

**THAILAND'S IMPLEMENTATION OF THE TRANSPARENCY PROVISIONS UNDER  
THE SPS AGREEMENT<sup>1</sup>**

Communication from Anut Visetrojana<sup>2</sup>

**International Framework**

1. As a Member of the World Trade Organization (WTO), Thailand must comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement").
2. All SPS measures which may, directly or indirectly, affect international trade shall be developed and applied in accordance with the provision of the SPS Agreement as provided for under Article 1.
3. Under Article 2, WTO Members have the right to impose SPS measures necessary for the protection of human, animal or plant life or health. The exercise of this right is, however, constrained by the obligation to ensure that SPS measures do not create arbitrary or unjustified barriers to trade. Specifically, measures put in place by a Member must be based, under Article 3, either on relevant international standards, guidelines or recommendations set out, in particular, by Codex, OIE and IPPC, or if Members introduce measures that provide higher levels of protection than would otherwise be achieved by measures based on international standards, upon a scientific justification. Having determined an appropriate measure at a higher level of protection, Members shall ensure under Article 5 that their SPS measures are based on risk assessment.
4. Even though WTO Members are obliged to exercise their basic right in compliance with the relevant provisions mentioned above, negative effects on international trade are foreseeable. In order to further minimize negative trade effects, the obligations on transparency under Article 7 require Members to notify changes in, and provide information on, their SPS measures. In this regard, each Member shall designate a single National Notification Authority for implementation in accordance with the procedures as well as a National Enquiry Point to respond to all reasonable enquiries from interested Members as provided for in Annex B of the SPS Agreement.

**Establishment of National Notification and Enquiry Point**

5. Since the SPS Agreement entered into force with the establishment of the WTO on 1 January 1995, Thailand has adopted a policy of a single authority responsible for both the SPS Notification Authority and Enquiry Point. From the first day of its implementation, Thailand's authority responsible for TBT matters has also been in charge of SPS Enquiry Point, namely, the Thailand Industrial Standard Institute (TISI) under the Ministry of Industry (MOI). When Thailand was launching the Government's comprehensive restructuring programme in 2002, the SPS Enquiry

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<sup>2</sup> Delegation from the National Bureau of Agricultural Commodity and Food Standards, Thailand.

Point was then transferred to the National Bureau of Agricultural Commodity and Food Standards (ACFS), which was newly established under the Ministry of Agriculture and Cooperatives (MOAC). The ACFS was also mandated as a national Enquiry Point for the three sisters organization of international standards - Codex, OIE and IPPC. This development aims to consolidate and strengthen the work on agricultural and food standards and control measures among the various agencies consistent with international standards, so as to ensure the commitment to, and execution of, Thailand's rights and obligations as regards the relevant international agreements and related bodies pertaining to the development of agricultural and food standards and trade related issues.

## **1. Regulatory Bodies**

6. The National Committee for Agricultural Commodity and Food Standards was established following the Cabinet Resolution when the Government launched its restructuring programme. This Committee comprises representatives from different law-enforcing authorities related to agricultural and food standards and SPS-related issues. These laws and regulations under the supervision of the Committee are, in particular, but not limited to:

1. Food Act BE 2522 (1979)
2. Animal Epidemic Act BE 2499(1956) amended BE 2542 (1999)
3. Plant Quarantine Act BE 2507 (1964) amended BE 2542 (1999)
4. Animal Feed Control Act BE 2525 (1972) amended BE 2542 (1999)
5. Hazardous Substance Act BE 2535 (1992)
6. Fertilizer Act BE 2518 (1975)
7. Plant Variety Act BE 2518 (1975) amended BE 2525 (1992)

7. The ACFS is designated as a secretariat of the National Committee working in coordination with policy divisions and law enforcement of the various agencies relating to SPS matters, as well as the operation of the National Notification Authority and Enquiry Point.

## **2. Operation of Notification Authority and Enquiry Point**

8. The function of Thailand's Notification Authority and Enquiry Point are as follows:

- (a) notify to WTO proposed SPS/TBT measures relating to agricultural and food standards once issued by relevant authorities of Thailand.
- (b) contact relevant authorities in order to reply to queries from other countries, including replying to Members who provide comments.
- (c) monitor notifications through the WTO website on a daily basis and preliminarily evaluate if the measures notified affect Thailand and, if so, forward such notifications to stakeholders within the country for further comments.
- (d) contact enquiry points of other countries for full texts and relevant documents if requested by domestic stakeholders and submit Thailand's comments on such notifications.
- (e) set up an inventory of texts and related information of notified SPS/TBT measures for further reference.
- (f) provide all other correspondence both inside and outside the country.

9. In order to carry out all above functions more effectively, ACFS has assigned both scientific and technical staff to supervise and operate related functions under the focal points and has also installed a communication system, i.e. telephone, facsimile, and computerized systems at the focal unit.

10. This infrastructure contributes to a more efficient daily operation of the focal unit; the computerized system can link up with sources of information from all over the world, most importantly, information available on the WTO website as well as the WTO Members' website.

### **Difficulties**

11. The difficulties that Thailand has experienced so far in implementing the transparency provisions can be identified as follows:

#### **1. Participation in the Notification Process of WTO Members**

12. Since Thailand is a major exporting country of agricultural and food products, we have to monitor and review all notified SPS measures from WTO Members. It is, therefore very important for us to indicate if the notified measures will negatively affect our trade and to submit our comments accordingly. We strongly believe this is also a major concern of other exporting developing countries. But we are constrained to participate in the notification process. There are two possible factors inhibiting such participation :

- (i) **Short Comment Period** - 60 days is the recommended period for submitting any comments. It is often difficult for countries affected by measures to comment, in particular developing countries, due to:
  - (a) the actual comment period is often less than 60 days.
  - (b) the large number of notifications being circulated each day/week which require different levels of expertise in reviewing both the justification of the measures, as well as the negative effect on export products. Developing countries can hardly afford such diverse expertise.
- (ii) **Limitation of Scientific Information** - Thailand would like to focus on SPS measures imposed by Members which provide a higher level of protection than would be achieved by international standards, or where an international standard does not exist.

Based on our experience, the scientific information provided to support these measures is very limited and, in some cases, both the scientific and technical clarification from countries is also limited. It is, therefore, burdensome for Thailand to provide comments in a very short period of time, as compared to the long period required to complete a scientific risk assessment.

## **2. Capacity to establish Appropriate Level of SPS Protection**

13. Thailand, like other developing countries, is very much dependent on international standards, guidelines and recommendations as references to establishing its own SPS protection. It is also aware that the development of international standards is moving at a very slow pace as compared to the growing trade volume, as well as related food safety concerns. In particular, risk assessment and risk management are not adequately established by international standards bodies to help capacity building of developing countries so as to establish an appropriate level of SPS protection.

### **Recommendations**

14. SPS measures, by their nature, may result in restriction on trade. All Members accept the fact that some trade restriction may be necessary to ensure SPS protection. But SPS restrictions which are not actually required for health reasons can be a very effective protectionist device and, because of their technical complexity, a particularly deceptive and difficult barrier to challenge. In this regard, Thailand is of the view that building up comparative advantage of both importing and exporting countries could minimize the negative effect on trade, in particular, the effective implementation of transparency provisions under SPS Agreement. Therefore, Thailand would like to provide the appropriate recommendation as follows:

#### **1. Domestic Area**

- Establish a communication system within the focal point and the country network, in particular, a computerized system which would encourage more effective participation of developing Members in the notification process.
- Encourage networking among stakeholders as well as building their awareness for their greater contribution in providing scientific evidence and assessing the impact on trade caused by the notified measures.
- Encourage and support more scientific works by the government in the areas of food safety, animals and plant health to strengthen the capacity to establish appropriate level of SPS protection based on scientific justification.

#### **2. International Cooperation**

- Capacity building on risk assessment is urgently needed by developing countries. This could be provided as technical assistance from developed Members or from the international standard setting agencies, i.e. Codex, OIE, and IPPC.
  - Continued support to developing Members on scientific research by developed Members in the areas of food safety, animal and plant health should be deemed a priority in terms of both relevant expertise required and available funding.
  - If risk assessment is to be involved in any proposed measures which are likely to affect developing countries, it should be identified and notified at an early stage of the risk assessment process so to encourage the developing countries' participation in providing comments.
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