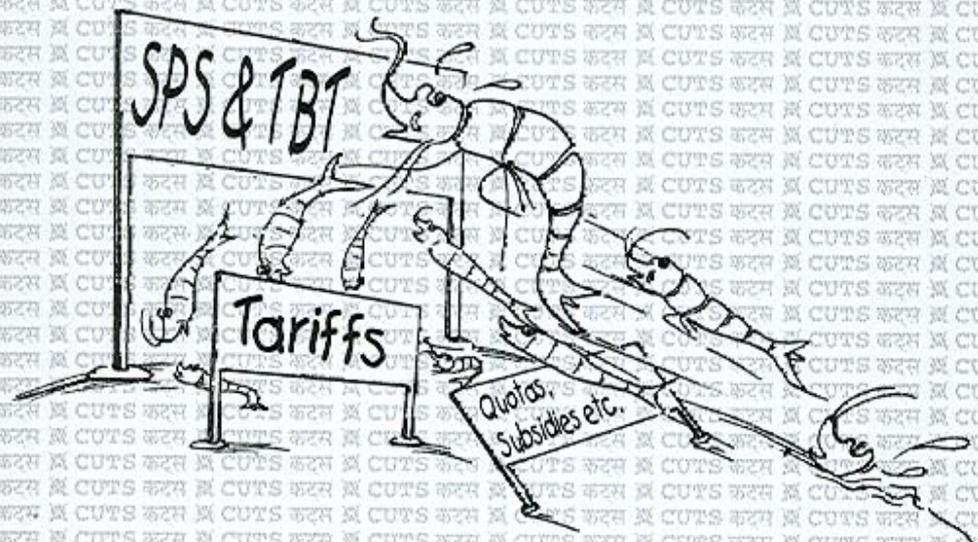


CUTS Centre for  
International Trade,  
Economics & Environment  
**Research Report**

**Market Access Implications  
of SPS and TBT:  
Bangladesh Perspective**



# **Market Access Implications of SPS and TBT: Bangladesh Perspective**

**कट्स ✕ CUTS**

## **Market Access Implications of SPS and TBT: Bangladesh Perspective**

This paper was researched and written by **Prof. Mustafizur Rahman**, Director, Centre for Policy Dialogue, Bangladesh. Comments on the first draft were received from Dr. Anura Herath and Dr. Spencer Henson, which have been suitably incorporated. The opinions expressed in the paper, and any errors of fact or interpretation or omission are the responsibility of the author and the editor, and do not reflect the agreed policy positions of the publishers or the commentators or the organisations with which they are associated.

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Published by:  
**CUTS Centre for International Trade, Economics & Environment**  
D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India  
Ph: 91.141.20 7482, Fax: 91.141.20 7486  
Email: cuts@cuts.org  
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**ISBN: 81-87222-69-7**

With the support of:  
**International Development Research Centre, Canada**  
Under the South Asian Civil Society Network on International Trade Issues (SACSNITI)  
Project

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# 0215, Suggested Contribution: Rs.100/US\$10

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## FOREWORD

As both tariffs and other traditional trade barriers are being progressively lowered, there are growing concerns about the fact that new technical non-tariff barriers are taking their place, such as sanitary and phytosanitary measures (SPS) and technical regulations and standards.

SPS measures are implemented to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants, whereas technical regulations ensure that other products are safe for consumers. It is generally accepted that countries have an inherent right to protect their national security, prevent deceptive practices and protect human, animal and plant health, life and safety. However, these measures can also be misused as protectionist devices to keep foreign competitors out. In order to do justice to both – a country's right to implement these measures and at the same time ensuring that they do not create unnecessary obstacles to international trade, two agreements (the TBT and SPS agreements) regulate their use within the WTO framework.

Nevertheless, developing countries, and more specifically LDCs, are still facing a large number of difficulties in complying with the standards that are set by developed countries. Concerns have been expressed about the way in which the SPS and the TBT agreements have been implemented to date. This paper evaluates the two Agreements from the viewpoint of developing countries and least developed countries.

The poor countries have been denied market access on quite a number of occasions when they failed to comply with a developed country's SPS or TBT requirements or both. The seriousness of this denial of market access is often not realised unless their impact on exports, income and employment is quantified.

In this paper, the author focuses on the findings of a 1998 case study into the European Commission's ban of fishery products from Bangladesh into the EU, imposed in July 1997. The ban resulted from the EC's inspections of seafood processing plants in Bangladesh. The EC's concern was caused by serious deficiencies in both the infrastructure and hygiene of processing establishments, as well as the lack of sufficient guarantees that the controls carried out by the competent authorities were efficient. The EC determined that fishery products processed in Bangladesh posed a significant risk to the health of European consumers.

The ban imposed by the EC caused serious injury to this export-oriented sector. During the ban period, Bangladesh's export of frozen shrimp to the EU was zero. Shrimp exports to the EU had come down from US\$128.9mn in 1997 to US\$48.2mn in 1998. The severity of the situation becomes even clearer when one reads it along with the important role of the fisheries sector in Bangladesh's economy. Shrimps represent about 90 percent of the value of Bangladesh's marine product exports and are a very important source of foreign exchange to the Bangladesh economy. About 1.2 million people are directly employed with an additional 11 million people indirectly employed in fisheries. Although there was some export

diversion to both the United States and Japan to make up for the fall in exports to the EU, the costs to the Bangladesh economy were nevertheless very high.

It could be argued that the health and safety of humans has no price. However, there are two sides to this. For example a World Bank study by *Wilson et al* found that the EU standards on *aflatoxin* would reduce the health risk to humans by approximately 1.4 deaths per billion a year, but would also decrease food exports from nine African countries by 64 percent or US\$670mn. One can easily visualise the adverse effects on the health and livelihoods of those people.

Non-discrimination is the basic principle underlying the WTO framework. This principle is effectuated through most-favoured-nation (MFN) and national treatment (NT) provisions in the basic WTO agreements, such as GATT. Yet there are several provisions in the WTO framework that allow Members to deviate from those principles on public interest grounds. To allow countries to protect the health and safety of humans, animals and plants alike, the SPS agreement permits countries to discriminate and violate MFN and NT principles as long as they don't do so in an unjustified and arbitrary manner. At the same time the measures have to conform to other important WTO principles: they must be 'the least trade restrictive' and 'necessary'.

On a different note relating to marine food, on a complaint by Peru, a WTO Panel recently found the EC trade description of sardines to be inconsistent with the TBT agreement. This was because the regulation was not based on the relevant international standard that would also have been effective and appropriate to fulfil the EC's legitimate objectives. In this case the objectives were market transparency, consumer protection and fair competition. The regulation was therefore more trade restrictive than necessary.

In fact, Peru relied upon a favourable opinion by Consumers Association, a UK based consumer organisation, thus calling the EC's bogey. This shows that countries have to be very careful when they adopt trade restrictive measures under the guise of consumer protection. The moral of the story is that when countries face such barriers, it would help them to contact the importing country's consumer groups to give an impartial opinion.

In implementing technical regulations and SPS measures, there is often a fine line between pursuing legitimate policy objectives in an effective and appropriate manner and misusing these measures as a means of protectionism, thus creating unnecessary obstacles to international trade.

Professor Rahman tries to identify the major difficulties faced by Bangladesh in complying with SPS measures. These difficulties originate from two fronts — domestic as well as global. On the domestic front, there are failures in the institutional, manpower and regulatory areas in addressing relevant issues, which inhibit compliance and lead to market access problems. Failures on the global front result from the weak capacity to realise the S&DT provisions and to negotiate new measures in support of LDCs.

On the one hand, LDCs have to comply with high SPS and technical standards, while at the same time the high costs of compliance are often beyond the capability of these countries. Therefore, both technical and

financial assistance from developed countries and inter-governmental organisations is needed. The special needs and circumstances of developing countries and LDCs require a sympathetic approach and consideration by the rich countries.

In general, developing countries are not against setting standards and designing regulations to safeguard health and hygiene. However, they feel that such requirements should be adequately supported by measures that can strengthen their capacity to address the relevant problems. A major issue is the fact that the position and participation of developing countries in the standard setting process is very weak. Even when measures are based on international standards, and thus given a presumption of being WTO compliant, developing countries have very little say in the preparation, adoption and implementation of those international standards.

The present paper intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.

**Jaipur**  
**September 2002**

**Pradeep S. Mehta**  
**Secretary General**

## INTRODUCTION

*The importance of trade in goods and services in the economy of the country, in terms of their contribution to GDP, employment generation, and investment promotion, has seen a material rise over the last decade. Bangladesh's foreign exchange earnings from exports of goods and services at present are four times higher than that of aid disbursed annually in recent years.*

Trade related issues are of growing concern and interest to Bangladesh in the current context. The importance of trade in goods and services in the economy of the country, in terms of their contribution to GDP, employment generation, and investment promotion, has seen a material rise over the last decade. Bangladesh's foreign exchange earnings from exports of goods and services at present are four times higher than that of aid disbursed annually in recent years. Consequently, factors impacting on the integration of Bangladesh's economy into the global economy are of crucial importance to the country. Thus, it is not surprising that Bangladesh gives the utmost importance to market access concerns originating from the various agreements negotiated during the GATT Uruguay Round and the World Trade Organisation (WTO).

There is a general consensus that, as a result of the eight rounds of negotiations under the GATT and the ongoing negotiations in the WTO, overt barriers to global trade in goods and services have been brought down to a significant extent. One of the major achievements of the GATT Uruguay Round was the inclusion of trade in agriculture on the negotiating agenda. The initiation of the process for a global Agreement on Agriculture (AoA), one of the ongoing agendas in the WTO, was considered a major achievement of the Uruguay Round. Commitments to liberalise trade, particularly trade in tropical agricultural products, are of interest to many South Asian countries where agriculture, on average, still accounts for about a-third of GDP. However, with the decline of tariff barriers, there has also been a proliferation of non-tariff barriers in the global trading system, which is often seen as detrimental to the interest of developing countries and least developed countries (LDCs).

*As a result of the eight rounds of negotiations under the GATT and the ongoing negotiations in the WTO, overt barriers to global trade in goods and services have been brought down to a significant extent. However, with the decline of tariff barriers, there has also been a proliferation of non-tariff barriers in the global trading system, which is often seen as detrimental to the interest of developing countries (DCs) and least developed countries (LDCs).*

There is wide recognition of the potentially negative consequences of non-tariff barriers (NTBs), which can undermine the interest of developing countries and LDCs in the global trading system. In view of the importance of agriculture to both their economies as well as to the export baskets of their countries, developing countries and LDCs are highly sensitive to any measures that in their perception may limit and constrain their potential capacities as trading nations. In the context of the formidable supply-side-bottlenecks that these countries have to deal with, any market access-limiting factor is likely to have a negative impact on the export capability and competitiveness of these countries. It is apprehended that many of the *potential gains* expected from the various provisions agreed in the WTO may be offset by *real risks* emanating from other Agreements negotiated in the WTO.

More concretely, and this concerns the theme of the present paper, it is perceived that the Agreements on Sanitary and Phytosanitary (SPS)

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The author would like to register his deep appreciation for the comments by an anonymous referee on an earlier draft of this paper.

measures and Technical Barriers to Trade (TBT) in the WTO may act as deterrents to the realisation of many of the opportunities *potentially* originating from the Agreement on Agriculture in particular, and other Agreements in the WTO in general. There is a growing fear that WTO rules pertaining to SPS and TBT are negatively impacting on the market access capacity of developing countries, especially LDCs such as Bangladesh. It is perceived that though these provisions were, in the first place, intended to service the need for stimulating trade amongst countries, in practice the results on the ground have often defied the original objectives, and have acted as new forms of trade barriers.

***There is a growing fear that WTO rules pertaining to SPS and TBT are negatively impacting on the market access capacity of developing countries, especially LDCs such as Bangladesh. It is perceived that though these provisions were, in the first place, intended to service the need for stimulating trade amongst countries, in practice the results on the ground have often defied the original objectives, and have acted as new forms of trade barriers.***

As is known, the Agreement on SPS measures, negotiated during the Uruguay Round, was intended to enable member countries to ensure the safety of their human, animal and plant life. At the same time the agreement aims to prevent that such measures are implemented in a manner that would constitute unjustified and arbitrary discrimination between countries where the same conditions prevail. It should be mentioned upfront that many such standards reflect genuine concerns of the importing countries as well as importers since non-compliance with such standards may indeed have serious implications for human, animal and plant life, health and hygiene.

The point of contention as far as the LDCs are concerned is that, some of the standards are more trade restrictive than necessary for the health and life protection and also that LDCs do not have the adequate resources to comply with the increasingly stringent standards that are required in the name of health and life protection. Thus, it is not surprising that LDCs complain that SPS measures often act as border protection instruments, which inhibit their market access capacity. There are concerns that the incremental benefits of liberalisation of trade under various WTO Agreements including the AoA could, in effect, be undermined by *protectionist use* of sanitary and phytosanitary measures.

The Agreement on Technical Barriers to Trade permits the formulation and implementation of regulations to, *inter alia*, protect the health of human beings, animals and plants; for national security requirements; and to prevent deceptive trade practices. The Agreement on TBT stipulates that technical regulations must not create “unnecessary obstacles to international trade”, and that the regulations must not be “more trade-restrictive than is necessary to fulfil a legitimate objective”, taking into account the “risks that non-fulfilment would create”. Contrary to the SPS agreement the TBT agreement also has a non-discrimination provision, incorporating MFN and National Treatment principles with respect to technical regulations. In a number of recent cases trade restrictions have also been introduced on environmental grounds. The regulations stipulate that SPS measures should be based on scientific evidence and information and that available scientific and technical information is a relevant element for consideration when assessing the risk of non-fulfilment with regard to technical regulations under the TBT agreement. Nevertheless, in a number of disputes over the application of SPS and TBT, the issue as to what actually amounts to adequacy of evidence or information has been the subject of intense discussion and passionate debate.

***There is a growing concern that the evolving interpretations of concepts relating to the various SPS and TBT measures serve the interest of the developed countries, to the detriment of the interest of developing countries and LDCs.***

There is a growing concern that the evolving interpretations of concepts relating to the various SPS and TBT measures serve the interest of the developed countries, to the detriment of the interest of developing countries and LDCs. This concern is not just a theoretical assumption. Many LDCs have, in the past, faced market access barriers in terms of exporting

their products to developed countries on account of applications of these provisions.

Bangladesh is an example of the market constraining impacts of SPS and TBT measures. Indeed in the recent past the country's export sector has suffered because of her inability to comply with SPS and TBT measures. From Bangladesh's perspective the issues of interest concern both changing the rules of the game as they relate to SPS and TBT, and also capacity building to ensure compliance with the negotiated provisions in the WTO. The difficulties are accentuated because of the small-scale nature of the business in Bangladesh and low technological capacities at the enterprise level.

In the above context, the objective of the present Bangladesh country study is to (a) identify major features in the SPS and TBT Agreements which are of concern to Bangladesh; (b) identify problems emanating from the provisions in the SPS and TBT which impact on market access capacity of LDCs such as Bangladesh and (c) articulate specific measures, and also amendments to current disciplines in SPS and TBT, to address the particular concerns of Bangladesh in the relevant areas.

The Bangladesh case study will essentially focus on five areas of concern - (a) present a review of agreement on SPS and TBT as negotiated during the Uruguay Round; (b) analyse the Bangladesh experience during post-Uruguay Round in the area of SPS and TBT and articulate the impact of these rules on performance of specific export-oriented sectors of the country; (c) present an assessment as to whether these provisions are being used as protectionist barriers; (d) suggest changes in the existing rules to address Bangladesh's growing concern in order to mitigate adverse impact of these rules; and (e) come up with suggestions as regards domestic, regional and global initiatives to (i) change the rules and (ii) ensure compliance.

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The study essentially draws on published sources mentioned in the bibliography from which the author has benefited both in terms of information and analysis; the author has also accessed some unpublished background materials from relevant ministries and trade bodies in Bangladesh. Debriefing of key informants was undertaken to evince necessary information on Bangladesh's concerns as regards SPS and TBT.

The present paper deals with the concerned issues in three separate sections. Section I provides a review of the SPS and TBT provisions and their significance for exports from LDCs such as Bangladesh; this section also highlights the special and differential status provided to the LDCs under the two agreements. Section II focuses on the implications of the SPS and TBT Agreements in terms of market access for Bangladesh's exports to the developed country market; this section provides a number of case studies to highlight Bangladesh's concern. Section III presents a catalogue of concerns emanating from the various provisions in the WTO Agreements on SPS and TBT from the perspective of Bangladesh and other LDCs; the discussion in this section centers on a number of propositions to address the difficulties faced by this particular group of countries in terms of market access which originate from these two agreements. The last section concludes.

## SECTION I

# A REVIEW OF THE AGREEMENTS ON SPS AND TBT

The Agreements on SPS and TBT cover two of the major negotiated areas of the last round of the GATT, the Uruguay Round. As a matter of fact, the Agreement on technical barriers to trade (Informally known as the 'Standards Code') was first negotiated during the seventh, Tokyo Round of GATT and dealt with food safety and animal and plant health issues. Subsequently, the agreement was revised during the Uruguay Round, when it was decided that SPS measures would be covered by a separate agreement. Both the SPS and TBT agreements are an integral part of the WTO, and under the 'single undertaking principle' that governs the work of the WTO, all member countries are expected to accept the underlying rationale of, and adhere to the provisions stipulated by the Agreements on the SPS and the TBT.<sup>1</sup>

### **Major Features of the Agreement on SPS**

The objective of negotiating an agreement on SPS measures was to safeguard consumer interest in the member countries, while at the same time ensuring that such measures would not create unnecessary obstacles to international trade. It puts in place a set of basic rules that would address food safety and animal and plant health issues, and would serve as a guideline for both producers and exporters. Annex A of the Agreement on SPS provides major features of the sanitary and phytosanitary regulations and stipulates that these measures are intended to protect - (a) human or animal life from food-borne risks which arise from the use of additives, contaminants, toxins or disease-causing organisms; (b) human health from animal or plant-carried diseases; and (c) animals and plants from pests and diseases. In effect, SPS focuses on setting certain standards and seeks to ensure that the food supply is "safe" in accordance with standards which each country considers to be appropriate, provided that such standards are based on scientific evidence. SPS provisions also stipulate that international standards, guidelines and recommendations should form the basis of SPS measures if and when such standards exist. The agreement, though, recognises the possibility of diversity in standard setting. Accordingly, members are expected to implement their respective measures based on internationally developed and acceptable standards and take initiatives towards harmonisation of standards. The issue of harmonisation has subsequently become a contentious issue.

Disciplines regulating the use of sanitary and phytosanitary measures are stipulated in the various articles of the SPS Agreement. For example, Article 3.4 stipulates that countries will play a proactive role in the activities of the concerned international organisations in order to promote the harmonization of SPS measures on an international basis. Article 4 of the SPS Agreement requires the signatory countries to accept the SPS measures of exporting countries as equivalent if they achieve the

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***Even though countries are allowed under the Agreement on SPS to set the level of standard that they consider appropriate, the Agreement specifically requires concerned countries to avoid levels of protection that may consequently result in unnecessary obstacles to trade or in the arbitrary and unjustifiable discrimination between members where identical or similar conditions prevail.***

same level of SPS protection. Article 4 also calls upon WTO member countries to enter, where possible, into arrangement towards mutual recognition of the equivalence of specified sanitary or phytosanitary measures. Accordingly, bilateral agreements on equivalency of relevant standards are encouraged. Annex B:5 allows interested parties in other countries to comment on draft standards of a member country when these are not based on international standards, or where they deviate from such standard or where there are no relevant international standards.

The SPS Agreement recognises international standards, guidelines and recommendations of three intergovernmental organisations.<sup>2</sup> The relevant provisions allow governments in the member countries to go for more stringent (than prevalent) regulations. Thus, member countries are entitled to impose higher than prevailing international standards if such measures are based on adequate *risk assessment*. This is applicable in case of both revision of current standards as well as when appropriate standards for particular products are absent. In such cases, members are required (a) to justify why international standards do not satisfy the level of protection that the countries would like to ensure; and (b) they will need to make the risk assessment available to other member countries in the WTO in order to lend credibility and transparency to the standard setting process. Thus, even though countries are allowed under the Agreement on SPS to set the level of standard that they consider appropriate, the Agreement specifically requires concerned countries to avoid levels of protection that may consequently result in unnecessary obstacles to trade or in the arbitrary and unjustifiable discrimination between members where identical or similar conditions prevail.

To lend transparency to the process, WTO members are required to publish their respective SPS regulations. They also must identify a national notification authority. Each member is required to inform others about an *enquiry point* in the country that will be a focal point for the purpose of SPS and be responsible for submitting notifications and full texts of SPS regulations to interested parties. Information about revisions to existing laws and revised provisions are required to be notified to the WTO at the draft stage so as to enable other countries to react to the envisaged revisions.<sup>3</sup>

### ***Major Provisions in the Agreement on TBT***

***The spirit of the Agreement, as articulated in Article 2.4 of the Agreement is that, wherever appropriate and feasible, countries should use international standards in formulating their respective technical regulations and also in developing voluntary national standards. The TBT allows countries to adopt conformity assessment procedures that do not essentially draw on internationally accepted guidelines.***

The Agreement on Technical Barriers to Trade relate to international rules that are applicable to product standards in trade in goods. The TBT concerns procedures for conformity assessment with respect to those standards. The five principles which guide TBT regulations under the negotiated mandate are - (a) non-discrimination, (b) harmonisation, (c) least trade restrictive measure, (d) equivalence and (e) transparency.

Technical regulations are implemented by governments to attain a number of objectives - (a) prevention of deceptive practices, (b) protection of human and animal health and (c) protection of environment. The spirit of the Agreement, as articulated in Article 2.4 of the Agreement is that, wherever appropriate and feasible, countries should use international standards in formulating their respective technical regulations and also in developing voluntary national standards. The Agreement on TBT urges countries to participate in various international standard setting organisations; when international guidelines are considered to be inappropriate or when appropriate guidelines do not exist, countries are encouraged to develop their own national standards. The TBT allows countries to adopt conformity

assessment procedures that do not essentially draw on internationally accepted guidelines. Conformity assessment procedures include such activities as registration, inspection, laboratory accreditation, independent audit and quality registration schemes. The Agreement on TBT is also geared to ensure conformity with technical requirements in packaging, marketing and labelling.

### **SPS v. TBT**

There are both points of convergence and departure as far as the provisions of SPS and TBT are concerned.<sup>4</sup> Both agreements are based on two policy considerations - (a) every country's inherent right to take measures to protect its human, animal or plant life and health; its national security; to ensure the quality of its exports; or to prevent deceptive trade practices; and (b) such measures should not create unnecessary obstacles to international trade or be used as protectionist measures. Both agreements require that the preparation, adoption and implementation of measures/regulations are done in a *transparent* manner, *inter alia*, by inserting advance notification requirements and calling for the creation of enquiry points.

However, these two Agreements also differ on some points: whilst under the SPS Agreement the only exception that can be made for not using a relevant international standard if there is a scientific justification for this ; under the TBT Agreement governments are not bound to use international standards if these are deemed to be inappropriate owing to, for instance, technological or geographical reasons.

### **S&D Treatment for LDCs in SPS and TBT**

Article 12 of the Agreement on TBT and Article 10 of the Agreement on SPS contain provisions for the extension of special and differential treatment to developing countries and LDCs. Some of the S&D measures under the TBT Agreement include: (a) ensuring that the technical regulations, standards and conformity assessment procedures maintained by the developed countries do not create unnecessary obstacles to market penetration by developing countries (including market expansion and export diversification); (b) developed countries should not expect that developing countries will be in a position to use international standards, because such standards may be inappropriate for the level of their technological development, environmental conditions, and resource availability situation of the small scale producers (c) developed countries should take initiative to ensure that developing countries effectively participate in international standardising bodies and international systems for conformity assessment; (d) developed countries should help the developing countries and LDCs to prepare international standards for the products which are of export interest to them; (e) they should allow developing countries and particularly the LDCs to obtain certain time-bound exceptions from obligations and (f) WTO will review the provisions from time to time to address the concerns of the LDCs.

According to Article 14 of the SPS Agreement, LDC members are allowed to delay application of the provisions of the SPS agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary and phytosanitary measures i.e. 2000.

**Article 12 of the Agreement on TBT and Article 10 of the Agreement on SPS contain provisions for the extension of special and differential treatment to developing countries and LDCs.**

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The two Agreements also contain provisions which call on the WTO Secretariat and member countries to provide technical assistance to developing and least developed countries and to assist them in putting in place the required legal and institutional frameworks for design and implementation of technical regulations and SPS measures.

It is evident from the S&D provisions in the Agreements on SPS and TBT that the negotiations took cognisance of four issues: (a) that compliance with SPS and TBT measures would entail *commitment of substantive financial resources* on the part of the developing countries and LDCs; (b) that there is a danger that these measures may potentially be used as *restrictive instruments*; (c) that these agreements leave wide space for *interpretative ambiguities* which will need to be resolved through the dispute settlement mechanism in the WTO; (d) that the global community will need to come up with *resources* to enable developing countries and LDCs to comply with the various provisions in the SPS and TBT and (e) that the *grey and emerging areas* in these agreements will need to be addressed through continuing negotiations. The S&D provisions in the SPS and TBT were designed to address these above-mentioned concerns of the developing countries and LDCs.

***As experience on the implementation of the Agreements on SPS and TBT over the last six years bears out, the S&D provisions have not been able to fully address the apprehensions of developing countries and LDCs. Many argue that in actuality SPS and TBT measures, in many instances, have acted as market access barriers to exports from these countries. In addition, owing to lack of adequate resources, developing countries and LDCs were not being able to ensure compliance with many of the SPS and TBT provisions.***

As experience on the implementation of the Agreements on SPS and TBT over the last six years bears out, the S&D provisions have not been able to fully address the apprehensions of developing countries and LDCs. Many argue that in actuality SPS and TBT measures, in many instances, have acted as market access barriers to exports from these countries. In addition, owing to lack of adequate resources, developing countries and LDCs were not being able to ensure compliance with many of the SPS and TBT provisions. As a result their export potentials have continued to remain unrealised.

The case of Bangladesh in a way epitomises both the above-mentioned concerns. As may be appreciated, problems faced particularly by the group of LDCs call for special attention and consideration. The experience of Bangladesh may serve as an example of how LDCs may end up in a situation where the opportunities and risks stemming from globalisation could be unevenly distributed as a result of differential capacities to (a) ensure compliance and (b) review and revise the relevant regulations by taking into cognisance the emerging difficulties.

## SECTION II

# IMPLICATIONS OF SPS AND TBT AGREEMENTS FOR MARKET ACCESS OF BANGLADESH'S EXPORTS

### *Importance of Market Access Issues for Bangladesh*

Bangladesh was one of the signatories to the concluding declaration of the Uruguay Round of GATT and a founding member of the WTO. During the 1980s and early 1990s, as a result of the economic reforms under the structural adjustment and other reform programmes, Bangladesh's economy became increasingly integrated into the global economy (Annex Table-1). The degree of openness of the Bangladesh economy increased from 0.24 to 0.35 between mid-1980s and mid 1990s.<sup>5</sup> Bangladesh gradually became more of a *trade-dependent* country rather than an *aid-dependent* country.

*During the 1980s and early 1990s, as a result of the economic reforms under the structural adjustment and other reform programmes, Bangladesh's economy became increasingly integrated into the global economy. The degree of openness of the Bangladesh economy increased from 0.24 to 0.35 between mid-1980s and mid 1990s.<sup>5</sup> Bangladesh gradually became more of a trade-dependent country rather than an aid-dependent country.*

In the early 1990s Bangladesh's aid and export earnings from goods and services were of equal measure. At present Bangladesh's annual export is about four times the amount of aid annually disbursed. About a-third of the incremental investment in the country goes to the export-oriented sector, and a substantial part of the labour force employed by the private sector is engaged in export-oriented activities. The above stylised facts are meant to emphasise that at present trade and market access issues are no less-important for the economic development of Bangladesh than the aid she receives and compared to any point of time in the country's history, issues which impact on Bangladesh's trade performance are now of more critical importance to Bangladesh's economy.

### *Bangladesh Concerns in SPS and TBT*

As an LDC, Bangladesh lacks in several areas required of WTO members if they are to benefit from potential opportunities created by the Agreements on SPS and TBT. During the Uruguay Round, Bangladesh was not able to participate effectively when the rules were being negotiated because of a lack of awareness about the relevant issues and their implications. This is true for many countries due to several reasons like – lack of adequate prior notice to ensure participation, lack of representation from LDCs in international fora where the relevant issues are discussed, government delegations often do not include professional who could forcefully argue the country's case in negotiating bodies, the absence of adequate preparatory work or participatory discussion within the country prior to participation at the negotiations as well as the fact that participants are often reluctant in opposing or even reacting to proposals of developed countries because of lack of adequate knowledge on the subjects.

As may be expected, Bangladesh lacks adequate human resource capacities to deal with the relevant SPS-TBT issues in the appropriate global fora. There is a lack of trained manpower at all levels and the

*The ban on imports of shrimp from Bangladesh by the EU, imposed in 1997, brings to the fore, in a very revealing fashion, a number of contentious issues which inform the approach of the LDCs to the various provisions on SPS and TBT negotiated during the Uruguay Round.*

*While putting up the case for reducing the negative impact of restrictive SPS and TBT measures countries such as Bangladesh should also demonstrate a vision and chalk up long term programmes in order to improve the production base and ensure the required quality of their exportables.*

*On face of it, SPS measures provide WTO member countries an opportunity to safeguard their interest in crucial areas of health and hygiene. However, the spirit of SPS may, in effect, be undermined by protectionist use of sanitary and phytosanitary measures.*

degree of awareness about related issues and concerns is also miserably low. In the above context, training programmes to address the local concerns and conditions should receive high priority in the policies of the government. Bangladesh's weak implementation and monitoring capacity means that it is also difficult to ensure compliance with SPS-TBT measures even when specific compliance demands are notified to firms and enterprises.

As a result, when faced with market access difficulties originating from SPS-TBT measures, Bangladesh has formidable difficulties in addressing the attendant concerns, and often unable to take adequate corrective measures. Such vacuum in terms of capacity is pervasive not only at the level of governments but at the level of firms as well. Firms do not have the required technical expertise to ensure compliance; and at the firm level awareness about SPS-TBT related demands continues to remain alarmingly low.

The ban on imports of shrimp from Bangladesh by the EU, imposed in 1997, brings to the fore, in a very revealing fashion, a number of contentious issues which inform the approach of the LDCs to the various provisions on SPS and TBT negotiated during the Uruguay Round. The ban and its impact highlight a range of issues of critical importance to LDCs. These include: (a) the issue of market access; (b) trade related domestic capacity building in LDCs; (c) effectualisation of the special and differential status for LDCs in the WTO; (d) strengthening the nexus between trade and aid; and (e) enhancing technical assistance at the firm and policy implementation levels.

There is also a need to ensure improvement of domestic capacity in information technology, which is very relevant from the perspective of getting hold of the required information from overseas importers, creating a central depository in the country and then disseminating the information amongst the producers. These are aspects which Bangladesh and other LDCs have repeatedly raised in various global fora, and which, according to the LDCs, must inform the discourse in the run up to any future round of the WTO.

However, it should be borne in mind that LDCs will need to do their own homework as well. Both the private sector and the government should be interested to identify avenues to raise their capacities for improving standards and qualities. Experience of some of the newly industrialised countries (NICs), our eastern neighbours, bears out the importance and necessity of undertaking concrete initiatives to control and improve quality. Otherwise, there is a danger that meanwhile there will be export diversion and some of the market share will be lost. Thus, while putting up the case for reducing the negative impact of restrictive SPS and TBT measures countries such as Bangladesh should also demonstrate a vision and chalk up long term programmes in order to improve the production base and ensure the required quality of their exportables.

As already mentioned, the spirit of the SPS Agreement is to ensure the protection of human, animal and plant life/health *without creating unnecessary obstacles to international trade and without arbitrary and unjustified discrimination between members where there are similar circumstances*. On face of it, SPS measures provide WTO member countries an opportunity to safeguard their interest in crucial areas of health and hygiene. However, the spirit of SPS may, in effect, be undermined by *protectionist use* of sanitary and phytosanitary measures.

*Shrimp is one of the major exportables of Bangladesh. The Share of shrimp in Bangladesh's total export averaged more than 6 per cent in the 1990s. In the year 2000 shrimp exports amounted to US\$ 322.4 million. Their importance is highlighted by the fact that they constitute more than 70% of the export of primary products from Bangladesh.*

Such protections may not necessarily be aimed at safeguarding only the interest of domestic industries, but also the interest of favoured trading partners, and developed country entrepreneurs investing abroad. More specifically, it is feared that if special safeguard clauses are not brought into play, including implementation of transfer of technology provisions in the SPS Agreements, access of the LDCs to developed country markets may be subjected to uncertainty and, thus, be seriously constrained. As the Bangladesh case bears out, such uncertainties may lead to volatility in key export sectors of LDCs and consequently, undermine their export potentials and developmental prospects. The case of the EU ban on imports of shrimp from Bangladesh in 1997, imposed on the ground of health safety and hygiene and non-compliance with *Hazard Analysis Critical Control Point* (HACCP) regulations is a case in point which encapsulates many of the concerns articulated in the above sections.

### ***SPS, Bangladesh Shrimp Sector and Market Access: A Case Study***

#### *Importance of Shrimp Sector in Bangladesh's Export Basket*

Shrimp is one of the major exportables of Bangladesh. The Share of shrimp in Bangladesh's total export averaged more than 6 per cent in the 1990s. In the year 2000 shrimp exports amounted to \$322.4 million. Their importance is highlighted by the fact that they constitute more than 70% of the export of primary products from Bangladesh. Their share in the year 2000 was higher than the combined share of Bangladesh's exports of raw jute and jute goods (5.8% of total exports); exports of shrimp accounted for about one-fourth of the non-ready made garments exports from Bangladesh.

About a million people are engaged in upstream and downstream activities related to the shrimp industry in the country - in harvesting, culture, processing and exporting. A majority of these workers are women. The production of shrimp by aquaculture method is a 100% export-oriented activity in Bangladesh, taking place in 9000 farms and covering an area of about 130 thousand hectares (12.7% of global area under shrimp culture) and producing an average output of 30 thousand tons annually (5% of the global production).

*The principal export market of Bangladesh's shrimp is the European Union (EU), which accounted for 38.7% of the total market in 2000; share of the USA was 38.3%, whilst Japan accounted for another 11.2% of Bangladesh's global export of shrimp.*

The principal export market of Bangladesh's shrimp is the European Union (EU), which accounted for 38.7% of the total market in 2000; share of the USA was 38.3%, whilst Japan accounted for another 11.2% of Bangladesh's global export of shrimp (Annex Table-2). Evidently, for Bangladesh, the importance of the EU market for this particular export sector is indeed very high. Any disruption or dislocation in the export of shrimp is bound to have widespread negative implications for the export-oriented sector of the country, and consequently, a negative multiplier impact for the national economy.

#### *Ban on Imports of Bangladesh Shrimp by the EU*

In July 1997 the European Commission imposed a ban on imports of shrimp products from Bangladesh into the EU member countries on the grounds that they did not meet the stringent provisions of the EC's HACCP regulations. It is to be noted here that Bangladesh is a member of the Codex Alimentarius Commission (CAC)<sup>6</sup>, which is entrusted with the implementation of the FAO/WHO food standard programme. The Codex forms the basis of many of the SPS/TBT provisions. The recommended international code of practices of the Codex also incorporates HACCP as a model for food safety assurance system.<sup>7</sup>

The EU ban originated from (a) *concerns* as regards standards in areas related to health safeguards, quality control, infrastructure and hygiene in the processing units, and (b) *lack of trust* in the efficiency of the controlling measures carried out by designated authorities in Bangladesh, in this particular case, the *Department of Fisheries* (DoF). Thus, the responsibility for the ban was put on both firms and the Government of Bangladesh (GOB). The ban put the country's shrimp export industry under severe strain, and led to serious market disruptions from which the country is still trying to recover.

#### *Reasons for Imposition of the Ban*

***Like other LDCs, Bangladeshi firms lack the required funds to invest in expensive mechanical equipment and fishing boats, ensure quality control measures and hire adequately trained staff. The GOB's governance capacity to design, implement and monitor quality and safety compliance is also weak.***

The ban was imposed following an EU inspection of Bangladesh's seafood processing plants in July 1997. The visiting inspection team raised questions with regard to compliance with HACCP regulations in the processing plants in Bangladesh. The team also expressed its doubt with regard to the reliability and efficiency of the controlling function of the GOB inspectors. The EC determined that "consuming fishery products processed in Bangladesh posed a significant risk to public health in EU member countries".

As mentioned earlier, as a food product, shrimp processed for global markets has to comply with the relevant SPS measures and international standards specified by *Codex Alimentarius Commission* provisions and has to meet buyer specifications as well as regulatory requirements of the importing country. Unfortunately, as is the case with many other LDCs, Bangladesh has been facing difficulty in meeting with the required safety standards and quality requirements.

In Bangladesh problems with quality compliance arise at (a) the *pre-processing phase*, at the stage of handling of raw shrimp (harvesting, sorting by size and colour, removal of heads and peeling which are often carried out under conditions and facilities that are unsuitable from hygiene perspective), (b) at the *processing phase* (absence of high quality water and ice, irregular electricity supply, poor infrastructure and transportation facility) and (c) during the *post-processing phase* when the processed shrimp is packaged for marketing and export.

***The study showed that during the August-December period when the ban was effective, Bangladesh's export of frozen shrimp to the EU was zero. The study carried out simulation exercises based on with and without ban scenarios and arrived at an estimate of \$ 65.1 million as the cost of the EU ban on Bangladesh.***

Like other LDCs, Bangladeshi firms lack the required funds to invest in expensive mechanical equipment and fishing boats, ensure quality control measures and hire adequately trained staff. Such problems seriously constrain the ability of Bangladeshi firms to pursue modern sanitary practices. The GOB's governance capacity to design, implement and monitor quality and safety compliance is also weak. Thus, whilst the EU concern about health and hygiene and quality and safety compliance by Bangladeshi plants was reasonably justified, and in principle, conformed with the SPS provisions of the WTO, the underlying causes of the country's lack of capacity to address the SPS issues and EU concerns need to be kept in perspective.<sup>8</sup>

#### *The Impact of the Ban*

The ban imposed by the EU remained effective for five months, between August and December 1997 and caused serious injury to this export-oriented sector. *Cato and Lima dos Santos* (1998) made an in-depth study of the negative impact of the EU ban on the export of frozen shrimp from Bangladesh. The study showed that during the August-December period when the ban was effective, Bangladesh's export of frozen shrimp to the EU was *zero*. The study carried out simulation exercises based on *with* and *without ban* scenarios and arrived at an estimate of \$65.1 million

as the cost of the EU ban on Bangladesh. This is shown in Table-1. As a matter of fact, some of the exporters did indeed succeed in diverting a part of their intended shipment to the US and Japanese markets and, thereby, cut down the losses.

*At a time when imports of Bangladeshi shrimp were suffering a ban in the EU, the same shrimp was entering the markets of Japan and the USA. This raises the issue of downward harmonisation of standards that many LDCs are calling for.*

The case study raises several issues in terms of the SPS and its implementation on the ground. Presumably, the provision of the Agreement to the effect that countries are allowed to maintain higher standards than international relevant standards had worked against Bangladesh. One manifestation of this, as was pointed out earlier, is the requirement to comply with the more stringent HACCP in the EU. Whilst, the Japanese and US markets are no less quality conscious, evidently in terms of the standards for imports of food items are required to comply with there are important departures. Consequently, at a time when imports of Bangladeshi shrimp were suffering a ban in the EU, the same shrimp was entering the markets of Japan and the USA. This raises the issue of *downward harmonisation* of standards that many LDCs are calling for.<sup>9</sup> However, the fact remains that in spite of some diversion of Bangladeshi shrimp to other markets, Bangladesh suffered an estimated net loss to the tune of about \$14.7 million (Table-1).<sup>10</sup> These are estimates for short-term losses only. The medium to long-term losses stemming from the loss of the sector's momentum, market diversions, erosion in price offered to exporters was, in all probability, much higher.

*Cato and Lima dos Santos estimated that the total cost of upgrading facilities and equipment, and training of staff and workers to achieve acceptable sanitary and technical standards was about \$18.0 million . The annual cost of maintaining the HACCP compliance programme was estimated to be \$2.4 million.*

Subsequently, the GOB and the shrimp entrepreneurs undertook a number of steps to address the problem. The firms made substantial investments to ensure HACCP compliance by their respective plants. Special credit programmes were designed, and the support of a number of global organisations was sought. *Cato and Lima dos Santos* estimated that the total cost of upgrading facilities and equipment, and training of staff and workers to achieve acceptable sanitary and technical standards was about \$18.0 million . The annual cost of maintaining the HACCP compliance programme was estimated to be \$2.4 million (based on information in Table-2 and Table-3). Initiatives included: (i) processing upgradation to match HACCP requirements, (ii) implementation of quality control measures, (iii) ensuring that HACCP compliance is monitored on a regular basis, and (iv) training of GOB staff in the Department of Fisheries and employees at the firm level in terms of HACCP compliance. Support from the FAO was also sought on this issue. The DOF estimated that an investment programme of \$14.9 million was required to fully ensure HACCP conformity within GOB institutions. The GOB expressed its readiness to provide about \$5.0 million with the condition that matching grants were available.

**TABLE 1: ESTIMATES OF THE NET EFFECT ON THE BANGLADESH FROZEN SHRIMP EXPORTING INDUSTRY AND THE MAJOR IMPORTING MARKETS DUE TO THE EUROPEAN UNION BAN ON BANGLADESH SEAFOOD EXPORTS IN MID-1997**

Importing Region	Without Ban	With Ban	Net Effect*
United States	73.5	102.2	28.7
European Union	65.1	0	-65.1
Japan	22.7	26.1	3.4
All Others	7.5	25.8	18.3
Total (to Bangladesh)	168.8	154.1	-14.7

*Note:* \* From August to December 1997. Values are in millions of dollars (U.S.).  
*Source:* Cato and Lima dos Santos (1998).

<b>TABLE 2: GOB INVESTMENT FOR UPGRADATION OF SEAFOOD INSPECTION FACILITIES</b>			
(thousand USD)			
Items	Cost of Upgradation of Government Facilities		Expected Annual Expenditure for HACCP Monitoring Program
	Apr. 1996 - Dec. 1997 (Actual)	1998 (Projected)	Annual Projected Expenditure during Subsequent Period
New Equipments	104.6	34.3	11.5
New Laboratories	86.1	11.4	9.1
Employees			
New	8.0	97.3	178.2
Training			
New employees	0	3.4	6.9
Existing	1.8	2.3	6.9
Quality Inputs	1.0	32.0	17.1
<b>Total</b>	<b>201.5</b>	<b>180.7</b>	<b>225.1</b>

*Source: Cato and Lima dos Santos (1998).*

Following the steps undertaken by both firms and the GOB, the EU started lifting the ban from January 1998 in a phased manner. When, in January 1998 some of the Bangladeshi plants were allowed to export to the EU, exports began to pick up. Shrimp exports to the EU had earlier come down from \$128.9 million in 1997 to \$48.2 million in 1998. In 1999 exports had gone up to \$89.3 million and in 2000 to \$124.9 million. Thus, Bangladesh's shrimp industry was able to address the emergency situation consequent upon the ban, and did recover a large part of the lost ground.

However, as export trend suggests, the earlier momentum was somewhat lost and Bangladesh's export of shrimp to the EU is still to regain the pre-crisis level of 1997 (Table-4). The risk of similar punitive measures continues to haunt Bangladesh with warning signals being periodically sent from EU in terms of non-compliance with HACCP requirements.

<b>TABLE 3: COST OF ENSURING HACCP CONFORMITY IN SHRIMP PROCESSING PLANTS OF BANGLADESH</b>				
(thousand USD)				
Cost Category	Cost to Upgrade Plant to Adequate Technical Sanitary Standards			
	Cost to Date	Additional Cost Anticipated	Total	Expected Annual Cost to Maintain HACCP Plan
Technical Advice	3.6	0.2	3.9	0.3
Employee Training	1.8	0.2	2.0	0.3
Sanitation Audits	6.3	0.8	7.0	0.6
Plant Repair/Modifications	165.9	27.0	192.9	22.2
Added Equipment Cleaning	25.5	3.5	29.0	2.2
Rejected Product	2.5	0.3	36.3	7.3
Lab Installation	30.9	5.4	3.3	2.0
All Other	3.1	0.2	277.2	0
<b>Total</b>	<b>239.6</b>	<b>37.6</b>	<b>277.3</b>	<b>34.9</b>

*Source: Cato and Lima dos Santos (1998).*

<b>TABLE 4: DYNAMICS OF EXPORTS OF SHRIMP FROM BANGLADESH</b>						
(value in million US\$)						
	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Shrimp Export from Bangladesh	260.71	270.51	279.22	260.41	242.23	322.43
Export to EU	108.11	116.37	128.98	48.16	89.26	124.86
Export to US	79.31	74.88	88.73	142.51	95.27	123.56
Export to Japan	56.01	68.27	50.98	36.54	32.16	35.94

*Source:* Export Promotion Bureau, Bangladesh.

It is perhaps fair to point out here that once the SPS-HACCP concerns were successfully met, shrimp exports to the EU started to pick up. During field visits to shrimp processing zones<sup>11</sup> exporters were found to express relief at the successful resolution of the conflict. They were indeed in three minds- unhappy as they were caught unaware<sup>12</sup>, relieved as they were able to tackle the situation with assistance from the government and uncertain as to how to address the increasingly demanding SPS/TBT related market standards in future.

*Once the ban was imposed, importers from the USA and Japan initially took hold of the opportunity and increased their import of shrimp from Bangladesh. However, once the news about the ban became widely known, the governments of both the USA and Japan threatened sanctions against imports of shrimp from Bangladesh on hygiene grounds.*

Indeed, as Table-4 shows, Bangladesh's global exports of shrimp, after suffering a drop from \$279.2 million in 1997 to \$260.4 million in 1998<sup>13</sup> and \$242.2 million in 1999 again rose to the level of \$322.4 million in 1999-00. As the table shows, exports to EU, after coming down from \$128.9 million in 1997 to \$48.2 million in 1998, started to recover in the subsequent years. As the figures in Table-4 shows, exports to EU went up to \$89.3 million in 1999 and reached \$124.9 million in 2000, almost the same levels as in 1997.

Interestingly, exports to the USA and Japan also started to fall after 1997. As a matter of fact, once the ban was imposed, importers from the USA and Japan initially took hold of the opportunity and increased their import of shrimp from Bangladesh. However, once the news about the ban became widely known, the governments of both the USA and Japan threatened sanctions against imports of shrimp from Bangladesh on hygiene grounds. Thus, although there was some increase in exports to these two markets during the period immediately after the sanction, later on imports from Bangladesh fell substantially in both these markets.

*The Bangladesh case study indicates that the approach of LDCs as regards SPS/TBT should indeed be two pronged - being vigilant against unfair application of stringent measures, and at the same time, building the required capacities to ensure compliance.*

Table-4 shows, exports to the USA rose from \$88.7 million in 1997 to \$142.5 million in 1998 from where it came down to \$95.3 million in 1999. Similarly in Japan, exports came down from \$36.5 million in 1998 to \$32.2 million in 1999. However, what is of interest to note here is that once compliance was ensured, exports picked up both in the EU and the USA. As Table-4 shows, in 2000, exports of shrimp in the EU rose to \$124.9 million from \$89.3 million in 1999, and in the US market exports rose to \$123.6 million from \$95.3 million attained in 1999. Thus, when Bangladesh was able to supply the accepted quality of shrimp her comparative advantage ensured continuing market access.

The Bangladesh case study indicates that the approach of LDCs as regards SPS/TBT should indeed be two pronged - being vigilant against unfair application of stringent measures, and at the same time, building the required capacities to ensure compliance. As the Bangladesh experience bears out, once compliance was ensured, exports began to recover and exports from incremental earnings were indeed substantially

higher compared to envisaged incremental cost of \$14.9 million mentioned earlier. As the estimates presented above indicate, the cost of upgradation of the firms was about \$277.3 thousand with expected annual costs being another \$35.0 thousand dollar per firm. It appears that such expenditures are well justified compared to the benefits from enhanced exports and the cost incurred from market uncertainties.

It is however difficult to estimate whether quality assurance had a positive impact on the price of shrimp. During the pre-ban period, the average unit price of shrimp ranged between \$13.0-\$14.0/kg. As Table-5 indicates, the average price in 1998 was, in general, of the same order as during the pre-ban period. Global prices suffered downward pressure in the subsequent two years, 1999 and 2000, mainly due to a supply glut in the global market. The average price of shrimp depends on many factors, including the global supply-demand situation. However, as may be inferred, even supply at going prices would require compliance with some minimum standards, as is highlighted by the Bangladesh case study.

<b>TABLE 5: TOTAL EXPORT (VALUE AND VOLUME) AND AVERAGE UNIT PRICE OF FROZEN SHRIMP</b>				
<b>Year</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Total Export (million \$)	260.41	242.23	322.43	349.75
Total Volume (million kg)	18.67	20.13	28.51	29.71
Per Kg. Average Price in \$	13.95	12.03	11.31	11.77
<i>Source: Computed from EPB.</i>				

### **The Shrimp-Turtle Case**

*Although the case was decided in favour of the developing countries, mainly on technical and procedural grounds, a closer scrutiny of the decision of the panel leaves little doubt that the global trading system is prone to accept the merit of cases that impose sanctions on the ground of environment-related concerns and that, in the near future, the incidence of threats of such sanctions may well be increasing.*

Yet another issue which may be of interest to note here is the shrimp-turtle debate, which also concerned Bangladesh's interest. The issue was related to export of shrimp to the US. In 1997 the US government threatened to ban imports of shrimp from countries, which do not use turtle-excluder devices (TED) in open-water catch of shrimps. This was, ostensibly, to protect the sea-turtle population, which was facing extinction and was declared an 'endangered species'. Bangladesh was one of the countries facing the threat of sanctions.<sup>14</sup> Countries that faced sanctions considered this threat to be a TBT that was being applied on environmental grounds. In the end, the dispute ended up in the dispute settlement body (DSB) of the WTO. At first the DSB upheld the sanction. However, later on the WTO Appellate Body decided against the US. The AB's arguments are presented in Box 1.

Although the case was decided in favour of the developing countries, mainly on technical and procedural grounds, a closer scrutiny of the decision of the panel leaves little doubt that the global trading system is prone to accept the merit of cases that impose sanctions on the ground of environment-related concerns and that, in the near future, the incidence of threats of such sanctions may well be increasing. It should be noted that sea turtles have been declared an 'endangered species' and there is a global initiative to save the species. Thus, the logic of imposing the mandatory use of turtle-excluder devices can hardly be denied. However, other issues of importance are: (a) the issue of prior notification and awareness building about possible impact at producers level, (here at small-scale disorganised/informal producers/farmers level) and (b) capacity

**BOX 1: THE SHRIMP-TURTLE CASE**  
*(Decision of the Appellate Board)*

- ▶ The US requirement that all exporting members adopt essentially the same policy as that applied in the US had an unjustifiable “coercive effect” on policy decisions made by foreign governments.
- ▶ The US did not assure that its policies were appropriate for the specific local and regional “conditions prevailing” in other countries.
- ▶ The US made far greater efforts to transfer the required TED technology to countries in the Caribbean/Western Atlantic region “than to other exporting countries, including the appellants”.
- ▶ The application of the US measure was “arbitrary” in that the certification process is not “transparent” or “predictable”, and does not provide any “formal opportunity for an applicant country to be heard or to respond to any arguments that may be made against it.”

building at producer- level to ensure compliance. Consequently, LDCs will need to enhance their domestic capacities to comply with TBTs, which may appear in the guise of environmental and other concerns.

The abovementioned shrimp case study reinforces the earlier argument that in many instances, genuine concerns about health, hygiene and environmental sustainability may act as market access barriers in absence of adequate capacities in LDCs such as Bangladesh.<sup>15</sup>

***Factors Inhibiting Bangladesh’s Compliance Capacity***

***In Bangladesh, as in most of the LDCs, the infrastructure that deals with sanitary, hygiene and standard related issues (including environmental standards) is extremely weak. This weakness entails both the absence of adequate human resources as well as the technical capacity to address the growing demands of an increasingly stringent global demand in the area of standardisation.***

In Bangladesh, as in most of the LDCs, the infrastructure that deals with sanitary, hygiene and standard related issues (including environmental standards) is extremely weak. This weakness entails both the absence of adequate human resources as well as the technical capacity to address the growing demands of an increasingly stringent global demand in the area of standardisation.

The basic framework legislation in Bangladesh for the purpose of food safety is the *Pure Food Ordinance 1959* and the *Pure Food Rules*.<sup>16</sup> The Pure Food Ordinance of 1959 was subsequently revised as Food Safety Ordinance 1994 and was adopted by the Parliament. The related activities are controlled at three levels - (a) Department of Public Health and Extension under the Ministry of Health; (b) City Corporations under the Ministry of Local Government and Rural Development and (c) Bangladesh Standard and Testing Institutions (BSTI) under the Ministry of Industries.

The DPHE with its sanitary inspectors, medical officers and health inspectors are entrusted with (a) implementation of the food related regulations and prevention of adulteration, (b) dissemination of safety messages and (c) inspection of compliance. The BSTI sets safety standards and monitors compliance by food industries and food related establishments at both wholesale and retail levels. The BSTI also serves as the Codex contact point in Bangladesh and executes the mandatory Certification Scheme as per the Codex guideline under the overall supervision of the Ministry of Industries. Quality control and the inspection of foodgrains and foodstuff, both domestically produced and imported from abroad, are carried out by the Directorate of Inspection, Development and Technical Services.

**Major difficulties which Bangladesh is facing in terms of ensuring compliance with SPS and TBT regulations are three-fold - firstly, inadequacy of the infrastructure; secondly, inadequacy of human resources; and thirdly, inadequacy of investment in health and hygiene related R&D.**

**The difficulties faced by Bangladesh concerning the SPS and TBT agreements originate in two areas: (a) failures in the domestic front which include failures in institutional, manpower, regulatory areas in addressing relevant issues which inhibit compliance and lead to market access problems and (b) failures in the global front which is a result of a weak capacity in realising the S&D provisions and in negotiating new measures in support of the LDCs.**

**The everything-but-arms (EBA) proposal of the EU may potentially create huge opportunities for LDCs, especially in exports of agricultural products, provided due attention is given to the twin issues of productivity and quality. However, a prime concern here is the lack of capacity in LDCs to ensure compliance with the stringent hygiene and health control standards in the EU.**

In spite of the regulatory framework, institutional structure and infrastructure which Bangladesh has put in place over the past years, there are major weaknesses in each of these three areas. Major difficulties which Bangladesh is facing in terms of ensuring compliance with SPS and TBT regulations are three-fold - *firstly*, inadequacy of the infrastructure; there are only a few laboratories for testing the quality of food and carrying out chemical and biological tests and in many instances these are not capable of carrying out the required tests to ensure compliance with the stringent quality control requirements under the SPS; *secondly*, inadequacy of human resources; there is a severe dearth of trained manpower, both at the level of scientists and at the field level; consequently, the capacity to design the required control points and to enforce the regulations is weak; and *thirdly*, inadequacy of investment in health and hygiene related R&D; this undermines and severely constrains Bangladesh's capacity to deal with the complex and highly technical issues required for both compliance assurance and formulation of appropriate rules and regulations.

Admittedly, in the above context, the difficulties faced by Bangladesh concerning the SPS and TBT agreements originate in two areas: (a) *failures in the domestic front* which include failures in institutional, manpower, regulatory areas in addressing relevant issues which inhibit compliance and lead to market access problems and (b) *failures in the global front* which is a result of a weak capacity in realising the S&D provisions and in negotiating new measures in support of the LDCs.

It needs to be appreciated that if LDCs are capable of complying with SPS-TBT measures, their market access opportunities will enhance significantly. A case in point is the *everything-but-arms* (EBA) proposal of the EU. This initiative, announced in October 2000, will allow zero-tariff, quota-free market access to all products but arms from all LDCs (except three items for a transitional period). This preferential market access scheme may potentially create huge opportunities for LDCs, especially in exports of agricultural products, provided due attention is given to the twin issues of productivity and quality.<sup>17</sup> Since tariffs on agro-products are still relatively high in the EU, zero-tariff access promises substantial preferential margins for exporters of agro-primary and agro-processed exports in LDCs compared to their competitors from developed countries and developing countries. However, a prime concern here is the lack of capacity in LDCs to ensure compliance with the stringent hygiene and health control standards in the EU. If LDCs are able to ensure compliance, the potential dividends are huge; if not, the potential export opportunities will remain unrealised, and not only that, even current exports may be discontinued.<sup>18</sup>

The above discussion once again reinforces the need for domestic initiatives to be complemented by global initiatives towards trade related capacity building in the LDCs in order for the LDCs to attain the capacity in translating potential market opportunities into real gains.

**SECTION III**

**MEASURES FOR ADDRESSING  
ATTENDANT CONCERNS**

The Bangladesh case, to a great extent, epitomises many of the difficulties with which LDCs, and many developing countries, are confronted within the area of ensuring compliance with the provisions of SPS and TBT Agreements in the WTO. These difficulties, as was revealed, relate to three main areas of concern - (a) putting in place trade related standards; (b) domestic capacity to design appropriate standards, enforce implementation and monitor compliance; and (c) global support for implementation of the trade related standards. The Bangladesh case provides important insights as regards policy initiatives required for safeguarding the interests of LDCs. In order for all WTO members to benefit equally from the Agreement on SPS, and to ensure that such measures do not end up as market access barriers, and in order to assist LDCs build the capacities necessary to guarantee compliance, it is important to undertake a concerted effort, on a global scale, to address the attendant issues.

***Major Areas of Concern***

As the Bangladesh case shows, and experience of many other LDCs bears out, the concerns in complying with SPS and TBT measures are several and have been well documented. These include, *inter alia* - (i) a lack of proper knowledge among entrepreneurs and government officials about SPS and TBT related issues; (ii) lack of awareness about SPS/TBT requirement in the agriculture, specially food sector of the developing countries and LDCs; (iii) poor access to information on SPS/TBT requirements (laws, notifications, standards); (iv) lack of trained scientific expertise to deal with standard setting and compliance issues; (v) lack of compatibility of SPS requirements with standards that regulate domestic production; (vi) lack of harmonisation of relevant regulations across countries or regions, in the area of procedures, mechanisms and standards; (vii) high cost in ensuring compliance with the stringent quality requirement in the developed country market; (viii) inability of small and medium scale exporting firms to comply with SPS related requirements; (ix) lack of capacity to examine compliance with various SPS and TBT requirements when goods are imported; (x) lack of expertise to deal with disputes in the dispute settlement body (DSB) of the WTO; (xi) absence of any global pool of experts to draw upon in deals with disputed matters; (xii) lack of global commitment to take up action in support of LDCs under the *integrated framework initiative* to enhance trade related capacity of the LDCs. For South Asian countries, the attendant difficulties have also been compounded and accentuated in the absence of any regional initiative to address issues of common concern relating to the Agreement on SPS and TBT.

***In order for all WTO members to benefit equally from the Agreement on SPS, and to ensure that such measures do not end up as market access barriers, and in order to assist LDCs build the capacities necessary to guarantee compliance, it is important to undertake a concerted effort, on a global scale, to address the attendant issues.***

Thus, the problems that inhibit market access of LDCs such as Bangladesh as a result of SPS and TBT measures may be grouped in four broad categories: (a) domestic, (b) global systemic, (c) global-national interface and (d) access to resources.

### ***Proposed Measures to Address the Concerns***

A number of relevant studies have put forward suggestions to overcome the difficulties mentioned above. There are seven key areas where concerted and targeted interventions are expected to (a) mitigate the present difficulties, and (b) strengthen the capacity of LDCs such as Bangladesh to reap the benefits of SPS and TBT provisions.<sup>19</sup>

***The SPS-TBT Agreements call for taking into cognisance the special needs and circumstances of developing countries and LDCs. However, often this is not the case. Several steps can be taken to ensure greater sensitivity on the part of the developed countries. This may take the form of financial assistance, technical help, longer implementation period etc.***

***Making SPS-TBT More Transparent:*** The current notification system and procedures in the SPS are criticised by LDCs on the ground that these do not take into cognisance the specific difficulties of this particular group of countries. It is felt that the time allowed for SPS related notifications and their application should be increased. The format of notification should be revised in such a manner that the information context is broadened. Developed countries should be ready to carry out bilateral discussions to better address the concerns, and better respond to those concerns if and when they find that a proposed SPS measure may potentially create difficulties in terms of compliance on the part of an LDC. Greater transparency is expected to lead to (a) better preparedness and (b) better compliance on the part of LDCs.

***Greater Sensitivity to LDC Concerns:*** The SPS-TBT Agreements call for taking into cognisance the special needs and circumstances of developing countries and LDCs. However, often this is not the case. Several steps can be taken to ensure greater sensitivity on the part of the developed countries. These include (i) taking into account local circumstances, culture, norms in the trade partner countries in designing SPS-TBT measures, (ii) longer period for implementation of measures, (iii) an willingness to recognise the difficulties which are articulated by the LDCs in the various bilateral, regional and global fora, (iv) transparent way of letting the potentially affected countries know that their concerns have been taken cognisance of whilst designing new SPS measures. This may take the form of financial assistance, technical help, longer implementation period etc.

***In general, LDCs are not against setting standards and designing regulations to safeguard health, and hygiene. However, they feel that even good measures can inhibit market access if such measures are not adequately supported by other measures that raise their capacity to address the relevant problems and enable them to comply with the incremental safety measures.***

***Trade Related and Legal Assistance:*** In general, LDCs are not against setting standards and designing regulations to safeguard health, and hygiene. However, they feel that even good measures can inhibit market access if such measures are not adequately supported by other measures that raise their capacity to address the relevant problems and enable them to comply with the incremental safety measures. For example, as was mentioned, WTO requires establishment of *inquiry points*. Such *inquiry points* are normally established within state institutions. The linking of such institutions with the private sectors, which is involved with the process of production, is grossly inadequate. The bureaucratic system is not geared to pass the information quickly down to the firm level. This affects access to information and subsequently, the adoption of quality standards by the firms. Bangladesh is also in need of capacity improvement in the area of effective networking and speedy onward dissemination of the information. Accordingly, they would like the developed countries to provide, both bilaterally and multilaterally, technical assistance and advice in dealing with the relevant problems. This may include access to relevant expertise in the area of risk assessment, and

the opportunity to effectively participate in the SPS and TBT Committees and relevant negotiations, dispute settlement bodies and international standard setting organisations.<sup>20</sup> LDCs require such assistance not only at a government-to-government level, but also at the level of sectors (food and agriculture) and firms (mainly the small and medium). The idea of creating a *global technical assistance fund* in support of the LDCs has already been mooted during the third UN Conference on the LDCs.<sup>21</sup>

***What is required for the developed countries is to agree to a common lowest denominator of standards for the LDCs and accept the harmonisation at that level for the LDCs as a group. From a long-term perspective, this problem can be better resolved if effective inclusion of LDCs in the international standard setting bodies and agencies can be ensured in order for LDC interests to be taken into cognisance whilst setting any harmonised standards in terms of both products and procedures.***

***Conformity and Harmonisation of SPS-TBT Requirements:*** Harmonisation is expected to cut down the cost of compliance if LDCs are able to demonstrate compliance in an effective way, as this would diminish the need for proving equivalence. Harmonisation would also lessen the burden of assessing, and responding to the large volume of notifications required of the government officials. However, it should be borne in mind that ensuring harmonisation is not easy as far as the LDCs are concerned - *firstly*, because harmonising national regulations with internationally accepted norms is a complex activity and hence, difficult; *secondly*, harmonisation may, in many cases, lead to more stringent regulations and *thirdly*, even after harmonisation, any importing country may subject LDC exporters to additional conformity assessment tests. To be true, given the reality on the ground, hardly any LDC will be able to harmonise their domestic standards with those of developed countries without confronting serious problems in the process. What is required for the developed countries is to agree to a common lowest denominator of standards for the LDCs and accept the harmonisation at that level for the LDCs as a group.<sup>22</sup> From a long-term perspective, this problem can be better resolved if effective inclusion of LDCs in the international standard setting bodies and agencies can be ensured in order for LDC interests to be taken into cognisance whilst setting any harmonised standards in terms of both products and procedures.

***Our analysis has shown that whilst non-compliance with SPS-TBT measures can be costly, ensuring compliance is no less so. South Asian countries can pool their resources together in a number of ways. Firstly, regional cooperation could serve the need for sharing information, data and knowledge which is likely to give rich dividends since many of the areas of interest would be common to the South Asian countries. Secondly, by combining their efforts, South Asian countries will be better prepared to participate in international bodies that discuss, examine and set standards.***

***Reforming the Relevant Systems:*** Bangladesh, like most LDCs lacks adequate measures in terms of SPS-TBT provisions – the institutions are weak, there is a lack of appreciation on the part of policy makers to ensure compliance with SPS measures; this non-appreciation also filters down to the firm levels. Accordingly, there is a need for LDCs such as Bangladesh to reform and revise the system by (a) putting in place appropriate institutions to design and monitor policies, (b) putting in place adequate R&D to (i) safeguarding against imports that do not comply with SPS-TBT requirements; (ii) facilitating domestic exporters to ensure compliance; (c) developing the required human resource which is capable to deal with the complex issues in the SPS and TBT agreements, (d) putting in place an incentive mechanism to encourage and promote private sector initiatives to ensure compliance and (e) reinforcing regional and global initiatives in support of compliance with commensurate domestic measures.

***South Asian Collaboration:*** Our analysis has shown that whilst non-compliance with SPS-TBT measures can be costly, ensuring compliance is no less so. South Asian countries can pool their resources together in a number of ways. *Firstly*, regional cooperation could serve the need for sharing information, data and knowledge which is likely to give rich dividends since many of the areas of interest would be common to the South Asian countries. *Secondly*, by combining their efforts, South Asian countries will be better prepared to participate in international bodies that discuss, examine and set standards. As a matter of fact, a regional division of labour could be encouraged and promoted. In any debate and discussion on harmonisation of standards, a regional stand is likely to

result in measures that better meet local needs and requirements. Collaboration in such areas as risk assessment and compliance assurance is also likely to cut down on costs which are to be incurred by individual South Asian countries through avoidance of duplication of efforts. *Thirdly*, the breadth and depth of negotiations within the ambit of the South Asian Preferential Trade Agreement (SAPTA) and the envisaged South Asian Free Trade Area (SAFTA) could be enhanced substantively through initiatives towards regional cooperation in the area of SPS-TBT compliance.

*A Common LDC Stand in the WTO:* The 49 LDCs have been provided with a number of facilities in view of their weak level of preparedness in the context of the ongoing globalisation. Bangladesh should take initiatives to make good use of the LDC platform in order to (a) realise the S&D commitments in the Agreements on SPS and TBT, (b) promote new and additional measures of support in the light of the experience in the post-UR period and (c) articulate a common stand for implementing commitments in various global fora such as the UN LDCIII and other UN and multilateral platforms which is likely to contribute to trade capacity building in the LDCs. Consequently this will enhance LDC capacity to address SPS-TBT related issues.

## CONCLUDING REMARKS

*The experience of Bangladesh, which will no doubt be common to most LDCs and many developing countries, is that unless countries are able to adequately deal with SPS-TBT issues, there is a danger that these may act as market access barriers to exports from these countries. The task is two-fold - (i) ensure compliance through domestic efforts and with support from relevant partners/agencies and (ii) at the same time, play a more proactive role in reforming the system at both plurilateral and multilateral levels through regional and global initiatives.*

*If standards are to be harmonised, these should take into consideration regional conditions. Interestingly, at the time of the EU ban, exporters were able to divert a part of the consignments to the USA and Japan, countries which are not particularly known for any lack of vigilance in terms of quality and hygiene standards.*

The analysis presented in the paper essentially focuses on the concerns and interests of LDCs such as Bangladesh in four broad areas as they relate to the various provisions in the WTO Agreements on SPS and TBT: (a) *systemic*, in the sense of weaknesses in the existing SPS-TBT provisions as these are perceived by Bangladesh and other LDCs; (b) *compliance*, in the sense of ensuring compatibility with the agreed provisions through rationalisation and harmonisation of domestic policies, regulations and instruments in Bangladesh and other LDCs; (c) *reforms*, in the sense of changing the existing rules of the game by making better use of the opportunities provided by ongoing negotiations in SPS-TBT related areas; and (d) *capacity building*, in the sense of building adequate human, scientific and technical capacities to better address the emerging problems and risks stemming from the global trading regime as they are reflected through the SPS-TBT discipline.

The experience of Bangladesh, which will no doubt be common to most LDCs and many developing countries, is that unless countries are able to adequately deal with SPS-TBT issues, there is a danger that these may act as market access barriers to exports from these countries. The task, as was pointed out in the analysis presented in the previous sections, is two-fold - (i) ensure compliance through domestic efforts and with support from relevant partners/agencies and (ii) at the same time, play a more proactive role in reforming the system at both plurilateral and multilateral levels through regional and global initiatives.

The study takes into cognisance the emerging difficulties faced by Bangladesh in the context of the Agreement on SPS and TBT and, by drawing on suggestions and recommendations put forward in various documents and secondary sources that deal with the relevant issues, comes up with a number of recommendations which address the particular difficulties of Bangladesh. The major points, which reflect Bangladesh's view in the light of the recent experience of the export-oriented shrimp sector, may be re-emphasised here. *Firstly*, SPS-TBT measures should be formulated in a transparent and accountable manner in order that LDCs have equal opportunities to participate in a fair standard setting process; although in the particular case of Bangladesh, the EC had been sending signals for quite some time before the ban was actually imposed, there was still an utter lack of awareness and appreciation about the HACCP regulations both at the GOB and plant levels. This needs to be improved through information technology.

*Secondly*, if standards are to be harmonised, these should take into consideration regional conditions. Interestingly, at the time of the EU ban, exporters were able to divert a part of the consignments to the USA and Japan, countries which are not particularly known for any lack of vigilance in terms of quality and hygiene standards.

*Thirdly*, full implementation of SPS-TBT measures should be sensitive to trade disruptive and trade restrictive nature of such measures for exports from the LDCs; adequate time for preparatory measures must be given to the exporting countries prior to the imposition of any penalty on their exports.

*Fourthly*, adequate financial and technical assistance should be given to the LDCs to facilitate conformity with SPS-TBT requirements; the nexus between trade and aid should be strengthened so that aid enhances the market access and trade capacity of the LDCs; programmes under the *Integrated Framework Initiative*, which envisages technical assistance for trade related capacity building in the LDCs, should be adequately funded and supported.

*Fifthly*, mutual recognition of conformity assessment and certification procedures should be pursued to avoid interpretative ambiguities with respect to standards.

The EU ban on imports of shrimp from Bangladesh once again reaffirms the apprehension of many of the LDCs that as globalisation gains momentum *standards* will become a major issue that will need urgent attention. Evidently, *standards* will have critical market access implications for LDCs such as Bangladesh in the context of the evolving global trading regime under the WTO. Bangladesh and other LDCs will need to address the attendant issues in all probable dimensions and complexities. Both domestic initiatives and global supportive measures will be required to accomplish this task.

## ENDNOTES

- 1 This 'single undertaking principle' in essence does not distinguish between countries on the basis of their level of capacities. Under such 'take it or leave it' context, it is to be expected that the weaker countries will face difficulties in ensuring compliance. The range of S&DT provisions in the WTO for DCs and LDCs were, as a matter of fact, designed to address these concerns. Weak implementation of S&D measures designed for DCs and LDCs have cast doubt on the appropriateness of the principle of single undertaking in the WTO.
- 2 These are the FAO/WHO Codex Alimentarius Commission, the Office of International des Epizootics (OIE) and the FAO International Plant Protection Convention (IPPC).
- 3 Except in case of extraordinary situation or emergency which require immediate action.
- 4 Karki, 2001 presents a succinct illustration of this.
- 5 Degree of openness of the economy refers to share of export and import in the GDP of a country.
- 6 The CAC is an intergovernmental body entrusted with the responsibility of developing international food standards, guidelines and recommendations for promoting food quality and safety. CAC was set up in 1962 with the objective of health protection of consumer health and ensuring fair practices.
- 7 The HACCP is based on seven principles: (i) hazard analysis, (ii) identification of critical points, (iii) establishment of critical points, (iv) establishment of monitoring indicators, (v) establishment of corrective action, (vi) establishment of verification procedures and (vii) establishment of effective record keeping. The objective of HACCP is three fold: (i) hazard evaluation, (ii) risk management and (iii) documentation control.
- 8 The EU's SPS requirements are more stringent even by most developed country standard. However, it is to be noted and appreciated here that, from one perspective, harmonisation of SPS provisions within the EU under the ambit of the unified European union wide rules and regulations serves a good purpose. Harmonisation of EU rules, in effect, has resulted in one single set of requirements instead of 15 separate sets of provisions: in many cases this harmonisation has been made to conform with the more strict provision in place in particular member country, in some other cases, with less strict measures.
- 9 This downward harmonisation is also a critically important issue for Africa. It has been estimated that net loss to Africa originating from the ban on exports of African agro-products on grounds of presence of aflatoxyn was about \$760 million annually. Investigations showed that on average, each year, about two people in EU suffer from presence of aflatoxyn in food. Whilst every life is important, the trade-off between market entry barriers that cause millions of people to suffer from hunger and the potential health hazard arising from possible aflatoxyn contaminated food needs to be carefully weighed and considered. This point was succinctly put forward by UNCTAD Secretary General, Mr. Ruben Ricupero during his speech at the inaugural ceremony of the third UN Conference on the LDCs held in Brussels in May, 2001.
- 10 As a matter of fact, following the EU ban, Japan did seriously consider taking similar punitive action and threatened to impose ban on imports of shrimp from Bangladesh.
- 11 In Bangladesh shrimp culture is mainly concentrated in the southern coastal belts of *Shatkhira, Bagerhat, Khulna* and *Cox's Bazar*.
- 12 It appears that prior to the sanctions of August 1997 the EC had indeed been sending signals to the GOB as regards impending sanctions against exporters from Bangladesh on account of non-compliance with HACCP standards. Apparently, the GOB had also been transmitting the signals onward to the Bangladesh Frozen Food Exporters Association (BFFEA). However, neither the GOB, nor the BFFEA perhaps thought that the sanctions would actually be slapped very soon, and as a result, did not start to take corrective measures to address the attendant problems.
- 13 The four months between August '97 and December '97 falls within the 1997 fiscal year (FY1998).
- 14 The other countries facing sanction included Malaysia, Pakistan, India, Thailand, and Australia.
- 15 Some other examples may be of interest here. For instance, the case relating to the issue of use of *azodye* in textile. As is known, presence of azodye in textile/apparels make these products inflammable. In recent times Bangladesh's Ready Made Garments (RMG) sector has been threatened by some of the developed countries with sanctions on the ground that *azodye*, which is considered as a health hazard, is being used in the country's apparel/textile sector. Many small entrepreneurs lack the capacity to ensure the relevant tests to prove that their apparels are made from azodye-free fabrics.
- 16 SAWTEE, 2000.
- 17 Under the existing GSP schemes of the EC, LDCs have been accessing zero-tariff preferential treatment for most of the manufacturing products. EBA's novelty was that many of the agro-commodities of export interest to the LDCs were included in the EC GSP scheme for the first time. As is known, MFN tariff rates on agro-imports in the EU is still at relatively high levels.
- 18 However, the issue of rules of origin, which also act as market access barriers, should not be missed here.
- 19 It needs to be appreciated that if and when LDCs are able to comply with SPS and TBT requirements, export opportunities of many agricultural commodities in the developed country markets will be significantly enhanced.
- 20 An Advisory Centre on WTO Law has now been established in Geneva to provide legal and scientific assistance to the LDCs. The initiative is supported by a number of developing and developed countries. The mandate of the committee also include providing free or subsidised legal advice and assistance to the DCs and LDCs in pursuing cases in the WTO.
- 21 The *Plan of Action* adopted by the third UN Conference on the LDCs held in May, 2001 in Brussels include a number of initiatives to bolster trade related capacities in the 49 LDCs.
- 22 As was noted in the Bangladesh case study, during the ban on imports of shrimp from Bangladesh, shipments were being made to US and Japan, often as a result of diversion from the EU market.

**Annex Table 1: Fact Sheet on  
The Increasing Importance of the Export Sector in Bangladesh's Economy**

(in bn. \$)			
Indicators	1979-80	1989-90	1999-00
GDP	12.7	22.4	39.4
AID	1.2	1.8	1.6
TRADE	3.0	5.3	13.2
<i>EXPORT</i>	0.7	1.5	5.8
<i>IMPORT</i>	2.3	3.8	7.4
REMITTANCE	0.2	0.7	2.0
FDI	0	0.03	0.3
<i>Memo Items (in %)</i>			
Share of Aid (Disbursed) in GDP	9.7	8.1	4.0
Share of Trade in GDP	23.8	23.6	33.3
<i>Share of Export in GDP</i>	5.7	6.8	14.5
<i>Share of Import in GDP</i>	18.1	16.8	18.8
Share of Remittance in GDP	1.9	3.4	4.9
Share of FDI in GDP	-	0.1	0.6
No. of Workers Going Abroad (in thousand)	28.0	110.0	248.0
Exports as % of Aid (Disbursed)	59.3	84.2	365.2
Exports plus Remittance as % of Aid (Disbursed)	79.7	126.2	489.2
<i>Source: Export Promotion Bureau, Bangladesh.</i>			

**Annex Table 2: Dynamics of Exports of Shrimp from Bangladesh**

(value in million \$)						
	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Total exports	3472.56	3882.42	4418.28	5161.2	5312.86	5752.2
Shrimp X from Bangladesh	260.71	270.51	279.22	260.41	242.23	322.43
Shrimp X as % of total X	7.51	6.97	6.32	5.05	4.56	5.61
<i>of which</i>						
X to EU	108.11	116.37	128.98	48.16	89.26	124.86
X to EU as % of Shrimp X	41.47	43.02	46.19	18.49	36.85	38.72
X to US	79.31	74.88	88.73	142.51	95.27	123.56
X to US as % of Shrimp X	30.42	27.68	31.78	54.73	39.33	38.32
X to Japan	56.01	68.27	50.98	36.54	32.16	35.94
X to Japan as % of Shrimp X	21.48	25.24	18.26	14.03	13.28	11.15
<i>Source: Export Promotion Bureau, Bangladesh.</i>						

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Enable and empower representatives of the civil society, from developing countries in particular, to articulate and advocate on the relevant issues at the appropriate fora.

Create a questioning society through empowerment of civil society representatives thus ensuring transparency and accountability in the system.

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ISBN 81-87222-69-7

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