

# **World Trade Organization Rules on Sanitary and Phytosanitary Measures: Bangladesh Perspective**

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## **Abstract**

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. While, WTO rules help to ensure that these products are traded safely and that health protection measures are not used as an excuse for protecting domestic producers. In this perspective, this thesis aims to meet two basic questions, these are how to work SPS measure agreement and what are the challenges and opportunities of SPS measures for market access implications. The research method is based on explorative research of inquiry. The agreement on the application of sanitary and Phytosanitary measures sets out the basic rules for food safety and animal and plant health standards. It allows countries to set their own standards. The basic aim of the SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate, but to ensure that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade. The SPS Agreement, while permitting governments to maintain appropriate sanitary and Phytosanitary protection, reduces possible arbitrariness of decisions and encourages consistent decision-making. It requires that sanitary and Phytosanitary measures be applied for no other purpose than that of ensuring food safety and animal and plant health. In particular, the agreement clarifies which factors should be taken into account in the assessment of the risk involved. This agreement is fully applicable in Bangladesh. Measures to ensure food safety and to protect the health of animals and plants should be based as far as possible on the analysis and assessment of objective and accurate scientific data. The SPS Agreement encourages governments to establish national SPS measures consistent with international standards, guidelines and recommendations. This process is often referred to as harmonization. Sanitary and Phytosanitary measures sometimes vary, depending on the country of origin of the food, animal or plant product concerned. The WTO itself does not and will not develop such standards. Therefore, the findings of this thesis can more trades in the products to impose SPS measures and achieve significance economics gains in Bangladesh.

## **Keywords**

WTO; SPS Measures; Bangladesh; Standards; Harmonization; Hazard

## **1. Introduction**

World Trade Organization (WTO) rules on Sanitary and Phytosanitary (SPS) Measures can improve capacity development of the industries. Bangladesh can access more market in world due compliance of SPS measures. Still, the Challenges are implementing and introducing compliance rules of SPS measures of WTO in Bangladesh. This study has been selected WTO rules on SPS measures in Bangladesh for simplification, harmonization specification and comparison of national rules and regulations to improve international trade capacity of Bangladesh. In order to protect human, animal and plant life and safety, WTO rules allow member countries to adopt SPS regulations and

measures. However, the buyers and sellers of Bangladesh are challenged with SPS measures which are perceived to be trade-constraining. Various types of SPS measures such as laboratory testing, registration, certification of sanitary and Phytosanitary certificate are crucial in international trade for exports. In spite of Bangladesh's Rank in world trade, 2017 are 57 for exports; 49 for imports and GDP in million current US \$ 261374 . Bangladesh's total exports to India, 20 percent are garments and the rest are others, especially agro-products. Around 170 million people live in Bangladesh. Contribution of GDP of Bangladesh is around 15% (2017-2018) from agriculture and the rest around 85% from industry and service sector. SPS measures in supply side of Bangladesh can increase and access in international trade. It is now a trade-legal and awareness problem for Bangladesh. Bangladesh has signed the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures of the World Trade Organization (WTO) rules for resolving the Sanitary and Phytosanitary (SPS) problems since 1 January 1995 . It concerns the application of food safety and animal and plant health regulations. Moreover, the government of Bangladesh has also sign the agreement as the South Asian Regional Standards Organization (SARSO) , a common certification panel for the SAARC region, is yet to be fully effective though it started journey in April 2014. The present research work will try to conduct a Legal Analysis on various types of SPS measures to the National Context of Bangladesh on the issues. This research includes an overview of the WTO rule on SPS measures for a Legal Analysis to the National Context of Bangladesh. WTO is a combination of 12 agreements on goods, services, intellectual property . SPS measures are one of the agreements among above 12 agreements. Agreement on the application of SPS measures has 14 articles including Annex A, B and C. According to Article 14, the final provisions is, "The least-developed country members may delay application of the provisions of this agreement for a period of five years following the date of entry into force of the WTO agreement with respect to their sanitary or Phytosanitary measures affecting importation or imported products." Bangladesh is already spent more than 5 years after sign WTO's SPS measures agreements. Thus, this agreement is fully applicable in Bangladesh exported and imported products without any doubt. In this regard, the SPS measures take the form of import bans, conformity assessment certificates, inspection, quarantine requirements, permission to use certain additives in foods, determination of maximum levels of pesticide residues; and the designation of disease free area or zones. The Agreement on SPS of WTO recognizes the need for ensuring protection to health, safety and sound living of human and plant. In this perspective, a study regarding SPS measures is needed for more legal capacity and compliance for market access in international trade of Bangladesh.

## **2. Research Questions**

In this research will cover the following questions:

- ✓ SPS measures agreement: How does it work?
- ✓ What are the Challenges and Opportunities of SPS measures for market access implications?

## **3. Objectives of the Research**

The Broader Objective is to overview WTO's SPS rules in compliance the national context. Besides, these have Some Specific Objectives as:

- To Identify and analyses the WTO's major SPS measures and concerns in Bangladesh.
- To identify the current cooperation mechanism, this can be deployed to address SPS measures.
- To come up with a framework for SPS measures for more market access in International Trade in Bangladesh.

## **4. Justification of the Study**

In the present study, the results which will be obtained from the research are expected to bring new insights in the development planning of our industrial and service sectors, which will help in increased industrial output and export according to compliance of SPS measure. This in turn will increase the employment opportunity in the country. After the study, the findings may be used for formulating long term policy, strategy and law for industrial development of Bangladesh. Bangladesh has a status Duty Free Quota Free (DFQF) Market Access offer to the Indian market around 94.1% (Meat and dairy products, vegetables, coffee, tobacco, iron and steel products, copper products, etc.) which has created significant opportunities to enhance Bangladesh's market access in India and deepen bilateral economic and trading relationship between the two countries . While the duties have been brought down to zero, the Non-Tariff Barriers (NTBs) such as Sanitary and Phytosanitary (SPS) measures continue to pose significant challenges in advancing the trade between the two countries . The goal of this study is to enable awareness of challenges of implementation concerning basic rights and obligations, harmonization, equivalence,

assessment of risk and determination of the appropriate level of sanitary or Phytosanitary Protection, Transparency and control, inspection and approved procedures of SPS measures for international trade.

## **5. Scope and Limitation of the Study**

The scope of WTO is non-discrimination; predictable and growing market access; fair competition; economic Progress and reform in developing countries, special & differential treatment for LDCs, promoting harmonization of national regulation in specific fields, Institutional and procedural rules, including those relating to decision-making and dispute settlement. Moreover, WTO have the rules on market access ;rules on custom duties; rules on other duties and financial charges; rules on quantitative restrictions; rules on other non-tariff barriers such as rules on transparency of trade regulations; custom formalities; and government procurement practices, trade liberalization versus other social values and interests on non-economic values and interest including protection of environment, public health, public morals, national treasures and national security . WTO multilateral agreement (covered agreement) are agriculture; textile and clothing; TRIMs; anti-dumping measures; subsidies and countervailing; pre-shipment inspections; rules of origin; safeguards; import licensing; custom valuation; TBT and SPS. Possible areas of study regarding SPS measure including Standardization, Certification, Calibration, Testing, Technical Information, and Dispute Settlement and Trainings. However, the perception survey can indicate, carried out for this study, that much more energetic and innovative steps will be needed to address the SPS concerns . In this perspective of WTO's SPS measures, the limitation of the present study will be covered the present policies, strategies, legal system, foreign and local investment in Bangladesh in connection to SPS measures for effects of industrial capacity development of Bangladesh in business supply side in connection to market access for international trade.

## **6. Literature Review**

World community was widely believed that protectionism and restrictions on trade dating back to the end of World War I had been largely responsible for the worldwide depression leading to world to its rock-bottom level . For the above reasons, the creation of multilateral legal framework (origin of GATT) has been through Bretton Woods Conference. The participants at the conference concluded that joint management of the political-economic order was the solution to the ills that plagued the interwar period. Joint management meant that the foremost industrial democratic states must lower barriers to trade and the movement of the capital and set up international institutions for safeguarding against protectionism. Agreements signed by the delegates included establishment of three institutions: International Bank for Reconstruction and Development (IBRD), which is presently the part of the World Bank. International Monetary Fund (IMF) for providing long term loan and International Trade Organization. The goal of IMF was to maintain exchange rate stability and help states with balance of payment problems. The World Bank was to provide technical assistance to emerging market economies. The ITO was to oversee negotiations and administration of a new international trade regime. GATT 1947 was concluded as a provisional agreement to function as a stopgap measure. GATT turned out to be a series of negotiating rounds. GATT 1947 was concluded as a provisional agreement - to function as a stopgap measure. GATT turned out to be a series of negotiating rounds regarding Liberalized policy for industrial products; Protected/restricted policy for trade in agricultural and raw materials; Principle of non-discrimination; GSP as an exception to principle of non-discrimination; Dispute settlement; Positive consensus and Multilateral trade liberalization . It is a process of incremental trade liberalization by substantial reduction of tariffs and tariff related other barriers to trade and elimination of discriminatory treatment; Reduction of tariff barriers: part 1, Art.2; Import restriction is prohibited ( Art.11); Absolute injunction upon import restriction ( Art.16); Balance of Payment problem as an exception to import restriction barriers (Art.12 safeguard measure); Equal treatment for all importers; Any advantage, privilege, favor or immunity given to any member shall be accorded to all members 'immediately and unconditionally'. It is called Most-favored –nation Treatment ; National treatment on internal taxation and regulation . Once a foreign product is available in any domestic market (after compliance of all border measures/payment of all tariffs and taxes); it must be treated equally with national/domestic products (like products) in terms of internal (indirect) taxation. It means treatment by a member state with each of others as favorably as it treats its 'most-favored' member, that is, the nation with which it has the most unimpeded commerce. It seems to establish sovereign equality of states with respect to trading policy. Art. 1 of GATT embodies MFN treatment with respect to custom duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports. The method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation'; and all matters in relation to national treatment of internal taxes and charges for imported goods (GATT, Art.III (2), and 'all laws , regulations and

requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use' (GATT, Art.III {4} ) MFN treatment is a contractual obligation of a country towards other trading countries under an international treaty, namely GATT . It obliges a trading country to accord to another the same favorable treatment that the former has granted to any third trading country under the treaty. The trading countries, which are entitled to MFN treatment, can claim as a matter of right all advantages and benefits associated with the treatment immediately and unconditionally without being required to compensate or reciprocate. The requirement of MFN includes concession granted in both the past and future. The main objective of MFN principle is to maximize the equality of opportunity by stamping out all discriminatory treatment. The terminology of SPS has no place in GATT 1947. GATT Article 20 outlines some general exceptions to MFN and NT principles under which it permits the adoption and enforcement of measures necessary to protect human, animal and plant life and health. GATT attempts to prohibit the abuses of measures which is arbitrarily discriminatory, creates undue barriers and disguised restriction to trade. It seeks to balance between the state's right to protect the life of its national and plant and its duty to liberalize the trade. History: It was first pursued in the Seventh Tokyo Round of GATT talks in 1973 to 79. 9 (nine) Plurilateral Agreement were adopted of which Agreement on TBT or the Standards Code dealt with the technical requirements to be fulfilled in ensuring food safety, and animal and plant health including pesticide residue limits, inspection requirements, and labelling . 43(forty three) GATT members became the parties to this Code. In Uruguay Round the Working Group modified and improved the Code text and prepared a draft text on SPS regulations on Nov 20, 1990. In 1991 Arthur Dunkel presented his own draft on SPS that closely followed the Working Group Text and finally approved at the end of the Round which was largely based on the Dunkel text. Preambular objective: to improve human and animal health and Phytosanitary situation in all member countries. The Agreement recognizes the right of each member to adopt or enforce measures necessary to protect human, animal and plant health . WTO seeks to control the unjustified, arbitrary and discriminatory use of SPS measures. It intends that it would not be applied in such a way that constitutes a disguised restriction on international trade. It seeks to minimize the restrictive effect on WTO trade liberalization scheme and therefore talks about a need for harmonization, which is voluntary, not obligatory .

## **8. Methodology of the Study**

This paper contains the doctrinal and qualitative research. Doctrinal research that includes the library based research. This research is based on case law, journal report, article, relevant book, reports, articles, newspapers, internet, statues and case studies etc. and existing research pertaining to the issue of World Trade Organization Rules on Sanitary and Phytosanitary Measures: A Legal Analysis to the National Context of Bangladesh. This thesis analyzes text books, journals and information from internet as secondary sources in order to completion of my dissertation paper. Data and information has been collected for this study from both primary as well as secondary sources to finds out the gap or drawback of the laws, which is made for the protection of WTO rules on SPS measures for harmonization, simplification and uniforms the non-technical barriers to trade. To conduct this research in the light of the objectives, in this thesis has used the information from various sources relating to WTO rules on SPS measures. The present research is based on explorative research of inquiry and adopted case study design. Personal observation has been a key source for collection and analysis. Moreover, the opinions of experts in these fields have greatly facilitated this research. The findings of the study are written in a more qualitative manner rather than in quantitative terms.

## **9. Conceptual Issues on the Application of Sanitary and Phytosanitary Measures**

The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and other regional arrangements have been introduced to facilitate trade in agricultural and food products by establishing minimum requirements to protect animal, plant or human life or health. Examples of these measures include those to prevent the introduction and spread of animal and plant pests and diseases in a country, which directly affects agricultural productivity (and the income of persons' dependent on agriculture) and also food security. Increased production costs resulting from the implementation of SPS measures are the main factor undermining LDCs' ability to access foreign markets. Even when access to markets is gained, repeated rejections of shipments on SPS grounds typically result in stricter scrutiny by the importing countries, increased transaction costs, damage to reputation of the product from that country, and a loss of confidence in the competent authority's export certification system. The aim of lowering trade barriers among nations through multilateral negotiations the world leaders who met at the Bretton woods created, along with the International Monetary Fund, another institution called General Agreement on tariffs and Trade (GATT) in 1947 with headquarters Geneva (Switzerland). From 1948 to 1994, the GATT provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in

international commerce. It seemed well-established but throughout those 47 years, it was a provisional agreement and organization. The agreement was intended to uphold and implement the fundamental principles in trade relations namely (i) nondiscrimination (called most Favored Nation, MFN, principle according to which any trade concession bilaterally negotiated should automatically be extended to all participating nation (ii) elimination of non-tariff barriers and (iii) consultation among nations for settling trade disputes within the GATT framework. The participating countries, meeting in various rounds of negotiations such as the Kennedy Round (1964-67), the Tokyo Round (1973-79), have substantially brought down the tariff and non-tariff barriers (with liberal exceptions for extra- ordinary circumstances. In spite of the major achievements of the various rounds of negotiations including the Tokyo Round many unresolved issues remained. These were taken up in the Uruguay Round, the eighth and the most ambitious attempt in the history of multilateral trade negotiations. This round began at Punta del Este in Uruguay in 1986 in which 117 countries took part. After seven years, protracted and complex bargaining (in which the US economic influence and diplomatic pressure played a significant role) the negotiations were concluded December 1993. Several of the notable features of the Uruguay Round were the following: restriction new protectionist tendencies; bringing trades in agriculture and services into negotiations; obtaining agreements with respect to trade related investment; measures (TRIMS) devising rules for the for the amendment of the patent regime to cover; trades in intellectual property rights (TRIPs) and setting up of a new institution to be called The World Trade Organization (WTO) replacing the GATT. Among the issues, trades in agriculture and services, TRIPs and TRIMs were quite controversial and largely account for the long time taken to conclude the negotiations and the round was supposed to be completed by December, 1990. The WTO's creation on 1 January 1995 marked the biggest reform of international trade since the end of the Second World War. Whereas the GATT mainly dealt with trade in goods, the WTO and its agreements also cover trade in services and intellectual property. The birth of the WTO also created new procedures for the settlement of disputes. An important aspect of the Marrakesh Agreement of April 1994 following trade negotiations under the Uruguay Round relates to provisions concerning Trade Related Investment Measures (TRIMs).The Marrakesh Agreement rules out these. The Uruguay Round negotiations concerning the intellectual property rights (IPR) met with objections from many developing countries led by India and Brazil. But they came to nothing with the signing of the Marrakesh Agreement. The basic structure of the WTO agreements are the six main areas fit together the umbrella of WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.

## **10. Legislative Background and Present Legal Systems of Bangladesh and SPS Measures**

Bangladesh is part of the common law jurisdiction. It is a member of the Commonwealth of Nations. The legal system of Bangladesh has its roots in the laws of British India. Since independence in 1971, statutory law enacted by the Parliament of Bangladesh has been the primary form of legislation. Judge made law continues to be significant in areas such as constitutional law. Unlike in other common law countries, the Supreme Court of Bangladesh has the power to not only interpret laws made by the parliament, but to also declare them null and void and to enforce fundamental rights of the citizens. The Bangladesh Code includes a compilation of all laws since 1836. Bangladesh has significant international law obligations. Governance Gaps in Bangladesh as per our proposed Model, which is described in fig. 1 in the next page. At the Strategic level, framing the governance design is as per laws, regulations, institution and resources. Purpose and procedures are setting in terms of reference, procedures and focus using, e.g., law, institution and regulations. Implementation status in Bangladesh is partially exercised without defining goals as governance model. While, moreover, the Bangladeshi Parliament passed the Plant Quarantine Act 2011 on March 20, 2011. This Law provides for the controlled export and import of plants, microbes, and soil. It strengthens the authority of the government to take steps to prevent the introduction of alien insects and diseases into the country. The new Law replaces a prior statute, the Destructive Insect and Pest Act 1914, which was thought to provide inadequate power to Bangladesh's quarantine authorities to protect the country's modern agricultural system. In this level existing gaps are science based screening and testing labs, non-functional, precaution, concern and risk based assessment gaps. The Law prescribes a maximum punishment of two years of imprisonment and a fine of 500,000 Bangladeshi Taka (aboutUS\$7,000) for producing, carrying, or distributing prohibited plants or related products. Moreover, The Bangladesh National Parliament has passed the Food Safety Act, 2013 on October 10, 2013 (after repealing and re-enacting the existing outdated laws in this regards) in order to make provisions for the establishment of an efficient, effective, scientifically based Authority and for regulating, through coordination, the activities relating to food production, import, processing, stockpiling, supplying, marketing and sales as well as to ensure the people's right toward access to safe food through appropriate application of scientific processes and state of the art technology . In order to meet the aspirations of the citizens of the country it was felt to be desirable to ensure their rights towards access to safe food for the protection of human health and life. Obligated by the citizens' aspirations and being respectful towards the present government's desire, the Bangladesh Food Safety Authority,

which has been set up on February 2, 2015, is committed to make a united start with its full strength and unstinting efforts. In Figure-1 is shown the SPS Safety Laws and Governance in Bangladesh as following:

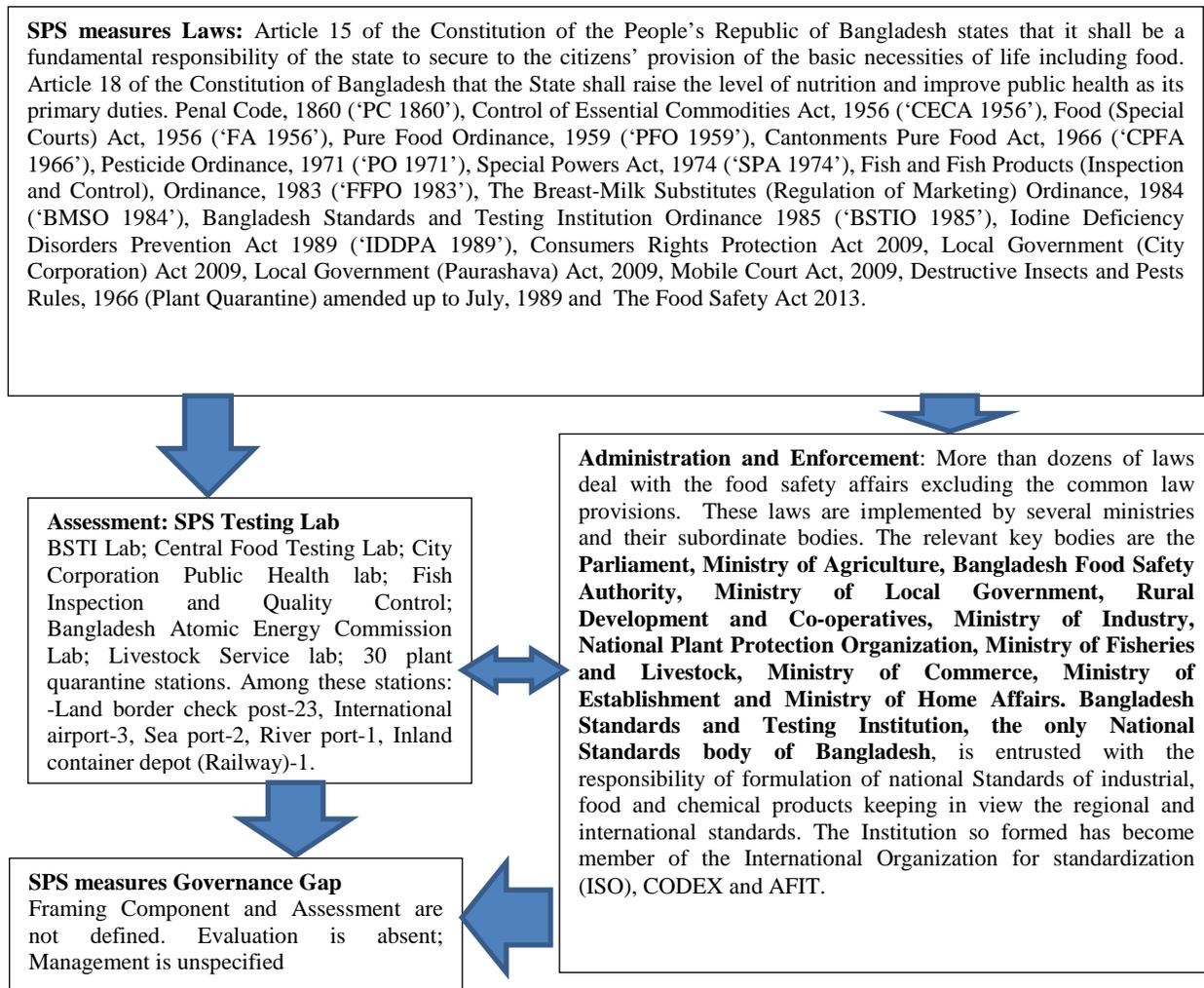


Figure 1: Model of SPS measures Laws and Governance in Bangladesh

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Alimentarius. At the operational level, assessment decisions are evaluated through value-based judgment, e.g., on tolerability prior to management decision. Still absence and not exercised found as governance process. Management/government/ Food safety authority/ National Plant Protection Organization (NPPO) can take proper decision, implementation and monitoring through selection of appropriate safety decision for risk by management board or regulator and decision are based on prevention, precaution, and concern or risk analysis. To increase successful export capacity building in addressed areas is of prime interest. To be practical, it is, therefore necessary to try to comply with EU Directives, international SPS rules and regulations, both mandatory and voluntary for improving Citrus, fresh Vegetables & other Plant and plant products export and import. As a signatory to the IPPC we have to follow the ISPMs adopted by the IPPC for international trade. In order to comply with the WTO-SPS agreement we must update our Phytosanitary capacity on a regular basis. To ascertain the Phytosanitary task we need high degree of quality control equipment's, trained manpower and necessary laboratory facilities in the field of quality control and Plant Quarantine. Therefore, necessary to try to comply with EU Directives, international SPS rules and regulations, both mandatory and voluntary for improving Citrus, fresh Vegetables & other Plant and plant products export and import for both raw and process food. In this clause is described methodology of the study in focus SPS-TBT agreements of WTO rules in harmonization of Bangladesh's both raw and process food standards with CODEX Alimentarius and ISPMs of IPPC for international trade.

### **11. Role of WTO rules about SPS measures in Domestic Laws**

Bangladesh was one of the signatories to the concluding declaration of the Uruguay Round of GATT and a founding member of the WTO. As may be expected, Bangladesh lacks adequate human resource capacities to deal with the relevant SPS-TBT issues in the appropriate global trade. There is a lack of trained manpower at all levels. In this perspective a model has been developed which is described in fig.1. According to study, raw food and Phytosanitary purposes the Plant Quarantine activities at national level of Bangladesh are under the Director of Plant Quarantine Wing of the Department of Agricultural Extension under the Ministry of Agriculture. He is serving as National Plant Protection Organization (NPPO) of Bangladesh. Therefore, the following key bodies are the Parliament, Ministry of Agriculture, Bangladesh Food Safety Authority, Ministry of Local Government, Rural Development and Co-operatives, Ministry of Industry, National Plant Protection Organization, Ministry of Fisheries and Livestock, Ministry of Commerce, Ministry of Establishment and Ministry of Home Affairs, Bangladesh Standards and Testing Institution are responsible for SPS measures in Bangladesh. National legal frameworks are a key pillar in an effective food control system. In all countries, food is governed by a complexity of laws and regulations which set out the government's requirements to be met by food chain operators to ensure the food is safe and of adequate quality. Generally, food law is used to apply to legislation which regulates the production, trade and handling of food and hence covers the regulation of food control, food safety and relevant aspects of food trade. Minimum quality requirements are included in the food law to ensure the foods produced are unadulterated and are not subjected to any fraudulent practices intended to deceive the consumer. In addition, food law should cover the total chain beginning with provisions for animal feed, on-farm controls and early processing through to final distribution and use by the consumer. Although food law is used in a singular term, it is recognized that in many countries more than one law may exist which contains provisions for ensuring safe and quality food production. The situation can be further complicated where laws and regulations may not have been updated or may have constantly been amended, creating a maze of rules which regulators, industry and consumers find it difficult to understand. Countries often face the additional challenge of updating their food laws in line with international agreements such as WTO and Codex standards. Finally, implementation of food laws and regulations is essential. We provide support to governments in developing modern, effective national food laws and regulations. This technical support is provided through teams of legal advisors working closely with food safety experts. Due consideration is given to harmonizing legal frameworks with WTO requirements and where relevant, basing them on Codex standards, guidelines and related texts which constitutes the benchmark for food safety at the international level.

Safety and Health Management System is defined a safety and health management system means the part of the Organization's management system which covers the health and safety work organization and policy in a company; the planning process for accident and ill health prevention; the line management responsibilities and the practices, procedures and resources for developing and implementing, reviewing and maintaining the occupational safety and health policy. The system should cover the entire gambit of an employer's occupational health and safety Organization. The key elements of a successful safety and health management system are: Firstly, Policy and commitment of the workplace should prepare an occupational safety and health policy programme as part of the preparation of the Safety Statement required by Section 20 of the Safety, Health and Welfare at Work Act 2005. Effective safety and health policies should set a clear direction for the Organization to follow. They will contribute

to all aspects of business performance as part of a demonstrable commitment to continuous improvement. Responsibilities to people and the working environment will be met in a way that fulfills the spirit and letter of the law. Cost-effective approaches to preserving and developing human and physical resources will reduce financial losses and liabilities. In a wider context, stakeholders' expectations, whether they are shareholders, employees or their representatives, customers or society at large, can be met. The workplace should formulate a plan to fulfill its safety and health policy as set out in the Safety Statement.

An effective management structure and arrangements should be put in place for delivering the policy. Safety and health objectives and targets should be set for all managers and employees. Secondly of implementation and operation for effective implementation, organizations should develop the capabilities and support mechanisms necessary to achieve the safety and health policy, objectives and targets. All staff can be motivated and empowered to work safely and to protect their long-term health, not simply to avoid accidents. These arrangements can be underpinned by effective staff involvement and participation through appropriate consultation, the use of the safety committee where it exists and the safety representation system and, sustained by effective communication and the promotion of competence, which allows all employees and their representatives to make a responsible and informed contribution to the safety and health effort. There should be a planned and systematic approach to implementing the safety and health policy through an effective safety and health management system. The aim is to minimize risks. Risk Assessment methods should be used to determine priorities and set objectives for eliminating hazards and reducing risks. Wherever possible, risks should be eliminated through the selection and design of facilities, equipment and processes. If risks cannot be eliminated, they should be minimized by the use of physical controls and safe systems of work or, as a last resort, through the provision of PPE. Performance standards should be established and used for measuring achievement. Specific actions to promote a positive safety and health culture should be identified. There can be a shared common understanding of the organization's vision, values and beliefs on health and safety. The visible and active leadership of senior managers fosters a positive safety and health culture. The Organization should measure, monitor and evaluate safety and health performance. Performance can be measured against agreed standards to reveal when and where improvement is needed.

Active self-monitoring reveals how effectively the safety and health management system is functioning. Self-monitoring looks at both hardware (premises, plant and substances) and software (people, procedures and systems, including individual behavior and performance). If controls fail, reactive monitoring should find out why they failed, by investigating the accidents, ill health or incidents, which could have caused harm or loss. The objectives of active and reactive monitoring are: to determine the immediate causes of substandard performance; to identify any underlying causes and implications for the design and operation of the safety and health management system. The Organization should review and improve its safety and health management system continuously, so that it's overall safety and health performance improves constantly. The Organization can learn from relevant experience and apply the lessons. There should be a systematic review of performance based on data from monitoring and from independent audits of the whole safety and health management system. These form the basis of complying with the organization's responsibilities under the 2005 Act and other statutory provisions. There should be a strong commitment to continuous improvement involving the development of policies, systems and techniques of risk control. Plant Quarantine "means the effort to prevent entry, establishment or spread of a foreign pest in the country through legal restriction on the movement of plant and plant products," Our lives & well-being are based on plant growth and cultivation Invasive alien species greatly endanger our food production, medication etc. Expanding global trade, tourism & climate change also increases the dangers. The impact of invasive alien species has serious implications for the economy and ecology.

Quarantine Service Started from 14th century in 1799 USA introduced Quarantine Act. In 1825 UK promulgated Quarantine Act. In 1914 British Indian Governor General Promulgated the "Destructive Insects and Pest Act". In 1951 FAO started International Plant Protection Convention (IPPC). In 1966 Pakistan endorsed 'Destructive Insects and Pests Rules'. In 1974 Bangladesh became the member of IPPC. In 1989 Bangladesh amended the Destructive Insects and Pests Rules' 1966 and the rules is still on 'Plant Quarantine Act-2011' has been passed in 2011. The SPS Agreement is intended to ensure that SPS measures needed to protect the safety of food, and human, animal or plant life or health are not applied in a manner which constitutes arbitrary or unjustifiable discrimination between Members (where the same conditions prevail) or a disguised restriction to international trade, while recognizing the right of Members to adopt such measures when scientifically justified. The SPS Agreement applies to all measures whose purpose is to protect for human or animal life or health from food-borne risks i.e. risks arising from additives, contaminants, toxins or disease-causing organisms in their food, feed or beverages; human life or health from

animal or plant carried diseases; animal and plant life or health from pests, diseases or disease-causing organisms; a Member's territory from damage from the entry, establishment or spread of pests (including weeds). These include sanitary and Phytosanitary measures related to products and to process and production methods.

The SPS Agreement applies to measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora, from the risks stated above. Furthermore, we analyzed the relationship between the SPS and TBT Agreements, and found out that the SPS and TBT Agreements are mutually exclusive in the measures they cover. The SPS Agreement covers all measures taken for one or more of the purposes identified above. The TBT Agreement covers all technical regulations, standards and conformity assessment procedures regardless of their objectives, except when these are sanitary or Phytosanitary measures as defined by Annex A of the SPS Agreement. Finally, we understand now that the SPS Agreement is, among other things, a further specialization. SPS measures considered to be in accordance with the relevant provisions of the SPS Agreement shall be presumed to be in accordance with the obligations of a Member under the provisions of GATT 1994. We also have to keep in mind, regarding the institutional coverage of the SPS Agreement, that it applies to a wide range of authorities: (i) central government bodies; (ii) local government bodies (which include provincial/state government bodies); and (iii) regional and non-governmental bodies. Members' obligations vary according to the type of body. Furthermore, the SPS Agreement applies to SPS measures in legal force regardless of the date they were enacted by the Member. In this Module, we are going to see some examples of SPS measures and discuss the basic obligations contained in the SPS Agreement, as set forth in its Article 2. In the final part of this Module we will explain the disciplines on procedures for Control, Inspection and Approval. SPS measures aim to the SPS Agreement applies to SPS measures which may, directly or indirectly, affect international trade. The development and application of these measures shall be in accordance with the provisions of the Agreement. SPS measures include all relevant i.e. Laws; Decrees; Regulations; Requirements; and Procedures. These include measures related to, inter alia end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety. Remember that sanitary relates to human and animal life or health protection, while Phytosanitary relates to plant protection. Moreover, animal includes fish and wild fauna; plant includes forests and wild flora; pests include weeds; and contaminants include pesticide and veterinary drug residues and extraneous matter. The term SPS measure may seem quite abstract or even vague when anybody can first hear about it, right? With some examples anyone can be collected below that it will become clearer what "SPS measures" may mean. Presently divided into three categories, so as to facilitate comprehension measures aimed at food safety; those aimed at the protection from pests and diseases of human life or health; animal or plant life or health; and measures to prevent the entry, establishment or spread of pests and diseases. The distinction between the different categories of risk, i.e. food-borne risks, and pest or disease risks, is very important because the kind of risk assessment to be conducted is different for each of these risk categories. By the way, do we know which were the latest SPS measures adopted by our country? These questions can meet notified in advance to trading partners and published. Food safety measures are those measures aimed at protecting human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. Contaminants include pesticide and veterinary drug residues and extraneous matter.

First example: Maximum Residue Limit for Pesticides on Fruits and Vegetables some consumers have become increasingly concerned about the adverse impacts pesticides may have not only on the environment, but also on human health. Most countries impose limits on pesticide residue levels in or on fruits and vegetables, and systems for testing and inspection have been put in place to ensure the fulfillment of requirements by both foreign and domestic producers. The Codex Alimentarius Commission, one of the three standard-setting bodies named in the SPS Agreement, has a Codex Committee on Pesticide Residues (CCPR), whose prime objective is to reach agreement among governments on maximum residue limits (MRLs) for pesticides residues in food commodities moving in international trade. Such MRLs are sanitary requirements relating to end product criteria when, for example, apples imported and domestically produced are required not to contain more than 10mg/Kg of Diphenylamine, a type of pesticide. However, MRLs may also relate to processes and production methods, since the application of pesticides during the growing period of the fruit is what determines the residue levels found in or on the fruit at harvest. Furthermore, governments may put in place sampling and testing requirements, to control the fulfillment of the MRLs proposed by the importing country. Harmonization is to bring consonance or accord on adjustment of differences and inconsistencies among different measurements, methods, procedures, schedules,

specifications, or systems to make them uniform or mutually compatible. Harmonization is urgent to be at par with international standards; ensure availability of safe food to our citizens; to enhance exports, to comply with international commitments and improve production practices. Hence, BFSA can always put in place regulatory measures for the protection of their territories against health risks contained in food and agricultural products. In recent years, these measures have proliferated, creating an important impact on trade. The increased liberalization of tariffs in trade in food and agricultural products caused a sharper focus on non-tariffs barriers, such as SPS measures, as obstacles to market access. Whereas many SPS measures are based on legitimate health concerns, the rationale for others might be more questionable. Indeed, governments may misuse SPS measures as disguised trade barriers for protectionist purposes. In 1989, a separate Working Group on Sanitary and Phytosanitary Regulations and Barriers was commissioned to work on revising and strengthening the 'Standards Code' which was negotiated during the Tokyo rounds. Two separate agreements on technical barriers: the Agreement on Technical Barriers to Trade (TBT) applicable to technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards and the Agreement on Sanitary and Phytosanitary Measures emerged upon the conclusion of the Uruguay rounds in 1995. The intent of WTO Members under the WTO SPS Agreement is found in the Preamble of the Agreement.

The WTO SPS Agreement aims at 'improving human health, animal health and Phytosanitary situations in all Members'. It also targets the 'establishment of a multilateral framework of rules and disciplines to guide the development, adoption, and enforcement of sanitary and Phytosanitary measures in order to minimize their negative effects on trade'. Article 3.2 adds that SPS measures that conform to international standards are presumed consistent with the SPS Agreement and GATT 1994. It is important to define the differences between the meaning of based on and conform to this question was addressed in the EC-Hormones case. The Appellate Body contended that based on does not have the same meaning of conform. A thing is commonly said to be based on another thing when the former stands or is built upon or is supported by the latter. In contrast, much more is required before one thing may be regarded as 'conform[ing] to' another: the former must 'comply with', 'yield or show compliance' with the latter. The reference of 'conform to' is to 'correspondence in form or manner', to 'compliance with' or 'acquiescence', to 'follow[ing] in form or nature'. A measure that 'conforms to' and incorporates a Codex standard is, of course, 'based on' that standard. A measure, however, based on the same standard might not conform to that standard, as where only some, not all, of the elements of the standard are incorporated into the measure. In the second place, 'based on' and 'conform to' are used in different articles, as well as in differing paragraphs of the same article. Thus, Article 2.2 uses 'based on', while Article 2.4 employs 'conform to'. Article 3.1 requires the Members to 'base' their SPS measures on international standards; however, Article 3.2 speaks of measures which 'conform to' international standards. Article 3.3 once again refers to measures 'based on' international standards. The implication arises that the choice and use of different words in different places in the SPS Agreement are deliberate, and that the different words are designed to convey different meanings. A treaty interpreter is not entitled to assume that such usage was merely inadvertent on the part of the Members who negotiated and wrote that Agreement. Canada has suggested the use of different terms was accidental in this case, but has offered no convincing argument to support its suggestion. We do not believe this suggestion has overturned the inference of deliberate choice. Consistent with this distinction, the Appellate Body in EC-Hormones identified three autonomous options open for Members as they implement these provisions. A Member may decide to promulgate an SPS measure that conforms to an international standard. Such a measure would embody the international standard completely and, for practical purposes, converts it into a municipal standard. Such a measure enjoys the benefit of a presumption (albeit a rebuttable one) that it is consistent with the relevant provisions of the SPS Agreement and of the GATT 1994. A Member may choose to establish an SPS measure that is based on the existing relevant international standard, guideline or recommendation. Such a measure may adopt some, not necessarily all, of the elements of the international standard. The Member imposing this measure does not benefit from the presumption of consistency set up, a Member may decide to set for itself a level of protection different from that implicit in the international standard, and to implement or embody that level of protection in a measure not 'based on' the international standard. The Member's appropriate level of protection may be higher than that implied in the international standard. The right of a Member to determine its own appropriate level of sanitary protection is an important right." In light of the above, a SPS measure that is based on an international standard, without conforming to it does not enjoy the presumption of consistency with the SPS Agreement. If the presumption of consistency with the SPS Agreement does not apply to SPS Measures based on international standards, guidelines or recommendations, one may ask why a Member State would choose this option. The Bangladesh National Parliament has passed the Food Safety Act, 2013 on October 10, 2013 (after repealing and re-enacting the existing outdated laws in this regards) in order to make provisions for the establishment of an efficient, effective, scientifically based Authority for equivalence of SPS standards in domestic laws and for

regulating, through coordination, the activities relating to food production, import, processing, stockpiling, supplying, marketing and sales as well as to ensure the people's right toward access to safe food through appropriate application of scientific processes and state of the art technology.

In order to meet the aspirations of the citizens of the country it was felt to be desirable to ensure their rights towards access to safe food for the protection of human health and life. Obligated by the citizens' aspirations and being respectful towards the present government's desire, the Bangladesh Food Safety Authority, which has been set up on February 2, 2015, is committed to make a united start with its full strength and unstinting efforts. The Authority whole-heartedly welcomes the all-out support of all food control agencies, food business operators and people of the country towards the landmark goal of establishing a Modern and Technological Food Safety System in Bangladesh to contribute to coordinate all concern authority of Govt. of Bangladesh. For this purpose, Bangladesh Food safety Authority (BFSA) has announced as the Bangladesh SPS Enquiry point for food safety on April 03, 2019. For this purpose, BFSA has announced a schedule for developing final standards within August, 2020. BFSA asked to contribute the following people: BFSA/BSTI experts; Industry (SMEs, large); Government Institutes, Subject Experts; Academicians/Students/Individuals; Consumer Organizations; Trade bodies/Associations. Therefore, the people of Bangladesh will be received approved final standard within August 2020 by BSFA. A country, like Bangladesh can adopt measures on a provisional basis in instances where available evidence is insufficient to effectively assess risk. However, there is no definition of sufficient information. The WTO does not have a minimum requirement for the amount of information needed to do a risk assessment. It is important to remember that even though there is no minimum requirement for information, the WTO requires a risk assessment. Sometimes countries use a lack of information as an excuse when they provisionally adopt a measure, sometimes for many years. This behavior is inconsistent with the SPS Agreement and has resulted in formal WTO dispute resolution proceedings. A risk analysis can be made using very little direct information, with the understanding that uncertainty is higher. Measures to compensate for uncertainty are allowable, but precautionary measures without a risk assessment are not permissible. The SPS Agreement encourages both importing and exporting countries to participate in risk assessment. The exporting country should provide relevant information about pest presence, pest distribution, production practices, and inspections. The importing country must justify the application of measures when they are not based on a standard. However, if a provisional measure is used, the importing country is required to provide all proof to support the provisional measures within a reasonable period of time. A country cannot indefinitely impose measures on the grounds of uncertainty alone. After sufficient information has been collected, the importing country should once again assess the risk based on the new information. The importing country should use this risk assessment to justify application or removal of measures. If requested, technical information must be provided to justify the use of all measures not based on international standards. The potential negative trade impacts of any measure should be considered before the measure is applied. Members should try to keep negative trade impacts as low as possible. For this reason, measures are not applied if the benefit from them cannot be proven for example, preventing new infestations from happening or existing infestations from escaping, or they do not reduce risk. The level of protection considered appropriate by an importing country must be consistent and non-discriminatory. This means that the importing country must make sure similar risks are considered in the same way, regardless of what country the risk begins from. A country's appropriate level of protection (ALOP) should ensure an acceptable level of risk. This risk level is different for every country, but cannot be zero. If the risk posed by an exporting country is acceptable to an importing country, the same risk from any other country should also be acceptable to that importing country. If two or more measures are available that offer comparable efficacy, are equal technically, and offer economic feasibility, the measure that is least restrictive to trade must be adopted. Insisting on a measure that is difficult or expensive to comply with when other equally effective measures are available is an unjustified barrier to trade. WTO rules about SPS measures in Domestic Laws of Bangladesh are described in this chapter. Moreover, present status of harmonization, equivalence and assessment of SPS Agreements in Bangladesh are discussed with clearly.

## **12. Comparative Study between Domestic SPS measure with International Standards**

Bangladesh's Food Standard with compare to CODEX and other International Best Practices are discussed in this section. Bangladesh became codex member in 1975 and Bangladesh Food Safety Authority was set up in 2015 according to Food Safety Act, 2013. For this reason, harmonization is defined firstly with to bring into consonance or accord, adjustment of differences and inconsistencies among different measurements, methods, procedures, schedules, specifications, or systems to make them uniform or mutually compatible. Harmonization will be need to be a par with international standards; ensure availability of safe food to Bangladesh's citizens; enhance exports;

comply with international commitments and improve production practices. BFSA is to regulate and monitor the activities related to manufacture, import, processing, storage, distribution and sale of food so as to ensure access of safe food through exercise of appropriate of scientific methods , and BFSA can take steps to inter alia provide scientific advice and technical support to the Government in formulating food and nutrition policy or rules or regulations; analyze scientific and technical information concerning the risks to human health; develop methods of risk assessment and to cooperate with international organizations in relation to food safety, quality and testing; harmonize safety and quality standards between domestic and international food articles ; BFSA to make Regulations to carry out the purposes of Section 13 . BFSA may form required number of Technical Committees consisting of subject matter experts to assist and advise the BFSA in conducting its functions. Technical Committees may, if necessary, invite the relevant industry and consumer representatives and experts in the meeting. Issue directives related to food safety and quality to any authority, organization or person concerned directly or indirectly with food safety management, and such authority, organization or person shall be bound to comply with such directives. Require any authority, organization or person to render necessary assistance, and such authority, organization or person shall be bound to comply. Codex 'Vertical Standards', 'Guidelines' and Codes of Practice: 'Vertical Standards' currently available under BSTI but may need harmonization, Format for Standards: Name of the Standard; Scope; Description; Composition and Quality Factors; Food Additives; Contaminants, and Residues; Hygiene Packaging, Labeling and Claims Methods of Analysis and Sampling and Processing Aids. While Codex 'Horizontal Standards', 'Guidelines' and Codes of Practice: 'Horizontal Standards' currently available under BSTI but may need harmonization, Format for Standards: These can be by Food Additives and guidance for work on food additives; compile list of Codex FA as per BFC and recommend Max. Use Level; make comparative chart of FA MLs; max.

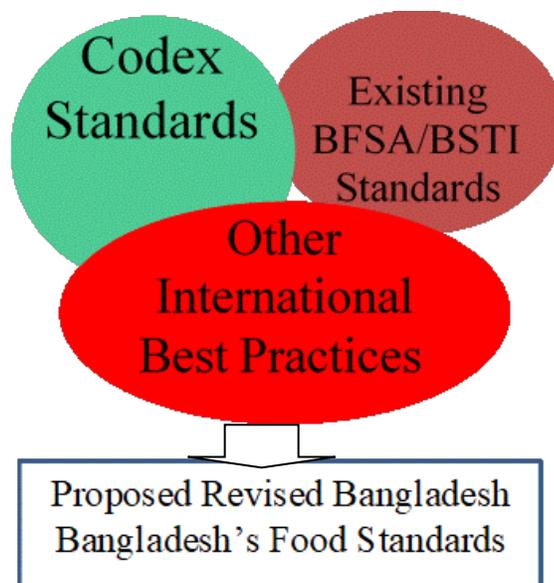


Figure 2: Proposed Revised Bangladesh Bangladesh's Food Standards with International Standard

Use levels; parts: make list of FA: As per GMP; Milk, butter milk, cheese, fresh fruits, vegetables; Food Cat. & Items excluded from Gen. Conditions; GMP and Food Contaminants i.e. Mycotoxins, NOTS, Heavy Metals, Vet. Drugs, Pesticides, Microbiological, Proc. Aids, Others; make list of MLs as per BFSA / BSTI and recommend new MLs make comparative chart of MLs; GSCTFF; General Standards of Labeling of Pre-packaged Foods; Nutrition Labeling; Gen. Guidelines on Claims and Guidelines for Use of Nutrition and Health Claims. Bangladesh Food Categories (BFC) including Non-Food Item: animal / bird feed are following:

- BFC 1: Cereals, pulses and their Products (incl. bakery products)
- BFC 2: Oilseeds, Fats and their products (including fat emulsions)
- BFC 3: Milk and Milk products and their analogues
- BFC 4: Fish and Fishery products (including molluscs, crustaceans etc.)

- BFC 5: Meat and Poultry (including eggs) and their products
- BFC 6: Salts, Spices and condiments, Soups, Sauces, Salads and Protein Products
- BFC 7: Tea and Coffee
- BFC 8: Sugar/Sugar products (incl. confectionery & sweets), Sweeteners, Honey
- BFC 9: Fruits & Vegetables, roots, tubers, sea-weeds, dry fruits/nuts
- BFC 10: Processed Fruits and Vegetables
- BFC 11: Starch derivatives etc.
- BFC 12: Soft drinks and Beverages (excluding dairy and juices)
- BFC 13: Edible ices and sorbet
- BFC 14: Ready-to-Eat Food Products
- BFC 15: Foodstuff for Nutrition and Special Dietary Purposes
- BFC 16: Miscellaneous including traditional foods.

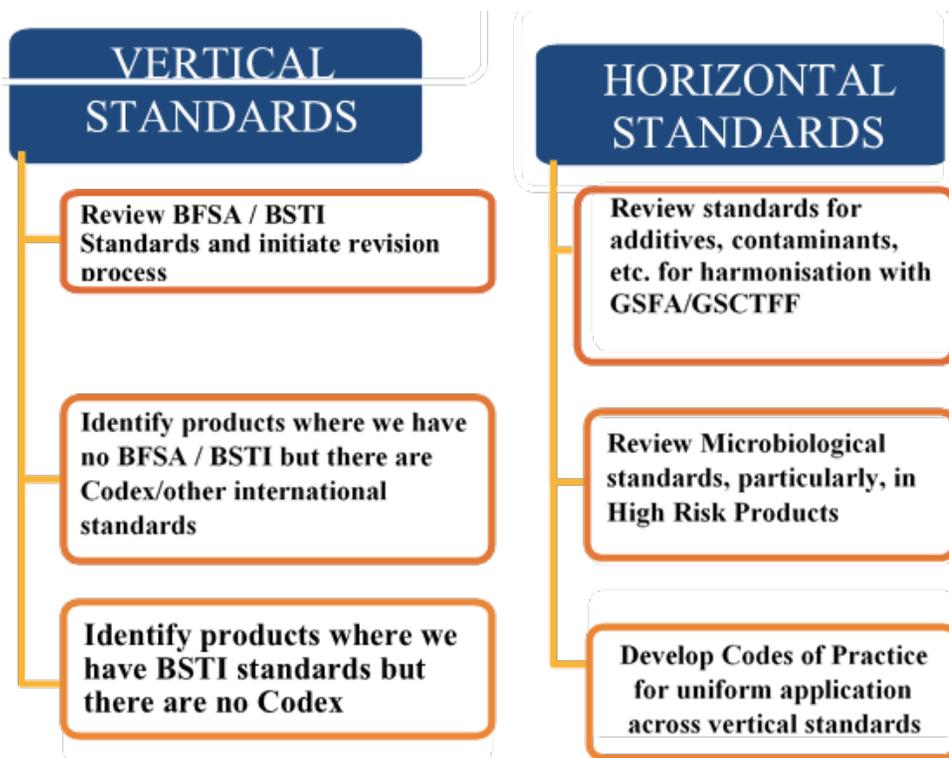


Figure 3: Vertical and Horizontal Standards

BFSA Strategy for Harmonization provisions of the Act, scope of work, procedure, TOR of WGs, criteria to come on WGs are also including following areas: detailed guidance to implement strategy ; the guidance for WGs; Codex Standards, Guidelines ;Food Additives ; Contaminants and Residues ; Packaging, Labeling and Claims; Examples of BSTI standards that may require review; Nomination Form to participate in WGs; Have clear understanding of the BFSA Strategy; Should have relevant experience in handling matters related to BFSA / BSTI standards and regulations; Have adequate exposure to food safety, quality and standards issues; Willing to work collaboratively as a member of a Working Group as assigned; Be available, willing and capable of working with BFSA for at least one year for successful execution, and will be available for subsequent consultations; Prominent SPS case is the hormone-treated beef case. Fact: The US red meat industry has been using hormones since 1970 to enhance the growth and fattening rate of animals. The EC has been restricting both the use of hormones in its domestic meat industry and the imports of hormone-treated meat and meat products since 1981. Finally, it banned the sale and import of growth hormone treated beef on January1, 1989. Argument by the US: it maintains that its hormones have been thoroughly tested in scientific studies and evaluation and, which found no risk to human health. There is a scientific uncertainty of the long-term effects of hormone treated beef that warrants the consideration of environmental and consumer concerns about potential public health risks. In the face of such scientific uncertainty, they are allowed to take precautionary measures. In 1996, the United States and Canada challenged before the WTO

Dispute Settlement Body (DSB) a number of EC directives prohibiting the importation and sale of meat and meat products treated with certain growth hormones. The complainants alleged that the EC directives violated, among other things, several provisions of the SPS Agreement. The EC contended that the presence of the banned hormones in food may present a risk to consumers' health and that, as a consequence, the directives were justified under several WTO provisions authorizing the adoption of trade-restrictive measures that are necessary to protect human health. In 1997 and 1998, the WTO adjudicating bodies admitted USA and Canada claims and invited the EC to bring the directives into conformity with WTO law before end of May 1999. EU did not comply and the DSB authorized the USA and Canada to take countermeasures against the EU. The countermeasures took the form of increased custom duties applied by the USA and Canada on certain EC products, including the notorious Roquefort cheese. In 2004, while the ban on hormone-treated meat was still in place, the EU initiated before the DSB new proceedings seeking the lifting of the countermeasures applied by the USA and Canada. EU alleged that it had collected new scientific data evidencing that the banned hormones may cause harm to consumers. According to the EC, the new scientific data provides sufficient ground for the ban on hormones, which may no more be sanctioned by the countermeasures imposed by the USA and Canada. As of January 2007, the proceedings initiated by the EC were still pending. Measures Concerning Meat and Meat Products (Hormones Beef Disputes between EC and the US, Canada). WTO Panel in May 1996 it heard the complaint and issued a report on 18 August 1997. It held the EC ban inconsistent with the EC obligations under SPS Agreement. Panel found that EC's ban was not based on scientific evidence or justification. It found that EC failed to demonstrate that its measures were based on a risk assessment. It rejected the EC's invocation of the precautionary principle as it has not yet assumed the status of customary principles of international law. Appellate Body of WTO with some modifications held EC ban inconsistent with the WTO. It failed to provide scientific evidence to meet its obligations by risk analysis under Article 5. Therefore, we are too aware of the relevant international food standards, laws, rules and regulations, like those of CODEX, USFDA, EU, India, Malaysia, China, etc.; prepare a complete draft standard for food products using the formats use an alternate template if found more suitable, but reason should be explained; If need to rewrite a standard, this can be done provided there is justification. The following stakeholders can contribute to revised food standards of Bangladesh: BFSA / BSTI Experts; Trade Bodies/Associations; Industry; (SMEs, Large); Consumer; Organizations; Government Institutes; Academicians/ Students / Individuals and Subject Experts. Transparency in the SPS and TBT agreements are Regulatory requirements, which is changes may affect market access; Enhance clarity, predictability which is facilitate trade & reduce trade disruptions; Advance warnings, which is more time to adapt and Improve accountability & responsiveness of regulatory system which is seek info, consult, comment. Main Obligations Transparency in the SPS/TBT Agreements is designation of notification authority for both SPS & TBT; Establishment of enquiry point for both SPS & TBT Notification of draft regulations for both SPS & TBT; Publication of regulations: SPS & TBT; Statement of Implementation for TBT and Notifications from Standardizing Bodies for TBT. Beyond obligations is taking advantage of transparency. Language of Notification of SPS Notifications shall be submitted to the WTO in English, French and/or Spanish or developing Country Members may submit SPS notifications in their own national languages. Regular notifications shall be made soon after the SPS regulation has entered into force or Regular notifications shall be made at an early stage when amendments can still be introduced and comments taken into account before an SPS regulation is finalized. Regular measures can be draft text, when modifications are still possible. [Notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account. Same for TBT Notifications. What if measure contains both SPS and TBT elements: for these reasons notify according to both Agreements Indicate which parts fall under: SPS (e.g., a food safety measure); TBT (e.g., quality or compositional requirements); When to Publish [Annex B, para. 1 & 2]: A reasonable period of time (normally 6 months) shall be allowed between the adoption of an SPS regulation and its publication, but its entry into force should occur immediately after publication. Or any adopted SPS regulation shall be promptly published and a reasonable period of time (normally 6 months) shall be allowed between its publication and its entry into force. Members to publish all adopted regulations promptly. Except in urgent circumstances, allow reasonable interval between publication and entry into force Normally, the date of entry into force is 6 months after date of publication .The submission of notifications, provision of answers to all reasonable questions and the provision of relevant documents is the responsibility of the Enquiry Point. Or the implementation of the provisions concerning notification procedures falls under the responsibility of a single central government authority: National Notification Authority (NNA) Single central government authority responsible for the implementation of notification procedures e.g., agency responsible for food safety, animal and plant health, Only 1 NNA, "Notification Authority" Designation of a single central government authority responsible at the national level for TBT notification obligations. Notifies the Members through WTO at an early stage (or immediately for emergency measures) to allow for comments/amendments; Provides copies of proposed regulations upon request; Ensures that comments are handled correctly; National Enquiry Point; Enquiry

Point SPS & TBT . Provides answers and documentation to all reasonable questions from other interested Members, including on SPS/TBT regulations adopted or proposed within its territory. Can have more than one but clearly define responsibilities. Can be same as NNA. Enquiry Point or National Notification Authority could: Collect/disseminate; SPS & TBT documents; SPS & TBT notifications; Alert relevant government agencies, private sector of SPS & TBT notifications that could affect exports; Coordinate comments on other countries' notifications; Follow-up on comments submitted; An emergency SPS measure shall be notified to the WTO immediately after its implementation. Or an emergency SPS measure is exempted from being notified to the WTO. Immediately notify other Members through the WTO Secretariat of the regulation and products covered: Brief indication of the objective; Rationale of the regulation. Nature of the urgent problem(s), a revision to a notification replaces the original notification. Or Addenda, revisions and corrigenda can be read in conjunction with the original notifications. In addition to original notifications Members can provide additional information or changes to an original notification: Corrigendum corrects an error, Addendum changes/updates, Read in conjunction with original notification, Revision replacement of original notification, Possible for Regular and Emergency Notifications. Developed country Members shall provide, upon request, copies of documents related to a specific notification in English, French or Spanish. Or all Members shall provide, upon request, copies of documents related to a specific notification in English, French or Spanish. Upon request, developed countries to provide translation of regulation or its summary in English, French, or Spanish. In the case of regular notifications, Members are only obliged to consider any comments received within 10 days of the circulation of the notification. Or in the case of regular notifications, Members should allow at least 60 days for interested trading partners to make comments. Members should, whenever possible, provide a hyperlink or electronic version of the proposed regulation with the notification, and can in any case provide a copy upon request. Or only developed country Members are obliged to attach a copy of the proposed regulation to the notification. An SPS regulation shall be notified to the WTO when (I) it is new or modified; (ii) when an international standard does not exist or it does not conform to it; and (iii) if the regulation may have a significant effect on trade. Or an SPS regulation can be notified to the WTO when (I) it is new or modified; (ii) when an international standard does not exist or it does not conform to it; and (iii) if the regulation may have a negative impact on trade. New or modified regulation significant impact on trade (restricting or facilitating); No existing international standard; or Notify Also Different than the international standard measures based CODEX (food); IPPC (plants) and OIE (animals); on International Standard! Significant impact on trade (restricting or facilitating); No existing relevant international standard or not in accordance with relevant international standard. Encouraged to notify also measures in accordance with int'l standards. One regulation and/or conformity assessment procedure or a combination; one product, groups of products or products in general; between two or more Members; the value or importance to either importing and/or exporting Members concerned, individually or collectively; potential growth of such imports; difficulties for producers in other Members to comply with the proposed regulations On existing measures or their changes, to ensure implementation Relevant laws and regulations:

- ✓ Time allowed for comments;
- ✓ Name and address of enquiry point(s), other national authorities and agencies;
- ✓ Measures ensuring national and sub-national authorities provide early information on their proposals
- ✓ Names of publications that announce draft technical regulations or standards and conformity assessment procedures

Notification obligations for standardization bodies:

Parallel notification to both ISO/IEC Information Center and WTO

- Acceptance of, or withdrawal from Code of Good Practice for the Preparation, Adoption and
- Application of Standards.
- Name and address of body, scope of current and expected standardization activities
- Publish work programme at least every 6 months.

Notification of bilateral or Plurilateral agreements on issues related to technical regulations, standards or conformity assessment procedures ,which should include the following information: Title of Agreement, Parties, and Date of Entry into force Subject matter; Covered products; Brief description; Special and Differential treatment can only be requested before the notified measure is adopted and before it enters into force. Or Special and Differential treatment can be requested even after the entry into force of a new regulation including an emergency measure. If following the adoption or entry into force of a new or modified measure including an emergency measure, an exporting developing country Member identifies significant difficulties which its exports face in complying with the measure, it may request an opportunity to discuss its difficulties with the importing Member. A Member who recognizes another Member's SPS measure as equivalent to their requirements should notify this to the WTO. Or Members shall notify to WTO their intention to recognize as equivalent other Member's sanitary and Phytosanitary

measures. Members who have made a determination recognizing the equivalence of SPS measures of another Member or Members shall notify other Members through the Secretariat of the measure recognized to be equivalent; and the products affected by this recognition. WTO Members must notify to the WTO any disease/pest outbreaks within 24 hours after they have occurred. Or Pest outbreaks and disease outbreaks should be notified to the IPPC and OIE, respectively, according to their relevant procedures. Pest and disease outbreaks may be notified to the IPPC and OIE respectively, according to their relevant procedures. The latest Enquiry Point contact information is available from the SPS Information Management. Enquiry Point contact information is updated on an annual basis by the WTO Secretariat. SPS: EP, NNA and Notifications. WTO rules on SPS and TBT, IPPC, CODEX (food), IPPC (plants) and OIE (animals) measure are described in this clause among in Domestic Laws, regional and Internationally. Moreover, present status of harmonization, equivalence and assessment of SPS Agreements in Bangladesh are discussed with relevant laws and regulations.

### **13. Summary of Major Findings**

Major Findings of this study are followings:

- ✓ According to study, trades in the products subject to SPS-type measures have the potential to result in significant economic gains for national economies. Favoring economic concerns over other important public health policy issues, however, is something that requires close scrutiny by governments and the international community. The SPS Agreement reflects the precautionary principle a principle which allows them to act on the side of caution if there is no scientific certainty about potential threats to human health and the environment. Under Article 5.7 Members who enact provisional measures are obligated to seek further information on possible risks and review the measure 'within a reasonable period of time'. The Appellate Body in Japan– Measures Affecting Agricultural Products stated that the length of a 'reasonable period of time' is to be assessed on a case-by-case basis. Under SPS rules, the burden of proof is on the complainant country to demonstrate that a measure violates Article 2.2 and Articles 5.1-5.8 before it can be regulated even though scientific evidence can never be conclusive and it is not possible to test for all health risks that could arise from importation of a certain product.
- ✓ Impact on Developing Countries are incorporated into the standard-setting process as the effect of exporting countries enacting SPS measures can be damaging to developing economies. This is partly due to these states not possessing the technology and resources needed to readily comply with certain SPS requirements.
- ✓ In this study is shown that impact of Consumer Pressure on adherence to the SPS Agreement and the WTO's assumption that trade liberalization enhances consumer welfare, has resulted in the SPS Agreement being ill-equipped to deal with trade restrictions put in place by governments responding to protectionist pressure from consumers. This was most noticeable in the Beef Hormones Dispute where, although the science pointed to the relative safety of the growth hormones in question, European consumers pressured governments to ban the import of hormone-treated beef.
- ✓ Bangladesh has made commendable progress in maintaining a growth-conducive macroeconomic environment and attaining the targets set by 'Vision 2021'. However, to further accelerate development of Bangladesh and keep the momentum for graduation, Bangladesh need to address the formidable supply-side constraints including SPS measures to improve competitiveness in the domestic and global markets.
- ✓ Bangladesh generally follows the guidelines of CODEX Alimentarius, IPPC and OIE in adopting SPS measures. As of today, no higher level of SPS protection is adopted than that of the relevant international standards. Accordingly, Bangladesh is not required to notify its SPS measures. Bangladesh never imposed any anti-dumping, countervailing or safeguard duty since 1995. It however, has notified the relevant laws and the name of the investigating authority.
- ✓ Bangladesh has recently submitted few notifications on SPS and TBT. Some others are in the process of preparation. We will submit those notifications soon as per our obligations. In this regard, Waste Generated Electrical and Electronic Equipment regulation is still in draft stage and is not ready for notification.
- ✓ Bangladesh as such does not have any acts and rules for regulating the prices of necessity goods and agricultural products that could affect the market forces. Trading corporation of Bangladesh and Bangladesh Food Directorate often sell some essential commodities including rice to poor and vulnerable people of the country at affordable prices for ensuring their food security.
- ✓ Bangladesh provides minimal domestic supports that include expansion of irrigation facilities; research on production of improved quality and high yielding varieties of seeds, introduction of short-duration crops,

Integrated Pest Management (IPM) etc. These activities are covered under the Green Box subsidies and will be notified accordingly.

- ✓ Major focuses of Bangladesh in fisheries subsidies negotiation are to ensure exclusion of aquaculture and inland fisheries from the discipline; exemption from obligation on providing subsidies to unreported and unregulated fishing unless capacity is developed through technical assistance; not to consider fish in overfished condition due to absence of assessment; exemption from obligation on artisanal and small-scale fishing within EEZ, exemption from obligation on prohibition of subsidies for capacity building, transition period for graduated LDCs etc.

## **14. Recommendations**

The following Recommendations are made from this study for Bangladesh SPS measures:

- ✓ Compile and update all SPS related Laws, rules, regulations and even policy under one national regulatory body in compliance to WTO rules. Formulate enforceable rule and action plans for SPS measures.
- ✓ Formulate a national innovation cell to encourage new innovations and facilitate start-up with the view to SPS measures.
- ✓ Strengthen and intensify coordination among related ministries, stakeholders, trade bodies and chamber for the implementation of the SPS measures.
- ✓ Striking an appropriate balance of bilateral and pluralist trade and investment opportunities/Free Trade agreement harmonizing the strategic objective of Ministry of Industries and Ministry of Commerce regarding SPS measures.
- ✓ Targeted interventions and adequate insensitive package need to be developed with the view to facilitate SPS measures according to WTO Rules.
- ✓ Industry specific focused skill development program regarding SPS measures in order to ensure availability of skilled human resources and productivity.
- ✓ Formulate action plans exclusive in SPS measures with the view to improve the position of Bangladesh in “Global Competitiveness Index” and “Doing Business Index.
- ✓ The Sanitary and Phytosanitary Measures for Trade can be by creating national bodies in each country and a regional body to lead the modernization process; developing regulations, procedures, and requirements that are aligned with international standards; and improving the capability of border agencies to implement these measures at selected common borders.

## **15. Conclusion**

Therefore, the clauses of the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS), Agreement in a developing country Bangladesh context have been studied. It describes the regulatory and institutional infrastructure developed to meet new obligations under the SPS Agreement using in-depth of legal study. The findings indicate that, as a developing country, Bangladesh has achieved a reasonable degree of compliance with its commitments towards the WTO. BAB, a national accreditation body has been set up. A number of transparency mechanisms have been put in place such as a National Notification Authority, a Sanitary and Phytosanitary Enquiry Point and a national SPS committee involving the public and private sectors for communicating and discussing about SPS measures of trade relevance. Bangladesh participated, to different extents, in the WTO SPS committee and in the activities of international standard-setting organizations. It can be updated some SPS-related laws. There have been operational changes in local organizations dealing with SPS issues. However, constraints such as the insufficient capacity to do risk assessment and to carry out equivalence might prevent Bangladesh from meeting all its obligations towards the WTO.

## **References**

- Henson, S., & Loader, R. (2001). Barriers to agricultural exports from developing countries: the role of sanitary and phytosanitary requirements. *World development*, 29(1), 85-102.
- Marceau, G., & Trachtman, J. P. (2002). The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade A Map of the World Trade Organization Law of Domestic Regulation of Goods. *Journal of World Trade*, 36(5), 811-881.
- Food, S. A., & Inspection, Q. (1994). Agreement on the application of sanitary and phytosanitary measures.
- Scott, J. (2009). The WTO agreement on sanitary and phytosanitary measures: a commentary. OUP Catalogue.

- Silverglade, B. A. (2000). The WTO agreement on sanitary and phytosanitary measures: weakening food safety regulations to facilitate trade. *Food & Drug LJ*, 55, 517.
- Cottier, T., & Schefer, K. N. (1998). The relationship between World Trade Organization law, national and regional law. *J. Int'l Econ. L.*, 1, 83.
- Henson, S., Loader, R., Swinbank, A., Bredahl, M., & Lux, N. (2000). Impact of sanitary and phytosanitary measures on developing countries (No. Folleto 434.). University of Reading, Department of Agricultural & Food Economics.
- Millimet, R. M. (1995). The Impact of the Uruguay Round and the New Agreement on Sanitary and Phytosanitary Measures: An Analysis of the US Ban on DDT. *Transnat'l L. & Contemp. Probs.*, 5, 449.
- Beghin, J. C., & Bureau, J. C. (2001). Quantification of sanitary, phytosanitary, and technical barriers to trade for trade policy analysis.
- Doherty, M. (2010). The importance of sanitary and phytosanitary measures to fisheries negotiations in economic partnership agreements. International Centre for Trade and Sustainable Development (ICTSD).
- Greenhalgh, P. (2004). Trade issues background paper: sanitary and phyto-sanitary (SPS) measures and technical barriers to trade (TBT).
- Dahlstrom, A., Hewitt, C. L., & Campbell, M. L. (2011). A review of international, regional and national biosecurity risk assessment frameworks. *Marine Policy*, 35(2), 208-217.
- Rahman, M. (2001). EU ban on shrimp imports from Bangladesh: A case study on market access problems faced by the LDCs. Center for Policy Dialog, Bangladesh.
- Jha, V. (2002). Strengthening Developing Countries' Capacities to Respond to Health, Sanitary and Environmental Requirements: A Scoping Paper for Selected Developing Countries. Geneva: UNCTAD, Working Paper Series, 1.
- Unnevehr, L. J. (2000). Food safety issues and fresh food product exports from LDCs. *Agricultural Economics*, 23(3), 231-240.
- Khatun, F. (2004). Fish Trade Liberalization in Bangladesh: Implications of SPS Measures and Eco-Labeling for the. B. T, G. P & K. U (Eds.). Chatham: Natural Resource Institute.
- Jaiswal, A. K. (2003). WTO Agreement on SPS: Strategic implications. *Economic and Political Weekly*, 4737-4742.
- Abdullah, M. N., Khaled, M., & Parvez, K. (2012). Is the Stock Market Overvalued: A Study in the Context of Bangladesh?. *Asian Business Review*, 1(1), 30-36.
- Karki, T. B. (2002). Sanitary and phytosanitary (SPS) measures in SAARC countries. *South Asia Watch on Trade, Economics, and Environment & CUTS Centre for International Trade, Economics & Environment [Jaipur]*.

## **Biographies**

Dr. Rashid is Bangladeshi National, Author, Researcher, Academician, Mechanical Engineer, Trainer, Lawyer and Consultant in the field of Engineering Management, Project Management, Quality Control and Supply Chain Management Occupational Health Safety and Productivity last 26 years. He has been serving as a Senior Management Counsellor and Head of Production Management Division at Bangladesh Institute of Management (BIM), Dhaka since 16 February 2004. He had been serving as a Faculty Member of Industrial Engineering Department from September 18, 2016 to July 17, 2017 (on lien from BIM). As a faculty he has been facilitating for the Graduate and Professional training program around 100 in the areas of TQM, HRM, Compliance of ISO9001:2015, SA8000, WRAP, ISO 14001:2015, OHSAS 18001:2007, Productivity and Competitiveness, Project Management with MS Project-2013, PMP preparation Course, Project Financial Analysis and Management, Integrated Management System, Supply Chain Management and Industrial Safety Management at BIM and outside of BIM. He also worked as adjunct faculty @ 10 universities i.e. Jahangirnagar University, BUP, AUST, IEB, DIU (three), BOU, IBAISU, BUBT, BUET, IPM, DIPTI, Planning Academy and Research Team Member for OHS and productivity improvement project of AUST-AAU for RMG in Bangladesh. Prior this job he worked as a Mechanical Engineer of Jamuna Fertilizer Company, Bangladesh for around seven years. He obtained BSc in Mechanical Engineering degree from RUET (erstwhile BITR) on dated November 27, 1993 with First Class and 8th position, MSc in Mechanical Engineering degree from BUET on dated December 28, 1996 and MBA degree from BOU in 2004. He completed a Diploma in Computer Science and Applications (BOU), a PGD in Human Resource Management (IPM), a Post Graduate Diploma in Marketing Management (BIM), LLB (NU) and LLM (BUP). Currently he is pursuing 2<sup>nd</sup> semester for MSS in Industrial Relations and Labor Studies from ISWR of Dhaka University on Session 2018-2019. He also completed Management Accounting, Project Management, Technology Management, Safety and Maintenance Management, Information Technology in Business and Artificial Neural

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