

**INDIAN SPICE EXPORTS AND SANITARY AND
PHYTOSANITARY MEASURES RELATED
CHALLENGES: A STUDY OF THE LEGAL AND
POLICY FRAMEWORK**

**A Dissertation submitted to the National University of Advanced
Legal Studies, Kochi in partial fulfillment of the requirements for the
award of L.L.M Degree in International Trade Law.**



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CERTIFICATION

This is to certify that **Ms. AISHWARYA DARBARI, REG NO: LM 0219006** has submitted her Dissertation titled, *“Indian spice exports and Sanitary and Phytosanitary measures related challenges: A study of the legal and policy framework”* in partial fulfillment of the requirement for the award of Degree of Masters of Laws in International Trade Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the dissertation submitted by her is original, bona fide and genuine.

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DECLARATION

I, Aishwarya Darbari, declare that this Dissertation titled “*Indian spice exports and Sanitary and Phytosanitary measures related challenges: A study of the legal and policy framework*” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfillment of the requirement for the award of Degree of Master of Laws in International Trade Law, under the guidance and supervision of **Mr. Hari S. Nayar**, Assistant Professor and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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ABBREVIATIONS

- AGMARK- Agriculture Marketing
- ASTA- American Spice Trade Association
- APEDA-Agricultural and Processed Food Products Export Development Authority
- BIS- Bureau of Indian Standards
- CAC-Codex Alimentarius Commission
- ESA- European Spice Association
- FSSAI- Food Safety and Standard Authority of India
- GATT-General Agreement on Tariffs and Trade
- IOPEPC-Indian Oilseed and Produce Export Promotion Council
- IPPC-International Plant Protection Convention
- LDCs-Least Developed Countries
- NABL-National Accreditation Board of Testing and Calibration Laboratories
- NEP-New Economic Policy
- OIE- International Office of Epizootics
- SPS-Sanitary and Phytosanitary
- WTO-World Trade Organization

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6.	EC- Measures concerning Meat and Meat products (hormones)
7.	Australia-measures affecting importation of Salmon

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Chapter-1

INTRODUCTION

India is known as the home of spices, boasts a long history of trading with the ancient civilisation of Rome and China. Today, India is the World's largest producer, consumer and exporter of spices. The country produces about 75 of the 109 varieties listed by the International Organization of Standardization (ISO) and accounts for half of the global trading in spices. India primarily exports pepper, chilli, turmeric, ginger, cardamom, coriander, cumin, fennel, fenugreek, celery, nutmeg and mace garlic, tamarind and vanilla. The US is the major importer of spices from India followed by, VIETNAM, CHINA, U.A.E, Thailand, U.K, Malaysia, Saudi Arabia, and Germany. The Quantum of export in 2017-18 of species from India was 1028060 million tonnes with an annual value of 1798016.2 Lakhs. Thus, there has been a gradual increase in the exports when compared with 2016-17 which amounts to 947790 million tonnes with annual value of 1781223.59 Lakhs. In 2018-19 the total exports amounted to 1100250 tons valued at 1950581 Lakhs. It can be seen that there is improvement in overall productivity and exports of the country.

A number of concerned steps/measures have been taken by the Ministry of Commerce and Industry, Government of India for promoting exports of food products from India. As regards spices, the Spice Board constituted on 26th February 1987 under the Spices Board Act 1986 is one of the five commodity board functioning under the Ministry of Commerce and Industry. The Spice Board which is an autonomous body is responsible for the promotion of export of spices from India. Apart, from the Spices Board, other institution such as the Export Inspection Council (established under the Export Quality Control and Inspection Act 1963) also plays a major role in the context of ensuring the quality of the spices exported from India.

India is a member of the World Trade Organisation. As a WTO member, India is bound to comply with the various obligations under the WTO covered Agreements. It is also entitled to make best use of the various rights and benefits available to members of the WTO.

While there is a strong commitment from the government to promote exports of fresh and processed food products , global agricultural trade faces a number of tariff and

non- tariff barriers. Though, tariff rates have come down significantly in recent times the non-tariff barriers continue to be an impediment to international trade in fresh and processed food products.

The WTO data on notifications show increasing use of sanitary and phytosanitary (SPS) measures by WTO member countries since the mid-1990s, which act as barriers to trade. SPS measures are measures adopted by countries to protect human, animal, and plant from diseases, pests, or contaminants. Most of the SPS measures are adopted for the protection of human life or health. One of the WTO covered agreements i.e. Agreement on Sanitary and Phytosanitary Measures lays down the rules relating to adoption of SPS measures by WTO members. It may be noted that most of the countries importing spices from India are members of the WTO. Some of the common non-tariff barriers faced by food products in export markets which includes lack of harmonisation of standards, different maximum residue limits (MRLs) for pesticides, drugs and other contaminants, and definitional issues. A number of studies have shown that Indian exporters have been facing difficulties in exporting food products to key markets such as the European Union and many of these are related to non-compliance with food safety and health standards. Some of these studies also refer to unreasonable food safety standards, which are often difficult for Indian exporter to comply with.

In terms of specific products, in the past, Indian exports of mangoes, table grapes, okra, peanuts, curry leaves, chillies. Shrimps, prawns and tamarind have faced rejection or bans in markets such as the US, Vietnam, EU, Saudi Arabia, Japan and Bhutan due to issues related to health and food safety standards. For instance, in the US, Saudi Arabia and Bhutan, Indian Chillies were rejected and even faced temporary bans due to the presence of higher than approved levels of chemical residues.

Import bans on ground of protection of human, animal or plant life or health are a cause for concern, especially because such bans can be employed for protectionist purposes to create unnecessary obstacles to international trade. They have both short and long term adverse effects on exporters and farmers. In the short run, there are financial losses due to the rejection of consignments, and in the long run, exporters and farmers lose their market share to exporters from other countries that are able to meet the food safety and health standards of importing countries. In the context of the

global economic recession there is an increased likelihood of food safety measures being introduced by various countries for protectionist purposes.

1.1 SCOPE OF STUDY

The study analyses the broad trends and patterns in India's export of spices as well as the secondary data and information on SPS barrier raised by different countries on import of spices from India. The key issues from an SPS perspective faced by Indian spice exporters in some key markets would be analysed. An analysis of the gaps, if any, in the domestic legal and policy framework which create obstacles to producers as well as exporters in facing the SPS related challenges in the global spice markets would also form a part of the present study.

The Preamble of this agreement directly talks about the non-discrimination in the application of the measures also with the sole objective to improve health concerned with human, animal and also phytosanitary situation respectively.

This agreement recognises various international standards and guidelines which are developed by relevant organisation like Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention. The relevance of this organization can be seen for the countries exporting products safely and in accordance with various regulations. **It applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.**¹

1.2 RESEARCH QUESTIONS

1. What is the significance of spice exports for Indian economy?
2. What are the SPS barriers faced by Indian spice exporters in foreign market?
3. What are the current legal and policy framework regarding facilitation of export promotion and quality assurance of spice exports?

¹Agreement on the application of Sanitary and phytosanitary measures art.1, Jan. 1, 1995, Marrakesh Agreement Establishing the World Trade Organisation, Annex1A, 1867 UNTS 493 [hereinafter SPS]

4. What are the scope of rights and obligation of members under WTO, SPS agreement?

1.3 OBJECTIVES

The study attempts to identify the SPS barriers that Indian spice export face, the reason for such barriers, the impact of the barrier on Indian domestic spice sector and how much such barriers can be addressed through reforms at the domestic legal and policy perspective.

1.4 HYPOTHESIS

Indian Legal and policy framework, for promotion and quality assurance of spice exports is effective to enable Indian spice exporters to meet the SPS challenges in foreign market.

1.5 METHODOLOGY

The methodology proposed to be employed is purely doctrinal and non-doctrinal. For the successful completion of this research work, the researcher will do extensive and thorough study with the help of documents, reports, books, research papers etc available in the library of NUALS and other legal education institutions. The researcher will also use secondary data of the relevant organisations and countries which have been made available in their official websites or other platforms. The researcher will also use research materials available in electronic databases as well as other general websites when they may not be available in physical format.

1.6 CHAPTERISATION

- **CHAPTER 1 – INTRODUCTION**

The first chapter gives an introduction about the WTO side agreement i.e. Agreement on Sanitary and Phytosanitary measures and also, this chapter provides a brief overview of various crucial points which are taken into account while dealing with the exports of the country.

- **CHAPTER 2 – SALIENT FEATURE OF SPS AGREEMENT AND RIGHTS AND OBLIGATION OF WTO MEMBERS**

In the third chapter, Agreement on Sanitary and Phytosanitary measures is taken into account in detail. The major key provisions which deal with various rights and obligations of the WTO members have been explained in consonance with the case in order to properly understand its application. These rights and obligations are necessary to understand so that the exports of any particular country are not hampered because of non-compliance of any provisions.

- **CHAPTER 3– ANALYSIS OF TRENDS AND PATTERNS IN INDIAN SPICE EXPORT& SPS BARRIERS**

In the second chapter a substantive amount of discussion is made about the Indian spice exports in the past five years with the amount of quantity exported and valued. The spices growing states with the amount of production made is necessary to be dealt with in order to understand, rising pattern of exports in the country. The SPS barriers can be understood, as those prevailing conditions in one country which could not be adhered by another country responsibly and so the consequences can be harmful for every player.

- **CHAPTER 4 –LEGAL AND POLICY FRAMEWORK**

In this chapter, major focus is dropped on the Spice Board of India which forms the core of spice exports. In Spices Board Act 1986, composition and various functions have been described, also various provisions complements the exports. There is another act, Export (Quality control and inspection) Act 1963, very well gives a glimpse of safe exports by India. Also, a brief discussion is made on Food safety and standard Act 2006 in order to promote the important role played in building the quality control strategy. The special emphasis is laid on the quality standards which are drafted by international organisations and also those followed by domestic agencies.

- **CHAPTER 5 – SPS RELATED CHALLENGES INCURRED BY SPICE PRODUCERS AND EXPORTERS**

In the Fifth chapter, producers and exporters involved in the spice export activities forms one of the major cores of the trade between nations. The

challenges faced by them, can occur because of the provisions which may not suitably apply in some countries. These provisions can prove as challenges faced by them and also, various other technical issues which may hinder the process.

- **CHAPTER 6 – CONCLUSION AND RECCOMENDATION**

In sixth chapter, conclusion and suggestions have been given to comply with the existing provisions and how maximum level of participation can lead to successful trade between nations. It focuses on review of chapter and testing of hypothesis.

1.7 LITERATURE REVIEW

The analysis of Sanitary and phytosanitary Agreement, its features and various characteristics in order to understand various key provisions constitutes an important part of the chapters. The export of spices from India in compliance with various legal policy framework and also, with the various standards laid down is well discussed and significant amount of literature has been written on it. In order to highlight the challenges and problems which can be faced by the exporters while complying with the SPS provision has been substantially dealt, while taking into account various viewpoints and new concepts.

Henry N. Ridely (1912) in his book “Spices” states that “the history of the cultivation and use of spices is perhaps the most romantic story of any vegetable product”. According to him, spices could be found in all parts of the world from the earliest known era of civilization. The drug and spices were considered as valuable as gold by the exporters of that era after it was explored by them and so the Cape of Good Hope as well as colonization of the East Indies paved its way. Each chapter of the book tries to bring forth characteristic of a spice which includes cinnamon, ginger, vanilla, which also takes into account history of cultivation across the globe speaking volumes in historical perspective.

K.V. Peter, in his book “Handbook of herb and spices” has widely discussed uses of various herbs and spices, the quality specifications which they have to adhere to in

order to be bought into trade aspects. The medicinal use of herbs or spice, also the flavours and colours being used to add specific natural ingredient since time immemorial which has been mainly emphasised along with the trade and definitions related to the same. The cultivation, production and processing of specific herb or spice has been discussed in order to analyse the uses and properties of the same.

L Thomas & P C Sanil in his review of “Competitiveness in spice export trade from India” mainly focuses on the India trade exports in relation to its history, competitiveness and issues which may be faced in relation to the export trade of the spices. The spices are the most traded commodities of the world and are surrounded by various trade barriers for various countries. India being one of the leading reducer and exporters faces various difficulties in the exports of the same, the legal framework as well as production and competitiveness has brought about few changes in its trade.

Amit Baran Sharangi in his book Indian Spices: The legacy, production and processing of India’s treasured export stated in the first chapter ‘Spices in India and beyond: the origin, history, tradition and culture’ that India through its geographical distribution has brought into account a wide accessibility of the spices, in order of its production, aroma and flavor for which it is known for. Even the nutritive value as well as qualitative value of the spices is something contributed by the spices itself. Also, a wide discussion is made on the marketing and exports of spices, focusing mainly on the value chain and distribution of the same.

Kajli Bakhshi in the article “SPS agreement under the WTO: The Indian experience” has dealt with the historical perspective of the agreement, the roots and causes which brought into the beginning of a new era in the safe exports of food items. It has further focused on the SPS barriers which are faced by the countries in terms of technology as well as certification. A special reference has been given to Indian situation whereby mainly concentrating on the exports as well as efforts made by various governmental bodies in complying with these provisions.

Simonetta Zarrilli in the working paper “WTO Sanitary and Phytosanitary agreement: Issues for developing countries” has stated about the Sanitary and phytosanitary measures are used for protectionist purposes and has been formed into an agreement. The agreement includes provisions which effectively address various answers pertaining to the difficulties faced by the developing nations, analysis of which has

been done in order to understand whether it is consistent or not with domestic laws. A critical analysis of the provisions has mainly concentrated on various problems faced by the developing countries.

Kasturi Das in her paper “Addressing SPS challenges in India” has stated about the experiences of the developing countries with the SPS requirements. The SPS agreement deals with various rights and obligation of its members and also, the fruitfulness of the same can be analysed in view of the challenges faced by the developing nations. The sector-specific SPS experiences in India have been mentioned and have taken into account various products widely exported, also known.

Autar Krishen Koul in his book “Guide to the WTO and GATT, Economics, Law and politics” states about the changes over the course of time in international trade law and international economic relations over the past decades. It provides an in depth knowledge about various agreements which have come into force since the inception of World Trade Organization in 1994. An emphasis has been provided to GATT which has been the predecessor of WTO and how it evolved over, with inclusion of various subject matters widely discussed.

P.K Vasudeva in his article “UAE Health standards: Indian meat banned” has reflected on the safety standards of its citizens which are widely followed by the international agreement mainly dealing with exports of various products. The SPS provisions which would mainly form the core of health standards have been taken into analytical aspect.

Van Den Bossche and Werner Zdouc in his book “The Law and policy of the World Trade Organisation” has stated about the Sanitary and phytosanitary Agreement and its various provisions. The formation of the World Trade Organization and its various agreements has been widely referred too, also some of the basic principles with which this organization deals has been analyzed and assessed. There are several case laws which complement and provide conceptual information about the provisions.

Zhu Zhu, Zhao Jinlong in their research paper “Scientific Evidence Requirements under the SPS Agreements” stated about the scientific evidence which is considered as mandatory while dealing with implementation of SPS provisions so as to protect the public health. The interpretation and application of sufficient scientific evidence is

looked upon to understand its advantages as well as to take a critical view. The dispute settlement body has been numerously addressed in various disputes between nations in order to interpret the meaning of scientific requirements.

Tim Cadman, Aanchal Jain, and Anjani Vajrala Sneha in their research paper “ Food safety and standards in India” has analysed the food safety standard laws and regulations of India, also impact of such standards on Indian agricultural trade flow between nations. The paper has widely discussed about the Food Safety and Standard Act 2006 and also the authority which functions in accordance with the act. Its main objective is to understand whether these food safety standards are hinderances for developing countries like India.

SM Solaiman and Abu Noman Mohammad Atahar Ali in their research paper “Most Serious offences and penalties concerning unsafe foods under the food safety laws in Bangladesh, India and Australia: A critical analysis” has efficiently taken into circumstances of countries like India, Bangladesh and Australia in relation to food safety. The paper examines various statutes which cite certain serious offences in violation of food safety laws in three countries, respectively.

Anubha Dhulia in her research paper “Law on food adulteration: A critical study with special reference to the food safety and standard act, 2006” has taken into consideration the food safety law specifically Food Safety and Standard Act 2006, with emphasis on food adulteration. The eating pure and unadulterated food can only provide a healthy environment and such can happen only when there is activeness in education and informing the public. Thus, analysis of such malpractices in consonance with the food safety counts for an important aspect.

Mayuri H. Pandya in his research paper “Humanising Consumer Protection: An instrument for food safety” has briefly discussed about consumer protection laws in India in consonance with food safety through international treaties. The key points pertaining to Food Safety and Standards Act has been explained and understood.

Steven Jaffee in his research paper “Delivering and taking the heat, Indian Spices and evolving product and process standards, World Bank, Agriculture and Rural development” has stated about the historical background of spices cultivation with special reference to sanitary and phytosanitary measures. There are certain

agricultural products which have been taken into consideration in order to understand the effect of SPS standards.

Shuvajit Chakraborty in his article “Sanitary and Phytosanitary Measures in Agriculture Trade” has stated about the problems which are faced to run an effective international trade system with regard to certain agricultural products. These barriers include SPS requirements and also, intellectual property as well as subsidies.

Shameek Sen in his article “The WTO agreement and the Right to Health: Conflict or Consensus? A developing country perspective” has mainly focused on developing country in regard international trade which may have affected public health. The right to health is looked upon as a human right and analysed in the light of certain agreements of World Trade Organization. As far as SPS agreement is concerned, has considered certain provisions which are considered necessary for its implication. The agreements widely include Sanitary and Phytosanitary Agreement, General Agreement on tariffs and trade, General Agreement on services, Agreement on technical barriers to trade, and TRIPS.

Krishnakumar Thulasimani in research paper “Quality Management of Agricultural products in India” has focused on quality management strategy which is mainly functioned under the guidance of government agencies. There are certain domestic food standards which are followed in compliance with the international standards in relation to food safety and quality.

John Croome in his book “Reshaping the World Trading system, A history of the Uruguay round” has widely taken into account all the events which had lead to the formation of WTO and also, negotiations during each rounds for development of a new agreement. The article has taken every minute detail about various criticisms and advantages which were faced by the participating members while trying to negotiate each agreement and to actively participate in world trade.

MM Pandey in his article “Indian Agriculture- An introduction” has stated that agriculture is the backbone of the economy. Indian agriculture is considered to be one of the most prosperous and economy driven sector, and also, major source of income generation. The Agricultural production and productivity has been taken into account so as to decide the nature of growth over the times.

S.K. Goyal, Prabha, Jai P. Rai, Shree Ram Singh in their article “Indian agriculture and farmers – problems and reforms” has stated in vast about the problems and reforms faced by farmers in relation to Indian agriculture. The farmers face a lot of problems because of miscommunication between government agencies.

Shashi Bhushan Kumar in his article “P.V. Narasimha Rao: The Precursor of the Era of Economic Reforms in India. Indian Journal of Public Administration” has brought into account economic turmoil which was faced by India during the tenure of P.V. Narasimha Rao. The economic reforms brought under the assistance of economic foreign minister Manmohan Singh lifted the economy and made major changes in the trade policies of India. Their contribution leads to building a much reliant and effective economy of the world.

Spencer Henson and Rupert Loader in his article “Barriers to Agricultural Exports from Developing Countries: The Role of Sanitary and Phytosanitary Requirements” has stated about the impact of SPS measures in developed as well as developing countries on exports of certain agricultural products. The problems and the amount of interference made by these measures have lead to certain difficulties which are faced by them in participating in global trade.

Kasturi Das in her research paper “The Impact of Sanitary and Phytosanitary Measures on India’s Exports and the Challenges/Opportunities of the SPS Agreement” has stated about SPS measures, the requirements which are need to be fulfilled in order to provide fundamental structure and organization of trade. The analysis of certain key provisions of SPS agreement, in light of trade with EU and USA has been dealt upon.

Chapter-2

SALIENT FEATURES OF SANITARY AND PHYTOSANITARY AGREEMENT & RIGHTS AND OBLIGATION OF WTO MEMBERS

2.1 INTRODUCTION

The protection of human, animal, plant health became one of the goals to be attained in international trade. The trade between nations was earlier not based on testing and inspection, which led to many diseases in countries where goods were exported. In the urgent need to understand the cause, precautions to be taken under such circumstances, countries started determining many aspects while importing goods. These determinations were made to protect the human, animal or plant health, which also constitutes one of the major parts of any economy. The non-tariff trade barriers became an area of discussion, as the tariff rates were already negotiated between the countries to curb any hurdles faced in the trade so now the talks were held for Sanitary and phytosanitary measures as to what extent these can be adopted so that they don't constitute barriers in trade. There may be other reasons for the need of SPS measures as that of the increased consumer expectations in relation to food safety as well as to adhere to the domestic laws of the country, also the number of risks that may arise of agricultural products or any foodstuffs, beverages were a cause of concern.

The Sanitary and Phytosanitary Measures has been brought into account after wide negotiations during Tokyo and Uruguay round, so that the food standards as well as health and safety standards could be met. The SPS agreement consists of 14 Articles followed by three annexure, providing a detailed analysis of rules and procedures which shall be adopted and applied by the member states. This agreement comes under the 'covered agreements' of the World Trade Organization, thus any country who is a member of the latter shall be obligated by the covered agreements. The SPS Agreement talks about the basic rights and obligations, the principles related to harmonization, equivalence, transparency also how the risks can be assessed and the

appropriate level of protection that can be taken. In the subsequent pages dispute settlement and administration of the SPS measures have been enumerated.

2.2 BACKGROUND OF SPS AGREEMENT

The negotiations on SPS agreement was bought during the Tokyo round (1973-79), during which negotiating group “Group Agriculture” was formed, which looked into the draft code of sanitary and phytosanitary measures and also because of the negotiations held, a code on Technical barriers to trade (the standard code) was bought whereby the sanitary and phytosanitary regulations were included in it implicitly.² The Technical Barriers to Trade agreement was bought into consideration because the negotiating parties were looking into non-tariff barriers, which included the barriers in trade because of some technical trade regulations or safety measures in regard to health of human, animal or plant. The agreement was adopted as ‘the standard code’ as these were not binding on member states but only on those members who were signatories to such. The provision was enacted so that the governments of the respective countries are able to look into food quality and safety standard, but any member state shall adopt only those many measures which does not become barriers to trade rather help in improving the trade between nations in accordance with the established guidelines and norms.

The negotiations took a major form during the Uruguay Round (1986-94) in Punta del Este, this round witnessed some major sectors to be looked upon which were disturbing the needs of the member states that is ‘Agriculture’. The Declaration sets out the aim to liberalize trade in agriculture..... by minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account relevant international agreements.³ ‘Agriculture’ was discussed in Tokyo Round but to give it a more substantive base, it was made a major agenda during the Uruguay Round. ‘Multilateral trading system of which GATT is the legal foundation is seriously endangered’ was adopted by the GATT contracting parties during this round, whereby defects in the GATT was taken under consideration, in

² Background note by the GATT Secretariat, *Sanitary and phytosanitary regulations affecting trade in Agriculture*, GATT Doc. MTN.GNG/NG5/W/41 (February 2, 1988)

³ GATT, Ministerial declaration on the Uruguay Round of 20th September 1986, GATT Doc. MIN(86)/W/19

particular disagreements regarding (a) GATT rules and degree of liberalization in agriculture (b) safeguard measures, (c) textiles were broadly discussed.⁴

The main reason for forming the SPS Agreement as a separate agreement and not making it a part of TBT Agreement was that the negotiators were of the view that lowering trade barriers would not be useful, because of the increased application of SPS measures for protectionists' purposes. Therefore, a special consideration was given to these measures and a broader view to this provision was bought during the Uruguay round, where it was decided that the Article XX (b) and standard code shall be strengthened. Thus, it can be said that this agreement is an elaboration of the original GATT exception so mentioned in Article XX (b).

The Working group was an initiative by the United States of America in 1988 with the goal of improving GATT procedures on health and sanitary measures, harmonization of measures and to look into international standard organization.⁵ In 1990, the draft text of Agreement on Sanitary and Phytosanitary Measures was given recognition after the Working Group on the latter submitted its unanimous decision on the provisions and provided alternatives to many disagreements by the contracting parties.⁶ On 1st January 1995, the SPS measures came into effect covering all the measures discussed by the contracting parties.

The preamble of the Agreement on the application of Sanitary and Phytosanitary measures has focused on the goals that shall be attained by the members, if the measures are adopted and applied by the member states diligently. The members shall *reaffirm* that other members shall adopt and enforce SPS measures, and thus without constituting any arbitrary or unjustifiable discrimination between members. Thus, providing a narrow view of non-discrimination principle discussed in other provisions of the Agreement. The improvement of human, animal health and phytosanitary situations shall be *desirable* by the members. This clause can also be called as a core of this agreement and the foremost aspect to be determined.

⁴ Autar Krishen Koul, *Guide to the WTO and GATT , Economics, Law and politics*, (1st ed. 2018)

⁵ Group of negotiations on Goods (GATT), *Communication From The United States On A Health And Sanitary Working Group*, MTN.GNG/NG5/W/77 (September 13, 1988)

⁶ *Revision on Draft final act embodying the results of the Uruguay Round Of Multilateral Trade Negotiations*, , Annexure D, pg. 163, MTN.TNC/W/35/Rev.1 (December 3, 1990)

The SPS measures will be applied by the members on the basis of bilateral agreements or protocols, and thus has to be *noted* by the members. The multilateral framework of rules and procedures so as to improve the development, adoption and enforcement of SPS measures shall be *desired* by the members in order to reduce the negative effects on trade. The multilateral framework can be interpreted as the formulation of domestic laws which can work in consonance with SPS measures so that the trade barriers can be reduced.

The international standards, guidelines and recommendations shall be *recognized* by the members, as it contributes to the application of SPS measures. The harmonization of SPS measures between members shall be *desired* by members, it shall be done on the basis of international standards. The developing country members have been given special and differential treatment in World Trade Organization that is giving preference to their needs and providing them with all kinds of assistance. Thus, preamble also proved that members shall *recognize* the needs of developing country members in the application and formulation of SPS measures, and assists them in regard to such difficulties faced by them. The rules of GATT 1994 which can be interpreted in and applied in regard to SPS measures, in particular to provision of Article XX (b) shall be desired by members to consider the same.

The agreement shall be applicable on all sanitary and phytosanitary measures which may *directly or indirectly* affect international trade. These measures shall be applied in accordance to the provisions so mentioned in the agreement, further giving definitions under Annexure A of the agreement. Annexure A of Agreement on the application Sanitary and Phytosanitary measures defines and gives a wide understanding of the concept. It is any measure applied:

1. To protect animal or plant life or health within the territory of the member from risks arising from the entry , establishment or spread of pests, diseases, disease carrying organism or disease causing organisms.
2. To protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins or disease- causing organisms in food, beverages or feedstuffs.

3. To protect human life or health within the territory of the member from risks arising from diseases carried by animals, plants or product thereof, or from the entry, establishment or spread of pests; or
4. To prevent or limit other damage within the territory of the member from the entry, establishment or spread of pests.

The definition broadly classifies protection to HUMAN from additives, contaminants, toxins, disease-causing organisms in foods, beverages or feedstuffs; disease carried by animals, plants or products, PLANT from spread of pests, diseases, ANIMAL from spread of pests, additives, toxins respectively. SPS measures can take the form of inspection of products, permission to use only certain additives in food, determination in maximum levels of pesticide residues, designation of disease-free areas, quarantine requirements, import bans, etc.⁷

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:..... necessary to protect human, animal or plant life or health.⁸ Before the SPS agreement, there was a provision in GATT 1947 in the exception clause wherein a country may revoke this provision and burden of proof shall lie upon the same, as to how the other country has:

1. Fell within the scope of policies designed to protect the human, animal or plant life or health.
2. Inconsistent measures which formed the core of policy have fell into this exception.

The appellate body in the case of *Australia-Apple* has given a vivid view as to interpretation of Annexure A (1) (a) of the SPS agreement:

⁷ Zarrilli, *supra* note 14

⁸ General Agreement on Tariff And Trade, Oct. 30, 1947, Article XX (b), 55 U.N.T.S 194 [hereinafter GATT]

Whether a measure is “applied.....to protect” in the sense of Annexure A (1) (a) must be ascertained not only from the objectives of the measure as expressed by the responding party, but also from the texts and structure of the relevant measure, its surrounding regulatory context, and the way in which it is designed and applied.⁹

2.3 RIGHT TO TAKE SPS MEASURES

Article 2.1 of the SPS agreement has broadly defined that members shall have the right to take necessary Sanitary and phytosanitary measures so as to protect human, animal, plant life or health, and the provisions so applied by the respective country should not be contrary to the provisions of Sanitary and phytosanitary agreement. The term ‘only to the extent necessary’ so used in this provision clearly defines the idea of imposing only those measures by the member states which doesn’t hinder the trade between nations and to meet relevant requirements of the former.

The position in GATT 1994 says that any discriminatory health measures shall be prohibited unless justified under Article XX (b) of the GATT 1994, has been overturned under this provision of the agreement. The limitations on the use of SPS measures have been mentioned in the subsequent provisions of the Article 2.2 which can be applied only to the extent necessary and shall be based on scientific principles and evidence.¹⁰ The non-discrimination principle as incorporated under the Article 2.3 of the SPS Agreement is also a limitation on the application of SPS measures by the member states. Thus, there are provisions under SPS Agreement which can be followed up, determining the limitations upon the right to take SPS measures by member states.

The obligations has also been imposed on the member states, these include the inclusion of scientific principles in the application of SPS measure and discrimination principle shall not be followed by any member state so as to hinder the trade. These obligations have been further explained in detail.

⁹ Appellate Body Report, *Australia- Measures Affecting the Importation of Apples from New Zealand*, ¶173, WTO Doc. AB-2010-2, WT/DS367/AB/R (adopted on Dec. 17, 2010)

¹⁰ United Nations, New York and Geneva, Training module of the WTO agreement on sanitary and phytosanitary measures, November 2005, (October, 02, 2019, 1:pm)

https://unctad.org/en/Docs/ditctncd20043_en.pdf

2.4 SCIENCE BASED OBLIGATIONS

Article 2.2 of the Sanitary and phytosanitary Agreement, has put an obligation on the members “to ensure” that the measures are applied ‘only to the extent necessary’ which shall be based on scientific principles and is not maintained without scientific evidence. The SCIENTIFIC PRINCIPLES shall be regarded as the basis of the SPS Agreement and thus solely science governs the major aspects of this agreement. The sufficient scientific evidence has been given a view in Japan-Apples (2003) stating the meaning of scientific evidence and has held that the evidence to be considered as scientific should be gathered through scientific methods, excluding by the same token not gathered through scientific method.¹¹ Further the panel clearly provided an elaboration on the term ‘scientific evidence’:

We further note that scientific evidence may include evidence that a particular risk may occur (e.g., the entry, establishment or spread of the bacteria that causes fire blight disease) as well as evidence that a particular requirement may reduce or eliminate that risk (e.g., the effectiveness of chlorine treatment in eliminating the bacteria.)¹²

The panel in succeeding paragraphs bought into consideration the meaning of the term ‘evidence’ and quoted in the report:

Negotiators could have used the term "information", as in Article 5.7, if they considered that any material could be used. By using the term "scientific evidence", Article 2.2 excludes in essence not only insufficiently substantiated information, but also such things as a non-demonstrated hypothesis.¹³

There are circumstances where a country may not be able to maintain scientific evidence for the risks which may arise or to the extent the risks may cause harm, but since the government has to take certain prompt actions to avoid those harms certain precautions are taken by them immediately. Article 5.7 can be called as a provisional measure applied by any member state, who could not maintain the scientific evidence respectively. It can be called as a rescue taken up by the member states or an

¹¹ Panel Report, *Japan – Measures affecting the importation of Apples*, ¶ 8.92, WTO Doc.

WT/DS245/R (adopted on December 10, 2003)

¹² *Id*

¹³ *Id*

exemption provided for the maintenance of sufficient scientific evidence. This article can be better understood by breaking it down into four constituent parts:

- a) *imposed in respect of a situation where "relevant scientific information is insufficient"; and*
- b) *Adopted "on the basis of available pertinent information".*
- c) *"seek[s] to obtain the additional information necessary for a more objective assessment of risk"; and*
- d) *"review[s] the ... measure accordingly within a reasonable period of time"¹⁴*

These points constitute the core of Article 5.7 and if even one of the conditions is not met, then it will be inconsistent with the latter and shall not fall under this exception. This provision has been called as a qualified exemption of Article 2.2. The SPS agreement allows countries to adopt SPS measures on provisional basis as a precautionary step, especially in cases where there is possible risk of uncertain diseases, but 'scientific evidence' is insufficient.¹⁵ The first requirement provides that there should be true lack of scientific information related to that risk, leading to insufficient scientific evidence. The second requirement talks about any measure so adopted by the member state shall be based on availability of pertinent information. The word 'pertinent' points out to that the information must have a bearing upon or be relevant to the suspected risk, appear to indicate that the risks may be theoretically plausible on the basis of what evidence exists.¹⁶ The third requirement calls for obtaining additional information so necessary for the more objective assessment of risks. In *Canada- Continued Suspension* (2008), the appellate body interpreted the third requirement and quoted that:

The requirement that the WTO Member "shall seek to obtain the additional information necessary for a more objective assessment of risk" implies that, as of the

¹⁴ Appellate body Report, *Japan – Measures affecting agricultural products*, ¶ 87, WTO Doc. WT/DS76/AB/R (adopted on March 19, 1999)

¹⁵ P. K. Vasudeva, *UAE Health Standards: Indian Meat Banned*, 35 *Economic and Political Weekly*, Aug. 05, 2000, at pp. 2819-2820

¹⁶ Peter Van den Bossche, Et Al., *The Agreement On The Application Of Sanitary And Phytosanitary Measures IN The World Trade Organization: Legal, Economic and political Analysis*, 304 (Patrick F. J. Macrory, Et Al., 2004)

*adoption of the provisional measure, a WTO Member must make best efforts to remedy the insufficiencies in the relevant scientific evidence with additional scientific research or by gathering information from relevant international organizations or other sources.*¹⁷

The fourth requirement notifies about the time requirement to review the provisional SPS measures so adopted. The agreement does not fix any particular time limit on the review mechanism, but only provides that it should be done in a reasonable time period, as it depends on the circumstances subsequently. Thus, Article 5.7 can also be called as a precautionary principle,

Taking into account circumstantial evidence, the panel was of the view that scientific evidence may include both direct and indirect evidence but the probative value of the same will be taken into account because any evidence which does not directly prove a fact might not be considered relevant.¹⁸ The sufficiency clause in Article 2.2 of the SPS Agreement has brought into account the interpretation of the same and thus in Japan-Measures affecting agricultural products, the Appellate body has considered Japan's issue of defining the meaning of the word sufficient so used in the latter provision, thus drawing a relational concept between the SPS measures and scientific measures.¹⁹ To understand the relationship, the panel in US-Poultry (China) cleared the position of scientific evidence and the measure has to be maintained with sufficient scientific evidence:

*The scientific evidence must bear a rational relationship to the measure, be sufficient to demonstrate the existence of the risk which the measure is supposed to address, and be of the kind necessary for a risk assessment.*²⁰

The provisions mentioned in Article 2.2 are further elaborated in Article 5.1, which provides that the measures should be based on risk assessment; the purpose of the risk mentioned under the SPS Agreement shall be divided into risk assessment and risk management. 'Risk assessment' is the process of identifying the risk on the basis of scientific principles and to establish a mechanism wherein the risk can be moulded

¹⁷ Appellate Body Report, *Canada – Continued suspension of obligations in the EC - Hormones dispute*, ¶ 679, WTO Doc. WT/DS321/AB/R (adopted on November 14, 2008)

¹⁸ *Id* at para 8.98

¹⁹ Japan – Agricultural Products II, Report of the Appellate body, *supra* note 38, at para. 73

²⁰ Panel Report, *United states – Certain Measures Affecting Imports of Poultry from China*, ¶ 7.200, WTO Doc. WT/DS392/R (adopted on October 25, 2010)

according to the principles whereas 'Risk Management' is a policy based aspect which can be applied in the territory of the country concerned and also choosing appropriate measures to achieve that level of protection against that risk.²¹ In EC-Hormones case (1998) the Appellate body gave a very vivid view of Article 5.1 and 2.2, its relation with each other respectively:

*The requirements of a risk assessment under Article 5.1, as well as of "sufficient scientific evidence" under Article 2.2, are essential for the maintenance of the delicate and carefully negotiated balance in the SPS Agreement between the shared, but sometimes competing, interests of promoting international trade and of protecting the life and health of human beings.*²²

The Annexure A paragraph 4 of the SPS Agreement defines the term 'risk assessment' and can be better understood by segregating into two parts, and thus the evaluation includes:

- 1) The entry, establishment or spread of pests or diseases having potential biological and economic consequences.
- 2) The potential or adverse effects on the human health from addictive, toxins, contaminants, or disease causing organisms in foods, beverages or feedstuffs.

Thus the risk assessment is based on pests or diseases and secondly on food, beverages or feedstuffs. There are basically two meanings that have been provided under the definition of 'risk assessment', and both are entirely different in interpretation. First, part of the definition talks about the evaluation of 'likelihood', which means the term "likelihood" is synonymous with the term "probability," which means that a proper risk assessment would compare "the probability of the entry, establishment or spread of diseases" as well as the associated potential biological and economic consequences with and without the SPS measures in effect.²³

²¹ Peter Van Den Bossche, ET AL., *The Law and policy of the World Trade Organization: Text, cases and materials* (4th ed. 2017)

²² Appellate Body Report, *EC- Measures concerning Meat and Meat products (hormones)*, WTO Doc. WT/DS48/AB/R, WT/DS26/AB/R (adopted on Feb. 13, 1998)

²³ Zhu Zhu & Zhao Jinlong, *Scientific Evidence Requirements under the SPS Agreement*, 3 J. WTO & China, 104(2013)

Risk assessment should account for economic factors, such as potential losses in production or sales, if a pest or disease enters the country, as well as the cost-effectiveness of different measures that could reduce such risk.²⁴ The second part of the definition mentions the ‘evaluation of potential’ which means the possibility of having any adverse effect from food, beverages or feedstuffs. The factors which should also be concentrated upon includes relevant scientific evidence, process and production methods, inspection, sampling or testing methods, also the diseases and environmental and ecological conditions.²⁵ While assessing the risks, members shall determine that appropriate level of protection is achieved, which shall not hinder the production or sales of the member states.²⁶

2.5 NON-DISCRIMINATORY TREATMENT

The non-discrimination principle as have been already mentioned under the General Agreement on tariffs and Trade (GATT) better known as Most-favored nation principle and National Treatment, is a established principle for regulating trade between the members. Article 2.3 of the SPS Agreement has also quoted on one of the most important principle for the application of measures between their own territory and that of other members, which shall not ‘arbitrarily or unjustifiably discriminate’ where identical or similar conditions prevails. Thus, disguised restriction on international trade is not promoted through the application these measures. The

²⁴*Id*

²⁵ Agreement on the Application of Sanitary and Phytosanitary measures, Article 5.2, Jan. 1, 1995, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493 [hereinafter SPS]

In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest — or disease — free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

²⁶ SPS Agreement article 5.3

In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

broader prohibition or discrimination is aimed to bring into account that different products may be prone to same or similar conditions shall be accounted to the non-discrimination treatment.²⁷

The appellate body in Australia-Salmon has discussed vividly on Article 2.3 and 5.5, further providing the inception of this provision in GATT: *This provision takes up obligations similar to those arising under Article I:1 and Article III:4 of the GATT 1994 and incorporates part of the "chapeau" to Article XX of the GATT 1994. Its fundamental importance in the context of the SPS Agreement is reflected in the first paragraph of the preamble of the SPS Agreement.*²⁸

Thus, Article 5.5 of the SPS Agreement further elaborated the arbitrarily and unjustifiable distinctions in the appropriate level of protection so applied by the member states.

*We recall that the third - and decisive - element of Article 5.5, discussed above, requires a finding that the SPS measure which embodies arbitrary or unjustifiable restrictions in levels of protection results in "discrimination or a disguised restriction on international trade". Therefore, a finding of violation of Article 5.5 will necessarily imply a violation of Article 2.3, first sentence, or Article 2.3, second sentence.*²⁹ Thus, establishing a relation between these two articles, appellate body mentioned about the same in Australia-Salmon case.

2.6 HARMONISATION

The preamble of the SPS Agreement mentions about the harmonization factor, it quotes as follows: *“Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without*

²⁷ SPS Agreement, chapter 7

²⁸ Appellate Body Report, *Australia-measures affecting importation of Salmon*, ¶ 251, WTO Doc. [WT/DS18/AB/R](#) (adopted on Nov. 06, 1998)

²⁹ *Id* at para. 252

requiring Members to change their appropriate level of protection of human, animal or plant life or health".³⁰ Thus, preamble itself provides the key provision for bringing a uniform standard into existence between member states.

Article 3 of the SPS Agreement has further elaborated this principle and members shall base their SPS measures on international standards, guidelines or recommendations,³¹ 'base' includes that a member state may adopt some of the international standards and that the measures so applied by them shall not be contrary to the former.³² The Harmonization has been defined as establishment, recognition, and application of common SPS measures by different member nations,³³ the principle was in consideration since the negotiations of SPS Agreement, further brought down to discussion firstly by United States of America in 1988 considering it as a basic norm to achieve the objectives so set to achieve health and safety standards. In Canada-continued suspension of obligation in the EC-Hormone dispute, Appellate body in its report mentioned that the objective so mentioned in the preamble of the SPS agreement find its reflection in the Article 3 of the SPS agreement which encourages the application of international standards, by taking into account appropriate level of protection so taken up by the member states.³⁴ The SPS measure should confirm with the international standards, guidelines or recommendations so as to protect human, animal or plant life or health and is presumed to be consistent with relevant provisions of the Agreement and of GATT 1994.³⁵ Thus in first article,

³⁰ Agreement on the Application of Sanitary and Phytosanitary measures, Jan. 1, 1995, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493 [hereinafter SPS]

³¹ SPS Agreement, Article 3.1, To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

³² Japan – Measures affecting the importation of Apples, *supra* note 10

³³ SPS Agreement, Annexure A Paragraph 2

³⁴ Canada - Continued Suspension of Obligations in the EC - Hormones Dispute, *supra* note 41 at para. 692

³⁵ SPS Agreement, Art 3.2, Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

members are asked to 'base' their SPS measures on standards not providing any further conditions but in the latter provision, the SPS measures 'confirm' to standards and a condition is applied that it is presumed to be in consonance with Agreement ad GATT 1994 making this provision a more demanding one.

Annexure A Paragraph 3 defines the international standards, guidelines and recommendations by taking into account food safety, animal health, plant respectively. The different international organizations whose standards have been taken into consideration in the SPS Agreement are Codex Alimentarius Commission (CAC) for food safety, The International Office of Epizootics (OIE) for animal health, International Plant protection Convention (IPPC) for plant protection, these are also known as 'three Sisters'. International standards are given a prominent role under the *SPS Agreement*, particularly in furthering the objective of promoting the harmonization of sanitary and phytosanitary standards between WTO Members. The members have liberty to introduce or maintain their SPS measures on any other standards, guidelines, or recommendations, if they provide higher level of protection and such can be done only if there is scientific justification or if the relevant international standards or guidelines or recommendations are not achieving appropriate level of protection under SPS measures.³⁶ It can be analyzed that Article 3 has provided three options:

- (1) The members to 'base' the SPS measures on international standards, guidelines or recommendations.
- (2) The members shall 'confirm' there SPS measures on relevant international standards, guidelines or recommendation.

³⁶ SPS Agreement, Article 3.3, Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.(2) Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

(3) The members shall 'introduce or maintain' there SPS measures on any other standards, other than those provided under this agreement.

2.7 EQUIVALANCE

The safety of human, animal, plant health is one of the major focuses of any importing country for any product so entering the boundaries of the latter. Thus, proper safeguards have to be taken by the importing country so as to ensure that there are no hazardous implications and this can only be done when the country which is exporting the product has taken all measures which may also be recognized in the importing country respectively. It is not always necessary that every country shall have same health standards or the environmental conditions respectively, which may bring out some changes in the SPS measures so adopted by the member states. The importing country member shall therefore examine the safety, and other attributes of the product, but the inspection taken over at the time of importation may not be always reliable or feasible, so exporting countries testing or inspection methods shall be undertakes. Now, major issue would be whether the inspection or certification system so undertaken by the latter, may have some variations when in taken in parallel to importing country measures. Thus to avoid disputes and clashes in trade between nations, a position of equivalence is developed, so that the exporting country may consider any measure equivalent to that of measure so inconsistent of another country.

The genesis of the principle of equivalence is creating a equal acceptance of the measures applied by a member state which may be different from the importing country or that of other member states SPS measures on the *same* products. These measures can only be acceptable by other member states, if the exporting country *objectively demonstrates* that the measures so adopted by the latter are appropriate enough to achieve the standards laid down by importing member state. The burden of proof is on the exporting Member to adduce scientific proof that its measure is equally effective in reducing the health risk posed by its export. In addition, the exporting Member must allow reasonable access to the importing member on request, to conduct its own inspections, tests and other procedures to verify the efficacy of the measure.³⁷ The bilateral and unilateral agreements can be entered into but it's not an

³⁷ P. K. Vasudeva , *supra* note 39 at pg. 326

obligation as these agreements are to bring recognition of equivalence on specific SPS measures, between concerned member states.

2.8 TRANSPARENCY

The exporters face many hurdles but one of the most common hurdle is the application of SPS measures and especially if it's inconsistent with the importing country. It even happens that sometimes the exporters cannot themselves approach to gather information regarding any changes made in the SPS measures by any member state, so to nullify such hurdles a principle has to be brought into vision where the notifications can be issued from time to time by any member state proposing such alteration in regulations. The term 'transparency' can be understood in literal sense as easily to see through, thus providing a see through the provisions of SPS Agreement can help in reducing barriers in trade among member states and also an advantage to the exporters in being up-to-date of the information passed on.

The transparency principle is provided under Article 7 of the SPS Agreement, further providing the publication and notification procedures in Annexure B. Annexure B talks about (a) the publication of regulations (b) the enquiry points (c) notification procedures (d) general reservations. Any changes made by the member state in their Sanitary and phytosanitary measures shall notify the same to other members. These regulations³⁸ shall be published as soon as possible without any delay to the interested members to become more informed of such changes also some producers, exporters need some time to adjust to these changes in the SPS measures unless there is an urgency a reasonable interval shall be provided between the publication and bringing into force such changes in the SPS measures; a special preference is given to developing countries so that their products and the new methods of production can meet the requirements of importing member.³⁹

The SPS Agreement makes it obligatory on the members to provide enquiry points so as to answer any doubt or any questions regarding the changes made in the SPS regulations by the interested member states.⁴⁰ A notification was issued by Committee

³⁸ As mentioned in footnote 5 of Annexure B, Sanitary and Phytosanitary measures such as laws, decrees, or ordinances which are applicable generally.

³⁹ SPS Agreement, Annex. B (1) & (2), Transparency of sanitary and phytosanitary measures

⁴⁰ *Id* at Para. 3

on Sanitary and Phytosanitary measures recommending procedures for implementation of transparency obligations, this notification vividly discussed about notification procedures in Annexure B paragraph 5 or 6 in relation to time, documents respectively.⁴¹ The notice shall be published to provide information regarding the proposal to introduce a particular regulation, with the inclusion of products which are falling into such proposed regulations and the rationale lying in the background of such proposals.⁴² The copies of such proposed regulation shall upon request be provided to concerned member state, a reasonable time period shall be provided to take the comments in writing and to have discussions upon the same.⁴³ The panel report in Japan-Apples discussed about the effects on trade because of the changes so made in SPS measures:

*We must determine whether the changes identified above constitute changes which are required to be notified under Article 7 because, inter alia, they "may have a significant effect on trade of other Members" in the context of the chapeau to Paragraph 5 of Annex B. In this regard, it would be relevant to consider whether the change has resulted in any increase in production, packaging and sales costs, such as more onerous treatment requirements or more time-consuming administrative formalities.*⁴⁴

The notification shall be circulated in English, French or Spanish, the secretariat plays a significant role as it shall circulate copies of the proposed regulations as soon as possible to interested international organizations and developing country members whose interests lies in relation to any products.⁴⁵ The member states shall authorize a central government agency who shall look into implementation of such notification procedures so mentioned in paragraph 5,6,7,8 of the Annexure B.⁴⁶ In India there are enquiry point set up which covers Food Safety Standard Authority of India (FSSAI), Ministry of Agriculture, Ministry of Agriculture and Farmers Welfare.

⁴¹ Recommended procedures for implementing the transparency obligations of the SPS Agreement, Committee on Sanitary and Phytosanitary Measures (article 7), [G/SPS/7/Rev.2](#) (April 02,)

⁴² Transparency of sanitary and phytosanitary measures, *supra* note 63 at para. 5 (a) –(b)

⁴³ *Id* at Para. 5 (c)- (d)

⁴⁴ Japan – Measures affecting the importation of Apples, *supra* note 35 at pg. 8.313- 8.314

⁴⁵ Transparency of sanitary and phytosanitary measures, *supra* note 63 at Para.7 -9

⁴⁶ *Id* at Para 10

The Sanitary and Phytosanitary Agreement are one of those legal and policy frameworks which are mostly followed by all nations who are considering food safety as one of the goals to be achieved. The rights and obligations faced by the members of WTO while complying with SPS Agreement.

The SPS Agreement requires risk analysis and communication; it involves the process of three components: risk assessment, management and risk communication. These should be adhered with while taking into account the safety measures and to avoid risks which may cause barriers. The risk communication involves exchange of information and opinions in regard to risk related factors between parties involved or risk partners or managers or consumers. Thus, the whole objective of the Agreement is to create such measures and to implement in a manner which shall be justified and does not lead to obstacles in trade. The transparency factor takes the lead as the provisions involved should be non-discriminatory and could be understood by the members in a rightful manner. The agreement also provides that other party shall be assisted with the competent authorities as well as contact points in order to address SPS issues and also, to have an up to date information. The principles relating to adapting to regional as well as environmental concerns, equivalence, transparency forms the core of SPS provisions and stringent compliance of the same becomes necessary.

Chapter-3

ANALYSIS OF TRENDS AND PATTERNS IN INDIAN SPICE

EXPORT & SPS BARRIERS

“The history of the cultivation and use of spices is perhaps the most romantic story of any vegetable product”.⁴⁷

-Henry N. Ridely

3.1 SPICES OF INDIA

International standard organization (ISO) defines spices and condiments as, “vegetable products or mixtures thereof, free from extraneous matter, used for flavoring, seasoning and imparting aroma to foods”.⁴⁸

Spices can be found in the form of dried fruit, leaves, bark, roots, seeds or any vegetative part which can add flavor to the food. These can be used in cosmetics, pharmaceuticals, aroma therapy also it can add distinctive color to the food.

Spices have the most amazing and bewitching history especially when it takes into account trade aspects.

“Whoever controls the spices controls the world” a famous belief of the rulers across the globe. In India, they are used in variety of dishes and also form a major ingredient of pickles. The cultivation of spices in India has started since ancient times, which attracted explorers, invaders, and traders from various parts of the globe. Charaka Samhita and Sushruta Samhita mention about medicinal uses of spices, also firstly it was used for meat preservation because of the anti-microbiological properties.⁴⁹ The demand for spices as preservatives increased over time with the advent of refrigeration and proper storage. Indian subcontinent flourished during 16th century, leading to increase in the trade volumes progressively.⁵⁰ The traders of major economies of the world brought colonial culture and early capitalism in the Malabar

⁴⁷ Henry N. Ridely, *Spices* (1912)

⁴⁸ International Standard Organization, ISO 676:1995, The International Organisation of standardization is a worldwide federation of 164 national standard bodies. It has published 23012 international standards and various documents covering various industries, (February 06, 2020, 3:30PM), www.iso.org

⁴⁹ *Handbook Of herb and spices*, 4 (K.V. Peter ed., 2nd ed. 2012)

⁵⁰ L Thomas & P C Sanil, *Competitiveness in spice export trade from India: A review*, 28 JOURNAL OF SPICES AND AROMATIC CROPS 1, 3 (2019)

Coast, which changed the whole course of Indian trade.⁵¹ India is a country which has always believed in agrarian form of economy, thereby producing vast variety of crops which has supported most of the income in the country. India is a land where battles have been lost and won, empires built and brought down, also rise and fall of religious beliefs. There have been various civilizations which have influenced the food and culture of India leading to prolonged effects of the same. One of the Portuguese sailors Vasco Da Gama in 1497 rounded the Cape of Good Hope, eventually sailing across the Indian Ocean to Calicut, India. This called for expedition by Spanish, English, and Dutch with a rise in competition leading to various wars over the control of spice trade.

The spice trade began as early as trade in precious metals and jewels and dyes and silks-which along with spices, were ancient items traded over the silk and spice roads in the near east. Spices moved first between Mesopotamia and Egypt, later Indian spices were traded to the Levant and, Mesopotamian spices reached the Indus valley.⁵² The control of spice trade became a factor for warfare between Greek, Romans and Near Eastern peoples.⁵³ Gradually the trade routes for spices became more flexible and accessible; also the techniques to produce various spices became popular among the people of different communities.

Different spices have their own importance both for culinary and ritualistic practices. Also, some of the spices have their own medicinal value which have been purported to be bought by nomadic people. In the case of turmeric which has anti-inflammatory property is a cure to many diseases, also in India especially in marriages it is used for ritualistic purposes. During funerals or mummifications of ancient Egyptians, the role of spices was must and decisive. For some folk communities, spices and vegetative aroma are offered to the dead bodies of man and animals with a devotion to God for the post eternal peace and renunciation.⁵⁴ In the culinary section, every spice has their own flavoring agent some are used for coloring and others have a kind of aroma.

⁵¹ *Id.* at 3

⁵² Report of the first meeting of the International spice group, in *Trading in tastes*, 435 (1986)

⁵³ *Id.* at 435

⁵⁴ Amit Baran Sharangi, *Spices in India and beyond: The origin, history, tradition and culture*, in *Indian Spices: The Legacy, Production And Processing Of India's Treasured Export*, 7 (2018)

There has been production of different spices by different states of India. India having most of its labor engaged in agriculture has been cultivating a lot of crops in a year, making itself a part of mass production and utilization at the same time.

TABLE 1.0

<u>STATES</u>	<u>SPICES</u>
Andhra Pradesh	Ginger, Turmeric, Chilli, Mustard
Arunachal Pradesh	Ginger, Tejpat, Turmeric
Assam	Aniseed, Turmeric
Bihar	Ajovan, Garlic, mustard, turmeric
Gujarat	Chilli, Cumin, Dilli seed, Fennel, fenugreek, Garlic
Haryana	Garlic
Himachal Pradesh	Ginger
Jammu & Kahmir	Ajovan, saffron
Karnataka	Cardamom (small), chilli, clove, garlic, ginger, Kokum, nutmeg and mace, pepper, turmeric, vanilla, cambodge
Kerala	Cardamom (small), cinnamon and cassia, clove, ginger, nutmeg & mace, pepper, turmeric, vanilla, and cambodge
Madhya Pradesh	Chilli, garlic, ginger
Maharashtra	Chilli, garlic, pomegranate seed, turmeric

Meghalaya	Ginger, turmeric
Mizoram	Ginger
Orissa	Chilli, garlic, ginger, turmeric
Punjab	Celery, aniseed
Rajasthan	Chilli, cumin, coriander, dilli seed, fennel, fenugreek, garlic
Sikkim	Cardamom (large), ginger, tejpat
Tamil Nadu	Cardamom (small), chilli, cinnamon & cassia, clove, ginger, herbal and exotic spices, nutmeg and mace, pepper, pomegranate seed, turmeric, vanilla
Tripura	Turmeric
Uttar Pradesh	Aniseed, fennel, chilli, coriander, cumin, fenugreek, garlic, mustard, turmeric, celery
West Bengal	Cardamom (large), chilli, ginger, turmeric

Source: Spice Board, India (https://www.indianspices.com/sites/default/files/spice_growing.pdf (last accessed on: 17-02-2020)

The table above mentioned shows the production of different spices by various states of India.

It can be perceived that Gujarat produces Chilli, Cumin, Dilli seed, Fennel, fenugreek, and Garlic. While Karnataka is producing cardamom (small), chilli, clove, garlic, ginger, Kokum, nutmeg and mace, pepper, turmeric, vanilla, and cambodge. Also, Kerala which is epicenter of production and export of spices is known for its production in Cardamom (small), cinnamon and cassia, clove, ginger, nutmeg &

mace, pepper, turmeric, vanilla, and cambodge. In Uttar Pradesh whose economy is run by the production and distribution of vast variety of crops, is profusely cultivating aniseed, fennel, chilli, coriander, cumin, fenugreek, garlic, mustard, & turmeric.

These spices were earlier considered equivalent to the value of gold & silver because of their significant contribution in the agrarian economy. As provided in the above mentioned table, there has been production of vast variety of spices each having its own significance and value. One of the most intimidating factors is that these spices make the most of India's trade and also, is more beneficial in terms of money for its producers and exporters.

3.2 EXPORT OF SPICES

The export of spices takes place after it has been authorized by the Spices Board of India which is an autonomous body responsible for the export promotion of the 52 scheduled spices and development of cardamom.⁵⁵ The board performs various functions which prove the latter, it grants certificates to the exporters, assist and develop research, provide quality standards, collect statistics, advise central government on these matters.⁵⁶ The Spices Board of India has emerged as the

⁵⁵ Spice Board of India, Constitution, (Jan. 03, 2020, 2:00 PM),

<https://www.indianspices.com/about-us/constitution.html>

⁵⁶ The Spice Board Act, No. 10 of 1986, Section 7 (1) (1986)

The Board may:-

- (i) develop, promote and regulate export of spices;
- (ii) grant certificate for export of spices and register brokers therefore;
- (iii) undertake programmes and projects for promotion of export of spices;
- (iv) assist and encourage studies and research for improvement of processing, quality, techniques of grading and packaging of spices;
- (v) strive towards stabilization of prices of spices for export;
- (vi) evolve suitable quality standards and introduce certification of quality through "Quality Marking" for spices for export;
- (vii) control quality of spices for export;
- (viii) give licenses, subject to such terms and conditions as maybe prescribed, to the manufacturers of spices for export;
- (ix) market any spice, if it considers necessary, in the interest of promotion of export;
- (x) provide warehousing facilities abroad for spices;
- (xi) collect statistics with regard to spices for compilation and publication
- (xii) Import, with the previous approval of the Central Government, any spice for sale, and

epicenter of the export in spices which takes place between India and other nations. The quality check requirements which is counted as a part of non-tariff barriers has been one of the indications to understand the sanitary and phytosanitary measures which has to be followed in order to bring a transparency in the commodity. India as earlier mentioned is a land of spices and so consist of diversified variety of spices due to the nature of soil, climatic conditions and land which differs from region to region, specifically from states to states.

TABLE 2.0
MAJOR STATE WISE PRODUCTION OF SPICES (2018-19)

STATES	PRODUCTION (Tons)
Rajasthan	942687
Gujarat	747148
Andhra Pradesh	742609
Telangana	651102
Karnataka	648620
West Bengal	343968
Orissa	297260
Uttar Pradesh	250814
Maharashtra	194434
Tamil Nadu	180447
Kerala	172549

Source: Spice Board of India,

<https://www.indianspices.com/sites/default/files/majorstatewise.pdf>

(xiii) Advise the Central Government on matters relating to import and export of spices.

The production of spices from different states of India contributes to the exports made to different nations as listed in succeeding pages. If we look into the production capacity of various states in 2018-19, Rajasthan has the maximum production of spices and Kerala with lowest production, also Gujarat and Andhra Pradesh with relatively high level of production of spices. With the largest production of spices all over the world, comes the responsibility of exporting the same, generating revenue and employment at the same time. The cost of production and labor can only be met, when adequate quantity and relevant value is placed before importing nations.

TABLE 2.1
EXPORT OF SPICES FROM INDIA

ITEM-WISE EXPORTS OF SPICES FROM INDIA (QTY. IN TONNES & VALUE IN Rs. LAKHS)										
ITEM	2014-15		2015-16		2016-17		2017-18		2018-19	
	Qty	Value	Qty	Value	Qty	Value	Qty	Value	Qty	Value
PEPPER	21450	120842.16	28100	173041.50	17600	114312.60	16840	82078.48	13540	56868.00
CARDAMOM (S)	3795	32346.75	5500	44982.75	3850	42150.33	5680	60980.15	2850	35625.00
CARDAMOM (L)	665	8403.90	600	7550.70	780	8265.45	760	5646.60	860	6106.00
CHILLI	347000	351710.00	347500	399743.97	400250	507075.63	443900	425632.74	468500	541117.50
GINGER	40400	33133.00	24800	27595.56	24950	25704.85	22605	21607.49	18150	19602.00
TURMERIC	86000	74435.00	88500	92165.00	116500	124190.65	107300	103567.63	133600	141616.00
CORIANDER	46000	49812.50	40100	42680.50	30300	29208.49	35185	27274.96	48900	35208.00
CUMIN	155500	183820.00	97790	153113.00	119000	196320.14	143670	241798.78	180300	288480.00
CELERY	5650	4302.10	5310	5328.24	6250	6246.11	6480	5950.30	6100	6649.00
FENNEL	11650	13165.50	15320	17239.60	35150	30875.93	34550	25906.35	26250	24412.50
FENUGREEK	23100	13947.50	33330	23380.70	34680	18276.49	29280	12688.57	27150	13846.50
OTHER SEEDS	28250	16512.50	23880	16205.75	18100	15455.86	22175	16045.55	29740	18736.20
GARLIC	21610	8183.00	23085	15959.00	32200	30711.50	46980	30936.38	29500	17110.00
NUTMEG & MACE	4475	26797.50	4050	20928.25	5070	23641.65	5500	22094.31	3300	15015.00
OTHER SPICES	36500	44915.00	43955	58348.50	40210	50595.00	38305	65253.17	43300	61486.00
CURRY POWDER/PASTE	24650	47026.00	26550	53174.50	28500	59910.43	30150	61619.55	33850	74470.00
MINT PRODUCTS	25750	268925.00	23250	258130.47	22300	252749.67	21500	322834.86	21610	374933.50
SPICE OILS&OLEORESINS	11475	191090	11635	214255.00	12100	245,532.80	17200	266172.39	12750	219300.00
TOTAL	893920	1489967.53	843225	1623822.99	947790	1781223.59	1028060	1798016.24	1100250	1950581.20

Source: Spice Board of India,

<https://www.indianspices.com/sites/default/files/Major%20Item%20wise%20Export%202019.pdf>

Spices exports have seen encouraging trends in recent years. If we take into account the data of spices exports of last five years, the growth can be identified. Spices export from India in 2014-15 is 893, 920 tons valued at ₹ 1489967.53 Lakhs. In 2015-16 there was a decrease in quantity exported 843,225 tons which was by 5.6%. The increase in quantity could be seen in 2016-17 which amounts to 947,790 tons. In 2017-18 quantity exported was 1,028,060 tons amounting to 8.4% rise valued at ₹ 1798016.24 Lakhs and during 2018-19 there was a sharp increase by 7% with a total quantity of 1,100,250 valued at ₹ 1950581.20 Lakhs. Thus it can be found that the quantity of spices exported from India has increased in the last three financial years.

3.3 COMPARATIVE STUDY OF EXPORT OF SPICES IN 2017-19

India is known as land of spices since ages, because of climate and agrarian advantage. If we look into an era when India got independence and was trying hard to liberalize trade regime in order to boost the economy, we can relate to the era of 1950-1960. During that era the pattern of export trade was seen in two sectors 1) agricultural production like tea, cotton, spices was still under performing 2) while raw materials like iron was showing a significant increase.⁵⁷ When we look into the current scenario the trades in spices have slowly and gradually grown. In table 3.0, total amount of quantity exported is **1028060mt in 2017-18 valued at 17, 98,016 Lakhs.**

TABLE 3.0

EXPORT OF SPICES TO MAJOR COUNTRIES (2017-18)

	2017-18
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⁵⁷ T.P. Bhat, *Structural Changes In India's Foreign Trade*, 2 (Nov. 2011)

MAJOR COUNTRY	QTY (MT)	VALUE (LAKHS)
VIETNAM	206879	226743
U.S.A	79882	302422
U.A.E	77587	88593
THAILAND	67043	71037
SRILANKA	65518	47723
MALAYSIA	62545	60045
BANGLADESH	53154	46709
INDONESIA	42286	41458
U.K	30659	68138
CHINA	28981	193422

Source: Spice Board of India,

https://www.indianspices.com/sites/default/files/cou172018123_new.pdf

In table 3.1, the total amount of quantity exported is **1100250mt valued at 1950581 Lakhs in 2018-19.**

TABLE 3.1
EXPORT OF SPICES TO MAJOR COUNTRIES (2018-19)

MAJOR COUNTRY	2018-19	
	QTY (MT)	VALUE (LAKHS)
VIETNAM	123673	168959
CHINA	93649	273054
U.S.A	82202	283059
BANGLADESH	80027	91018
THAILAND	74215	92242
SRI LANKA	67884	61502
U.A.E	65140	83047
MALYASIA	64998	68474
INDONESIA	40804	56060
SAUDI ARABIA	38717	33435

Source: Spice Board of India,

https://www.indianspices.com/sites/default/files/cou172018123_new.pdf

The comparative view should be taken, in 2017-18 Vietnam (206879mt), U.S.A (79882mt), U.A.E (77587mt), Thailand (67043mt), & Sri Lanka (65518mt) were at the top five positions in export of spices from India in terms of quantity. Malaysia, Bangladesh, Indonesia, U.K, China ranks at bottom five with the lowest quantity exported is 28981mt to latter.

The major top ten countries where spices are exported from India in 2018-19 are Vietnam, China, U.S.A, Bangladesh, Thailand, Sri Lanka, U.A.E., Malaysia, Indonesia, Saudi Arabia among the 31 countries. The country which tops the chart is Vietnam with a quantity of 12,3673mt exported from India. China ranks second in the amount of quantity of spices (93649mt) exported from India. The quantity of spices exported from India to U.S.A is 82,202mt, Bangladesh is 80,027mt, and Thailand is 74,215mt. Indonesia which stands at 9th position imports 40,804mt, with Saudi Arabia at the bottom with total quantity of 38,717mt imported.

The quantity exported to these nations speaks volume about the amount of revenue which is been generated and also the profit margins of the producers and exporters. India, has been constantly putting all it efforts to maintain exports in consonance with various standards.

3.4 SPS BARRIERS

The Marrakesh treaty signed on April 15, 1994, which was endorsed by India as well, intended to make international trade free including of removal of quantitative restrictions on imports of agricultural commodities. World Trade organization (WTO) came into being on 1 January 1995, and this became the beginning of new era of international trade. On April 1, 2001, the quantitative restrictions on import of a number of agricultural commodities were removed.

Sanitary and phytosanitary (SPS) Agreement is an international treaty of the World Trade Organization. At the Mid-term review of the Uruguay Round, in December 1988, the priority areas of SPS were recognized as:⁵⁸

- International harmonization on the basis of the standards developed by the international organizations.
- Development of an effective notification process for national regulations.

⁵⁸ Kajli Bakshi, *SPS agreement under the WTO: The Indian experience*, 2 (2006)

- Setting up of a system for the bilateral resolution of disputes.
- Improvement of the dispute settlement process.
- Provision of the necessary input of scientific expertise and judgment, relying on relevant international organizations.

The risk that countries resort to standards and regulations to maintain a degree of desired domestic protection is increasing, since more obvious trade barriers, such as tariffs, were reduced through several rounds of multilateral negotiations. This risk is particularly high in the agricultural sector where lowering the level of protection provided by tariffs and many non-tariff barriers would increase the importance of sanitary and phytosanitary measures as border protection instruments. Probably, the major difficulty in dealing with standards and regulations is to distinguish those measures which are justified by a legitimate goal from those which are applied for protectionist purposes.⁵⁹

SPS called for zero-risk goals by inculcating various provisions in its agreement which can lead to transparency and adoption of protectionist measures for the trade flow.

There are other countries like USA who are supporting SPS barriers taken by the government to protect their people, plants and animals from any kind of hazardous health risks. There are various criteria followed in order to ascertain safe consignments and to avoid huge losses.

Over the years, India has set up a robust export inspection regime; there are cases where certain chemicals, pesticides etc., used in farms and production of certain agriculture products which lead to the SPS barriers. Also, there have been Indian exporters and farmers who are adversely affected by these barriers leading to loss of revenue and shelf life of the products. In the past, some specific products like mangoes, table grapes, peanuts, Okra, curry leaves, shrimps, prawns and tamarinds is markets of U.S.A, Vietnam, EU, Saudi Arabia, Japan and Bhutan.

There are 125 countries which came together during Uruguay round in Marrakesh to establish the World Trade Organization. During the least developed country the implementations of this agreement was delayed for five years, so as to comply to these provisions timely or orderly.

⁵⁹ Simonetta Zarrilli, *WTO Sanitary and Phytosanitary agreement: Issues for developing countries*, 1 (Trade Related Agenda, Development and Equity, Working paper no. 3, July 1999)

3.5 INDIA'S EXPERIENCE OF SPS BARRIERS

India is a major exporter of peanuts in the world, but due to certain reasons there has been the share of its export in EU market is low and declined significantly during the years. Peanuts can be consumed directly or can be fed to birds, animals. India is the second largest producer of groundnuts in the world. Indian groundnuts are available in different varieties: Bold or Runner, Java or Spanish and Red Natal. The main Groundnut varieties produced in India are Kadiri-2, Kadiri-3, BG-1, BG-2, Kuber, GAUG-1, GAUG-10, PG-1 , T-28, T-64, Chandra, Chitra, Kaushal, Parkash, Amber etc.⁶⁰

The EU has laid down different MRLs for aflatoxin to be permitted to be present in the same.⁶¹ Thus, the consignment was refused entry in EU for a reason of a risk to human health, and to animal health, or environment if it concerns feed. The survey found that the issue of aflatoxin arises from poor storage and processing, the problem is two-fold which takes into account farm & processing related and supply chain related. The farm & processing level, finds that the sector is fragmented and most farms and processing units are very small in size, leading to cleaning the product with water causing chances of aflatoxin. The supply chain level counts for the consignment when it reaches the EU and the way they collect samples to send it to the laboratories.⁶² India contended on the tolerance limits which should be increased by EU, and laid emphasis on WTO's SPS Agreement where the former asked the EU to provide scientific justification for established aflatoxin levels.⁶³

Indian organizations like Agriculture and processed food products Export Development Authority (APEDA), Indian oil seeds and produce export promotion council (IOPEPC) were majorly concerned by the ban on imports of peanuts by EU. It was not only EU but other countries like Indonesia, Vietnam have also raised the same issue. This can be seen as a SPS barrier because of the different levels of MRLs

⁶⁰ *Ground Nut*, Agricultural & processed food products export development authority, (March, 25,2020, 2;30 pm) http://apeda.gov.in/apedawebsite/SubHead_Products/Ground_Nut.htm

⁶¹ *2017 Import border rejections edible nuts and dried fruits, EU-USA-JAPAN-AUSTRALIA*, International Nut and Dried Fruit Council, (March, 25, 2020, 2:15 pm) https://www.nutfruit.org/files/tech/1523958240_2017_EU-USA-JAP-AUS_Border_Rejections_PDF.pdf

⁶² *Id*, at 135

⁶³ *Id*, at 136

sanctioned by different countries for different products leads to requirement of more uniformed structure in the exporting country. This uniformed structure of agricultural practices and technologies or providing adequate training to the farmers at ground level could not be done in a day; it takes a year at least to function in accordance with set norms. The quality issue is becoming a determinant issue in the importing countries, because of stringent consumer laws and high level of awareness among the people.

India was banned by EU for export of red chilli powder because of added red dyes sudan I, II, III, & IV are oil soluble dyes used legally in the leather and fabric industries sometimes added to chilli for getting attractive red color. This is carcinogenic in nature and can have long term harmful effects.⁶⁴ The Spices Board is of the view that the harmful effects of Sudan Red can occur only at intake levels of chilli powder that are substantially higher than that even in countries like India, where chilli is a key ingredient in daily diets. Such high intake levels are unforeseeable in the European countries.⁶⁵

EU has also banned India from exporting curry leaves because it was contaminated with pesticides residue. Thus in order to curb the crisis, it was decided that the export consignments of EU would be subjected to Cleared Analytical Reports on the Permissible residue level of various pesticides so used.⁶⁶

In 2008 APEDA⁶⁷ released a notification⁶⁸ regarding non-tariff barriers which were faced by India from various countries in different agricultural products. The export of flowers (floriculture) to Japan have also faced barriers due to stringent plant quarantine procedures including zero tolerance for insects and pests which are in existence in the latter. Consignments are fumigated even when the fumigation has been done by the exporters and phyto sanitary certificate accompany the

⁶⁴ Subhodini Pillarisetti, *Creating Awareness on sudan red dye and aflatoxin in chilli to farmers, India*, (July, 02, 2020, 3:00 pm)

https://www.wto.org/english/tratop_e/sps_e/wkshop_oct13_e/presentation_4_subhodini_pillarisetti.pdf

⁶⁵ Kasturi Das, *Addressing SPS challenges in India*, Centre of WTO studies, 4(2008)

⁶⁶ Spices Board(Ministry of Commerce and Industry, Government of India) circular, (January 15, 2015)

⁶⁷ Agricultural and Processed Food Products Export Development Authority (APEDA),

⁶⁸ Non- tariff barriers, Agricultural and Processed Food Products Export Development Authority, (March 26, 2020, 4:00 pm) http://apeda.in/apedahindi/Databank/NTBs_March_08.pdf

consignment.⁶⁹ Also, in the same notification, other countries like China which had caused delay in finalization of protocol on phyto sanitary measures and certification procedures in respect of 17 fruits and vegetables.⁷⁰

These SPS barriers occurs because of the environmental conditions and other factors which may at some time be unknown, leading to loss of revenue for small scale markets. Also, these barriers can only be resolved after the government takes drastic steps according to the guidelines provided by respective nations. There has to be effective coordination among the nations in order to ensure that these trade barriers are not in existence for other agricultural products and so it should be made repairable in time without any hassle.

The table so mentioned in the preceding pages of this chapter speaks a volume about the trade flow of spices from India, making it one of the largest producer and exporter of the spices. India has seen downfall and rise in the exports over the years with various countries, it has tried to analyze the trends and accordingly reform the steps in production activity.

India is one of the fastest growing nations and is constantly moving to be one of the major production fields for agriculture products as well as for some other items, it specializes in.

⁶⁹ *Id*, at 19

⁷⁰ *Id*, at 1

Chapter-4

LEGAL AND POLICY FRAMEWORK

4.1 INTRODUCTION

The protection of public health and safety constitutes one of the universal needs and also the measures so adopted in regard to the above should not have arbitrary restrictions to the trade of any country. The developing nations who have adopted the Sanitary and Phytosanitary agreement has to comply with various provisions enumerated therein. The nations have tried to bring out the welfare gain through their domestic legal framework, and also have faced many difficulties like that of scientific justifiability standards, technical expertise that a country needs to meet. It is not easy for any developing nation to comply with the SPS agreement so profoundly, there are various aspects which need to be understood and brought into light when it comes to trade of any country. Article 3 of the SPS agreement talks about the *Harmonisation* clause, where members shall base their SPS measures on relevant international standards, guidelines or recommendations except where a higher level of protection can be called upon which would not have been achieved if based on relevant international standards, guidelines or recommendations.⁷¹ Thus, the agreement itself specifies that the members have to bring in consonance with their domestic legal framework, the SPS provisions.

The developing country find various difficulties while addressing the SPS measures but the agreement has provided some advantages to these members which counts for the technical assistance so provided by other members or by international organisations. Such assistance can be in any form like that of advice, grants, infrastructure etc., thus expanding their market access opportunities.⁷² The special and differential treatment is always provided to the members of the World Trade Organisation, especially when it relates to the developing and least developed country members. In this agreement, the special needs of developing country members and least-developed country members shall be looked upon, giving long time frames, or

⁷¹ Agreement on the application of sanitary and phytosanitary measures, Article 3(1) & (3)

⁷² *Id.*, at Article 9 (1)

encouraging and facilitating active participation.⁷³ In order to avoid any kind of biasness among various nations these principles are added, also with a view to bring about flexibility in their domestic legal framework respectively. The implementation of these measures shall be done by the member i.e. not only by the central government bodies but also by the non- governmental entities or regional bodies' receptively.⁷⁴

4.2 LEGAL PROTECTION FOR EXPORT OF SPICES (BRIEF OVERVIEW)

India is an agrarian economy, which has contributed to most of its exports thereby increasing the production and growth in the country. It exports some of the major food items like, marine food, mangoes, meat product, poultry products, cotton etc. This country is also known as the land of spices, producing a variety and tons of spices every year making it one of the largest producer and exporter. The spice sector is blooming at a great pace, procuring a large amount of income to the exporters and also generating more employment in the region. Thus, there has to be some legal protection which is to be given to the exports of spices at domestic level in order to comply with various criteria as mentioned under the Sanitary and Phytosanitary Agreement. Indian government is providing financial assistance to the farmers, spice producers so as to provide more hygienically processed spices for the exports.⁷⁵ Also, the Spice board of India⁷⁶ which comes under Ministry of Commerce and Industry is one of the five commodity boards which was established on 26th February 1987 under the Spice Board Act 1986 has been extensively working in the promotion of exports of spices and monitoring necessary obligations related to the same. The production and export of spices majorly begins with the grant of this body and can be looked upon as independent structure majorly dealing with one agricultural product. While, exporting spices there are certain laws which has to be abided like Export (Quality

⁷³ *Id*, at Article 10

⁷⁴ Agreement on Sanitary and Phytosanitary measures, *supra* note 71 at Art 13

⁷⁵ *The production and export potentiality of spices in India*, 163(Jan. 20, 2020, 10: 00 am)

https://shodhganga.inflibnet.ac.in/bitstream/10603/133666/12/12_chapter%204.pdf

⁷⁶ Constitution, Spice Board of India, it is an autonomous body fully functioning in adherence with rules and regulations set up in order to promote export of spices, (Jan. 20, 2020, 10:15am)

<http://www.indianspices.com/>

Control and Inspection) Act 1963, functioning primarily to extend support on the basis of good quality and inspection process in order to promote exports. The Export Inspection Council of India advises the central government regarding various measures to be undertaken in order to enforce quality control and inspection to avoid any hindrances. The Food Safety and Standard Authority of India is established under the Food Safety and Standard Act 2006⁷⁷ is an integrated food law that governs that specifically lays down certain standards and regulations which every food product has to be governed with in order to promote safety of consumers. This act is one of the most discussed and criticised legislative framework in the field of food law in India. It also seeks to harmonise domestic standards with international standards CODEX⁷⁸, so as to bring in consonance and to adhere with the provisions of SPS Agreement. There are also certain quality standards which forms the core of exports in India and so to make it function there are certain agencies which are working effectively.

4.3 SPICE BOARD OF INDIA

The Spice Board of India so formed with the merger of the Cardamom Board (1968) and Spices Export Promotion Council (1960) plays an important role in the development of exports by providing adequate assistance to the exporters of spices, promotion through programmes, projects and regulation of exports through legal enactments.⁷⁹ The board has substantially grown in its work and has expanded its periphery so as to provide platform for study and research in improvement of processing, quality, techniques of grading and packaging of spices, also it strive towards stabilising the prices of spices, so that exports could be more feasible.⁸⁰

The issuance of certificate to the exporters of spices provides them with adequate representation and registration of the brokers is also called for, further license are given to the manufacturers of spices on prescribed terms and conditions as may hold

⁷⁷ This act received the assent of president on 23rd of August 2006 and came into effect on 5TH August 2011.

⁷⁸ CODEX Alimentarius or 'food code' is a collection of standards and codes adopted in order to ensure safety of food in trade.

⁷⁹ The Spices Board Act, No. 10 of 1986, Acts of Parliament, (India) Chapter II, Section 7(1)(i)(iii)

⁸⁰ *Id*, at Chapter II, Section 7(1)(iv)(v)

good.⁸¹ The exporters of spices have to acquire certificate from the board on an application with the receipt of the prescribed fees so paid, and after determining the same by the board, a certificate shall be granted subject to such terms and conditions as provided under the regulations.⁸² The board also has the authority to cancel the certificate, on violation of any terms and conditions or in the interest of the general public, also it can in writing order the suspension of the certificate for a term not exceeding 45 days.⁸³ It shall provide an opportunity to show cause within 15 days from the date of such order, the reason for not extending the suspension of the certificate till the determination of the question as to whether the registration should be cancelled, an appeal can lie against it.⁸⁴ There is an exception; the Central government can allow export of species by any agency or body or any business without any certificate, if it is necessary to do so in the public interest by notifying in the official gazette.⁸⁵ These provisions have been introduced in the act, so as to bring the exporters within the legal rules so that there can be transparency in the production and export of spices.

The standard of the quality of spices and the certification of such through 'quality marking' helps in controlling the quality of spices.⁸⁶ It has also introduced organic spices in 1998, with the growing demand of the other countries that were looking forward to organic farming as a long-term health goal, with this initiative it tried to promote the non-governmental organisation and farmers to engage in new techniques and providing adequate infrastructure for the same.⁸⁷ The board perform these functions with the objective of achieving high ends so as to maintain easy flow of the exports of spices in the country and more important to raise the standard of quality. The Spice Board of India has put all the efforts to advance its techniques of quality checking or to bring new equipments which can help the producers in the production of spices.

⁸¹ *Id* at chapter II, Section 7(1)(ii)(viii)

⁸² *Id* at chapter IV, Section 11 & 12

⁸³ *Id* at Section 13

⁸⁴ *Id* at chapter IV, Section 13& 14

⁸⁵ *Id* at chapter IV, Section 15

⁸⁶ *Id* at Chapter II, Section 7(1)(vi)(vii)

⁸⁷ The Spice Board of India, Organic spices, (Jan. 20, 2020, 11:00 am)

<http://www.indianspices.com/spices-development/organic-spices.html>

4.4 EXPORT (QUALITY CONTROL AND INSPECTION) ACT 1963

The Export (quality control and inspection) Act 1963⁸⁸ was brought by the legislature with the intent to develop the export of India through the means of controlling quality and inspection process. This can be achieved with the formation of machinery, having power to regulate the quality and inspection prior to exports. The act has provided definition for 'quality control', which takes into account any activity which is, carried out with the objective of determining the quality of the product at any stage, so that the standard specification applicable to it or if contracts provide any specifications are met and also it should be acceptable for the purpose of export.⁸⁹

Quality control as mentioned in the act deals with observation of various conditions or specifications which has to be met, while dealing with exports of any commodity because sometimes different countries have different conditions or standard specifications which has to be considered in exporting of that particular commodity. The standard specification relates to the standard norms which have been set up by the government in consonance with the various organisations, with the view to attain conformity in exports as well as to comply with the obligations mentioned under Sanitary and Phytosanitary Agreement.

The inspection process mainly deals in determining whether that commodity complies with the standard specification or as mentioned under the concerned contract, by taking into account the whole batch or certain samples of the same.⁹⁰ Thus, the objective of the act revolves around these two aspects, which can only be achieved with the formation of a body known as Export Inspection Council so formed under the provisions of this act.

The Export Inspection Council is the official export certification body of India, which has been formed in consonance with the international agreements as that of World Trade Organisation, especially the SPS Agreement. The Export Inspection Council

⁸⁸ Came into effect: 1st January, 1964

⁸⁹ The Export (quality control and inspection) Act, no. 22, Acts of Parliament, 1963, (India) Section 2(f)

⁹⁰ *Id* at section 2(c)

shall advise the central government related to quality control and inspection, also hold such programmes which can be in coordination with the central government so as to promote safety in exports.⁹¹ It has installed quality assurance system (In process quality control and self-certification), which can be done in exporting units or consignment-wise, in order to provide certification in the quality of export commodities.⁹²The agencies so established by the central government⁹³, shall be provided financial assistance by the council for the purpose of quality control or inspection. ⁹⁴ These agencies are bodies through which the council exercises technical and administrative functions, found in five cities (Chennai, Delhi, Kochi, Kolkata, and Mumbai). The agency has power to issue certificate after determining that the commodity satisfies the standard specifications or any other specification. If the certificate has been obtained for commodities which have quality issues, through fraudulent means or by misrepresentation then it shall be amended, suspended, or cancelled, this provision is added through an amendment in 1984⁹⁵ in order to curb the corruption in export which can be hindered because of quality issues and to promote transparency in trade.

The Quality Control Laboratories is set up by Spice Board of India since 1989, in major cities like Mumbai, Kochi, Guntur, Chennai, New Delhi and Tuticorin has three divisions i.e. chemistry lab, residue lab, microbiology lab.⁹⁶ These laboratories are accredited under the National Accreditation Board of Testing & Calibration Laboratories (NABL), and Export Inspection Council is working with the support of these labs. The laboratory monitors the quality of the spices and also keeps a check on the samples of chillies.⁹⁷ The central government has the power to notify commodities

⁹¹ *Id* at section 5(1)

⁹² Export Inspection council, (Jan. 20, 2020, 11:30 am)

<https://www.eicindia.gov.in/WebApp1/pages/menuInfo/aboutUs.xhtml>

⁹³ The Export (quality control and inspection) Act, 1963, *supra* note 89 at section 7(1)

⁹⁴ *Id* at section 5(1)

⁹⁵ *Id* at section 3(A), Ins. by Act 40 of 1984, s.4 (w.e.f. 2-7-1984)

⁹⁶ The Spice Board of India, Quality Evaluation laboratory,(Jan. 22, 2020, 1:00 pm)

<http://www.indianspices.com/quality-evaluation-laboratory.html>

⁹⁷ *Id*

in the official gazette, which should be bought under the quality control and inspection, only after consultation with the Council.⁹⁸

4.5 FOOD SAFETY AND STANDARD ACT, 2006

Food laws are a crucial part of our economy as they play an important role in building the quality control strategy. The multiplicity in law regarding the food standard settings, enforcement agencies will create confusion for the traders, investors and consumers, so it brought down standards which could be more rigid and responsive to scientific advancement and modernization. The Government of India through extensive deliberations and discussions brought an act which integrated all the food laws named as “Food Safety and standards bill 2005” which formulated into “Food Safety and Standard Act 2006” on 23rd August, 2006. Initially the food safety of India was under the Prevention of Food Adulteration Act, 1954 but in 2006 it was replaced and a consolidated act came into functioning.⁹⁹

Food safety is one of the major concerns of many countries because if anything in the contrary takes place then that shall be an irreparable loss to human life and to health.¹⁰⁰ The aim of the act is to have an assimilated and modern law for the food problems and to have an authority exercising its power through centre, to formulate science-based standards for scientific development of the food industry.¹⁰¹ The act also regulates the manufacture, storage, distribution, sale and import, so as to ensure the availability of safe and wholesome food for human consumption.¹⁰² The SPS Agreement in Article 5 talks about the measures so adopted shall be based on risk assessment techniques, so as to achieve appropriate level of protection to minimise

⁹⁸ The Export (quality control and inspection) Act, 1963, *supra* note 93 at section 6(1)(a)

⁹⁹ A. Amarender Reddy ET AL., Food safety and standards in India, ICAR-Indian Agricultural Research Institute, (2017)

¹⁰⁰ SM Solaiman & Abu Noman Mohammad Atahar Ali, *Most Serious offences and penalties concerning unsafe foods under the food safety laws in Bangladesh, India and Australia: A critical analysis*, 70 FOOD DRUG LAW J. 409(2015)

¹⁰¹ Anubha Dhulia, *Law on food adulteration: A critical study with special reference to the food safety and standard act, 2006*, 1 ILI L. Rev. 163, 173 (2010).

¹⁰² Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India), Preamble.

negative trade effects.¹⁰³ The act features the objective to carry out risk management based on risk assessment so as to achieve appropriate level of protection of human life and health.¹⁰⁴

In the Section 18(1)¹⁰⁵ of the same act, various principles have been enumerated taking into account food safety whereby we can see glimpse of SPS agreement

¹⁰³ SPS Agreement, Article 5, Assessment of Risks and Determination of the Appropriate level of sanitary and phytosanitary agreement

¹⁰⁴ Mayuri H. Pandya, *Humanising Consumer Protection: An instrument for food safety*, 2.1 Nirma University L.J. 96, 108 (2012)

¹⁰⁵ Food Safety and Standard Act, 2006, S. 18, General principles to be followed in administration of Act.-The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following principles, namely:-

(1) (a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices

(b) carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

(e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of

provisions guiding the same. The risk as a whole term has not been defined in the SPS Agreement, but in the current statute 'risk' means the chances of having adverse effects on the health of its consumers causing food hazards.¹⁰⁶ The risk analysis includes three major components, includes risk assessment techniques which are scientific based.¹⁰⁷ The pesticides and other contaminants used in excess of quantities as specified by regulations shall be considered injurious to health referring it as 'unsafe food'.¹⁰⁸ In the past, there have been instances where export of spices was hindered because of the pesticide concerns, as in 1994 and 1995 several Indian dry chillies consignment were rejected by the Spanish authorities as the pesticide residue exceeded the permissible maximum residue limit (MRLs).¹⁰⁹ Also, content of Aflatoxin¹¹⁰ was found in the spices in 1998-2000, which was later banned by the Germany, Italy, Spain, and United Kingdom because of the growing health hazards that it would cause.¹¹¹ Section 21¹¹² of this act, has put restriction on the excess

the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and

(g) Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

¹⁰⁶ Food Safety and Standards Act, 2006, Section 3(zm)

¹⁰⁷ *Id* at Section 3(zn), 'Risk analysis', in relation to any article of food, means a process consisting of three components, i.e., risk assessment, risk management, and risk communication. Section 3(zo), 'Risk assessment' means a scientifically based process consisting of the following steps: hazard identifications, hazard characterization, exposure assessment, risk characterization.

¹⁰⁸ *Id* at Section 3(zz)(xii)

¹⁰⁹ Steven Jaffee, *Delivering and taking the heat, Indian Spices and evolving product and process standards*, World Bank, Agriculture and Rural development, 2004

¹¹⁰ According to WHO, Department of food safety and Zoonoses, Food Safety Digest, Aflatoxins are poisonous substances produced by certain kind of fungi (moulds) that are found annually all over the world; they can contaminate food crops and pose a serious health threat to humans and livestock. It can destroy 25% or more of the world's food crop annually.

¹¹¹ Kajli Bakshi, *supra* n. 13

¹¹² Food Safety and Standards Act, 2006, S. 21(1), Pesticides, Veterinary drugs residues, antibiotic residues and micro-biological counts.- No article of food shall contain insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active

amount of pesticides or any other residues as mentioned in the specified regulation to be used in any article of food. This may lead to degradable food quality and shall also be questionable on the safety as well as standards of it. Items of food affected by pests, microbes or fungi become impure and unfit for human consumption. The presence of foreign matter, moisture content above permissible levels, residues of pesticides, presence of other chemicals etc., also make food unfit for human consumption.¹¹³ Also, section 3(1) (a)¹¹⁴ defines the term 'adulterant' in order to ascertain the impact of such on the food.

The Food safety and standard (food product standards and food additives) Regulations 2011, has provided the standards regarding salt, spices, condiments and related products¹¹⁵ which the Spice Board of India adhere to. These regulations provide a substantive view of the food products safety and mentions standards which should be in consonance with the international agreement i.e. Sanitary and Phytosanitary Agreement.

4.6 QUALITY STANDARDS

The agreement allow countries to use different standards and different methods of inspecting products, but when a developed country is not able to determine as to what constitutes risk to health, then there is a hope to adopt uniform standard for the determination of the latter.¹¹⁶ The standard specifications dealt by the Spice Board of India are mentioned under various organisations who are primarily working to inculcate a standard in the quality of the commodities. These provide guidelines for the commodities, thereby bringing them under the peripheral of disciplined system of exports so that future repercussions could be sought. The Sanitary and Phytosanitary

substances and micro-biological counts in excess of such tolerance limits as may be specified by regulations.

¹¹³ Spice Board India, Guidelines on Quality Improvement, (Feb. 01, 2020, 7:00 pm)

<https://www.indianspices.com/quality/quality-standards/guidelines-quality-improvement.html>

¹¹⁴ Food Safety and Standards Act, 2006, S. 3(1) (a), "adulterant" means any material which is or could be employed for making the food unsafe or sub-standard or misbranded or containing extraneous matter.

¹¹⁵ Food safety and standard (food product standards and food additives) Regulations, 2011. 2.9

¹¹⁶ Shuvajit Chakraborty, Sanitary and Phytosanitary Measures in Agriculture Trade, PL 35, (2012)

Agreement also mention provisions which monitor the standards that could be looked into in compliance with the domestic legal framework.

The agreement mentions about three different organisations which shall set the standards, guidelines and recommendations and a member country can approach the same for periodic review. The agreement requires that the measures adopted by a country, must satisfy a test of Necessity, assessed by International standards like Codex Alimentarius.¹¹⁷ There are two other organisations specifically mentioned in the agreement for animal and plant health. International office of Epizootics and International plant protection convention deals with the safety of all the products during the international trade, thus maintaining a high amount of health safety.¹¹⁸

CODEX

The Codex Alimentarius is a Latin term that means, ‘Food law or code’. It is a collection of food standard adopted by **Codex Alimentarius Commission** which is responsible for the execution of joint WHO/FAO food standards programme.¹¹⁹ In case of application of codex, the consumers are able to build trust on the safety and quality of the food they are consuming to be in consonance with the internationally recognised specifications.¹²⁰ Risk analysis under the Codex is more structured, systematic so as to examine the potential adverse effects on the health consequential to food hazards and to develop options to weaken the risk.¹²¹ The Food Safety and Standard has adopted some of its definition from the CODEX Alimentarius, which is considered the reliable platform by the SPS agreement. It mentions about the various standards as well as maximum residue limits (MRLs) which could be followed in regard to various food items by various countries so as to effectively regulate trade.

¹¹⁷ Shameek Sen, *The WTO agreement and the Right to Health: Conflict or Consensus? A developing country perspective*, 1 NUJS L. Rev. 225, 231 (2008).

¹¹⁸ SPS Annexure A, Definition, Agreement on Application of Sanitary and Phytosanitary measures

¹¹⁹ SM Solaiman & Abu Noman Mohammad Atahar Ali, *Supra* n. 100 at pg 177

¹²⁰ CODEX protecting health, facilitating trade, 2019, FAO & WHO

¹²¹ Regulatory standards for foods in India and International context: A socio-historical overview, chapter – 2, (Feb. 01, 2020, 4:00 pm) <https://www.amu.ac.in/emp/studym/100000568.pdf>

National Codex committee is created by FSSAI in order to deal with various subjects on food safety and can be called a shadow committee.¹²² The objective of Codex is to make all countries harmonise with internationally agreed standards in order to avoid barriers and prolong with the notion of free trade, thus domestic standards have to be bought in consonance with these standards so as that all trading partners can be equalised on the same field.¹²³ There are basically two agreements which have given utmost importance to the Codex standards, i.e. Technical Barriers to Trade (TBT) & Sanitary and Phytosanitary Agreement (SPS), so that every country which is party to these agreements can look up to these standards as ideal ones.

INTERNATIONAL OFFICE OF EPIZOOTICS

This organisation is made up of 182 member countries and recognised as a reference organisation of World Trade Organisation (WTO). The objective of this organisation is to provide standards in the field of eliminating potential hazards during the slaughter or after processing the food.¹²⁴ This helps in creating greater synergy among the nations and organisations taking into account sanitary conditions for international trade. The OIE consist of five regional commissions which organises conference in every two years, consisting of members from each regions.¹²⁵ There are four specialist commissions like scientific commission for animal diseases, Biological standards commission and others, working to address various issues related to prevention and control of animal diseases.¹²⁶

INTERNATION PLANT PROTECTION CONVENTION

¹²² Food Safety and Standard Authority of India, (Feb. 02, 2020, 1:15 pm)

<https://www.fssai.gov.in/cms/c-codexindia.php>

¹²³ Food and Agriculture Organization, The specialized agency of United Nations, CODEX ALIMENTARIUS, INTERNATIONAL FOOD STANDARDS (Feb. 01, 2020, 1:15 pm),

<http://www.fao.org/fao-who-codexalimentarius/about-codex/trade/en/>

¹²⁴ World Organization for Animal Health (Jan. 29, 2020, 5:00 pm), <https://www.oie.int/about-us/our-missions/>

¹²⁵ World Organization for Animal Health, OIE Regional Commission (Jan. 29, 2020, 5:00 pm)

<https://www.oie.int/about-us/wo/oie-regional-commissions/>

¹²⁶ World Organization for Animal Health, Specialist Commission (Jan. 29, 2020, 5:00 pm)

<https://www.oie.int/about-us/wo/commissions-master/>

This organisation is recognised by World Trade Organisation on the application of Sanitary and Phytosanitary Agreement. It consists of 183 member states, only body setting standard for the plant health. This keeps a check on the plant and plant products moving in international trade, thus enhancing the food safety and security globally.¹²⁷

These organisations functions globally taking into account all the member states and so to bring a consonance with these prescribed standards, domestic agencies work in parallel. The spice board of India effectively comes under the food category of this agreement and thus engages many agencies on the same field.

The Spice Board of India has listed various platforms for quality standards which include Bureau of Indian Standards (BIS), Food Safety and Standard Authority of India (FSSAI), AGMARK, American Spice Trade Association (ASTA), European Spice Association (ESA). These standards are country specific as well as product specific, leading to a uniform platform of dealing with the quality issues.

BUREAU OF INDIAN STANDARDS (BIS)

This came into existence through an act dated 26 November 1986, on 1 April 1987 in order to widen the scope and peripheral of Indian standard Institution (ISI). The activities which are performed by the BIS include:¹²⁸

- Standards Formulation
- Product Certification Scheme
- Compulsory Registration Scheme
- Foreign Manufacturers Certification Scheme
- Hall Marking Scheme
- Laboratory Services
- Laboratory Recognition Scheme
- Sale of Indian Standards

¹²⁷ International Plant Protection Convention (IPPC), Multilateral treaty deposited with the Food and Agriculture Organization of the United Nations (FAO) (Jan. 29, 2020, 5:15 pm)

<https://www.ippc.int/en/structure/>

¹²⁸ Bureau of Indian Standards (Feb. 02, 2020, 2:38 pm), <https://bis.gov.in/index.php/the-bureau/about-bis/>

- Consumer Affairs Activities
- Promotional Activities
- Training Services, National & International level
- Information Services

The responsibility of BIS is to check the quality of the product at the manufacturing stage, before it is marketed, and the standards are dynamic in nature.¹²⁹ There is provision for reaffirmation or review after five years but other than that there is no means to evaluate the validity of the standards in this changing scenario have been expressly submitted.¹³⁰ There are 30 standards found in the Bureau of Indian Standards related to the spices and condiments, which shall help in the marking of quality and loosen the trade barriers among the nations. There is compulsory certification of those products which can impact the health and safety of consumers at large.

The **Bureau of Indian Standards Act, 2016 (repealed the act of 1986)** is a consolidated act which received the assent of the President on 21st March, 2016. This act provides in its preamble for establishment of national standard body in order to bring conformity, quality assurance, and standardization.¹³¹ “Indian Standard” has been defined as a standard which is set and published by Bureau of Indian Standards, in accordance to any article, good, system, service or process; which may indicate of quality and specification needed.¹³² These standards are adopted, established, and published as well as recognized by the Bureau.¹³³ The act provides about offences and penal actions taken in the case of any violation or non-compliance with the provisions of this act.

¹²⁹ Regulatory standards for food in India and International context: A socio- historical overview, pg 40
<https://www.amu.ac.in/emp/studym/100000568.pdf>

¹³⁰ *Id*, pg 41

¹³¹ The Bureau of Indian Standards Act 2016, An Act to provide for the establishment of a national standards body for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services and for matters connected therewith or incidental thereto.

¹³² The Bureau of Indian Standards Act, 2016, No. 11, Acts of Parliament, 2016, Section 2(17)

¹³³ *Id*

This governmental organization has been working extensively to ensure the safety and minimizing health hazards for its consumers. It mainly works in 14 different sectors and to frame standards in accordance to each product becomes an important element, when it's produced in India or has been imported into India. The Spice Board adheres to the quality standards which are set up by the BIS in order to have substantive surety, while exporting its consignments.

FOOD SAFETY AND STANDARD AUTHORITY OF INDIA

Food Safety and Standard Authority of India (FSSAI) administered under the Ministry of Health and Family Welfare established in 2008. It functions in accordance with the **Food Safety and Standard Act 2006** and is constituted under section 5 of the act. The main function of this authority is to regulated and monitor, manufacture, processing, distribution, sale and import of food while ensuring safety and wholesome food to the consumers.¹³⁴ In order to provide better administration it has various offices in different states/UTs, thus providing support in training programs and compliance with the provisions of the act. In India food safety and standards provisions are analyzed in light of this organization. CODEX standards, guidelines and recommendations are taken into consideration as they form a major part of SPS Agreement. The food law and CODEX are dealt together, in order to bring these standards in relevance. The FSSAI constitutes a National Codex Committee which functions in order to systematize the standards at domestic level.¹³⁵

AGMARK

This is a certification mark under the **Agricultural produce (Grading and marketing) Act 1937** which was further amended in 1986. This certification act as third party guarantee to quality certified for agricultural products. AGMARK standards includes Spices grading and marketing rules for spices like compound asafoetida, curry powder, mace, mixed masala powder, nutmeg, poppy seeds, saffron,

¹³⁴ Food Safety and enforcement and state food authorities, Chapter 2, pg. 15

<https://www.fssai.gov.in/upload/uploadfiles/files/Chapter2.pdf>

¹³⁵ ORDER No. 1-87/FSSA/Codex/2009 Vol. II, Food Safety and Standard Authority of India,

https://fssai.gov.in/upload/uploadfiles/files/Order_NCC_Constitution_28_12_2015.pdf

seedless tamarind, sun dried raw mango slices and powder and other spices.¹³⁶ This is further enforced by Department of marketing and inspection which comes under the Ministry of Agriculture & Farmers Welfare. The authorities after inspection and ensuring that the necessary facilities like equipment, laboratory etc are available allows them to use AGMARK symbol which ensures that the quality standards laid down for that product under AGMARK have been complied with.¹³⁷ The objectives of AGMARK scheme:

1. To assure pre-tested quality & purity for the consumers.
2. To assist the producers of good quality products to have better revenues.
3. To have high sale of products in the market with better composition and comprehensive quality.
4. To avoid the practice of adulteration in the market.

AMERICAN SPICE TRADE ASSOCIATION (ASTA)

It aims to ensure clean, safe spice and to shape public policy globally in order to advance business interests of its members. The physical quality of the spices is assessed by this US based agency. At each stage of the supply chain ASTA monitors to minimize the potential for contamination of spices by mammalian excreta, rodent hair, insect fragments and other foreign materials.¹³⁸ This monitors the environment for cleanliness and has certain guidelines to adhere too.

EUROPEAN SPICE ASSOCIATION (ESA)

This is one of the umbrella associations of the European spice industry. It basically looks into processing, packing, quality assurance and food safety and also marketing

¹³⁶ Directorate Of Marketing & Inspection, Ministry of Agriculture and Farmers Welfare, Grades & Standards, (February 02, 2020, 3:00 pm) <https://dmi.gov.in/GradesStandard.aspx>

¹³⁷ Krishnakumar Thulasimani, Quality Management of Agricultural products in India, pg. 8

¹³⁸ Indian Spices: The legacy, production, and processing of India's treasured export, Amit Barang Sharangi, Supply chain and marketing of spices, Amit barang sharangi, M.K Pandit, SPRINGER

of these spices respectively.¹³⁹ This organization is listed by the Spice Board regarding the quality standards.

In 1990s ASTA and FDA unified to bring forth some of the guidelines which can be part of trade in a country. Many countries started following up and adhered to the same relatively. The producing countries geared up their regulations accordingly to meet the specific regulations. Later, a new addition to the spice trading regulation was done which basically looked into European nations and thus came out with their own set standards. The grading, cleaning, and sterilization of raw spices, also the amount of tests and increase in the level of standards have called for huge investments and effective policies in regards to the same. The ‘King of spices’ or ‘black gold of India’, black pepper is extremely popular exports among other nations. A significant amount of investment has been made over the past decade in laboratory facilities and equipment, with individual labs being extended beyond their initial focus on physical and chemical parameters to include testing for pesticide residues, aflatoxin, and, in a few cases, heavy metals.¹⁴⁰

¹³⁹ European Spice Association is a non-profit association concerned with all the packaging, processing, quality assurance, and food safety, also marketing of the spices, herbs, (March 02, 2020, 3:00 pm) <https://www.esa-spices.org/>

¹⁴⁰Steven Jaffee, *Delivering and Taking the Heat Indian Spices and Evolving Product and Process Standards*, World Bank, Agriculture and Rural development, 36 (2005)

Chapter-5

SANITARY AND PHYTOSANITARY RELATED CHALLENGES INCURRED BY SPICE PRODUCERS AND EXPORTERS

5.1 ROOTS OF SPS AGREEMENT (A BRIEF OVERVIEW)

The Sanitary and phytosanitary agreement finds its root in General Agreement on tariff and trade of 1947 (GATT) where in Article XX (b)¹⁴¹ “necessary to protect, human, plant and animal life” is included under the general exception of the Agreement. The agreement came with the main objective that the imported agriculture products especially the domestic products must be safe and free from diseases and pests. Thus, it is accepted the countries should play safe, in case any doubt arises as to the imports, then certainly the country exporting such would be banned from further supply. This can be considered as an alarm for the country producing and exporting, to keep a check on pesticide residues (MRLs), the adulteration element found if any. The Punta del Este Declaration (of 20 September 1986) called for increased disciplines in three areas pertaining to agriculture: market access, subsidies, and SPS regulations.¹⁴²

¹⁴¹ General Agreement on Tariff And Trade, Oct. 30, 1947, Article XX (b), 55 U.N.T.S 194

[hereinafter GATT] read as follows:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: ...

(b) necessary to protect human, animal or plant life or health;

¹⁴² The Punta del Este Declaration states:

...Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations by:(i) improving market access through, inter alia, the reduction of import barriers; (ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes; (iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements...

The agreement that finally emerged in 1994 and became operational with effect from 1 January 1995, set in place an array of multilateral trade rules that on the one hand, recognized the legitimate right of WTO Members to adopt SPS measures necessary to protect human, animal or plant life or health, and on the other, enshrined certain checks and balances to cope with the possibility of these measures emerging as NTBs. The concern about the food and health safety with enhanced scientific understanding in the area also coupled with growing public awareness, has caused an increasing preference for safe and hygienic food particularly in countries rich in trade. Sanitary and phytosanitary Agreement has assumed a lot of significance in the context of International trade.

At the time of formation of this agreement, the fear was whether every country would be able to produce with proper techniques or ingredients and the scientific justification which would be relied upon. By the time of the mid-term review, discussion of the subject had advanced sufficiently for ministers to agree on the long-term goal of “harmonization” of national SPS regulations. By this, they meant that national SPS requirements should as far as possible be consistent with internationally established standards, guidelines and recommendations developed by scientists and government experts working together in the specialized international bodies concerned with these matters.¹⁴³

The ministerial declaration of 1986 launched the Uruguay round which contained “minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements” as one of the major agendas to be discussed under the sub-heading Agriculture.¹⁴⁴ There has always been a difference in climatic or environmental conditions of different regions of the world, thus it’s not always possible to impose the same sanitary and phytosanitary requirements on food, animal or plant products at a global level. Therefore, there is high probability that the measures will vary depending on various factors.

¹⁴³ John Croome, *Reshaping the World Trading system, A history of the Uruguay round*, 204

¹⁴⁴ Multilateral trade negotiations, The Uruguay Round, Sanitary and phytosanitary regulations affecting trade in agriculture, Background Note by the Secretariat, MTN.GNG/NG5/W/41, 2 February 1988, Pg. 4-5

Three different types of precautions are provided by the Sanitary and phytosanitary agreement:

1. The assessment of risk and determination of acceptable level of risks talks about the safeguard of human, animal or plant life or health.¹⁴⁵
2. In determining its own level of acceptable risks, it shall even take into account the national concerns as to what can be health risks involved.¹⁴⁶
3. In case there is insufficient scientific evidence for the safety of products or process, then a member can provisionally adopt such measures on the basis of pertinent information.¹⁴⁷

5.2 CHALLENGES FACED BY SPICE PRODUCERS AND EXPORTERS

India is an agrarian economy; it mostly concentrates on the major portion of the population. This sector largely comprises of those people who are either low income

¹⁴⁵ Agreement on the Application of Sanitary and Phytosanitary Measures, Article 5.1, Sanitary and Phytosanitary Agreement, Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

¹⁴⁶ *Id* at Article 5.5, With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

¹⁴⁷ *Id* at Article 5.7, In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

groups or those who are living in the rural areas. This originally forms a substantive part of the economy because of the income generated and also, contribution made by it in the agriculture exports. India is considered to be one of the usurping nations in terms of its production and exports to several countries. The producers and exporters are those who form the chain in agriculture, farming and distribution, respectively. The challenges which are faced by the spice producers and exporters are mainly contributing in the production as well as exports of the country. These are the various challenges faced by them in the light of SPS Agreement.

- **Environmental & Regional conditions**

The promotion of harmonization of SPS measures across countries through adherence to international standards is purportedly a key objective of this agreement; the interpretations of the relevant provisions under leave sufficient room for WTO Members to deviate from international standards, even where they exist, as has often been done by the EU. The Appellate body in *EC- Hormones*¹⁴⁸ observed that:

“In generalized terms, the object and purpose of Article 3 is to promote the harmonization of the SPS measures of Members on as wide a basis as possible, while recognizing and safeguarding, at the same time, *the right and duty of Members to protect the life and health of their people*. The ultimate goal of the harmonization of SPS measures is to prevent the use of such measures for arbitrary or unjustifiable discrimination between Members or as a disguised restriction on international trade, *without preventing Members from adopting or enforcing measures which are both 'necessary to protect' human life or health and 'based on scientific principles', and without requiring them to change their appropriate level of protection* (emphasis added).”

Sanitary and Phytosanitary Agreement obligates WTO Members to apply SPS measures¹⁴⁹ only to the extent necessary to protect human, animal or plant life or

¹⁴⁸ Appellate Body Report, European Communities — Measures Concerning Meat and Meat Products (Hormones), ¶124, WTO Doc. WT/DS26/29 (adopted on: 13 February, 1998)

¹⁴⁹ Annex A (1) of Sanitary and Phytosanitary Agreement read as follows : For the purpose of this Agreement, SPS measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated

health. Such measures are, in general, required to be based on scientific principles and are not to be maintained without sufficient scientific evidence.¹⁵⁰

Article 2.3 points out that measures should not be arbitrary or unjustifiably discriminate between members where identical or similar conditions prevail, including between the territory and other members. It shall not be applied in a manner which would constitute a disguised restriction on international trade.¹⁵¹

One of the challenges which a spice exporter can face is the regional and environmental conditions, which requires Indian government to invest heavily on the development of areas which can be pest and disease free. The nature plays its own role, it cannot be controlled by anyone nor can it work in a specific way, thereby leading to unexpected atmospheric conditions. In any country, the situation regarding plant and animal can never be steady. There are developing countries especially with diverse geographical, environmental, and epidemiologic conditions, where adaption to regional conditions, including the recognition of pests or disease free areas or areas of low pests or disease prevalence calls for more mindful of the measures taken.¹⁵²

For example many countries have very strict restrictions for presence of Aflatoxins in spices. In Belgium tolerance level is as low as zero. In Switzerland it is 1ppb and in Germany and Denmark it is 4ppb. The problem arises due to the fact that the climatic conditions in most spice growing countries are such that make spices vulnerable to the attack of fungus. These are mostly tropical countries where high temperature and humidity make it difficult for the producers to meet the specified conditions.¹⁵³

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 labeling requirements directly related to food safety,

¹⁵⁰ Sanitary and phytosanitary Agreement, Article 2.2

¹⁵¹ Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

¹⁵² *Id* at Article 6.2 Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

¹⁵³ Bakshi, *supra* note 13, at 6.

Under Article 6.1 of SPS Agreement, a member country is expected to be more cautious in applying SPS measures so that it is more adaptable to the conditions prevailing in an area from which *product originated*, also where the *product is destined*.¹⁵⁴ In order to do so, they have to make huge investment to launch various programmes and strategies to eradicate or control the prevalence of specific diseases or pests, there are international organisations which have developed criteria or guidelines.¹⁵⁵

The exporters are always at risk when it comes to safety and standard of food product, they need to build trust relationship and also avoid any kind of rejection of consignment. They have to provide necessary amount of evidence to importing country members, of area within their territories which are disease free or pest free which shall objectively demonstrates the safety and appliance of SPS measures.¹⁵⁶ In the case of spice producer and exporter, if the consignment is rejected because of the dangerous elements present in the area which cannot be detected while the farmers were cultivating the same, then a heavy loss of revenue take place.

- **Difficult to adapt changes**

There are challenges for the international trade when some divergence takes place in the standards and guidelines issued by various organisations dealing with quality control and inspection policies. The organisations like CODEX, for animal health there is International office of Epizootics, for plant health there is International plant

¹⁵⁴ Agreement on Sanitary and phytosanitary measures, Article 6.1, Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

¹⁵⁵ *Id*

¹⁵⁶ *Id* at Article 6.2, Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

protection convention in consonance with other regional cooperation and those matters which are not included in the same shall be dealt by certain relevant organisations.¹⁵⁷ The international standards so produced by them, does not adhere to any particular criteria also the latter is not mentioned in the agreement. The process of international standards setting is becoming increasingly politicized, with the inclusion of a large number of non-traditional stakeholders. This trend makes the adoption of standards more complex and time-consuming and implies that considerations of a non-scientific nature may play a role.¹⁵⁸

Earlier when trade regime of India was developing, it was not possible for exporters and producers to access important changes made by other nations in products imported by them. Today, as the technology has taken a lead role in fostering new relationships and building communication between nations, World Trade Organisation has also upheld the same by creating online platforms for SPS & TBT procedures. The technology has been empowered in each and every sector of the economy, and to be in pace with that there need to adoption of certain changes. These changes take time for acceptance especially when a country has substantive amount of population who are not known to various aspects of international trade regime. In the view of WTO it can be inferred that these challenges of a spice producer and exporter can be relevant earlier in context of being ignorant of the notification and enquiries, but now it cannot be considered as one of the challenges faced by them. When sanitary and phytosanitary measures are published, a reasonable time is provided to the members between publication and its entry into force, so that the producers of the exporting countries can adapt to new measures and accordingly change their course of production according to the needs of importing country.¹⁵⁹ On the contrary, it's not possible for every other small player to be technically equipped and knowledgeable.

- **Effectiveness of notification and Enquiry points**

India being a developing nation is accorded special and differential status by the SPS Agreement, thereby giving it an advantage for longer time frames for compliance with

¹⁵⁷ Agreement on Sanitary and phytosanitary Measures, Article 3

¹⁵⁸ Zarrilli, *supra* note. 14, at 16

¹⁵⁹ Annexure B (1), Transparency of Sanitary and phytosanitary regulations, Sanitary and Phytosanitary Agreement.

the changes so made by any country in relation to any product favourable to the former.¹⁶⁰ Even inquiry points so set up to provide viable solutions to the questions from the members concerned related to various aspects of sanitary and phytosanitary measures and also, those related to relevant documents. In order to address these prudent questions of other members in regards to SPS measures, every member nation has to establish one enquiry point and also notification centres. Thus, National Enquiry points (NEPs) and National Notification Authority (NNA) is responsible for all these procedures.

In India, there are three enquiry points and one notification centre:¹⁶¹

- **Food safety and human health related issues:** Assistant Director (Regulation/Codex) Food Safety Standards Authority of India (FSSAI), FDA Bhawan.
- **Plant health or phytosanitary related issues:** Joint Secretary Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare.
- **Animal health and related issues:** Secretary Department of Animal Husbandry, Dairy and Fisheries, Ministry of Agriculture.
- **For notification:** Trade Policy Division, Ministry of Commerce

World Trade Organization has taken a drastic step to improve the efficiency and the speed of notification activities, by the use of electronic means. Now, every country has access to internet, we may not take into account least developed countries (LDCs) but there is improved communication channel between nations. The SPS notification system provides National notification authorities to submit the notification online, can be accessed through WTO website.¹⁶² An easy access to the information regarding products entering a market, which need to be in line with that market's product requirements, it is important to be, informed when a government is planning to revise

¹⁶⁰ Agreement on Sanitary and Phytosanitary measures, Article 10.2, Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

¹⁶¹ Sanitary and phytosanitary Information Management system, (April,15, 2020, 7:00 pm)
<http://spsims.wto.org/en/EnquiryPointsNotificationAuthorities/Search?countryCode=C356&filter>

¹⁶² World Trade Organization Notification Submission System, (April,15, 2020, 7:00 pm)
https://nss.wto.org/Index_en.htm

regulations on product requirements.¹⁶³ WTO has launched ‘ePing’ a communication platform where data compiled by the former are published. In order to ensure transparency in the implementation of these measures facilitation of proper communication is necessary. Though the technology has provided easy access to information but these may not always be in knowledge of those producers and exporters who are not made aware either by the authorities concerned or is incompatible to access such.

- **Education and awareness**

There are producers and exporters who are not much educated to understand the SPS agreement, some of the important provisions which may form their rights and obligations respectively. This leads to much exploitation of their skills and efforts, in effect lowering their revenue from such exports. In a country like India, where agriculture is the backbone leading to serve the economy on a large scale. The discipline of agricultural engineering endeavors to develop technologies for enhancing productivity and reducing the cost of cultivation.¹⁶⁴ Spices cultivation primary shifts the focus to the agriculture of India which has faced many problems over the years. The population growth of India largely depends directly or indirectly on agriculture; also mixed cropping is getting prominent among the states. Mixed cropping essentially constitutes production of variety of crops over different seasons, which may lead to distributed attention and not focusing on a single crop.¹⁶⁵ These problems make awareness an unknown factor for them, leading to cause severe harm in understanding the quality standards. The spice production can adversely affected by various disease and pests incidences and also ignorance in use of chemical control measures as it may cost to ordinary producers. The cost of certification of organic spices is prohibitively high and beyond the capacity of an average Indian farmer. Impact of low grade, low priced spices from other countries to India and their re-export under Indian label may destroy the quality image of Indian spices in the international market of food and may detrimentally affect the demand for Indian

¹⁶³ Track product requirements in export markets, (April,18, 2020, 8:30 pm)

<https://www.epingalert.org/en#>

¹⁶⁴ MM Pandey et al., Indian Agriculture- An introduction, 3-4 (April, 19, 2020, 7:20 pm)

<http://www.un-csam.org/Activities%20Files/A0902/in-p.pdf>

¹⁶⁵ S.K. Goyal et al., Indian agriculture and farmers – problems and reforms, 81 (2016)

spices in future.¹⁶⁶ Even coordination is needed among the needful and agencies working at domestic level with the food safety and quality issues.

Even testing procedures are extensive and detailed which are conducted on the food products before the export of any item takes place. There are domestic agencies which may find a product suitable and complying with the prescribed guidelines but when it reaches other country's agency it may not be in accordance with their guidelines.

The knowledge to promote international trade is important in order to combat various discrepancies and to bring forth various provisions dealt by various nations. This is a major challenge which is faced by spice producers and exporters.

- **Cooperation between Developed and Developing Nations**

One of the challenges faced by producers and exporters in the case when the following belongs from a developing nation, India is developed nations does not take into account adequate needs of the latter. The criteria of 'equivalent' is not strictly followed by the developed nations as they tend to pose it less effective for their land and ignore the participation of developing nation. In SPS Agreement under the special and differential treatment, a developing country member is provided long time frames in products of importance to maintain opportunities for exports.¹⁶⁷ World Trade Organization provided time concession to the member states in regards to the agreement providing them with additional time to developing countries to implement and recognize the provisions, a period of two years is provided (until 1997) and least developed countries were provided five years (until 2000). This can be considered as relatively less time period for India specifically, because economic liberalization took place in India (1991) under the guidance of Prime Minister, P.V. Narasimha Rao and Finance minister, Manmohan Singh. The devaluation of the currency was fact accompli for the opposition and for the citizens of our country. The trade policy reform was defined by two key considerations: first, to enable India to move closer to the emerging new global trade policy architecture that was to be put in place by the

¹⁶⁶ Chapter 5, Spice's scenario, 77 (April 19, 2020, 7:20pm)

https://shodhganga.inflibnet.ac.in/bitstream/10603/53584/11/11_chapter%205.pdf,

¹⁶⁷ Sanitary and Phytosanitary Agreement, Article 10.2, where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

yet to be established World Trade Organization; secondly, to link import entitlements to export performance.¹⁶⁸ This combination of devaluation and trade policy liberalization bought a lot of change in the years to come. This event led to a different aspect of economic scenario and thus to comply with any agreement like Sanitary and Phytosanitary measures became far more difficult to adhere as well as to understand its technicalities.

The developing countries sometimes typically implement qualitatively or quantitatively lower SPS standards than developed countries, in principle the SPS Agreement should help to facilitate trade from developing to developed countries by improving transparency, promoting harmonization and preventing the implementation of SPS measures that cannot be justified scientifically.¹⁶⁹ It is mostly seen that developed countries have always been very ignorant about the amount of death which are faced by other developing nations and have tried to raise questions which are unfruitful. On the other hand, it can be seen that developing as well as LDCs have been working rigorously to achieve an adequate level of standards which can neither put them in a back gear nor make them least impressive nations.

- **Technical cooperation**

The member country so exporting goods can avail various benefits under the agreement as it clearly identifies various provisions where the need of developing country is not stepped upon. Instead, it leads to more suitable alternatives where other developed nations can join hands with them and prosper together. The technical cooperation for the developing countries is necessary for the effective implementation of the SPS Agreement. Article 9.1¹⁷⁰ provides that assistance should be provided

¹⁶⁸ S.B Kumar, P.V. Narasimha Rao: *The Precursor of the Era of Economic Reforms in India*, 63(4) Indian Journal of Public Administration 616,627 (2017)

¹⁶⁹ Spencer Henson et al., *Barriers to Agricultural Exports from Developing Countries: The Role of Sanitary and Phytosanitary Requirements*, 29 World Development 85, 94 (2001)

¹⁷⁰ Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment

bilaterally or through international organisations may be *inter alia* taking the form of advice, credits, grants, and donations. The main purpose is to achieve appropriate level of protection by seeking technical expertise, training, and equipment to adjust and comply with the sanitary and phytosanitary measures. This assistance covers the capacity building of the officials in developing countries, as the transparency is a key for the correct functioning of the agreement. This assistance also helps the personal working in laboratories, certification bodies and accreditation institutions in developing countries, so as to up-grade their technical skills since they are having a certain level of qualifications and training, thereby constituting a precondition for the international acceptance of certificates issued by respective agencies. This also helps in to build an understanding and bringing friendly negotiations in terms of the agreement.

There are several international organizations and a number of developed countries who provide technical cooperation in the field of sanitary and phytosanitary measures, leading to better coordination among these nations and organizations, also ensuring that the countries fully avail benefits from the efforts so made by them. Article 9.2 states “Where substantial investments are required in order for an exporting developing country Member to fulfill the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved”.¹⁷¹ India’s top five importers of mangoes are USA, UK, UAE, Oman, and Qatar. During the late 1980s, Japan banned the import of Indian mango on health grounds. The process of vapor heat treatment had to be put in place to comply with Japan’s SPS requirements before mango exports could resume in 2007¹⁷². Similarly, in USA it was SPS measures which were causing hindrances and also high cost of certification lead to trade barrier for India.¹⁷³ In order to strengthen this provision, firstly the countries who are parties to the SPS agreement creating a lot

to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

¹⁷¹ Agreement on the Application of Sanitary and phytosanitary measures

¹⁷² Kasturi Das, The Impact of Sanitary and Phytosanitary Measures on India’s Exports and the Challenges/Opportunities of the SPS Agreement (2013)

¹⁷³ Non- Tariff barriers faced by Indian Agricultural products, (May, 01, 2020, 5:30 pm)

http://apeda.gov.in/apedawebsite/Databank/NTBs_July_08.pdf

of practical difficulties for the exporting developing country should reassess these measures. Also, secondly, when the importing country reconfirms the measure, after reviewing various implications, it should confirm to technical cooperation, making the transfer of the necessary technology, mandatory. There are developing countries for which it may be useful to develop flexible relationships among themselves and also with the developed countries, because the latter are much more equipped with techniques and experienced in bringing forth specific cases to the attention of other countries or to the attention of the SPS committee.

5.3 CONCLUSION

The SPS Agreement has been amended over time to inculcate new and substantive provisions. The provisions mentioned are bought in with negotiations from all the WTO members and after scrutinizing each condition faced by the members. There may be a possibility that these provisions are introduced in a manner to publicize about systematic and friendly trade between nations. Thus, a concrete view of the provisions provide about challenges which may be faced by producers and exporters of spices.

To summarize the challenges faced by spice producers and exporters:

1. Environmental and regional conditions cannot be always favorable and work according to one's will.
2. Dearth of technically skilled people in regard to access notification and enquiry points.
3. Inefficient to adapt changes regularly as put forward by developed nations.
4. Lack of education and know-how about various procedures to be undertaken while exporting spices.
5. Lack of proper coordination among the both sides of the world, developed and developing countries respectively.
6. Inadequate access to technology which is appropriate for production and insufficient amount of finance leads to a drawback in competing with their needs.

India has suffered significant export losses from time-to-time on account of its inability to respond to such SPS requirements adequately. Even where it has succeeded in complying with stringent SPS requirements, compliance has always involved substantial investments. Moreover, there is no guarantee that once suitable changes in the production processes are made, the goods will get continued or enhanced market access, as buyers do not give any such guarantee upfront. A concomitant problem is that of shifting standards. The worst affected in the whole process are the small players, who are often technically ill equipped and financially hard pressed to be able to comply with SPS requirements. There has been an attempt made to overcome all the effects of SPS measures through this agreement by the international community but due to lack of resources the opportunities went empty handed.

Chapter-6

CONCLUSION

With the establishment of World Trade Organization on 1st January, 1995, came into effect the Agreement of Sanitary and Phytosanitary Measures (commonly known as SPS Agreement). The benefits of trade liberalization in the agriculture sector achieved by the Uruguay Round negotiations could be undermined by the protectionist use of sanitary and phytosanitary measures. The SPS Agreement was negotiated to limit this danger and represents a useful instrument for this purpose.

The preamble of this agreement makes its provisions applicable without any arbitrariness as well discrimination among the member states. In General Agreement on Tariffs and Trade 1994 (GATT), article XX (b) mentions about sanitary and phytosanitary provision, so the reference of the same has been taken into this agreement. In order to provide a suitable stand to all the member states which consist of three classes developed, developing, and least developed nations, the agreement has very specifically dealt with needs of every nation.

The Agreement majorly focused on Food safety and plant and animal health regulations. This agreement became binding on all those nations which were member states to WTO. Also, this is a side agreement whereby each member of the organization has to compulsory follow in regulating its domestic norms. It has bought in the spirit of assistance and corporation among the nations in the field of trade and also has put in efforts to develop an adequate system of communication among them.

The SPS measures are considered under the non-tariff barriers among the nations because of its restriction on the trade. There is another view that should be considered to be more accountable and reliable that protection is to be given by providing safe food to the people and also by safe guarding health of plants and animal. This can only take place when disease free or pest free food is exported or imported within a region, also the treatment and inspection is done diligently.

When a developing nation like India which is known for its unity in diversity and vast variety of food culture exports certain items to other countries, it has to take into account every possible step to safeguard the consignment. India is made up of an agrarian economy where a chain of people are involved in the production any kind of

agricultural product. There are 109 spices recognized under the ISO list, but 52 spices have been bought under the consideration of Spice Board of India.

The developing countries have a lot of opportunity to twist and turn the standards more than it is necessary for achieving optimal level of protection and testing as well as certification criteria relatively. There is disadvantage also, as the man power and resources to maintain adequate facilities for food safety standards are not reliable and effective.

The developed countries have drafted their food standards according to the domestic markets, their suitability, and above all have looked into improving food quality standards and expansion of the markets. The changed economic scenario symbolized by the establishment of the WTO holds great potential for the Indian agricultural and food processing sector. In fact, India has all the makings of an agricultural superpower. The inefficiencies which are coming in the way of the development of a vibrant food industry can be tackled with an integrated response of food manufacturers and government. The elimination of unfair trade barriers as envisaged in the SPS and WTO agreement presents enormous opportunities for India to emerge as major food trading nation.

The Food Safety and Standard Authority of India is established to bring forth much of coordination between the government and the agencies which deal with the food standards. CODEX is an international organization which deals with various standards in order to promote the norm of food safety. Thus in order to promote these standards domestically and application of the same it is necessary to frame certain rules which can be actively adhered too. The framing of laws is necessary to regulate the exports of the country in a more disciplined and uniform manner.

There are various agricultural products which are produced by India also poultry and floriculture is very much prevalent in the exports of the country. There are various boards which come under the governance of Ministry of commerce and Industry, Government of India. These boards or agencies are working in a coordinated manner with the latter to provide substantive amount of development in the production, distribution and marketing of these products.

Spice Board of India is based in Kochi, Kerala governed under the Ministry of Commerce and Industry. This is a primary organization working for the promotion and development of Indian spices worldwide, it also provides better opportunity to commute between our exporters and those of the other world nations. Some of the

major functions which this board performs are development, marketing, Quality standards check, and also provides vast data on production and exports of the country. The board has been working constantly to meet the SPS requirement and has over the course of made much improvements in its working and communication. The data given by spice board of India very well portrays the rise in the flow of spices to other major developing / developed nations. There are barriers faced by India while trying to push hard towards generating revenue as well as a greater level of productivity for its people, and they only occur when any stringent requirement is not followed by them which may account as an important factor.

The spices exports of India is a major focus as compliance of Sanitary and phytosanitary measures plays one of the most effective as well as prudent role in setting the quality standards. The process starts from level of pesticide used in production of spices to packaging and labeling of the same, as any unsealed or mishandling could lead to extensive rejection of the consignments. The quality standards as well as the laboratories so set up by the Spice Board have certain guidelines and are functioning at its full capacity. This has lead to a great deal of flexibility in the exports and also, in coordinating with other nations who have earlier rejected the consignment.

While looking into the trends and patterns of spice exports of India, there has been a tremendous improvement but never the less there are always ways to improve and be more effective in the implementation of laws and regulations practically.

The SPS agreement has provisions which help in trade facilitation among the nations through technical assistance and providing special treatment to the developing nations on various feasible grounds. This treatment so provided by the developed nations may have helped various other nations but has also called for discriminatory and unjustified actions for the same.

The findings of the researcher that the Indian legal and policy framework has not been able to regulate the promotion and quality assurance and is not effective in meeting the challenges faced by Indian Spice Exporters.

SUGGESTIONS

The main of Sanitary and Phytosanitary Agreement is to promote food safety and non-discriminatory treatment between nations which shall further help in promotion of trade between nations. India is one of the developing nations, but from past few years it has been growing substantially from all dimensions. However, from previous chapters it can be ruled out that developing countries are not able to cope up with new SPS regulations which in turn are leading to hindrances for its producers. The following steps can be taken in order to ensure that country like India emerges as one of the most powerful players in terms of exports.

INCLUSION OF ADEQUATE TIME FRAME BETWEEN NOTIFICATION AND SPS MEASURES

If a developing as well as least developed country will get adequate amount of time to understand the measures and draft a plan which may be placed step by step to reach a certain goal, then obviously that would generate a lot of assistance for its domestic players in various markets. Even the notification process which is mainly online can sometime be inaccessible for those who are not known to certain technicalities. It becomes necessary to either spread awareness or provide substantive information to the main players at domestic level.

The application of these measures is what plays an important role in the market; if applied effectively and after ascertaining all the risks then definitely it would produce results.

NEED FOR ACTIVE PARTICIPATION OF DEVELOPING AND LEAST DEVELOPED NATIONS IN NEGOTIATION

The increased willingness on the part of developed countries to enter constructive bilateral negotiations with developing countries where their economic interests are adversely affected by a proposed SPS measure has become necessary. India has always tried to maintain friendly relations with its neighbors and also with those nations which are leading developed countries of the world. The negotiations which took place at an early stage of formation of WTO have brought results for many countries and India had always been an active participant to ensure its global trade.

However, now scenario has changed as an effective communication becomes a part of treaty or agreement which has been entered into mutually by both the parties. This drastic change shall improve the situation over time, if negotiations are made on clear terms and also, actively.

There are least developed nations which have been awarded special provisions by this agreement, but certainly there need to be representation by these countries so that their demands can be heard and negotiated.

It is said that when two nations talk they don't end up into war rather leads to more constructive output, than a destructive one.

ADEQUATE TIME FRAME TO COMPLY WITH SPS REQUIREMENTS

An adequate amount of time period should be granted for developing countries to comply with SPS requirements, during which exports should be allowed, taking into account the domestic circumstances of the latter. For example, if a particular hazard (such as a plant disease) does not exist in a country, that country should not be required to undergo inspection for that disease or should be provided sufficient time to frame a plan in order to combat such future happenings. The acceptance of SPS measures in developing countries should be more of effective implementation of the same and also should facilitate the development of effective SPS control systems.

GENERATING AWARENESS AND UNDERSTANDING OF SPS ISSUES

It becomes necessary to enhance awareness and understanding of SPS issues amongst developing country, government officials and the agricultural and food sectors. India has over the course of time framed various food safety laws and also amended many. These codified laws can be more functional if they are made known to those working at ground level. The SPS issues which arise as a result of mixed responses from different countries had severely affected the exporting countries. In case of India, there have been a lot of losses because of rejection of consignments from importing country on the issue of MRLs. These issues could only be better responded when they are understood and laws pertaining to such are widely published. This has lead to the

birth of various provisions which are stringent in nature and can help in promoting exports of the country.

NEED FOR EFFECTIVE PARTICIPATION IN SPS COMMITTEES AND INTERNATIONAL STANDARD ORGANISATIONS

The ability of developing countries to participate effectively in the SPS committee and international standards organizations should be more concentrated upon. If there will be a large amount of participation of India, then it will put forward various issues which are faced by them because of regional and environmental conditions. These standards could further be framed in accordance with every country's situation as well as needs. An active participation of developing countries like India is necessary to showcase the amount of efforts it is trying to pour to bring forth stringent laws in food safety and also sincere compliance with the SPS standards.

NEED TO UNDERSTAND THE NEEDS OF DEVELOPING NATIONS AND SMALL PLAYERS

An expectation of coordination between the developed and the developing nation is a primary aspect. The needs of developing nations should be understood by other nations as the latter lack many resources which may be counted as necessity and in order to fulfill, there is need of time as well as assistance. Also, in addition to the same there has to be certain importance given to the environmental conditions and various distinctive features of nations who are still in the growth process. Some of the nations claim that lack of miscommunication and ignoring the conditions faced by the countries has led to severe problems. Thus, lack of miscommunication and also, assistance can lead to high rejection of consignments which may further lead to loss in income and employment.

NEED TO CONCENTRATE ON GRIEVANCES OF SPICE PRODUCEERS AND EXPORTERS

The grievances of spice producers and exporters should be taken into account by the Indian Spice Board. The Spice Board of India have grown over the years with the new

laws so passed by the legislature and also, to ensure fulfillment of needs of importing countries. The producers and exporters are small market players who are earning their livelihood from this, but then the board should hear their grievances and try to resolve it within a specified time frame. These grievances should be focused upon majorly when it's related to quality and inspection process, also with the techniques of farming.

NEED TO ENGAGE COMPETENT LEGAL PANELISTS

The acts lay down by the legislature in concern with the food safety and adulteration needs special focus. There should be engagement of competent legal panelists who shall look into the crux of legal and policy framework, concerning spices export of India. It becomes necessary to analyze various provisions and interpret it in such a manner so that it could lead to less hindrance in exports of spice. There are various laws which may indirectly be subjected to spice quality and exports; such should also be relied upon extensively. The inclusion of legal panelists will help in looking into loopholes in the legal draft and shall try to rectify the same.

NEED TO ADVOCATE TRANSPARENCY IN QUALITY CONTROL MANAGEMENT

The quality assessment of spices done by laboratories assigned by Spice Board of India should be made more transparent so as to bring in issues faced while dealing in quality of spices. If these issues are publicized to those concerned at large, there could be some possible solution to such flaws. The laboratories should issue precise guidelines to its farmers, producers as well as exporters, in order to make them understand the growing needs and changes made by other nations.

An effective way to overcome a number of the problems faced by developing countries is to introduce certain amendments to the legal text to ensure that the risk of using SPS measures as a border protection

instrument is minimized, while all countries benefit equally from the agreement. Some provisions of SPS do not take adequate account of circumstances as well as trade interests of developing countries. These are quite discriminatory and create hidden trade barriers. Thus, it becomes necessary to involve active participation of

every member state even if it be a small player. The suggestions mentioned can be applied and a fruitful result can be born, only if the domestic laws and various other SPS measures are understood and made widely published for awareness. The awareness and understanding of various key points are necessary to initiate further course of action in order to bring certainty in exports.

BIBLIOGRAPHY

BOOKS/DICTIONARY/REPORTS/ARTICLES

- Amit Baran Sharangi, *Spices in India and beyond: The origin, history, tradition and culture*, in INDIAN SPICES: THE LEGACY, PRODUCTION AND PROCESSING OF INDIA'S TREASURED EXPORT, 7 (2018)
- Amarender Reddy ET AL., Food safety and standards in India, ICAR-Indian Agricultural Research Institute, (2017)
- Anubha Dhulia, *Law on food adulteration: A critical study with special reference to the food safety and standard act, 2006*, 1 ILI L. Rev. 163, 173 (2010).
- Autar Krishen Koul, *Guide to the WTO and GATT, Economics, Law and politics*, (1st ed. 2018)
- Amit Baran Sharangi, Supply chain and marketing of spices, Amit Baran Sharangi, M.K Pandit, Springer
- B Kumar, P.V. Narasimha Rao: *The Precursor of the Era of Economic Reforms in India*, 63(4) Indian Journal of Public Administration 616,627 (2017)
- Group of negotiations on Goods (GATT), *Communication From The United States On A Health And Sanitary Working Group*, MTN.GNG/NG5/W/77 (September 13, 1988)
- Henry N. Ridely, *Spices (1912) Handbook Of herb and spices*, 4 (K.V. Peter ed., 2nd ed. 2012)
- Indian Spices: The legacy, production, and processing of India's treasured export,
- John Croome, *Reshaping the World Trading system, A history of the Uruguay round*, 204
- Kajli Bakshi, *SPS agreement under the WTO: The Indian experience*, 2 (2006)
- Kasturi Das, *Addressing SPS challenges in India*, Centre of WTO studies, 4(2008)
- Krishnakumar Thulasimani, Quality Management of Agricultural products in India, pg. 8

- L Thomas & P C Sanil, *Competitiveness in spice export trade from India: A review*, 28 JOURNAL OF SPICES AND AROMATIC CROPS 1, 3 (2019)
- MTN.TNC/W/35/Rev.1 (December 3, 1990)
- Peter Van den Bossche, Et Al., *The Agreement On The Application Of Sanitary And Phytosanitary Measures IN The World Trade Organization: Legal, Economic and political Analysis*, 304(Patrick F. J. Macrory, Et Al., 2004)
- P. K. Vasudeva, *UAE Health Standards: Indian Meat Banned*, 35 Economic and Political Weekly, Aug. 05, 2000, at pp. 2819-2820
- *Revision on Draft final act embodying the results of the Uruguay Round Of Multilateral Trade Negotiations*, , Annexure D, pg. 163
- Simonetta Zarrilli, *WTO Sanitary and Phytosanitary agreement: Issues for developing countries*, 1 (Trade Related Agenda, Development and Equity, Working paper no. 3, July 1999)
- SM Solaiman & Abu Noman Mohammad Atahar Ali, *Most Serious offences and penalties concerning unsafe foods under the food safety laws in Bangladesh, India and Australia: A critical analysis*, 70 FOOD DRUG LAW J. 409(2015)
- Steven Jaffee, *Delivering and taking the heat, Indian Spices and evolving product and process standards*, World Bank, Agriculture and Rural development, 2004
- Shuvajit Chakraborty, *Sanitary and Phytosanitary Measures in Agriculture Trade*, PL 35, (2012)
- Spencer Henson et al., *Barriers to Agricultural Exports from Developing Countries: The Role of Sanitary and Phytosanitary Requirements*, 29 World Development 85, 94 (2001)
- Zhu Zhu & Zhao Jinlong, *Scientific Evidence Requirements under the SPS Agreement*, 3 J. WTO & China, 104(2013)

STATUTES

1. Agreement on the Application of Sanitary and Phytosanitary Measures
2. General Agreement on Tariffs And Trade

3. The Bureau of Indian Standards Act, 2016
4. Food safety and standard (food product standards and food additives) Regulations, 2011
5. Food Safety and Standard Act, 2006
6. The Export (quality control and inspection) Act, 1963
7. The Spices Board Act, 1986

INTERNET SOURCES

- International Standard Organization, ISO 676:1995, (February 06, 2020, 3:30PM), www.iso.org
- Spice Board of India, Constitution, (Jan. 03, 2020, 2:00 PM),
<https://www.indianspices.com/about-us/constitution.html>
- *Ground Nut*, Agricultural & processed food products export development authority, (March, 25,2020)
http://apeda.gov.in/apedawebsite/SubHead_Products/Ground_Nut.htm
- *2017 Import border rejections edible nuts and dried fruits, EU-USA-JAPAN-AUSTRALIA*, International Nut and Dried Fruit Council, (March, 25, 2020)
https://www.nutfruit.org/files/tech/1523958240_2017_EU-USA-JAP-AUS_Border_Rejections_PDF.pdf
- Subhodini Pillarisetti, *Creating Awareness on sudan red dye and aflatoxin in chilli to farmers, India*, (July, 02, 2020)
https://www.wto.org/english/tratop_e/sps_e/wkshop_oct13_e/presentation_4_s_ubhodini_pillarisetti.pdf
- *Non tariff barriers*, Agricultural and Processed Food Products Export Development Authority, (March 26, 2020)
http://apeda.in/apedahindi/Databank/NTBs_March_08.pdf
- *The production and export potentiality of spices in India*, 163(Jan. 20, 2020)
https://shodhganga.inflibnet.ac.in/bitstream/10603/133666/12/12_chapter%204.pdf
- Constitution, Spice Board of India, it is an autonomous body fully functioning in adherence with rules and regulations set up in order to promote export of spices, (Jan. 20, 2020) <http://www.indianspices.com/>

- Export Inspection council, (Jan. 20, 2020)
<https://www.eicindia.gov.in/WebApp1/pages/menuInfo/aboutUs.xhtml>
- Food Safety and Standard Authority of India, (Feb. 02, 2020)
<https://www.fssai.gov.in/cms/c-codexindia.php>
- Food and Agriculture Organization, The specialized agency of United Nations, CODEX ALIMENTARIUS, INTERNATIONAL FOOD STANDARDS (Feb. 01, 2020), <http://www.fao.org/fao-who-codexalimentarius/about-codex/trade/en/>
- World Organization for Animal Health (Jan. 29, 2020),
<https://www.oie.int/about-us/our-missions/>
- World Organization for Animal Health, OIE Regional Commission (Jan. 29, 2020)
<https://www.oie.int/about-us/wo/oie-regional-commissions/>
- World Organization for Animal Health, Specialist Commission (Jan. 29, 2020)
<https://www.oie.int/about-us/wo/commissions-master/>
- International Plant Protection Convention (IPPC), Multilateral treaty deposited with the Food and Agriculture Organization of the United Nations (FAO) (Jan. 29, 2020) <https://www.ippc.int/en/structure/>
- Bureau of Indian Standards (Feb. 02, 2020), <https://bis.gov.in/index.php/the-bureau/about-bis/>
- Regulatory standards for food in India and International context: A socio-historical overview, pg 40 <https://www.amu.ac.in/emp/studym/100000568.pdf>
- Food Safety and enforcement and state food authorities, Chapter 2, pg. 15
<https://www.fssai.gov.in/upload/uploadfiles/files/Chapter2.pdf>
- ORDER No. 1-87/FSSA/Codex/2009 Vol. II, Food Safety and Standard Authority of India,
https://fssai.gov.in/upload/uploadfiles/files/Order_NCC_Constitution_28_12_2015.pdf
- Directorate Of Marketing & Inspection, Ministry of Agriculture and Farmers Welfare, Grades & Standards, (February 02, 2020)
<https://dmi.gov.in/GradesStandard.aspx>

- European Spice Association is a non-profit association concerned with all the packaging, processing, quality assurance, and food safety, also marketing of the spices, herbs, (March 02, 2020) <https://www.esa-spices.org/>
- Sanitary and phytosanitary Information Management system, (April,15, 2020) <http://spsims.wto.org/en/EnquiryPointsNotificationAuthorities/Search?countryCode=C356&filter>
- World Trade Organization Notification Submission System, (April,15, 2020) https://nss.wto.org/Index_en.htm
- Track product requirements in export markets, (April,18, 2020) <https://www.epingalert.org/en#>
- MM Pandey et al., Indian Agriculture- An introduction, 3-4 (April, 19, 2020) <http://www.un-csam.org/Activities%20Files/A0902/in-p.pdf>
- Chapter 5, Spice's scenario, 77 (April 19, 2020) https://shodhganga.inflibnet.ac.in/bitstream/10603/53584/11/11_chapter%205.pdf

APPENDIX A

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