

Attachment 2.2:

SASEC SPS/TBT Diagnostic Study

Identification of Potential Export Items Facing Sanitary/Phytosanitary and Technical Barriers to Trade Measures in the SASEC Subregion

NEPAL TERMS OF REFERENCE
(as of 13 June 2016)

I. Introduction

1. Given the reduction in tariffs over the last 30 years due to multilateral and bilateral obligations as well as autonomous economic liberalization, the important remaining barriers to trade are non-tariff measures (NTMs). NTMs occur frequently in the form of standards and technical regulations, especially Sanitary/Phytosanitary and Technical Barriers to Trade (SPS/TBT). Since the establishment of the World Trade Organization (WTO), reliance on using SPS/TBT and other NTMs has increased:¹ SASEC member countries are not an exception.

2. To promote subregional integration among South Asia Sub-regional Economic Cooperation (SASEC)² countries by removing all remaining barriers, a need has been identified to develop mutual cooperation processes in the diverse and challenging area of SPS/TBT-related issues. The current situation in SASEC countries varies widely: some present a highly skewed export structure, and are also dependent on small number of markets for their exports. This creates two-fold problems: (i) loss of foreign exchange earnings for least developed countries due to lack of capacity to produce and export processed goods—which are supposed to generate more value added in these countries; and (ii) the lack of foreign direct investment inflow, thus limiting technology and growth options. Unless there is integration of industries in South Asian Association for Regional Cooperation or at least in SASEC members, regional integration will not take place.

II. Sanitary/ Phytosanitary and Technical Barriers to Trade (SPS/TBT) in the SASEC Subregion

3. In November 2013, SASEC countries gathered to brainstorm on SPS/TBT priorities and challenges in member countries and initiate development of a regional agenda in South Asia to address these issues.³ Outcomes of the meeting included: (i) increased understanding of country-specific constraints in SPS/ TBT in the region; (ii) enhanced knowledge of available assistance and support from international organizations and research networks in the area of SPS/ TBT; (iii) preliminary identification of preferences and priorities for necessary SPS/ TBT diagnostics and studies in the SASEC countries; (iv) identification of needs-based capacity-building activities at both regional and national levels; (v) agreement

¹ World Trade report 2012 (WTO)

² The South Asia Sub-regional Economic Cooperation (SASEC) Program brings together Bangladesh, Bhutan, India, the Maldives, Nepal, and Sri Lanka in a project-based partnership to promote regional prosperity by improving cross-border connectivity, boosting trade among member countries, and strengthening regional economic cooperation. Since 2001, SASEC countries have implemented 33 regional projects worth more than a total of \$6 billion in the energy, transport, and trade facilitation sectors. SASEC also supports initiatives in the information and communications technology.

³ Full information and materials are available at www.sasec.asia/index.php?page=event&eid=90&url=sasec-brainstorming-meeting-on-sanitary-phytosanitary-priorities-and-challenges-in-sasec-member-countries

on the need and general initial scope for a regional platform addressing SPS/ TBT development in the SASEC region. The TOR proposed here addresses item (iii) above: preliminary identification of preferences and priorities for necessary SPS/ TBT diagnostics and studies in the SASEC countries.

III. SASEC Support for SPS/TBT Measures

4. In March 2014, the SASEC countries endorsed the SASEC Trade Facilitation Strategic Framework 2014–2018 (STF Strategy) that aims “to promote the prosperity of the subregion by facilitating the efficient movement of trade across borders”. Specific goals during 2014–2018 include increasing intra-regional trade through enhanced efficiency and security, and reducing the time and costs associated with trade. Trade facilitation is already a high priority at the national level of SASEC countries, and the regional platform offered by the STF Strategy will further complement and strengthen national actions through the sharing of information and experience, and promotion of joint and coordinated action.

5. The STF Strategy focuses on five priority areas, under which five strategic thrusts further define the steps identified to implement the TF Strategy: (i) customs modernization and harmonization; (ii) standards and conformity assessment strengthening; (iii) cross-border facilities improvement; (iv) through transport facilitation; and (v) institution and capacity building. The proposed TOR directly contributes to areas (ii) and (v) of the TF Strategy.

IV. TOR Objectives

6. The proposed SPS/TBT Diagnostics Study comprises two broad phases: (i) building a robust understanding of the specific needs of individual SASEC countries through **national diagnostic studies (NDS)**; and (ii) based on the national diagnostic studies, identifying common issues and challenges faced by the countries in a **regional diagnostic study (RDS)** to facilitate development of coordinated regional responses and required capacity building actions.

A. Phase 1: National Diagnostics Studies

7. The primary objectives of the NDS, to be conducted in each SASEC country by a national consultant expert over a period of 5 months, include

- Identify the specific items which have the potential for exports from the SASEC country and subject to SPS/TBT measures of the importing countries;
- Carrying out a national diagnostic audit by (i) examining trade data trends; (ii) conducting a gap analysis that examines and compares current national legislation, local practices, and international best practice; and (iii) carrying out practical field studies in identification of standards or regulations in the SASEC countries that are impeding trade on the above identified items;
- Identifying current infrastructure capacity/ constraints related to SPS and TBTs, and presenting prioritized recommendations for necessary future investments; and
- Identifying priority national capacity-building activities in the area of standards and regulations and a preliminary 2016-2018 time-line for these activities.

8. Detailed tasks to be carried out under the NDS include⁴

⁴ The final TOR for the NDS will reflect individual country priorities and situations.

- (i) Prepare a list of products (at 6-digit HS level) that have potential to be exported but are either not being traded or traded negligibly within SASEC countries;
- (ii) Conduct detailed gap analysis, identifying areas of non-alignment or conflict between national legislation, local practices, and international best practice;
- (iii) Identify the SPS/TBT measures that exist in the exporting and importing countries and the gaps in standards through a survey of exporters, compiling reasons for lower or no share of exports, and covering at least the following criteria:⁵
 - a) Which countries are major markets at present for *X*?
 - b) How *X* complies with the SPS/TBT requirements of current export markets other than SASEC countries?
 - c) The reasons for not exporting to *M*?
 - d) Is information about market *M* available?
 - e) Is information on SPS/TBT in market *M* available?
 - f) What are the problems associated with compliance of SPS/TBT in market *M*?
 - g) Is conformity assessment (including testing, certification and inspection) available in exporting country *X*?
 - h) Which agency does the conformity assessment in *X*?
 - i) If conformity assessment is done in importing country *M*, where is the conformity assessment of products done to ensure compliance of SPS/TBT?
 - j) Can exporters of *X* meet the demand of the SASEC importing country or do they face identified supply-side constraint as well?
 - k) What kind of support do exporters need from their Government to export the list of products (identified in [i]) to SASEC countries?
- (iv) Recommend possible measures to address SPS/TBT constraints within the overall framework of the World Trade Organization (WTO) and regional integration. Proposed measures should detail the nature of support required for effective integration at national as well as at sub-regional level. The findings should also explore how measures like investment flows, technology, mutual recognition agreements and arrangements (MRAs), and others could help in developing the regional supply chain;
- (v) Propose actions to address the issue relating to technical regulations and standards as well as the staging of individual and related initiatives such as MRAs, conformity assessment procedures, harmonization and regionalization, and others;
- (vi) Identify SPS and TBT infrastructure constraints at the national level and develop an indicative time-bound action plan to address these constraints;
- (vii) Collate broad-based national inventory of all bilateral, multilateral, and development partners' initiatives in SPS/TBT; and identify sources of technical assistance and expertise of and for local agencies;
- (viii) Identify human capacity constraints in the application of effective SPS and standards measures, and develop an indicative time-bound action plan to address priority capacity-building needs;
- (ix) Determine the need for a national database of SPS/TBT standards, legislation, and procedures, and recommend an efficient approach to its development;
- (x) Disseminate the results of the studies through comprehensive stakeholders' consultations to verify the findings. Government officials should be engaged to explore options for controlling non-tariff measures that are in principle compliant with the trade rules, to ensure such non-tariff measures do not degenerate into barriers and/or cause too high costs of compliance for exporters; and

⁵ Country of exports = *X*; importing country = *M*. A detailed methodology is provided in Annex 1.

- (xi) Provide inputs to and collaborate with the international consultant team and other national consultant experts in the development of the RDS.

B. Phase 2: Regional Diagnostics Study

9. The RDS will be prepared by an international consultant over a period of 6 months, with inputs and support from the national consultants responsible for the NDS,⁶ The broader primary objectives of the RDS include

- Identifying prioritized common issues and challenges faced by the SASEC countries, based on the national diagnostic studies and proposing practical steps to facilitate increased regional trade of products adversely affected by SPS/TBT measures;
- Preparing a comprehensive assessment of regional and inter-regional entities active in SPS/TBT initiatives (including but not limited to SARSO, World Trade Organization), to include (i) recommendations of options to enhance effective coordination in addressing SPS/TBT challenges and strengthen a broader regional response, including possible establishment of information and data exchange systems; and (ii) details of successful regional initiatives to tackle SPS/TBT, and lessons learned from less effective projects;
- Identifying common infrastructure and human capacity constraints across the region and where possible developing coordinated solutions at a regional level.

10. Detailed tasks to be carried out under the RDS would include:

- (i) Prepare a summary of the national diagnostic studies and list the common elements;
- (ii) Identify common exporting country and common item matrix and the market;
- (iii) Identify the gaps between importing country measures and international standards;
- (iv) Propose actions to address the issue relating to technical regulations and standards, as well as the staging of individual and related initiatives such as MRAs, conformity assessment procedures, harmonization and regionalization, and others at the regional level;
- (v) Identify infrastructure constraints at the sub-regional level and develop an indicative time-bound action plan to address these constraints; and
- (vi) Suggest the role that SARSO can play in addressing these issues.

⁶ The phase 2 consultant is expected to coordinate the inputs of the phase 1 national consultant experts. Phase 2 could run concurrently with the latter stages of phase 1 work.

Annex 1: Detailed Methodology for NDS

1. Identification of potential export items that could not be exported due to SPS/TBT measures:

- A. Using the latest five years trade data, identify top 100 items at 6 digit HS level, to include the products already identified in the NTIS 2016:
- i. Which are being exported to world markets where the import share the individual SASEC members are less than or equal to 20%);
 - ii. Where the exporting country unit value of exports is lesser than the importer country's unit value of imports.

The summary table should provide the following:

S. No.	HS Code	Description	Export value of X to M	Global export value of X	UV exports of X	Global import value of M	UV imports of M	X Share of exports in M (in %) [(4)/(7)]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

X = country of exports, M = importing country.

2. To understand existing gaps in standards/ regulations, identify the SPS/TBT measures of exporting and importing country on the identified items:

S. No.	HS Code	Description	SPS/TBT measures of X	Details of SPS/TBT agency of X	SPS/TBT measures of M	Is SPS/TBT of M based on international standard?	Details of SPS/TBT agency of M
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Annex 2: Implementation Arrangements

1. A SASEC SPS/TBT Focal Point and Core Group has been identified by the Government of Nepal, and comprises Under Secretary (Ministry of Commerce) as Focal Point; and representatives from the Ministry of Agriculture Development (2) and the Nepal Bureau of Standards and Metrology (1). The Office of the Focal Point undertakes to be the national coordinator for the SASEC SPS/TBT national diagnostic study.
2. Other relevant government agencies and representatives of the private sector and research will be involved in the diagnostic study process, including a national stakeholder workshop to be conducted by the national consultant.
3. The national consultant will be engaged in accordance with standard ADB process for a period of 5 months (intermittent over 7 months), and will coordinate closely with the established government counterparts (SASEC SPS/TBT Focal Point and Core Group) in Nepal. Close collaboration will also be required with the (i) other relevant government agencies, and (ii) representatives of the private sector, and research, and (iii) the SASEC SPS and TBT consultant team (international and national) for the diagnostic studies initiative being prepared in the other five SASEC countries.

Tentative schedule:

Selection of national consultant	15 July 2016
Draft outline submission	31 July 2016
Draft report submission	30 September 2016
National workshop	15 October 2016
Draft final draft	15 November 2016