

Session III Panel Discussion 2

TBT provisions in Japan's RTAs: Some Prospects for Greater Convergence of TBT Policies

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I. Introduction

This paper examined TBT provisions in Japan's RTAs (Regional Trade Agreements) and assessed the degree of convergence with the WTO's TBT Agreement. In the OECD work addressing the question of "*Do bilateral and regional approaches for reducing technical barriers to trade converge towards the multilateral trading system?*" (OECD Trade Policy Working Paper No. 58, November 2007, *hereinafter*, "OECD Working Paper"), it was concluded that, "[M]ost bilateral and regional TBT rules tend to converge with, and support, the multilateral trading system. Agreements... can further strengthen and complement the WTO TBT Agreement (p.50)." However, Japan's case may not be completely in line with the OECD conclusion. Japan's case is interesting because Japan's RTAs do not necessarily contain the TBT provisions, and even for those RTA's that do include TBT provisions, there is a lesser degree of consistency across the contents. Only three Agreements require mutual recognition of conformity assessment procedures. This paper analyzes explanations for Japan's circumstances and demonstrates hesitancy in promoting governmental mutual recognition in every RTAs.

II. Facts: A Comparative Analysis of Japan's regional TBT Provisions

As of September 2009, Japan concluded eleven RTAs. However, as Table 1 shows, not all the Agreements contain TBT provisions. Within the eight Agreements containing TBT provisions, varieties of TBT rules are set forth. Table 2 presents the results of a survey on TBT provisions in Japan's RTAs. Most notably, in three Agreements --- RTAs with Singapore, Philippines, and Thailand,¹ mutual recognition of conformity assessment procedures was concluded on a sectoral basis.² There is no "WTO plus" provision included, in which Parties would need to give an explanation for non-recognition to the CAB (conformity assessment body) located in another Party. In the rest of the RTAs, TBT liberalization has not been strongly encouraged: some simply assure the acceptance of conformity assessment results (not mandatory), and others simply reaffirm the obligations under the WTO TBT Agreements with transparency and further cooperation provisions.

III. Some Factors for Explaining Japan's Approach --- What explains the absence of mutual recognition in Japan's RTAs?

As noted above, the TBT provisions in Japan's RTAs have little consistency and a few RTAs pursued mutual recognition of conformity assessment results. According to the OECD Working Paper, "The most common approaches RTAs pursue for addressing TBT are the mutual recognition of conformity assessment results...(p.25)." The Japanese situation goes against such a view, and it cannot simply be explained by a factor that engaged Parties were at a similar or higher level of development in mutual recognition. Below, I discuss three other factors to explain Japan's situation, other than the level of development factor: (1) implementation costs; (2) CAB's insufficient interests and (3) lukewarm business reaction.

(1) Implementation costs

While mutual recognition of conformity assessment results "are often considered to be less costly than harmonization of regulations,

¹ Stand-alone MRAs with EU and the U.S. were concluded separately from these RTAs and applied on a sectoral basis (with EU, four sectors including electric and electronic equipment; with the U.S., telecommunication equipment).

² The Agreement with Singapore targets telecommunication and electrical equipment; and the Agreements with Philippines and Thailand target electrical equipment alone.

standards and conformity assessment procedures (OECD Working Paper, p.6),” implementing mutual recognition is not without costs.

The designation of CABs is a complex process. Engaged governments are, each other, delegated the authority to designate CABs pursuant to their counterparts’ law, thus they need to learn the laws and regulations of their counterparts in designating CABs. Thus, the largest ‘learning’ costs of the implementation are imposed upon the countries in this phase. Language problems were an additional obstacle for the implementation, as a party must obtain translations of its counterpart’s laws and regulations.

In order to mitigate the learning costs, the METI (Ministry of Economy, Trade and Industry, Government of Japan) has been considering the “cross-border designation-type MRA.” Under this system, instead of requiring the importing country’s authority to designate and monitor CABs pursuant to the law of the exporting country, the importing country can designate and monitor CABs in the exporting country pursuant to the law of the importing country (however, in the course of monitoring CABs, a cooperation with the exporting country is necessary). Under this system, the importing country can retain its authority to designate and monitor CABs pursuant to its own law, thereby completely avoiding the costs of learning laws and regulations of the counterpart (*See Table 3*).

In fact, this system was recently adopted under the Japan-Philippines Economic Partnership Agreement signed in September 2006, and also under the Japan-Thailand Economic Partnership Agreement signed in April 2007. However, this system is not without problems. Under this structure, a certification body, that is a CAB candidate, is required to communicate and deal with a foreign state in order to be recognized as a CAB. In this respect, both agreements provide a government with the opportunity to make inquiries of a CAB candidate in the other country or to make a visit. As a consequence, the ‘learning’ costs previously absorbed by a government are now shifted to the certification body as ‘transaction’ costs. Such a shift may make certification bodies hesitant to apply for CAB status.

(2) CABs’ insufficient interests

The second and third factors (below) can be summarized as the limited impacts of a mutual recognition arrangement. Here, it is focused on CABs’ weak interests in the arrangement. For instance, under the Japan-Singapore Arrangement which entered into force for 7 years, no CABs have been designated in Japan³ (To be precise, one CAB was designated in 2004, but it had not renewed its

³ The designated CAB in Singapore is PSB corporation (‘PSB’).

status).

Some reasons can be suggested to explain why there are no CAB candidates in Japan. First, before concluding the governmental mutual recognition arrangements, a private cooperation framework had already been established among private certification bodies (including ones in Japan and Singapore). For instance, when a Japanese firm wanted to export electrical equipment to Singapore, the Japanese certification body, under the cooperation framework, performed testing based on the Singaporean safety law. Based upon its testing, the Japanese certification body would then apply, in lieu of the firm, for certification from the Singaporean certification body.

In addition, there was also ‘the Scheme of the IECCE (IEC System for Conformity testing and Certification of Electrical Equipment) for Mutual Recognition of Test Certificates for Electrical Equipment’ (the so-called ‘IEC CB Scheme’) among certification bodies. Under this scheme, an assessment of equipment safety is conducted according to the IEC standards and a national certification body then issues a certification, which can be accepted in member countries.

Such established voluntary frameworks and practices are also recognized in the OECD working paper as “technical mutual recognition arrangements” in contrast with “mandatory governmental mutual recognition arrangements” (p.14). With such voluntary arrangements, we can assume that certification bodies would have little incentive to become CABs under the governmental mutual recognition arrangements.

(3) Lukewarm business reaction

Similarly, the governmental mutual recognition arrangements have not attracted much interest among private business parties. Presumably, business parties have been using the private scheme already established among certification bodies, as explained above. Moreover, the production style of Japanese firms might be a cause for the lukewarm reaction to the use of governmental mutual recognition. A firm applying for mutual recognition of a certification in Japan is one which completes its production process in Japan and is interested in exporting its products overseas. However, recently, many Japanese firms produce products overseas, thereby diminishing strong business interests in mutual recognition arrangements.

IV. Japan's Regional Initiative: Alignment towards Existing International Standards under the APEC

While Japan's practices demonstrate hesitancy towards governmental mutual recognition, Japan has engaged in promoting alignment towards existing international standards ("standards alignment work") in APEC. Japan's approach is that convergence towards international standards is a much preferred policy than promoting TBT liberalization in RTAs.

In APEC, the Sub-Committee on Standards and Conformance ("SCSC") was established in 1994 to assist the Committee on Trade and Investment to achieve APEC's trade and investment liberalization.⁴ In the SCSC, priority areas for alignment have been determined; for instance, in the years 1995-1998, [1] electrical and electronic appliances, [2] food labeling; [3] rubber products; and [4] machinery were targeted. The alignment work in such priority areas has been pursued as part of the Voluntary Action Plan ("VAP") under which APEC Members are requested to submit their VAP reports. Japan has taken an interest in the VAP activity and summarized the results of the VAP reports submitted. Through VAP activity, some APEC members have already achieved alignment towards 142 existing international standards.

To most effective answer to the question --- "What are the prospects for greater coordination/convergence of TBT policies across RTAs?"--- is harmonization across existing international standards. Pursuing governmental mutual recognition in RTAs for the purpose of ensuring consistencies across RTAs may not work successfully given the high costs of implementation as discussed in this paper.

⁴http://www.apec.org/apec/apec_groups/committee_on_trade/sub-committee_on_standards.html#current_activities

TABLE 1 TBT Provision/Chapters in Japan's RTAs

No	Agreement	Entry into force	Type of Agreement	TBT Provisions/chapters
1	Japan-EC	1-Jan-2002	Stand-alone MRA	Yes
2	Japan-Singapore	30-Nov-2002	RTA	Yes
3	Japan-Mexico	1-Apr-2005	RTA	No
4	Japan-Malaysia	13-Jul-2006	RTA	Yes
5	Japan-Chile	3-Sep-2007	RTA	No
6	Japan-Thailand	1-Nov-2007	RTA	Yes
7	Japan-US	21-Nov-2007	Stand-alone MRA	Yes
8	Japan-Indonesia	1-Jul-2008	RTA	No
9	Japan-Brunei	31-Jul-2008	RTA	No
10	Japan-ASEAN	1-Dec-2008	RTA	Yes
11	Japan-Philippines	11-Dec-2008	RTA	Yes
12	Japan-Swiss	1-Sep-2009	RTA	Yes
13	Japan-Vietnam	1-Oct-2009	RTA	Yes

TABLE 2 Categorization of the TBT legal provisions in Japan's RTAs

categories		Japan- Singapore	Japan- Malaysia	Japan- Thailand	Japan- Philippines	Japan- ASEAN	Japan- Swiss	Japan- Vietnam
Reaffirmation of WTO TBT obligations			Yes			Yes	Yes	Yes
Harmonization								
Mutual Recognition/ Equivalence of technical regulations								
Conformity	Ensure the Acceptance of conformity assessment results		Yes				Yes	
Assessment	Mutual Recognition of conformity assessment	Yes+		Yes+	Yes+			
	(WTO-plus requirement: need to explain reasons for non-recognition?)							
Transparency			Yes*			Yes*	Yes*	Yes*
Further Cooperation			Yes			Yes	Yes	Yes
Enforcement and DS		Yes	Yes**	Yes	Yes	Yes**	Yes**	Yes**

+ Implemented by the Sectoral Annex

*Designating "enquiry point"

** Establishing "sub-committee" but DS chapter does not apply

Table 3
New Model of Mutual Recognition
“Crossborder designatior MRA”



