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Sanitary and Phytosanitary Agreement of the World Trade Organization – Advantage India

NAAS

NATIONAL ACADEMY OF AGRICULTURAL SCIENCES, INDIA
September 2001

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Introduction

Sanitary and Phytosanitary (SPS) Agreement of the World Trade Organization (WTO) is aimed at developing measures which would ensure protection of human, animal or plant life or health, and equivalence and transparency in global agricultural trade. SPS measures are not new to global agricultural trade. However, a specific 'Agreement on the Application' of SPS measures was negotiated during the Uruguay Round for giving impetus to agricultural growth through SPS measures, derived from scientific principles, instead of SPS being used as disguised restrictions to global agricultural trade.

SPS measures are applied to both domestically produced and imported goods to protect (i) humans from animal and plant-carried diseases, (ii) plants and animals from pests or diseases, and (iii) territory of a country from spread of a pest or disease. To achieve these objectives, SPS measures must have adequate quarantine regulations and monitoring and certification system regarding how the goods are produced, processed, stored and transported for ensuring the quality of final products. The perception that crops, genetically modified through biotechnological interventions may negatively impact human and animal health and environment, adds another dimension to be addressed through SPS measures.

There is a growing concern that certain SPS measures impede the export of agricultural produce from developing countries because the latter are not adequately equipped to address various issues related to SPS Agreement. Factors that put developing countries in a disadvantageous position are:

- Lack of information on aspects that affect exports.
- Lack of infrastructure for scientific research, testing, conformity assessment and equivalence.
- Non-technical persons influencing international standard-setting process.
- Inability to benefit from the provision of transparency and adaptation to regional conditions due to inadequate infrastructure and technical support.
- Inadequacy to utilise the provisions relating to special and differential treatment for developing countries. The provisions in practice remain of theoretical interest.

This paper is the outcome of the deliberations of a seminar organised on, 'Sanitary and Phytosanitary Issues', by the National Academy of Agricultural Sciences. It suggests approaches that would overcome the above deficiencies, in general and improve India's ability to use the SPS Agreement to its advantage in the matter of global agricultural trade.

It is essential for India to develop infrastructure and policies to respond to the SPS measures in their target markets as well as expectations of the consumers, by providing good quality and safe products at reasonable prices. To achieve this objective the country

must ensure that: farming remains competitive and profitable; export policy is aggressive; domestic capabilities are strengthened for implementing SPS measures; products which we do not wish to enter our markets, because of the potential negative impact on health, agriculture or environment, are identified proactively. All this will be necessary to ensure free and safe trade in agriculture.

Landmarks in the Development of the Agreement on the Application of Sanitary and Phytosanitary Measures

- 1974-1979: Inclusion of SPS concerns for food safety and health of humans, animals and plants in the Agreement on Technical Barriers to Trade (TBT) during the Tokyo Round.

- 1986: Call for increased discipline in agricultural trade including sanitary and phytosanitary measures as per the *Punta del Este* Declaration, which launched the Uruguay Round in September 1986.

- 1988: Mid-Term Review of the Uruguay Round in which the following priority areas related to SPS measures were identified: (a) harmonisation of the SPS measures on the basis of international standards, (b) transparency through effective notification of national regulations, and (c) improvement in the dispute settlement process including bilateral resolution of disputes and scientific support.

- 1990: Formation of the Working Group on Sanitary and Phytosanitary Regulations. SPS measures included in a separate draft agreement.

- 1991: The Director General of the General Agreement on Tariffs and Trade (GATT) issued "Dunkel Draft". The draft included sanitary and phytosanitary issues. The final text of the Agreement on the Application of Sanitary and Phytosanitary Measures which was approved at the end of the Uruguay Round was largely based on the Dunkel text. It fulfils the general objectives of the *Punta del Este* Declaration in this area.

- 1993: Establishment of the Secretariat of the International Plant Protection Convention (IPPC) and start of standard-setting process related to the SPS measures.

- 1995: Establishment of a Dispute Settlement Mechanism under the WTO which provides for mutually acceptable solutions or adoption of a panel/Appellate Body ruling by the Dispute Settlement Body (DSB).

- 2000: SPS Committee completes draft on risk consistency. The draft provides guidelines (not legally binding) on levels of health protection.

- 2000: Finalisation of United Nations Agreement concerning trade in genetically modified organisms (GMOs).

The Goal and Main Objective of the SPS Agreement

The Agreement requires the member countries to develop domestic SPS measures that: (a) are technically sound and economically feasible to implement, (b) are based on geographical, climatic and epidemiological conditions prevailing in different regions of the country, (c) do not discriminate in favour of domestic producers, (d) recognise disease-free areas of other countries and allow import of products originating from such areas, (e) permit introduction of measures providing a higher level of protection than achieved by measures based on international standards, if these are scientifically warranted and are based on risk assessment, and (f) allow provisional adoption of SPS measures as a precautionary step in cases where scientific evidence is insufficient but probable risk of the spread of pests or diseases exists in the importing country.

International Standards

Article 3 of the SPS Agreement, envisages application of international standards as basis for SPS regulations of the member countries. Application of this Article is essential as divergence of standards and regulations adds cost to international trade. However, divergence arising from legitimate differences in societal preferences, technological developments, environmental and health conditions, may be justified. In such cases, mutual recognition of standards is a desirable option. On the other hand, where divergences are not justified, harmonisation of international standards should provide appropriate solution. In either case, the crucial requirement is the efficiency and fairness of the process of international standard-development. Benefits of harmonisation may not reach equally to all the members if the process is guided by motives that exclude other market participants or if the procedure is not adequately transparent. International standards developed for food safety by the Codex Alimentarius Commission, for animal health by the International Office of Epizootics and for plant protection by the Secretariat of the International Plant Protection Convention are recognised by the SPS Agreement. For areas not covered by these organisations, the SPS Committee recognises standards developed by other relevant international organisations.

Codex Alimentarius Commission

The Codex Alimentarius Commission, a joint FAO/WHO Commission, with a membership of over 160 countries, has developed the Codex Alimentarius, a collection of international food standards for all principal food products. The Codex Alimentarius includes nearly 5000 standards, aimed at protecting the health of consumers and for ensuring fair practices in the food trade.

India is a member of the Codex Alimentarius Commission (CAC) and the Ministry of Health is the Nodal Agency. The country has passively adopted the Codex Alimentarius and India does not have any process for developing internal standards, although a National Codex Committee and a Central Committee for Food Standards exist. These Committees should be armed with infrastructure for testing to ensure that international standards are suitable to the Indian situation if not to develop appropriate alternative standards. There is also a need to establish a network of laboratories to certify that the products meet international/national standards. The key issues are the chemical/pesticides residue limit and detection of food-borne pathogens. The National Codex Secretariat (NCS), housed in

the Ministry of Health, is a non-entity. Considering the new challenges, the NCS should be provided with appropriate technical manpower and facilities to effectively coordinate and facilitate agricultural trade related to CAC requirements.

India has a great strength in producing organically grown food-using organic manures, soil-enriching cropping sequences and biological management of pests. Organic farming should be further strengthened by providing alternative energy sources to the farmers so that organic matter burnt as fuel becomes available for soil enrichment. The country has encouraged alternative energy sources like biogas and solar energy but more aggressive efforts are required through government and non-government extension agencies, to highlight the benefits that would accrue to the farmers. With increasing awareness of environmental concerns and health consciousness, national and international demand for organically grown food would grow and farmers would get higher returns for their produce. To take advantage of the emerging opportunities, the country must be supported by guidelines for the production, processing, labelling and marketing of organically grown food and putting in place a 'certification system' to assure organic production of a commodity. Certification system has to be based on continuous objective inspection, quality auditing of the inputs as well as the produce.

The International Plant Protection Convention (IPPC)

The IPPC Secretariat was established in 1993, for phytosanitary standard-setting and harmonisation of phytosanitary measures affecting trade. The nodal agency for setting phytosanitary standards in India, is the Directorate of Plant Protection, Ministry of Agriculture. The main objective of IPPC is to, "prevent the spread and introduction of pests of plants and plant products and to promote measures for their control." Special emphasis is on the 'quarantine pests' which are either not present in the country or are not widely distributed and have the potential of causing economic losses. The pests include 'invasive species' like weeds, which not only reduce yields of crop plants and add to the cost of cultivation but also pose health hazards. *Parthenium hysterophorus,* commonly known as 'congress grass', is an apt example of such introduction. It was inadvertently introduced in the country in early sixties through wheat consignments. It first established itself in areas adjoining the ports of entry but soon spread to all parts of the country causing serious human health problems, particularly asthma and skin diseases.

According to the present mandates, IPPC has responsibility for genetically modified organisms (GMOs) also, because, GMOs are included in the category of invasive species. Since, GMOs do not fall in the category of invasive species, a review of mandate allocation is called for.

The National Plant Protection Organisation i.e. the Directorate of Plant Protection has major responsibility of not only preventing introduction of exotic plant pests but also to ensure and certify that plants and plant products exported from the country are free from pests. It is a tall order and requires a very efficient and competent system to perform the following functions as per the IPPC guidelines:

i. inspection of growing plants, of areas under cultivation (including fields, plantations, nurseries, gardens and greenhouses), and of plants and plant products in storage or

in transportation, particularly with the object of reporting the existence, outbreak and spread of plant pests and controlling those pests;

ii. inspection of consignments of plants and plant products moving in international traffic and, where appropriate, inspection of consignments of other articles or commodities moving in international traffic under conditions where they may act incidentally as carriers of pests of plants and plant products, and the inspection and supervision of storage and transportation facilities of all kinds involved in international traffic whether of plants and plant products or of other commodities, particularly with the object of preventing dissemination of pests of plants and plant products across national boundaries;

iii. disinfestation or disinfection of consignments of plants and plant products moving in international traffic, and their containers (including packing material or matter of any kind accompanying plants or plant products), storage places, or transportation facilities of all kinds employed;

iv. issuance of 'phytosanitary certificates' relating to phytosanitary conditions and origin of consignments of plants and plant products;

v. determine the distribution of information within the country regarding pests of plants and plant products and the means of their prevention and control;

vi. conduct research and investigation in the field of plant protection;

vii. report on the existence, outbreak and spread of economically important pests of plants and plant products which may be of immediate or potential danger; and

viii. dissemination of information on means found to be effective in controlling the pests of plants and plant products.

The Directorate of Plant Protection, which has been charged with the above responsibilities' initiated activities, started mainly for plant quarantine purposes, at the major airports and seaports. Gradually, particularly with the ratification of WTO treaty, their responsibilities increased but infrastructural facilities did not improve commensurate with the additional responsibilities. Recently, four state-of-the-art facilities have been established at Delhi, Chennai, Calcutta and Amritsar with the UNDP/FAO assistance, but these laboratories lack adequately qualified technical manpower and the resources to effectively perform all the assigned functions. For a country of our size having more than 50 ports of entry, many more such facilities are required. We also do not have complete understanding of the SPS measures of our target markets, mainly due to the lack of direct technical contact with the concerned authorities in those countries. This gap can be bridged if the country posts a technically qualified agricultural *attaché* at our diplomatic missions in the countries of interest.

The Office of the International des Epizootics (OIE)

The objectives and functions of OIE are, harmonisation of health requirements and adoption of international standards for international trade in animals and animal products. It

is unfortunate that international standards are developed with very limited participation of developing countries. As a consequence, international standards are often inappropriate for use, as basis for domestic regulations, in developing countries. Also, developing countries face problems when they have to meet standards imposed by the importing markets of the developed countries.

India has vast wealth of animals and fishes which could become an important component of international trade if efficient and transparent mechanism of meeting international standards are operated in respect of animal health. Our present system does not inspire confidence. Even though a large number of animal diseases have been reported during the last five years, no information has been given about the number of animals destroyed, slaughtered or vaccinated to prevent spread of diseases. It is necessary to undertake pest risk assessment, identify areas/regions free from such pests, take appropriate measures to maintain disease-free status and develop eradication programme for diseases which could hamper international trade. Similarly, the reports on zoonoses do not give the number of cases but simply indicate'+' suggesting that a disease has been reported. Such an approach cannot build confidence in markets looking for animal products from India. The mechanism of issuing SPS certificates for the export of meat and fish products in various parts of the country requires harmonisation. Laboratories accredited to test the products meant for export should have adequate infrastructure to meet international standards.

India is advantageously placed for international trade in meat products as it produces lean meat, low in cholesterol—free of growth promoters and chemicals. The country should take measures to promote meat industry by encouraging animal farming to produce quality meat based on scientific principles.

The Standard-setting Process

The procedures for formulating standards vary among the international standard-setting organisations. Therefore, harmonisation of procedures is required for a coherent, transparent and effective system of international standardisation. The procedure should ensure meaningful participation of developing countries while developing and adopting standards taking into account the conditions prevailing in different countries. India can play an important role in debating and suggesting approaches to harmonisation of procedures, by sending technical representatives to the international meetings related to WTO/SPS, so that international standards do not become disguised barriers to trade. The process of setting international standards should be transparent to ensure reconciliation of conflicting opinions. This would require suitable modification of Article 3, so that the international standards are developed through a fair process based on consensus where all countries are effectively represented.

The safety measures and SPS standards must be based on science. India, therefore, should embark upon developing scientifically sound SPS measures, and be prepared to challenge the SPS measures of trade partners on scientific basis when required. Some countries may have difficulty but India has the advantage of having well-trained human resource which can undertake scientific pests risk assessment (PRA). Our technical resources can also be made available to other countries under suitable framework of international cooperation.

Equivalence

Article 4.1 of the SPS Agreement contains the important provision of accepting as equivalent the SPS measures of other members, if the exporting country demonstrates that its measures achieve the importing member's appropriate level of sanitary and phytosanitary protection. Some countries interpret this provision as 'sameness', instead of equivalence of measures and deprive Article 4.1 of its function, of recognising that different measures can achieve similar levels of SPS protection so that the member countries can adopt suitable SPS measures to ensure adequate SPS protection. There is a need to clearly define 'equivalence' in the SPS Agreement.

Equivalence is the ideal option when international standards are lacking or are inappropriate. India has diverse climatic, developmental and technological conditions. If its SPS measures are accepted as equivalent to those of importing countries, it will be an important instrument of enhancing market access for its agricultural products. India can also strive to develop regional or sub-regional agreements related to equivalence in SPS measures. Gradually, such measures could be harmonised within and outside the region. A major difficulty in utilising this clause of the Agreement is the non-acceptance of conformity assessment certificates by some member countries. Therefore, it would be useful to include the provision of the internationally supported accredited institutions for certification.

Mutual Recognition Agreements

Article 4.2, encourages member countries to develop Mutual Recognition Agreements (MRAs). The MRAs could either be limited to purposes like the testing methods, or they can cover all aspects including the standards. MRAs play an important role in building confidence and form a base for developing broader MRAs. The MRAs reduce costs by avoiding duplicative testing and eliminating delays. These also build valuable databases through intensive exchange of information and close contacts between the concerned laboratories in different countries. Confidence building leads to MRAs which consider the domestic requirements of the parties as equivalent so that a commodity which can be legally sold in one country may be legally sold in the other(s). India should utilise the provision of MRAs and accreditate laboratories assigned testing functions. Such laboratories should develop linkages with similar laboratories of other countries with comparable agroclimatic conditions. This will ultimately lead to regional trade agreement aimed at pooling human resources for research as well as development and establishment of regional or sub-regional laboratories, certification bodies and accreditation institutions.

Transparency

Transparency is becoming an international requirement for establishing credibility as a basis for promoting trade. SPS measures, crafted on sound science can be given wide circulation through electronic media for notification. India has built an efficient Internet-based infrastructure, which will be useful for networking of relevant public and private institutions and publishing relevant information on the world wide web. India should also take advantage of the SPS Committee for highlighting difficulties experienced by it, if any, relating to SPS measures of other member countries.

Adaptation to Regional Conditions

Article 6 of the SPS Agreement, deals with the adaptation to regional conditions, including recognition of pest- or disease-free areas or areas of low pest or disease prevalence. It is an important clause for countries like India, which have a vast geographical area and diverse agroclimatic conditions. To benefit from this clause for agricultural export, the country should identify and maintain some areas free of plant and animal pests of significance to international trade. Where feasible, cost-effective programme for eradication of a particular pest or disease can also be taken up. If required, external expert assistance can also be sought, although, considering the expertise available in the country, such assistance may not be large.

Declaring an area free of pest or disease requires scientific documentation for its acceptance by the relevant international organisations. Elaborate procedures have been developed for such recognitions. It is important that we identify export products, for example, wheat and mango, which face export restrictions due to diseases like 'Karnal bunt' and pest like 'stone weevil', respectively. Export of such items can be made from the pest- or disease-free areas. India should also seek inclusion of a clause in Article 6 to the effect that once an area is recognised as pest- or disease-free all the member countries will accept it without need for additional assessment.

Special and Differential Treatment

Article 10 of the SPS Agreement provides for special and differential treatment for the developing and least developed countries. India should prepare a list of major agricultural export products, identify the main constraints these products face in the countries of destination and request these countries (and/or the relevant international organisations) to facilitate export of the listed products. As per the provisions of Article 10, assistance could be sought for, eradicating a disease or pest, improving packaging and transportation, developing good manufacturing practices for individual agricultural products and training of personnel. So far, limited use has been made of these provisions.

Technical Cooperation

To help in the effective implementation of SPS Agreement, Article 9.1 provides for assistance to developing countries either on a bilateral basis or through appropriate international organisation. The main purpose of this provision is to enable developing countries to establish necessary infrastructural and other conditions required to promote international trade in agriculture. Technical cooperation could be used for building capacity of the officials; upgrade the technical skill of personnel working in laboratories, certification bodies and accreditation institutions, and risk assessment for a particular pest.

Enquiry Point

All member countries are required to establish an enquiry point to receive and respond to requests for information, regarding domestic SPS measures, including new or existing regulations and decisions based on risk assessment. The enquiry point can also be the nodal point for notifying the WTO Secretariat. Since, India does not have a single window enquiry point, it should utilise provisions of SPS Agreement to establish an enquiry

point. Major functions of the enquiry point would be to: (a) serve as notification authority, (b) coordinate with SPS related Committees, (c) represent country's interests in international fora, and (e) identify and resolve technical issues related to agricultural trade.

Summary of Recommendations

- SPS Agreement envisages use of international standards as a basis for SPS regulations of the member countries. At present, India passively adopts the standards developed by other countries. There is an urgent need to establish referral laboratories for testing the international standards for their suitability to the Indian situation and developing standards, which would be in the interest of country's agriculture. The key issues are the chemical/pesticides residue limit and detection of food-borne pathogens.

- India has a great strength in producing organically grown food. To take advantage of the emerging opportunities the country must strengthen organic farming and develop guidelines for the production, processing, labelling and marketing of organically grown food, and put in place a 'certification system' to assure organic production of a commodity.

- The Directorate of Plant Protection, which has the responsibility of "preventing the spread and introduction of pests of plants and plant products and to promote measures for their control", started mainly for the purposes of plant quarantine at the major airports and seaports. With the ratification of WTO treaty, their responsibilities increased but not the infrastructural facilities commensurate with additional responsibilities. Recently, four state-of-the-art facilities have been established, but these laboratories do not have adequate qualified senior technical manpower and resources required to effectively perform all the functions related to SPS measures. Moreover, considering the vast size of the country having more than 50 ports of entry, many more such facilities are required. The Department requires strengthening and complete reorganisation so that it is able to address various SPS related issues, effectively.

- The present situation is not satisfactory due to overburdening of limited resources and lack of general concerns about domestic as well as the international SPS measures. For example, the Immigration Declaration Form at the Indian ports of entry does not have any clause for declaring plant parts or food products of plant and/or animal origin being carried by the passengers. At the arrival lounge, there is no proper space and trained personnel to meet the functional needs of plant quarantine; both need correction.

- India has a vast wealth of animals and fishes which could become an important component of our international trade, if we put in place an efficient and transparent mechanism of meeting international standards in the field of animal health.

- India has an advantage of international trade in meat products as it produces lean meat which is low in cholesterol and is free of growth promoters and chemicals. However, it is necessary to take measures to promote meat industry by encouraging animal farming to produce quality meat, based on scientific principles.

- The mechanism of issuing SPS certificates for the export of meat and fish products in various parts of the country requires harmonisation, and the laboratories accredited to test the products meant for export should have adequate infrastructure to meet international standards.

- In principle, the safety measures and SPS standards must be based on science. The country, therefore, has to prepare itself to develop SPS measures which should be scientifically sound, and when required should be able to challenge the SPS measures of trade partners on scientific basis.

- We must undertake pest risk assessment (PRA), identify areas/regions free from such pests both of plants and animals, take appropriate measures to maintain disease-free status and develop eradication programme for diseases, which could hamper international trade. Some countries may have difficulty in scientific PRA but India has the advantage of having welltrained human resource which can play a significant role in the process of sound domestic PRA. Our technical resources can also be made available to other countries under suitable framework of international cooperation.

- Transparency of the SPS measures based on sound science, is important for promoting international trade. This can be best achieved through the use of electronic media.

- SPS Agreement has the important provision of accepting as equivalent the SPS measures of other members. Some countries interpret this provision as 'sameness', instead of equivalence of measures. There is a need to clearly define 'equivalence' in the SPS Agreement. Equivalence is the ideal option when international standards are lacking or are inappropriate.

- Article 4.2, encourages member countries to develop Mutual Recognition Agreements (MRAs). The MRAs reduce costs by avoiding duplicative testing and eliminating delays. India needs to play a proactive role in utilising the provision of MRAs.

- Article 6 of the SPS Agreement, deals with the adaptation to regional conditions, including the recognition of pest- or disease-free areas or areas of low pest or disease prevalence. It is an important clause for countries like India, which have a vast geographical area and diverse agroclimatic zones. For utilising this clause for the benefit of agricultural export, the country must undertake programmes to identify and maintain some areas free of plant and animal pests of significance to international trade. The country must identify the priority export items and take measures to promote export from the pest- or disease-free areas. India should also seek inclusion of a clause in Article 6, to the effect that once an area is recognised as pest- or disease-free all the member countries should accept it, without the need for additional assessment process.

- To facilitate effective implementation of SPS Agreement, Article 9.1 provides for assistance to developing countries either on a bilateral basis or through appropriate

international organisation. These provisions can be utilised to great advantage. India can also extend special technical assistance to countries.

- Article 10 of the SPS Agreement, provides for special and differential treatment for the developing and least developed countries. India should prepare a shortlist of major agricultural export products, identify the main constraints these products face in the countries of destination and request these countries and/or the relevant international organisations to provide assistance to facilitate the export of the listed products.

- According to the International Plant Protection Convention (IPPC) pests include the 'invasive species' like weeds as well as the genetically modified organisms (GMOs). The status of GMOs needs to be redefined in the light of recent debates in the country and elsewhere. All GMOs do not fall in the category of invasive species.

- India can play an important role in debating and suggesting approaches to harmonisation of procedures, by sending technical representatives to the international meetings related to WTO/SPS, so that international standards do not become disguised barriers to trade.

- We do not have complete understanding of the SPS measures of our target markets, mainly due to the lack of direct technical contact with the concerned authorities in those countries. This gap can be effectively bridged if the country posts a technically sound agricultural *attaché* at our diplomatic missions in the countries of interest.

- All the member countries are required to establish an Enquiry Point to receive and respond to requests for information regarding domestic SPS measures, including new or existing regulations and decisions based on risk assessment. The enquiry point can also be the nodal point for notifying the WTO Secretariat. India does not have a single window enquiry point. It must be developed for effective utilisation of the provisions of SPS Agreement. Major functions of the enquiry point would be to: (a) serve as notification authority, (b) coordinate with SPS related Committees, (c) represent country's interests in international fora, and (e) identify and resolve technical issues related to agricultural trade.