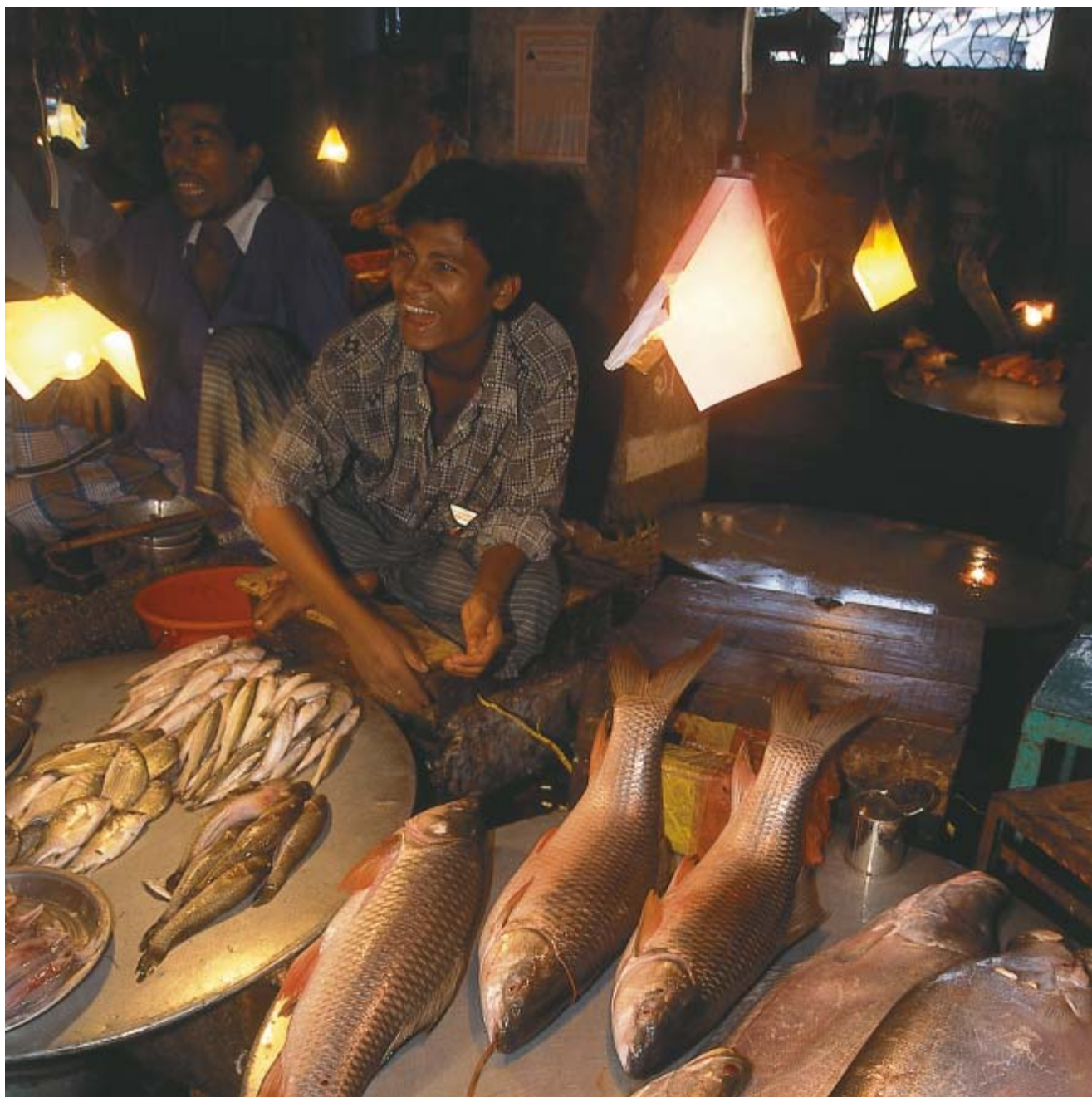


Standards as barriers to trade



Trade briefs is a Sida publication serie on trade and development issues. The briefs consist of three parts: a description of the content of the subject, why the subject is important from a development perspective and the issues raised in the debate, and the role of trade-related technical assistance and capacity building. The purpose is to increase the general understanding about issues related to trade and development. The serie includes:

1. Trade and poverty by Constantine Michalopoulos
2. TRIPS and development by Keith Maskus
3. Trade in agriculture, the WTO and developing countries by Harry de Gorter
4. The GATS and developing countries – at the service of development? by Pierre Sauvé
5. Standards as barriers to trade – and how technical assistance can help by Digby Gascoine
6. Trade, development and the environment by Scott Taylor
7. The WTO dispute settlement mechanism and developing countries by Marc L. Busch and Eric Reinhardt
8. Regional integration and developing countries by Jaime de Melo

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Standards as barriers to trade – And how technical assistance can help¹

Summary

The expansion of international trade is one of the most important avenues for economic growth and poverty reduction in developing countries. Increased export activity provides jobs and investment, and foreign exchange earnings can be used to fund the importation of capital items and services that facilitate further expansion. There are, however, many impediments to trade applied by importing countries. The most obvious of these restrictions are tariffs and quotas. Another important category is technical barriers to trade, which are measures applied to ensure that imported (and domestically produced) commodities meet certain requirements expressed in standards or technical regulations.

The significance of technical requirements as impediments to trade was recognised in the adoption of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (the SPS Agreement) and the *Agreement on Technical Barriers to Trade* (the TBT Agreement) as outcomes of the Uruguay Round negotiations, which also resulted in the establishment of the World

Trade Organisation (WTO). The disciplines applied by these Agreements can greatly assist developing countries to enhance their export opportunities, especially for agricultural, forestry and fishery products.

Technical assistance which is targeted on helping developing countries to meet the legitimate technical requirements of importing countries, and to operate their own regimes of sanitary and phytosanitary protection and technical regulation, may be very cost-effective. However a systematic and co-ordinated approach, based on a planning framework, is desirable to produce sustainable improvement in the most cost-effective way.

The SPS and TBT Agreements do not apply to countries that are not members of the WTO. Many of these countries are amongst the least developed – and therefore are most in need of technical assistance. Much of the material in this note is nonetheless applicable to the circumstances of these countries, especially as a number have applied for WTO membership or are likely to do so.

¹ The note was written by Digby Gascoine, November 2003.

Standards and other technical barriers

Sanitary and phytosanitary measures (covered by the SPS Agreement, box 1) are, broadly, technical requirements whose purpose is to protect human, animal or plant life or health against certain risks posed by pests, diseases and disease-causing organisms as well as additives, contaminants and toxins in foods or feedstuffs. These measures typically take the form of laws, regulations, requirements and procedures concerning food safety and biosecurity. Examples include limits on pesticide residues

in foods, prohibition of imports of plant products that may carry plant pests or diseases, and pre-export testing requirements for diseases in live animals.

Technical barriers to trade (as covered by the TBT Agreement, box 2) are all other technical requirements that do not fall within the scope of the SPS Agreement. They cover a very wide range of objectives such as safety of electrical appliances, compatibility of telecommunication devices, prevention of deceptive practices in trade in consumer goods, and protection of the environment.

Box 1. The SPS Agreement

Since it came into effect in 1995, the SPS Agreement has proved to be a very strong instrument for discouraging the mis-use of such measures as barriers to trade. The Agreement confirms the right of WTO Members to apply measures necessary to protect human, animal or plant life or health, provided that these measures are consistent with the provisions of the Agreement. Measures must :

- be based on scientific principles
- not be maintained without sufficient scientific evidence
- not discriminate against or between other WTO Members in an arbitrary or unjustifiable way
- be based on a relevant international standard, guideline or recommendation OR
- (unless applied provisionally) be based on an appropriate risk assessment, reflect a consistent approach to risk management and use the least trade restrictive means of achieving the appropriate level of protection.

Other provisions of the Agreement concern the adaptation of measures to the sanitary or phytosanitary circumstances in exporting and importing countries; recognition of the equivalence of different measures that achieve the same level of protection; transparency in the preparation and adoption of measures; assistance to developing countries; and dispute settlement.

Box 2. The TBT Agreement

The TBT Agreement defines *technical regulations* as documents that lay down mandatory product characteristics or their related processes or production methods. Technical regulations may include or deal with terminology, symbols, packaging, marking or labelling requirements. *Standards* are defined similarly, but are non-mandatory. *Conformity assessment procedures* are used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

The TBT Agreement says that technical regulations must –

- not discriminate against or between other WTO Members in an arbitrary or unjustifiable way
- not create unnecessary obstacles to international trade
- not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks arising if the objective is not met
- be based on relevant international standards, where they exist or are about to be completed, unless the use of such standards would be inappropriate.

Other provisions deal with matters such as the recognition of equivalence of different technical regulations, and transparency in the development and implementation of technical regulations. Conformity assessment procedures applying to products from other countries must not be discriminatory or create unnecessary obstacles to international trade. Annexed to the Agreement is a code of good practice for the preparation, adoption and application of standards.

The TBT Agreement strongly encourages the provision of technical assistance to developing countries for purposes such as the establishment of national standardising bodies and regulatory and conformity assessment bodies, and participation in relevant international bodies.

The SPS and TBT Agreements (similar in many respects but also differing in some important aspects) allow each WTO Member to determine its own attitude to the acceptance of risk and to establish SPS measures and technical regulations accordingly. Each Agreement also establishes a set of rules that effectively distinguish legitimate measures from arbitrary or unjustified ones, and makes disputes about such matters subject to the jurisdiction of the WTO's dispute settlement procedure.

Why are standards important?

Clearly there is the potential for SPS and TBT requirements to be used by a country in an arbitrary

or unjustified way which discriminates against imports that could compete with domestic products. In the regular meetings of the WTO committees on SPS measures and technical barriers to trade, many issues of specific trade concern are raised by Member countries who believe that their trade has been inappropriately restricted by other Members. Developing countries may be especially vulnerable to discrimination against their products. If the Agreements did not exist only economically powerful countries could overcome illegitimate technical barriers to trade.

The economic significance of technical barriers to trade, and

therefore of the SPS and TBT Agreements, is potentially very large. For example, studies on SPS measures have concluded:

- using data for 11 developed countries which import bananas and 19 banana exporting countries in Latin America, Africa and Asia, a 10 percent increase in the stringency of regulation of the pesticide chlorpyrifos would decrease banana imports by almost 15 percent, whereas harmonisation around the international Codex standard would allow banana exports to increase by over USD 5 billion per year;²
- using 1998 data for 9 African exporting countries and 15 European importing countries, introduction of a more stringent proposed regulation for aflatoxin in cereals, dried fruits and edible nuts in the EU would reduce the value of exports from the 9 countries to only one quarter of the value of trade to the EU that would occur if the less stringent international standard were applied.³

Similar examples could be provided in respect of TBT measures – for example, in relation to the current controversies over requirements for labelling and traceability of genetically modified foods.

Another economic dimension of SPS measures is that they are vital in assisting countries to avoid damage from incursions of exotic pests and diseases and to protect human health against hazardous additives, contaminants and toxins in foods. Recent examples of incidents that imposed very large

costs include outbreaks of foot-and-mouth disease and classical swine fever in Europe, as well as the spread of mad cow disease (bovine spongiform encephalopathy) to a number of countries. Again, parallel examples could be provided in respect of the issues that are addressed by TBT measures.

Difficulties in implementation

Many developing countries say that they have difficulty in meeting their responsibilities under the SPS and TBT Agreements, even to meet the notification and enquiry point obligations under the Agreements which involve only relatively small costs. Another area of concern for developing countries that are WTO Members is that they are expected to participate in the activities of the relevant international standard-setting organisations. The requirement under the SPS Agreement that measures not based on international norms must be based on a risk assessment is particularly onerous for many countries.

Developing countries also say, with considerable justification, that they often experience difficulty in meeting the SPS and TBT requirements of importing countries. While it is legitimate for importing countries to set high standards in a way that accords with the Agreements, the cost of meeting these standards may be relatively very high for developing countries. In some instances the requirements of importing countries may not be justifiable under the Agreements, but it may be too costly (or provocative to trading partners) for developing countries to utilise the dispute settlement procedure of the WTO.

² J. S. Wilson and T. Otsuki (2002).

³ T. Otsuki, J. S. Wilson and M. Sewadeh (2001).

However it is very unlikely that the SPS or the TBT Agreement will be amended in the near future. There is no strong body of opinion among WTO Members that either agreement has significant defects, and opening up the Agreements to re-negotiation could weaken rather than strengthen them. (However improvements in *implementation* are being made in parallel with the Doha Development Round negotiations.) Consequently the issue is how to assist developing countries to take maximum advantage from the Agreements in their present form.

What can be done to help

Much of the assistance provided by national and multilateral development assistance agencies over many years in building SPS- and TBT-related infrastructure has been fragmentary and has not been effectively integrated with national activities in the recipient countries. Much more assistance is needed, but it should be provided in a more cost-effective way, and with much better co-ordination between donors. There is a clear need for assistance to be problem-based, addressing the real capacity constraints that developing countries face.

Part of the problem is that systems of SPS measures and technical regulations are multi-dimensional and often quite complex. Such regimes need an adequate legislative base and institutional structures (often the most serious areas of deficiency in developing countries⁴), 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.

An *export market access strategy* can be developed to identify and systematically target particular SPS/TBT barriers. Priority targets can be determined on the basis of industry views on what are the highest priorities and on the basis of the views of the relevant government agencies as to which barriers are likely to be negotiable. Each high priority barrier may then be addressed by means of a progressive approach involving appropriate technical development (for example compilation of a pest risk assessment or establishing an effective treatment regime that would allow exports to occur) followed by step-by-step, government-to-government representa-

⁴ According to analysis carried out by the WTO Committee on Sanitary and Phytosanitary Measures in 2002.

tions on a bilateral basis, ultimately leading to WTO dispute settlement if necessary.

From the perspective of donors the issue is then how to support this integrated approach by injecting assistance where it is most needed in a targeted way over time. A typical situation might be where a country has domestic and perhaps regional markets for a certain product and is looking to access the more lucrative EU, US or Japanese markets. If there is the prospect of building up a profitable export trade into these markets for the product then what are the technical barriers and what needs to be done to overcome them? Donors can assist in a programmed way which complements national industry and government efforts.

A similar planning approach can be envisaged for assistance targeted at strengthening the local SPS/TBT regimes while ensuring conformity with the relevant WTO Agreements.

Implicit in this discussion is the notion that assistance for SPS- and TBT-related activities will be more cost-effective if the assistance is provided within the framework of some kind of multi-year plan that integrates the key elements of national programs and initiatives with externally funded projects. Use of a planning framework allows transparency to all interested parties, encourages commitment on the part of the recipient country authorities, and facilitates the setting of goals and milestones and a parallel reporting procedure.

Incorporating both the national and externally-funded streams should assist in reducing the displacement of national effort by technical assistance and in spelling out the key complementarities between different elements of the overall SPS regime.

For many countries the idea of adopting such an approach may be thought of as extremely ambitious. Clearly the planning methodology used must be flexible enough to accommodate the diverse circumstances of developing countries, and in some instances might be no more than rudimentary. Elements of the methodology may include SWOT analysis, scoring systems, templates and questionnaires, decision tree analysis and so forth.⁵

It should be noted that a significant number of the least developed countries that are, ipso facto, most in need of technical assistance are not yet Members of the WTO and therefore are not participants in the WTO processes under the auspices of the SPS and TBT Committees.

Some guidelines for SPS/TBT assistance

To effectively build developing countries' capacity related to SPS and TBT measures, donors should:

- tailor assistance to the host country's specific needs (taking into account both needs as expressed by the host country and the needs indicated by the application of suitable diagnostic tools) to ensure that assist-

⁵ The TBT Committee has developed and circulated to WTO Members a detailed questionnaire on technical assistance needs and priorities, to which some 53 Members have responded. As part of its Third Triennial Review the Committee is apparently considering a proposal for means to bring greater focus and coherence to TBT technical assistance by collecting and classifying information on TBT technical assistance needs, as defined by countries wanting such assistance, together with information on projects underway or completed and information on donors. The shape of this proposal should become clear, apparently, at or after the meeting of the TBT Committee that is scheduled for early November, 2003. The SPS Committee has also been collecting information from Members on their perceived needs for technical assistance.

- ance is beneficial and to avoid duplicating donor efforts;
- link assistance to development priorities and strategies so that SPS/TBT-related issues that affect, for example, agricultural products and foodstuffs are incorporated into national development plans;
 - take a comprehensive, integrated approach to SPS/TBT assistance that encompasses the relevant domestic government agencies, as well as the external setting and political will for change and reform;
 - plan for a multi-year effort, since tailoring a cost-effective program to a specific country's needs, implementing it, and ensuring its sustainability will require extended commitment;
 - foster local ownership to ensure effective implementation and monitoring of the SPS/TBT systems at every level;
 - encourage development of links between producers and buyers in target markets by providing assistance directly to producers and enlisting private sector support for such assistance;
 - consult information sources (e.g. the data collected by the SPS and TBT Committees) and co-ordinate with other donors and providers of technical assistance to learn about the results of past and ongoing assistance and to build on such efforts;
 - emphasise development of legislation and associated enforcement systems, and investment in human capacity up to and including the management level;
 - explore potential for regional co-operation to increase benefits while controlling costs; and
 - work with regulatory agencies in key markets to ensure that developing country producers understand the regulatory requirements and procedures of a particular market.

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Halving poverty by 2015 is one of the greatest challenges of our time, requiring cooperation and sustainability. The partner countries are responsible for their own development. Sida provides resources and develops knowledge and expertise, making the world a richer place.



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