PART II. KEY AREAS FOR CO-OPERATION

Chapter 6

Non-tariff Barriers in South Asia: Nature and Modalities to Address the Attendant Issues

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6.1 Introduction

With tariffs coming down worldwide, attention has been increasingly diverted to issues related to barriers to trade other than the tariffs, non-tariff barriers (NTBs). It is true that, often, NTBs are put in place for protectionist purposes; on the other hand, NTB-imposing countries tend to argue in favour of these barriers for a variety of reasons. The border line between *defensive* and *offensive* interests with regard to the NTBs thus tends to be blurred. The fact also remains that in many regional trading agreements (RTAs), which were set up in the first place to enhance intra-regional trade flow, NTBs have emerged as the *spoiler* that defeats the very purpose and objective of the RTAs. In this context South Asia has emerged as an epitome of this dichotomy.

The issue of enhancing intra-regional trade in South Asia is high on the agenda of policy-makers in all the member countries of the South Asian Association for Regional Cooperation (SAARC). Though the SAARC regional grouping was established in 1980, the first institutional arrangement for stimulating intra-regional trade could be put in place only in 1993 when the SAARC Preferential Trading Arrangement (SAPTA) got off the ground. Four rounds of SAPTA negotiations were held between 1993 and 2005, with each successive round having an increasingly large number of goods which were accorded preferential tariff treatment by the member countries. The margin of preferences was also gradually raised.[1]

The SAPTA, as is known, was followed by the agreement to establish the South Asian Free Trade Area (SAFTA). The SAFTA Agreement (2006) envisaged bringing down existing tariff barriers in accordance with the Trade Liberalization Programme (TLP) agreed by the member countries. The programme included three schedules – (i) a positive list, (ii) a negative list and (iii) a residual list. A two-track approach was taken – one for developing members, the other for the least developed countries (LDCs). Duties on tariff lines belonging to the *positive list* were set at zero from the date of implementation of the SAFTA accord. However, a large number of tariff lines belonging to the *negative list* continue to be traded at existing most favoured nation (MFN) tariff rates. These lists were to be reviewed periodically (every three years).[2] Duties on items belonging to the *residual list* were to be reduced to between 0 and 5 per cent by 2013 by developing SAARC members and by 2016 by the LDC members.[3]

It should, however, be noted here that both developing countries and the LDCs in the SAARC have reduced their tariffs, primarily through trade liberalisation reforms.

MFN tariff rates, which used to be on average in the range of 50–60 per cent during the early-1990s had, in fact, come down to 15–20 per cent by mid-2000s. Thus, the preferential margins enjoyed by members under the envisaged TLP of the SAFTA is set to provide declining dividends. The fact is that a large number of items continue to remain in the negative (sensitive) lists of SAARC countries undermining both the spirit and the efficacy of the SAFTA.[4] Less than 5 per cent of the global trade of SAARC member countries is with each other.[5]

It is often argued that one of the major reasons for this low level of intra-regional trade lies in the presence of the plethora of NTBs that limit the potential benefits and opportunities emerging from the free trade accord. Not only are NTBs perceived to be limiting the scope of realising the benefits of duty-free access, they also severely constrain the promotion of intra-regional trade in general. It is true that the SAFTA accord envisages initiatives to reduce NTBs, facilitate customs co-operation and enable trade facilitation. However, until now not much progress could be made in this context. Sobhan (2006) points out that tariff reduction is only a part of the narrative and in order to deepen regional co-operation a more comprehensive approach would be needed. Both trade and investment remain critical to the economic development of the South-Asia and Asia-Pacific region. However, both these important drivers are constrained by NTBs and lack of trade facilitation (UNESCAP 2013). The problems faced particularly by the weaker economies of the SAARC have received prominence in a number of studies (Razzaque 2010, De et al. 2012). Some authors have also specifically pointed out how NTBs are constraining the possibilities of Indo-Bangladesh bilateral trade (De and Bhattacharya 2007, Rahman et al. 2011).

There is, thus, a need to conduct an in-depth investigation into what the various NTBs are, how they affect intra-regional trade, how they can be addressed and what institutional mechanisms can be put in place to resolve the attendant disputes.

The purpose of this chapter is to (a) examine the various concepts and typology of NTBs (Section 6.2);[6] (b) identify the nature of the NTBs in place in South Asia (Section 6.3); (c) examine cross-country experiences in addressing the NTBs (Section 6.4); (d) document how the NTBs are being addressed within the SAFTA architecture and what lessons can be learnt from other regions (Section 6.5); and (e) provide policy recommendations to address NTB-related issues in the context of South Asia (Section 6.6).

6.2 Non-tariff barriers: Concept and typology

6.2.1 Definition of NTBs and their classification

As is broadly defined, a tariff is a tax imposed on foreign goods and services as they enter a country through customs points, whilst non-tariff barriers are non-tax measures which act as barriers to the entry of goods and services exported by foreign suppliers. Such measures could provide certain advantages to domestic suppliers or suppliers from other countries for which the measures are not applicable. Some of the NTBs may have relatively unimportant trade effects, e.g. packaging and labelling

requirements can impede trade, but perhaps only marginally. Non-tariff measures, such as quotas, voluntary export restraints, and other non-automatic import authorisations and variable import levies would have much more significant effects on market entry as well as price-competitiveness.

The broadest definition of a NTB is any measure other than a tariff that distorts trade (Linkins 2002). Tariff barriers to trade are easy to measure, as these are quantifiable. In contrast, NTBs are often grey; they come in various shapes, sizes and forms. NTBs tend to lack concrete features and are often devoid of precise data and information and involve a lot of grey areas that are subject to interpretative ambiguities.

The trade analysis and information systems of the United Nations Conference on Trade and Development (UNCTAD) provide a comprehensive list of NTBs classified according to trade control measures. These, according to UNCTAD, fall under five broad categories:

a. *Price control measures*: administrative pricing (minimum import prices, administrative pricing); voluntary export price restraint (variable levies, variable components, compensatory elements, flexible import fees, variable charges); anti-dumping measures (anti-dumping investigations, duties, price undertakings).

b. *Finance measures*: advance payment requirements (advance import deposit, cash margin requirement, advance payment of customs duties, refundable deposits for sensitive product categories); multiple exchange rates; restrictive official foreign exchange allocation (prohibition of foreign exchange allocation, bank authorisation, transfer delays, queuing).

c. *Quantity control measures*:

    i. Non-automatic licensing (licence with no specific ex-ante criteria, licence for selected purchasers;

    ii. Licence for specified use, licence linked with local production (purchase of local goods, local content requirement, barter or counter trade); licence combined with or replaced by special import authorisation;

    iii. Authorisation for sensitive product categories, licence for political reasons;

    iv. Quotas: global quotas (unallocated, allocated to exporting countries), bilateral, seasonal, linked with export performance, linked with purchase of local goods, quotas for sensitive product categories, for political reasons; prohibitions: total, seasonal, temporary prohibition, suspension of issuance of licences, import diversification, prohibition for political reasons (embargo);

    v. Export restraint arrangements: voluntary export restraint arrangements, Multifibre Arrangement (MFA): quota agreement, consultation agreement, administrative co-operation agreement, export restraint, etc.; and

    vi. Enterprise-specific restrictions: selective approval of importers, enterprise-specific quota.

d. *Monopolistic measures*: single channel for import (state trading administration, sole importing agency), compulsory national services (compulsory national insurance, transport).

e. *Technical regulations*: requirements for product characteristics, marking, labelling, packaging, testing, inspection and quarantine, information, requirement to pass through specified customs, etc., pre-shipment inspection, special customs formalities, return obligation.

This list would indicate that (a) NTBs are fairly diverse in nature; and (b) many NTBs are subject to interpretative ambiguities and it is difficult to separate which are protectionist in nature and which originate from genuine concern. This would also imply that resolving any NTB-related dispute would involve a complex negotiation and arbitration process.

6.2.2 Use of NTBs in international trade

As was mentioned earlier, from the early 1990s, as tariff rates started to come down at a fairly accelerated pace, many countries tended to make use of regulations in a more aggressive manner to govern trade flows. The use of NTBs in international trade has been on the rise. Before dwelling on the issues of NTBs in South Asia and identifying modalities to address the relevant disputes, it is pertinent to keep in mind that NTBs have become a common phenomenon in international trade and so have NTB-related disputes. Examples of NTBs include regulations referring to technical requirements, either directly or by referring to or incorporating the content of a (mandatory or voluntary) standard, technical specification or code of practice, with a view to protecting human life or health or animal life or health (sanitary regulation), protecting plant health (phytosanitary regulation), protecting the environment and wildlife, ensuring human safety, ensuring national security, and preventing deceptive and unfair practices. In the European Union, the focus of regulation was primarily on the environment, health and safety (EHS). However, there have been tendencies by governments to regulate IT and telecommunications products in terms of certain features, such as privacy and security.

Control measures, such as those in the area of sanitary and phytosanitary (SPS) regulations, meant to protect humans, animals and plants, have often exceeded multilaterally accepted norms. Often what is accepted by one country has not been accepted by others. Technical barriers to trade (TBT) have often constrained trade flows, when standards, regulations and assessment systems intended to ensure safety were not applied uniformly. Experience has shown that duplication of testing procedures that do not add value to a product adds to the cost of compliance and undermines competitiveness.

Regulations in developed countries apply stringent rules on food quality, packaging and labelling. For example, exports of poultry products have been particularly affected by such sanitary regulations, which encompass rules pertaining to equipment and methods used in the processing and packaging of the product. Obtaining approval is a lengthy process that involves substantial documentation and tedious bureaucratic

procedures. It has taken exporters of meat products from developing countries more than two years to get approval.

When perceived as protectionist measures, these have also been challenged on appropriate platforms. When developed countries are members of RTAs, the dispute settlement mechanism of the RTAs have been put in to effect when an aggrieved party has lodged a complaint. On some occasions the dispute settlement mechanism of the World Trade Organization (WTO) has been put into effect when it was perceived to be a better route to resolve an NTB-related conflict.

Indeed, according to UNCTAD, in the last ten years there has been a seven-fold increase in government-mandated testing and certification requirements with increasing costs that had to be borne by the exporters in order to comply with the various technical regulations and standards related requirements. According to an International Trade Centre (ITC) study (2005), 42 per cent of LDCs were subject to some NTBs. The issue has been debated to such an extent that a special working group has been created in the WTO to deal with NTBs. This working group has identified a wide variety of NTBs based on the discussion and submissions from WTO member countries.

Rahman and Razzaque (2009) provide information on the prevalence of NTBs, including where countries have been members of RTAs for periods that far outrun the existence of SAFTA as an RTA. They found that NTBs came in various shapes. Interestingly, in the Association of South East Asian Nations (ASEAN), the overwhelming majority of NTBs are related to customs surcharges (70%). These could be perceived as protectionist measures on the part of trading partners to provide safeguards to domestic producers. One would have thought that with the deepening of trade liberalisation these would come down in both numbers and degree of incidence. However, it is worth noting that NTBs in the form of SPS and TBT do not figure in any significant way. This was the case mainly because SPS-TBT-related NTBs were largely resolved through agreements pertaining to mutual recognition of standards and certification. This is something which, as will be seen later, is very significant for the SAARC members. One could infer that a mechanism such as the one in ASEAN could play an important role in reducing the number of NTBs in South Asia.

The upshot of the aforesaid brief discussion is that when the issue of NTBs in the context of South Asia is considered, it is well-advised to keep in mind that NTBs are a widely prevalent phenomenon in the global trading regime and there is hardly any scope to wish these away. Cross-country experiences indicate that the best way go about it is to (a) build up capacities to ensure compliance and (b) put in place appropriate institutions to resolve attendant conflicts.

6.3 Non-tariff barriers in South Asia

6.3.1 NTBs constraining intra-SAARC trade

If the UNCTAD definition of NTBs is considered, the menu of NTBs that inform intra-SAARC trade would be quite an extensive one. All the four major trading partners in SAARC (India, Pakistan, Bangladesh and Sri Lanka) have a large number

of NTBs in place. Whilst individual members tend to consider their own NTBs to be genuine and WTO-compliant, they are, as a rule, opposed to NTBs imposed by partners, arguing that such NTBs are protectionist in nature.

Though the SAFTA Agreement requires members to notify the committee of experts (CoE) of any NTBs and para-tariff measures, the CoE can only recommend their removal as these recommendations do not entail a *binding commitment*.

A survey of NTBs reported by SAARC member countries to the CoE shows the NTBs that are most frequently imposed in trade among the SAARC countries related to SPS measures and TBT, quotas, anti-dumping measures, licence requirements and countervailing measures. Documentation procedures and SAPTA certification for rules of origin are also considered to be NTBs by exporters. Computerisation of trade transactions (cargo declaration, licensing and duty payments) have opened up the need for new standards (e.g. Automated System for Customs Data (ASYCUDA)) and compatibility across regional systems.

A wide range of NTBs, albeit WTO-consistent, are in place in India. These include tariff rate quotas (TRQs) on 14 tariff lines (Harmonized System (HS) eight-digit level), import restrictions and licensing, and restrictions in the form of entry through particular ports. Under the India–Sri Lanka Free Trade Agreement, for example, tea and garment exports from Sri Lanka to India can only be cleared through specified ports. In Bangladesh, there is a significant application of para-tariffs (e.g. surcharges and supplementary duties) – estimates are that 38 per cent of the average protection is due to para-tariffs. Bangladesh continues to maintain quantitative restrictions on eggs, poultry and salt, for which the government has obtained waivers from the WTO. Sri Lanka bans the import of tea and spices on the grounds that low quality imports, if mixed with Sri Lankan products, would reduce the quality of exports and thus affect their marketability.

As can be seen from Table 6.1, information which has been collated by the Asian Development Bank (ADB) (2008) shows 86.3 per cent of NTBs in the region relate to SPS, TBT and other related measures. Thus, the overwhelming majority of NTBs are indeed in areas where compliance with SPS and TBT are major requirements. If such measures are on an MFN basis, non-discriminatory and equally applicable for all imports, and if these relate to compliance with relevant national laws, one would be hesitant to call them protectionist measures. It is when these are applied on a discretionary basis and when the required standards are more stringent than national laws would be that these could perhaps be considered 'NTBs' in the strictest sense of the term.

6.3.2 Connectivity barriers as NTBs

Lack of physical, industrial, and communication infrastructure in the region has also contributed to restricted trade among countries. This could also be termed a NTB in the context of its broad definition. Kabir (2007) provides a summary of the key barriers to trade in this context. Air and maritime port facilities in South Asia are ranked as less competitive compared to East Asia. While it takes two hours to clear a vessel in

Table 6.1 Percentage share of NTBs to all NTBs by SAARC countries

Non-tariff measures	Share
SPS, TBT and other related measures	86.3
Tariff quota	9.8
Anti-dumping measures	7.4
Licence requirement	5.3
Countervailing measures	1.2

Source: ADB (2008)

Singapore and Laem Chabang, Thailand, it takes two to three days in Chittagong, Bangladesh, and at Delhi airport India, the average cargo dwell time is two and a half days. Some estimates have been made with regard to the magnitude of NTBs in the form of lack of connectivity and infrastructure. For example, the World Bank (2003) estimate savings in terms of transport costs from road to rail along the Kolkata–Kathmandu corridor at 22–33 per cent of road cost. UNESCAP (2003) estimates transit charges at 0.45 per cent of cost, insurance and freight (CIF) value for private cargo.

The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) Nataraj (2007) also found that inter-South Asia disparity in infrastructure facilities has been on the rise in recent years. Additionally, progress on information technology is also considered to be as important as the development of physical infrastructure and is crucial for customs and standards harmonisation among countries of the region. This is lacking in South Asia.

Lack of border infrastructure and traffic planning is a major constraint to deepening trade relations in SAARC (Rahmatullah 2008). Most border crossings between South Asian countries are not designed to handle the volume of traffic that currently passes through them. This results in severe traffic congestion and delays in handling the shipments.

Land ports at the border have emerged as a major stumbling block for seamless movement across borders. As goods are required to be transshipped, precious time is wasted at the borders. About 90 per cent of the trade between India and Bangladesh is carried out through 17 land ports. These land ports do not have adequate storage facilities and godowns and warehouses for proper storage of goods. This leads to waste and pilferage. Often goods have to be offloaded at the border and are not allowed to be brought to warehouses inside the importing country. Because of increased trade volumes, storage dwell times have been on the rise at the ports where storage capacity tends to be highly inadequate. At the Petrapole–Benapole border, it takes more time to unload vehicles at the land ports than physical clearance time. All these factors undermine competitiveness and add to cost.

In some land ports there is also a lack of adequate human resources to deal with customs clearance work. Often, the officer is not appropriately trained and has to send documents to head office, which causes inordinate delay. Often, when goods are exported under preferential treatment, delays also occur because the customs

official at the border point does not have enough knowledge about tariff classification and is not adequately equipped to certify the authenticity of the certificates of origin. Many of the land customs offices lack testing and laboratory facilities at the border ports and have to send samples to relevant institutions that are situated far away. This is a common phenomenon in the case of Bangladesh's export of cement and fruit juice to the north east Indian markets. The absence of appropriate banking facilities (honouring letters of credit opened for trade) also delays trade transaction and discourages trade. At times NTBs are imposed as purely protectionist measures, as has been the case for the anti-dumping duty (ADD) imposed by India on imports of dry-cell batteries from Bangladesh. Whist the ADD was subsequently withdrawn (Box 6.1), the exporters had already incurred significant damage.

Trader practices also often create bottlenecks. Importers often do not submit the required clearance documents to customs on time. As a significant amount of time is required to collect the formidable array of supporting documents, importers use godowns at storage facilities while they deal with the required financial and documentation work involved. This is often the case because storage charges are relatively low. Hence, storage facilities are being used for purposes they were not designed for in the first place.

Lack of cross-border transport agreements also creates problems for the movement of goods. As a result of lack of through-transport movement, there are transport inefficiencies at the interface. As some of the recent reports (Rahmatullah 2008; FICCI 2010) point out, the SAARC countries have about 3.8 million km of road network, which accounts for about 10 per cent of the world's road networks; the railway networks spread over 77 thousand km (FICCI 2010). However, because of a lack of bilateral and multilateral road and rail transport agreements, the seamless movement of goods, road/rail vehicles and wages across borders is not possible – this is true for movement

Box 6.1 The ADD on Bangladesh's dry-cell battery

India started to impose ADD on the import of dry-cell batteries from Bangladesh from the mid-1990s. India's argument was that Bangladeshi exporters were exporting the items at prices that were below the cost of production in Bangladesh. Bangladesh argued that the ADD was an NTB to protect India's domestic producers. Several meetings took place between the two countries to resolve the dispute, which created a lot of resentment in Bangladesh, without any positive result. The issue was also raised several times in meetings of the CoE; however, the case could not be resolved and the ADD continued to be imposed for several years. In 2005 Bangladesh decided to go to the dispute settlement mechanism of the WTO, the first time any LDC had done so. Following due process, a panel was constituted to hear the case. Bangladesh built its case on the ground that the ADD was not in compliance with relevant WTO provisions. In the end, India decided not to contest the case and the ADD was withdrawn.

between Bangladesh and India and between India and Pakistan. Major obstacles here are the absence of protocols, lack of standardisation of technologies, operation and maintenance practices, incompatibility of rolling stock, load restrictions on bridges, and differences in rail gauges, braking systems and couplings. At present, there are also restrictions on the movement of goods from Nepal and Bhutan through India to Bangladesh that are destined for third-party countries. Although South Asia has 25 major ports and one of the largest water systems in the world, lack of capacities, and the absence of comprehensive protocols hinder the cross-border movement of goods. This lack of trade facilitation is a major non-tariff barrier (in the broad sense of the definition) that (a) limits scope of intra-regional trade and (b) results in costly transshipment. Discussions have been initiated, at bilateral levels, to address some of the attendant issues. Existing protocols are being reviewed to explore the possibility of expansion.[7] In this regard, the positive role that information technology could play has been highlighted by some authors (Alburo 2010).

Some experts have argued that establishing SAARC regional rail. Networks will be the best way to move forward at this point of time. Addressing the attendant issues related to transport facilitation to stimulate trade among SAARC countries will require comprehensive negotiations between the member countries to identify the win–win options, which alone could lead to successful resolution of these NTBs. The recent visit of Bangladesh's Prime Minister to India and the communiqué resulting from the visit indicate some positive movement in this regard.

A careful review of the various NTBs faced by exporters in South Asia shows that the manifold and diversified NTBs that inform trade between SAARC countries could be categorised in the following broad areas *at the border* and *behind the border*. Broadly, these may be grouped into seven clusters: (a) NTBs related to SPS measures; (b) NTBs related to customs regulations; (c) NTBs related to TBT and environmental measures; (d) quantitative restrictions including bans; (e) border-crossing barriers; (e) labelling requirements; (f) rules of origin; and (g) visa requirements.

6.3.3 Current state of NTBs in Bangladesh and India

Information collated from UNCTAD Trade Analysis and Information System (TRAINS) Database gives an idea of the various types of NTBs that are in place in Bangladesh and India in the context of trade in particular items within the region.

NTBs in Bangladesh

Apart from the MFN duties, Bangladesh maintains a number of other duties on particular goods in the form of para-tariffs.[8]

Customs surcharges Supplementary taxes ranging from 15 per cent to 75 per cent are levied on the duty-paid value of goods, such as liquor, tobacco products, certain cosmetics, ceramic tiles, large engine automobiles, air conditioners, refrigerators and televisions.

Tax on transport facilities An infrastructure development surcharge of 3 per cent is levied on the assessable value of most imported goods. This has since been withdrawn.

Additional charges Import duty on gold in different forms is subject to specific duty at the rate of 'taka' (Tk) 300 per 'tola' (11.644 grams).

- A 1 per cent insurance fee and a 1 per cent landing charge are levied on the cost and freight (CFR) value of imported goods.
- An Import Registration Certificate assessed between Tk 500 and 5,000 is required from importers.
- Internal taxes and charges levied on imports.

General sales taxes A value-added tax (VAT) at the rate of 15 per cent is levied on all imports and domestically produced goods with the exception of selected items, including feed and medicines for poultry, dairy machinery, aircraft and spare parts, textile machinery, raw cotton, certain types of medical equipment, and items from small and cottage industries.

Internal taxes and charges levied on imports A fee of 1 per cent is levied on the value of imports to finance the pre-shipment inspections. In addition to the VAT levy, applicable supplementary duties ranging from 5 per cent to 270 per cent are levied on certain luxury products that include liquor, tobacco products, petroleum products, make-up materials, perfume, ceramic tiles, air-conditioners, refrigerators, televisions and motor vehicles.

Financial measures

- An advance payment for importation of specialised or capital goods requires the approval of the Bangladesh Bank.
- Only commercial banks and specialised financial institutions authorised by the Bangladesh Bank are allowed to trade in the foreign exchange market.
- Payment for imported goods to Bangladesh are financed either by the country's own resources, or from foreign aid, loans or by means of barter trade.
- Registered importers are allowed to import against Letter of Credit Authorisation Forms (LCAF) issued by authorised dealer banks.
- In general, payment against imports is permissible under irrevocable letters of credit.

Quality control measures Non-automatic licensing: as there is no import requirement for most goods, there is a registration requirement for importers by the Ministry of Commerce, the issuance of a prior permission for the importation of goods on the restricted list (controlled for religious, health or trade reasons, e.g. textiles and shrimps, raw sugar, milk foods, pork sausages), as the existence of authorised users to import certain restricted goods. For the importation of goods on the restricted list, a LCAF is needed. A clearance permit is required for the importation of the following goods: books, magazines, journals and periodicals; scientific and laboratory equipment against surrender of UNESCO coupons; plant and machinery of permissible specifications, new or not exceeding 12 years old; motor cars, new or not exceeding 5 years old; cargo or passenger vessels of steel of wooden body; plant or machinery for export-oriented industries, trawlers and other fishing vessels; imports of free samples,

advertising materials and gift items; imports of drugs and medicines (allopathic); and imports of capital machinery as a share of capital of the foreign shareholder.

Licence for specified use: a permission from the Director General, Narcotics Control Department, or others with permission from the same and the Ministry of Commerce allows foreign exchange earning hotels to import narcotics.

To ensure national security: a prior approval from the Chief Inspector of Explosives of the Ministry of Energy and Mineral Resources is required for the importation of explosives; and armaments are importable only by the government or by dealers approved by the government.

Prohibitions To control drug abuse: poppy seeds and dried 'posto dana', marijuana, opium and 'tendu' leaves are prohibited for importation.

To ensure human safety: there is an import prohibition on vessels more than 15 years old, motorbikes more than 3 years old, and single-phase electricity meters.

To ensure national security: importation of the following items is prohibited: maps, charts and globes indicating the territory of Bangladesh and not in conformity with government printed maps.

Prohibitions for purposes: an import ban is set on horror comics and obscene or subversive literature or materials, and used goods, including reconditioned office equipment, live pigs, pig and poultry fat, eggs, except hatching eggs, lard, lard and tallow oil, solid or semi-solid palm oil, raw sugar, un-denatured ethyl alcohol, denatured spirits of any strength, wine, artificial mustard oil, selected petroleum products, woven fabrics of silk or silk waste, pig hair, certain kinds of cloth, certain insecticides, nylon and polyethylene ropes, fishing nets, used or new rags.

Prohibitions with particular political objectives (embargo): import prohibition of goods originating from Israel and Serbia/Montenegro.

Monopolistic measures Compulsory national insurance: insurance for imports must be taken with the *Shadharan Bima Corporation* or any Bangladeshi insurance company.

Compulsory national transport: the Bangladesh Flag Vessels (Protection) Ordinance, 1982, ensures that at least 40 per cent of sea-borne cargo of imported goods is transported by national flag vessels.

NTBs in India

India maintains a large number of NTBs which impose additional burdens on importers. These constrain both intra-regional and extra-regional trade.[9]

Customs surcharges

- A special additional duty (SAD) introduced in the fiscal budget of 1998–99 is levied at the rate of 4 per cent on most imports, except duty-free ones.

- The 2004–05 Budget announced on 8 July 2004 a levy on imported goods of a 2 per cent education surcharge based on the CIF value with customs and excises taxes.

General sales taxes Levies of sales taxes ranging from 2 per cent to 20 per cent with permitted assessment of up to 4 per cent are set on textiles, sugar and tobacco products. In addition, as of 1 April 2005, a VAT levy at state level will be in effect, and the rate defined.

Internal taxes and charges levied on imports Domestic taxes, known as the central VATs, are assessed at the rates of 8 per cent, 16 per cent and 24 per cent on goods with some exceptions.

Price control measures Anti-dumping measures: imports of goods into India, valued at prices less than in the country of origin, are subject to anti-dumping measures laid in the Customs Tariff Act with a view to protecting domestic production.[10]

Finance measures Restrictive official foreign exchange allocation: the Indian currency, the rupee, is convertible on current account transactions as capital account transactions are carried out by foreign investors; however, Indian firms and individuals remain subject to capital account restrictions.

Regulations concerning terms of payment for imports: when imported machinery and capital goods require down payments exceeding US$15,000, a bank guarantee from an international bank covering the advance remittance amount is required from importers.

6.3.4 NTBs in South Asia identified by nationally appropriate mitigation action (NAMA) working group

As was mentioned earlier in section 6.2.2, a special working group was constituted in the WTO to look into the NTB issues. The following NTBs were notified for Bangladesh, India, Pakistan and Sri Lanka.

Bangladesh:

- health, religious, environmental and balance of payment purposes;
- quantitative restriction;
- import through state-trading enterprises (salt);
- restricted port of entry;
- custom surcharges in the form of supplementary taxes.

India:

- tariff rate quotas;
- import through state trading enterprises;
- health and sanitary regulations (quarantine fees);

- restricted port of entry and inland customs port;
- anti-dumping and countervailing duties;
- customs valuation.

Pakistan:

- ban on imports from India of products not on the positive list of 771 items (corresponding to about 1,500 HS eight-digit lines);
- local content required in the auto industries.

Sri Lanka:

- import ban (tea and certain spices);
- import monopoly (wheat);
- health and sanitary regulations.

The general criterion of SAFTA rules of origin is change in tariff heading (CTH) +40 per cent value addition for non-LDCs and CTH +30 per cent value addition for LDCs. There is also a product-specific rule for 191 items where the general criteria does not apply. Under regional cumulation rules of the SAFTA, applicable rules relate to the provision of value addition criteria only. In this case, the regional value addition is 50 per cent, of which 20 per cent has to be in the final exporting country.

Two cases are presented here in Boxes 6.1 and 6.2 to provide an understanding about how NTBs were addressed in the context of bilateral trade between Bangladesh and India. In one case (that of dry cell batteries) the case was taken to the WTO dispute settlement mechanism, whilst in the other case (that of apparels) the NTBs could be resolved through discussion and negotiation.

The case of conflicts that arose with regard to Bangladesh's export of apparels to India under the special market access initiative may be mentioned in this connection. The case demonstrates how NTBs might creep in, even when there are good intentions, and could undermine the spirit of decisions taken at the political level.[11]

Possible non-tariff barriers in service trade

Despite services not having been included in the SAFTA framework as yet, it is to be noted that at present SAARC members are moving forward in negotiating the SAARC Framework Agreement on Trade in Services (SAFAS), which will bring the services sector within the ambit of SAFTA. If and when the agreement is signed, exporters could face the following NTBs: limits on the total value of service transactions; limits on the number of service operations; limits on the number of natural persons to be employed necessary for the supply of a particular service; measures which force a service supplier to supply a service through a particular legal means; limits on the percentage share of a foreign investment, which may be accounted for by foreign shareholders into a telecommunication firm. Furthermore,

Box 6.2 India's offer of market access of apparel and NTBs

As was mentioned, India has kept apparel items in its sensitive list for LDCs, under the SAFTA. Later, in a welcome move in 2007, India offered to put in place a TRQ on apparel and decided to provide zero-tariff access to Bangladesh for 6 million (which subsequently was raised to 8 million) pieces of items of apparel. The preferential treatment was given exclusively to Bangladesh, on a bilateral basis. This was on extremely important and welcome initiative for Bangladesh, as apparel constitutes about 75 per cent of Bangladesh's global exports and it was felt that duty-free access would significantly enhance Bangladesh's export competitiveness of this item in the Indian market. Initially, the offer was subjected to a number of conditions: (a) 50 per cent of the fabrics had to be sourced from India; (b) the exports would be permitted through only certain land ports; and (c) Bangladesh will need to declare upfront, at HS six-digit level, the volume of export under specific tariff lines. In the end, following protracted discussions, India agreed to withdraw all pre-conditions and Bangladesh has been making good use of the duty-free market access offered by India. This case study serves as a good example of how the spirit of duty-free initiatives can be undermined by bureaucratic interventions.

in compliance with the scheduled specific commitments, there could be barriers in terms, limitations and conditions of market access; conditions and qualifications of national treatment; undertakings relating to additional commitments; the time frame for implementation of such commitments; and the date of entry into force of such commitments. Any future framework of dispute settlement will need to keep such possibilities in perspective. It will be advisable that these are kept in mind when SAFAS is negotiated.

6.4 Cross-country experience in resolving non-tariff barriers

A majority of RTAs have developed mechanisms to deal with the NTBs. Most RTAs have signed mutual recognition agreements whereby certification and laboratory tests, the standards of one country, are accepted at border points by other member countries. Such mutually beneficial arrangements were found to be a good modality to address concerns of RTA member countries with regard to compliance with measures against SPS and TBT.

ASEAN, for example, has signed an agreement on the general framework of a process by which NTBs would be addressed, and subsequently eliminated. The process involves (a) verification of information on NTBs, (b) prioritisation of products/NTBs, (c) developing specific work programmes and (d) obtaining a mandate from the ASEAN economic ministers to implement the work programme.

Member countries are now in the process of verifying the list of NTBs and products covered by these measures compiled by the ASEAN Secretariat. Several criteria have

been considered by the Interim Technical Working Group (ITWG) on Common Effective Preferential Tariff (CEPT) for the ASEAN Free Trade Agreement, with a view to identifying which products/measures have to be dealt with first. These criteria would be used individually or in combination with each other in order to set priorities. These criteria are, in order of importance: (a) number of private sector complaints, (b) difference between domestic and world prices and (c) trade value. The *first criterion* would rely on the private sector's or exporters' complaints, as they are in a better position to tell how different measures existing in the country of destination act as a trade barrier. The *second criterion* relates to the price divergence between domestic and global prices. The price gap provides an indication of how much trade is hindered, for if there are no trade barriers, imports tend to narrow down and eliminate the price differences. However, finding appropriate price data to make this type of comparison has not been easy. The *trade value criterion* prioritises those NTBs/products which are traded most widely (both within and outside the region). The fact that the ASEAN Secretariat has this information certainly helps. However, it is not easy to prove whether or not NTBs present in the sector hamper trade. If there is an extensive trade in a particular item, this may indicate that the NTB is not an important hindrance to trade; on the other hand, if that is not the case, the NTB could be identified as a major constraint. The criteria may not be mutually exclusive and could also be used jointly. Indeed, where all three criteria converge, they should give a robust indicator of the degree to which NTBs exist in that product or sector and appropriate actions may be initiated depending on this. That is what ASEAN is doing.

6.4.1 NAFTA dispute settlement (NTB) mechanism

The North American Free Trade Agreement (NAFTA) Secretariat deals with complaints regarding NTBs under Chapter 19 and Chapter 20 of the NAFTA. Chapter 19 provides for a system of binational panel review of decisions by a party authority on anti-dumping and countervailing duty matters. Article 1903 provides that a party may request that amendments to the other party's anti-dumping or countervailing duties statutes be referred to a bi-national panel for a declaratory opinion on whether the amendment is consistent with the General Agreement on Tariffs and Trade and the NAFTA. Bi-national panels comprise of five independent experts.

In Chapter 20, process is 'applicable to all disputes regarding the interpretation of application of the NAFTA' and 'intended to resolve disputes by agreement, if at all possible' (NAFTA n.d.). The process begins with government-to-government consultations, can proceed to a meeting of the ministerial level Free Trade Commission, and then finally move to the creation of a five-member arbitral panel. Panel rules are designed to result in final panel decisions within 315 days of the date on which a request for a panel is made. Within the 315-day period, strict deadlines have been established relating to the selection of panel members, filing of briefs and reply briefs, and the setting of the date for Oral Argument. In the event of failure to comply with decisions of a bi-national panel on statutory amendments, the complaining state is free to adopt comparable legislation or equivalent executive action to the violating amendments, or even withdraw from NAFTA (NAFTA n.d.).

Chapter 20 also provides for scientific review boards, which may be selected by a panel in consultation with the disputing party, to provide a written report on any factual issue concerning environmental, health, safety or other scientific matters to assist panels in rendering their decisions. Moreover, a third party that believes it has a substantial interest in a disputed matter is entitled to join consultations or a proceeding as a complaining party on written notice.

6.4.2 NAMA dispute settlement proposal (NAMA 11)

NAMA Dispute Settlement Proposal (NAMA 11) stipulates that the aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the concerned parties and which is consistent with the covered agreements is to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements (Article 3.7). It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all members will engage in these procedures in good faith in an effort to resolve the dispute (Article 3.10). The proposal also mentions that during consultations members should give special attention to the particular problems and interests of developing country members (Article 4.10).

6.4.3 European Commission dispute settlement proposal

The EU currently follows the WTO dispute settlement mechanism to deal with NTBs. According to the EU Trade Commission, the following recommendations have been made to strengthen the process:

a. The introduction of a system of more permanent panellists.

b. The clarification of the dispute settlement understanding provisions on implementation, covering notably:

    i. the sequencing issue (that is, the steps which need to be taken, and their order, before determining that the losing party has not complied correctly with the dispute settlement body recommendations and reacting accordingly);

    ii. the arbitration procedure on the level of suspension of concessions;

    iii the establishment of a procedure to lift suspension of concessions once a losing party has implemented changes.

c. The improvement of the provisions on trade compensation to make it a more attractive option before moving on to suspension of concessions and for speeding up the process whenever this is feasible and justified.

d. Greater transparency to secure continued public support and confidence in the WTO system, while preserving its inter-governmental character.

A number of RTAs have developed mechanisms for the assessment of equivalence of qualification, licensing and other requirement-related regulations with a view to improving the market. The EU, North American Free Trade Agreement (NAFTA) and Trans-Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand are some of the RTAs that have done so.

Approaches to mutual recognition and coverage of mutual recognition agreements (MRAs) could vary significantly. Two basic approaches have been suggested as the basis for mutual recognition. The so-called *vertical approach* argues recognition to be provided on a profession-by-profession basis, and as a result of the harmonisation or co-ordination among the parties to an MRA with regard to education and training being required by each profession (harmonisation-based approach) (Zarrilli 2005). The horizontal approach, on the other hand, allows for mutual recognition to be provided without prior harmonisation of curricula and training requirements, on the basis of a broad equivalence of qualifications (equivalence-based approach). While the vertical approach normally leads to unconditional market access, Zarrilli argues that the process is a long and laborious one and usually requires significant time and effort. On the other hand, compared with the vertical approach, the horizontal approach leads to much faster and concrete results. Thanks to this, more and more countries are relying on it as the basis for their MRAs. Since the establishment of equivalence with respect to qualification, licensing and standard requirements vary from country to country. South Asian countries would be well advised to follow the horizontal approach. A proposal in this vein has been submitted by India and is under consideration by the CoE.

6.5 Dispute settlement mechanisms in SAFTA and its efficacy: SAFTA committee of experts

As noted, the CoE, with government officials of the SAARC countries as its members, is the body that has been entrusted to deal with non-tariff-related issues and complaints.[12] The SAFTA CoE deals with notifications and responses with regard to NTBs. To begin with, the contracting state notifies the SAARC Secretariat about all its non-tariff and para-tariff measures to trade on an annual basis. The measures are then reviewed by the CoE, established under Article 10, in its regular meetings to examine their compatibility with relevant WTO provisions. The CoE then recommends elimination or implementation of the measure in the least trade-restrictive manner in order to facilitate intra-SAARC trade.

In view of the importance of the attendant issue, successive high-level meetings, both at ministerial and summit levels, have put emphasis on a co-ordinated and structured response to address non-tariff and para-tariff measures that impede and discourage intra-SAARC trade. The sub-group on non-trade measures, which was constituted at the first meeting of the SAFTA–CoE in April 2006, asked all member countries to notify the CoE about the NTMs they were facing whilst exporting to SAARC partner countries. Member countries, in response, notified of NTMs/para-tariff measures (PTMs) faced by their exporters in their intra-regional trade. The sub-group in its

fourth meeting identified the notifications under six broad headings: (a) sanitary and phytosanitary measures, (b) technical barriers to trade, (c) para-tariff measures, (d) trade facilitation measures relating to infrastructure, procedures, transparency, standards and testing, (e) customs rules and procedures and (f) others. It was decided that individual SAARC member countries would examine all notifications addressed to it by their partner countries to decide whether those NTBs met the basic principles of the WTO relating to non-discrimination and national treatment and whether their application had been made in a trade-friendly manner. It was decided that the fifth meeting of the SAFTA–CoE would review the responses to the notifications and identify the way forward.

A careful examination of the detailed list of notifications and responses of partner countries indicates that all member countries have tried to justify themselves on the grounds that measures taken by them did not violate national treatment and non-discrimination principles of the WTO and that these measures originated from health-hygiene and other admissible concerns.

Each of the three countries, Bangladesh, Pakistan and India had submitted detailed lists of NTBs that they perceived in the other two partner countries, at and beyond the border. A close examination of the submissions and responses indicates that NTBs have been interpreted by member countries from the perspective of a very broad definition of barriers to trade. Relevant documents reveal some interesting patterns.

The complaints regarding the submissions mainly relate to (a) market access difficulties faced on account of requirements relating to SPS-TBT, certification, labelling, registration, laboratory testing and standardisation in place in partner countries; (b) difficulties faced in partner countries due to infrastructural constraints that impede cross-border movement of goods from the exporting countries (lack of infrastructure, low handling capacity, lack of warehouse facilities, etc.); (c) imposition of para-tariffs, surcharges, cess, VAT, sales tax and other duties beyond MFN tariffs; (e) requirements of licences and permits from importing countries; (f) anti-dumping and countervailing measures; (g) interpretation of rules of origin; and (l) lack of availability of adequate letters of credit facilities and necessary financial intermediation.

What is perhaps not surprising is that, as a reporting country, (exporting) members have given generous interpretations of the NTB-related difficulties faced in trading with (importing) partners, but in submitting their own responses the same partners have attempted to justify similar types of NTB/NTM in place in their own countries. The responses have tended to argue that their own NTB/NTMs should not be interpreted as such because: (a) SPS-TBT and other related complaints actually should not be perceived as NTBs/NTMs, as these have been put in place to ensure compliance with national relevant standards, rules and regulations; (b) measures perceived as NTBs/NTMs are of MFN nature and are not directed at specific countries; (c) these measures are WTO-compatible; (d) some of the measures relate to security concerns; (e) partner countries have also imposed similar barriers; and (f) lack of domestic capacity to develop necessary infrastructure has led to infrastructure-related constraints in importing countries. In only a few cases did the

partner country, in response, mention that they are taking steps to address particular complaints (building of infrastructure) or that relevant authorities (often central banks) have been asked to provide clarification as to the complaint. Thus, in spite of the best efforts of the CoE to resolve the existing NTB-related issues, much remains to be done in actually resolving the outstanding issues.

Indeed, it is understood that at the meeting of the CoE it was pointed out that submission of responses and counter-responses may not be very helpful in terms of leading to resolution of issues related to NTMs/PTMs. Rather, efforts should be made to list NTMs/PTMs which are trade restrictive as per relevant WTO provisions. The sub-group of the CoE was asked to clarify whether notified NTMs/PTMs fall into any of the following categories: (a) SPS; (b) TBT; (c) para-tariff measures; (d) trade facilitation measures relating to infrastructure, procedures, transparency standards and testing; (e) customs rules and procedures; and (f) others. The idea is to take it from there, by identifying WTO-compatible barriers and WTO-incompatible barriers, and then proposing measures to address the attendant concerns.

Whilst member countries could go on arguing whether what they were facing were NTBs or not and whether those were WTO-inconsistent or not, the fact of the matter is that intra-regional trade flow continues to be significantly constrained because of the 'real' or 'perceived' NTBs. The task is to take concrete initiatives to address the attendant concerns, in a positive manner, through constructive engagements at various levels. As would appear from the above discussion, initiatives will need to be taken in three broad areas: harmonisation of customs policies and procedures, capacity building in compliance-related areas and improving trade facilitation at border points.

Developing MRAs is also critical in the area of trade in services, which is envisaged to be the next phase of SAFTA. Of particular relevance in this context will be trade in services with regard to Mode 4 (Movement of Natural Persons) under the General Agreement on Trade in Services (GATS). Lack of recognition of qualifications, skills or experience is one of the most common barriers affecting Mode 4 (Chanda 2005). It either denies market access altogether to foreign service providers or induces such suppliers to perform at a capacity that is below their level of qualification (academic or otherwise). These problems will need to be dealt with in the course of SAFAS negotiation.

6.6 Policy initiative to address the NTBs

NTBs have not only severely restrained the potential opportunities of trade expansion among SAARC countries, the related issues have often been politicised in a manner that has severely undermined the overall spirit of co-operation among the member countries. As the discussion above would indicate, in spite of efforts at various levels to deal with the related issues, much more needs to be done by way of concrete measures. This is not to deny the fact that some positive movements have taken place in terms of addressing the attendant problem within the SAARC institutional framework. However, the need of the hour is to build on the progress made thus far,

and move forward at a faster pace. The following sections focus on a number of steps and initiatives that are required to address the concerns that were identified in the preceding sections, based on the experience of addressing the NTB-related issues in other, more advanced, regional trading arrangements.

General principles: SAARC members should work towards some general principles with regard to NTMs/PTMs. In general, the principle should be that NTMs/PTMs that have not been notified to the WTO, and hence are unlikely to be admissible if contested in the WTO dispute settlement body, should not be imposed in the case of intra-regional trade. If a new NTM/PTM is to be introduced, member countries should be given prior notification for examination and preparation. The principle of MFN and national treatment should be guaranteed in all intra-SAARC trade transactions. An agreement may be made to the effect that value of all imported products would be ascertained on the basis of a customs valuation assessment (CVA) of the WTO.

Strengthening SPS-TBT related capacities: As is evident from the aforesaid discussion, a majority of the NTBs relate to such areas as certification, testing and SPS-TBT compliance. A practical way of resolving this, which also has been floated during SAARC meetings at various levels, is to (a) strengthen national capacities in relevant areas through capacity building of standardisation institutions and (b) putting in place mutual recognition agreements (MRAs) whereby certificates issued by standardisation/accreditation institutions of one country will be accepted by those of another country. Indeed India made an offer in the fourth meeting of SAFTA sub-group on NTMs to assist LDCs to develop the required capacities in the areas of standards, technical and human resources. The need to address NTBs inhibiting Indo-Bangladesh bilateral trade was also highlighted at the highest policy level (Indo-Bangladesh Communiqué 2010). These are to be provided on the basis of specific requests from member states. India has started to provide some technical assistance towards the strengthening of the Bangladesh Standards and Testing Institution (BSTI). The decision to establish the South Asian Regional Standards Organisation (SARSO) in Dhaka is also a step in the right direction. SARSO is expected to provide assistance in areas of national capacity building in standardisation related areas. SARSO could also play a critical role in ensuring the evolution of common standards in various SPS-TBT, certification, testing-related areas and could also play an important role in facilitating the MRAs.

Dispute settlement mechanism: A workable dispute settlement mechanism is important to resolve conflicts relating to NTBs in trade among SAARC members. As was mentioned earlier, until now the CoE has served as the dispute settlement authority in the SAARC. Whilst the CoE has been trying to address the NTB-related disputes and issues as best it can, the fact remains that it is an ad hoc body, which is able to sit only periodically and does not have enough power to follow-up with the decisions. In view of this there is a need for a more institutionalised approach to deal with the NTB issues in SAARC. Experience of other RTAs, such as ASEAN, NAFTA and the EU, may be studied thoroughly to come up with an acceptable structure for SAARC in this context. The SAARC Secretariat could take the lead in this respect by (a) introducing a system

of permanent panellists; (b) putting in place a transparent system of arbitration; and (c) introducing transparent procedures for lodging complaints and getting remedies.

Establishment of accreditation agencies: In order to ensure that certificates issued by relevant agencies in one country are accepted by another country, appropriate accreditation institutions will need to be developed. These agencies will be required to have the necessary competence in relevant areas. These could play an important role in resolving many of the compliance-related concerns. Governments should provide incentives so that such accreditation institutions are set up in the private sector. In a good move, an SAARC Arbitration Council has been set up for which nominations have been submitted by member countries for the governing board. Some of the administrative and financial matters have been addressed and the progress was reported in the first meeting of the Council held in January 2009. What will be required now is to ensure that the Council has the required capacity and logistical support to deal with disputes as and when these appear. It is perceived that the Council could serve as a clearing house of disputes and that it could help stimulate trade by guaranteeing that trade is not disrupted until the Council gives a verdict with regard to the dispute being arbitrated by the Council. An effective arbitration Council could play an important role in resolving NTBs, such as ADDs and CVDs. If the Council is vested with appropriate authority and capacity, it could rule whether the specific NTB is WTO-compatible or not. The Council could also suggest ways so that damage to the aggrieved parties is kept at the minimum.

SAARC standards co-ordination body: As varying standards in the SAARC countries are one of the major reasons disputes arise in the first place, it is a welcome initiative that the SAARC has constituted a *Standards Coordination Board*. The board has already met several times. The board has finalised the statutes and bylaws of SARSO to be headquartered in Dhaka. The board has also identified an initial list of products for which work has commenced with regard to harmonisation of standards among countries of the region.[13] The important task at hand now is to build the infrastructure of SARSO as speedily as possible and to organise the appropriate human resources for SARSO, which then can take on the task of harmonisation of standards encompassing all tradeable goods in SAARC.

Customs co-operation: A frequent reason for disputes during cross-border movement of goods is bottlenecks at customs points. Often disputes arise because of interpretations of tariff lines and whether particular products belong to a particular tariff line. Often exporting country officials are keen to put the item under a tariff line that enjoys preferential treatment, whilst importing country officials would try to put it under a line with MFN duties, particularly when there is an interpretation ambiguity with regard to the item. In recent times, some initiatives have been taken towards customs co-operation among SAARC countries. An SAARC *Agreement on Mutual Administrative Assistance in Customs Matters* was finalised by the sub-group on customs co-operation.[14] The focus of attention here should be on capacity building, harmonisation of HS eight-digit tariff lines at among member countries, customs clearing procedures and facilitation for movement of consignments traded under SAFTA. The task now is to expedite this entire spectrum of exercise. In this context, speedy completion of the harmonisation

and computerisation of the customs clearance process at border points and ports should be given priority so that disputes, particularly at land customs stations, can be reduced. It is to be noted here that four of the seventeen land customs stations in Bangladesh have been placed under private sector management contract. There is a need for public–private partnership initiatives in this context.

Dealing with para-tariffs: Indeed, the practice of some countries in various RTAs to determine assessable values of imported items by fixing a certain percentage of abatement on retail sales or on the basis of pre-fixed tariff value, often give rise to disputes among member countries. In countries with a federal structure, such as India, disputes often arise because exports which enter the border at zero-tariff are subjected to state-level taxes.[15] Whilst, such 'para-tariffs' can hardly be contested,[16] per se, member countries could think about coming to an agreement in terms of not imposing any para-tariffs/surcharges in intra-regional trade.

Reducing sensitive lists: As the sensitive lists of individual SAARC countries tend to be long, and often disputes arise as to whether or not an item (at the disaggregated HS eight-digit tariff line) should be accorded preferential treatment under SAFTA (the positive or residual list) or whether it belongs to the sensitive list, one way of resolving such disputes is to have an agreement towards an accelerated reduction of the sensitive list. Already, India has taken some positive steps in this regard and other members could also think of fixing definitive timelines.[17]

Mutual recognition agreements: One key factor to resolve disputes with regard to SPS-TBT standards is to go for (a) signing MRAs with regards to certification, technical regulations, testing, etc.,[18] and (b) putting in place the required capacities in this respect. Indeed, India has offered to provide technical assistance in building and strengthening the capacity of SAARC LDCs in compliance-related areas.[19] However, given the importance of the issue and the need to take urgent initiative in this area, member countries (particularly LDCs) should also seek support from other potential donors including the EU, which has extensive trade-related capacity-building support programmes in place for LDCs.

Addressing infrastructure-related trade-facilitation bottlenecks: The most often-mentioned NTBs relate to the lack of trade facilitation at border points. The bottlenecks come in various shapes. The issue of addressing the 'soft ones' (customs valuation, tariff harmonisation, computerisation, etc.) has already been mentioned. However, what hinders cross-border movement of goods, to a large extent, is the absence of physical infrastructure at border points. Some of these relate to conscious policy choices (e.g. when a country would not allow unloading of imports at its ware houses, which then has to be done at the border) or by default (when appropriate facilities, such as testing laboratories, warehouses, etc., are not there). Whilst ensuring seamless movement through regional connectivity and multi-modal transport facility is the long-term solution, from a short- to medium-term perspective there is an urgent need to build the necessary border infrastructure to facilitate cross-border movement of goods. Co-ordination among partner countries in terms of the development of infrastructure facilities is also critical in addressing these issues.[20]

Services trade and NTBs: The World Bank (1977) provides a number of guidelines for MRAs in selected services which could serve as guiding principles for similar initiatives in the SAARC. With regard to services trade, Chanda suggests that any progress on the issue of recognition requires initiatives to be taken simultaneously at three levels (Chanda 2005). The first is to improve the framework for MRAs. The second is to address more broadly the entire concept of recognition, such as the assessment of competence and determination of equivalence. The third is to address the operational difficulties facing the South Asian countries in negotiating recognition agreements, given institutional, technical, and financial constraints, and Mode 4 GATS interests that tend to fall outside the purview of most MRAs. However, the most common way to achieve recognition has been through bilateral agreements. Article VII of the GATS recognises this as permissible. There are differences in education and examination standards, experience requirements, regulatory influence and various other matters, all of which make implementing recognition on a multilateral basis extremely difficult. In this regard, it has been suggested that bilateral negotiations will enable those involved to focus on the key issues related to their two environments (WTO 1997). WTO further suggests, once bilateral agreements have been achieved, this can lead to other bilateral agreements, which will ultimately extend mutual recognition more broadly (WTO 1997). Zerrilli (2005), for example, cites the case of Mercousur (Mercado Común del Sur or Southern Common Market), an RTA that includes several South American countries, where accredited degrees are recognised by member countries which makes it possible for professionals to move around the region.

6.7 Concluding remarks

NTBs are often cited as stumbling blocs to deepening regional integration among the countries of the SAARC. In the preceding sections an attempt has been made to situate the discussion on NTBs in South Asia in the context of cross-country experiences, and to put forward recommendations based on best practices available with various RTAs. There is now a growing recognition among SAARC member countries that NTBs not only constrain trade expansion within the region, but also add tensions to bilateral relations that go beyond trade and commercial aspects of the relationships. It is, thus, critically important that SAARC members start to apply their collective wisdom to address the attendant issues, taking a long-term view.

As the study has pointed out, this will need policy initiatives on a number of fronts. First, as the discussion shows, in many RTAs some categories of NTBs, particularly those related to SPS and TBT and health and hygiene concerns, were successfully dealt with by putting in place appropriate capacities and institutional mechanisms. SAARC should deal with these NTBs in a similar fashion by strengthening the domestic capacities of member countries to ensure compliance in the aforesaid areas and by signing MRAs. Second, there is a need for putting in place a mechanism in the SAARC Secretariat for the arbitration of NTB-related disputes which would have transparent procedures for selection of panellists, submission of complaints, appeal, remedy and sanctions. Third, as discussed, many NTBs arise from ambiguities with regard to customs procedures, lack of customs harmonisation and also because of

various para-tariffs and surcharges in place. The best solution, as has been found with many RTAs, is a move towards graduation to customs unions. Whilst this can be seen as a medium-term solution, individual SAARC member countries in the meantime could address such 'perceived NTBs' by gradually moving towards a unified customs code that does away with most para-tariffs and surcharges. Fourth, investment in trade facilitation has come out to be a key factor in addressing NTBs in South Asia. Indeed, initiatives in the form of development of infrastructure both at and behind the border, better connectivity and putting in place the required protocols have emerged as one of the most effective means of removing NTBs in the South Asian context.

If the SAARC member countries are to succeed in enhancing intra-regional trade, they will need to get on with the attendant tasks on an urgent basis.

Notes

1 This was mainly done through a *positive list approach* where particular sectors/items were identified for preferential treatment, with the preference margin ranging from 10–100 per cent of the MFN applicable duties.
2 Member countries were to have two negative lists: one for LDCs (shorter) and another for the developing country members. However, not all countries have come up with two lists.
3 The three developing SAARC members are India, Pakistan and Sri Lanka and the LDC members are Bangladesh, Nepal, Bhutan and Maldives, which were joined recently by Afghanistan.
4 It may be noted here that in a welcome move India, the dominant trading partner in the SAARC, has offered to accelerate the reduction of its negative list through periodic reviews. India has taken out 264 items from its negative list, which now stands at 480 items. In addition India has also allowed TRQs for 164 items (8 million pieces of apparel) to Bangladesh on an autonomous basis. It is also to be noted that India has agreed to take out an additional 47 items from the negative list. However, items on this list are yet to be made known.
5 It is to be reckoned that a significant volume of trade in SAARC is conducted through informal channels. Whilst recent data on informal trade is not available, studies conducted in the mid-1990s put the ratio between formal and informal trade to be 1:1.2.
6 It may be noted here that trade flows among India, Pakistan, Bangladesh and Sri Lanka account for about 95 per cent of intra-South Asia trade for the SAARC members.
7 For example, under a bilateral water protocol signed between Bangladesh and India, Bangladesh allows India to transport goods by waterways to certain ports in Bangladesh. There have been talks between these countries with regard to access of Nepal and Bhutan to global markets through India and allowing India limited connectivity to the north east by extending the remit of the current protocol.
8 The items tend to vary from budget to budget.
9 Here also the type of items falling under NTBs and the depth of incidence has varied from one budget to another.
10 The following anti-dumping measures are in force against the following products: acrylic fibres on 18 July 2000, analgin on 8 October 2001, potassium permanganate on 1 November 2001, paracetamol on 27 March 2002, sodium nitrite on 29 November 2002, caustic soda on 14 November 2003 and green veneer tape on 9 February 2004.
11 It is to be noted that the EU also expressed its intention to join the case as an interested party.
12 The CoE was constituted as per Article 10 of the SAFTA Agreement. The CoE is mandated to review all NTBs and NTMs and to recommend elimination or implementation of measures in the least trade restrictive manner to facilitate intra-SAARC trade.
13 These include cement, sugar, biscuits, skimmed milk power, vegetable, textile fabrics, jute, etc.
14 This was done during the Thirteenth SAARC Summit in Dhaka in November 2005. The Agreement has been ratified by all countries.

15 For example, in India there are state taxes, cess (at 4%), etc.
16 Member countries (in this case, for example, India) argue that items coming from other states, when they enter the particular state, have to pay similar duties.
17 India carried out a review of its negative list in April 2008 (after two years of SAFTA, although the agreement stipulates a review in at least every three years. The number of items in India's negative list was reduced from 744 to 480 (as a result of exclusion of 264 items from the negative list). Moreover, through a bilateral memorandum of understanding India has given a TRQ to 164 items of apparels export from Bangladesh.
18 Indeed, India has offered, and Bangladesh has accepted, the signing of a framework agreement on mutual recognition.
19 India is providing assistance in strengthening the capacity of the BSTI in certain areas.
20 This is important in view of the fact that, in the past, it has been seen that countries have developed border facilities, particularly land ports, in such a manner that port infrastructure and trade facilitation measures have been developed on one side of the border, whilst the developments have taken place on the other side of the border in another land port. Such disjointed developments have tended to restrict the potential benefits to be accrued from improvements at border crossing points.

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