



United Nations
Economic and Social Commission for Western Asia
(ESCWA)

Agricultural Research Center
Egypt

EXPERT GROUP MEETING
 ON THE HARMONIZATION OF NORMS,
 REGULATIONS
 AND LEGAL INSTRUMENTS FOR SELECTED
 AGRICULTURAL INPUTS
 WITH A VIEW TO REGIONAL COOPERATION
 Cairo, 18-20 February 2001

Distr.
 LIMITED
 E/ESCWA/AGR/2001/WG.1/16
 15 February 2001
 ORIGINAL: ENGLISH

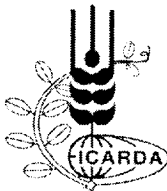
EX-ESCWA/AGR/2001/WG.1/16
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**DEVELOPMENT OF A MODEL FOR HARMONIZATION OF
 PHYTOSANITARY LEGISLATION FOR ESCWA REGION**

by

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01-0198

Development of a Model for Harmonization of Phytosanitary Legislation for ESCWA Region

Introduction

International Treaties such as the World Trade Organization Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the International Plant Protection (IPPC) have introduced disciplines and rules that have fundamentally changed procedures in international trade. They emphasize very important principles such as cooperation, non-discrimination, transparency, and the necessity of regulatory decision making to be based on science and technically justifiable.

These treaties recognize and promote harmonization of sanitary and phytosanitary measures through international standards, guidelines and recommendations developed designated international conventions.

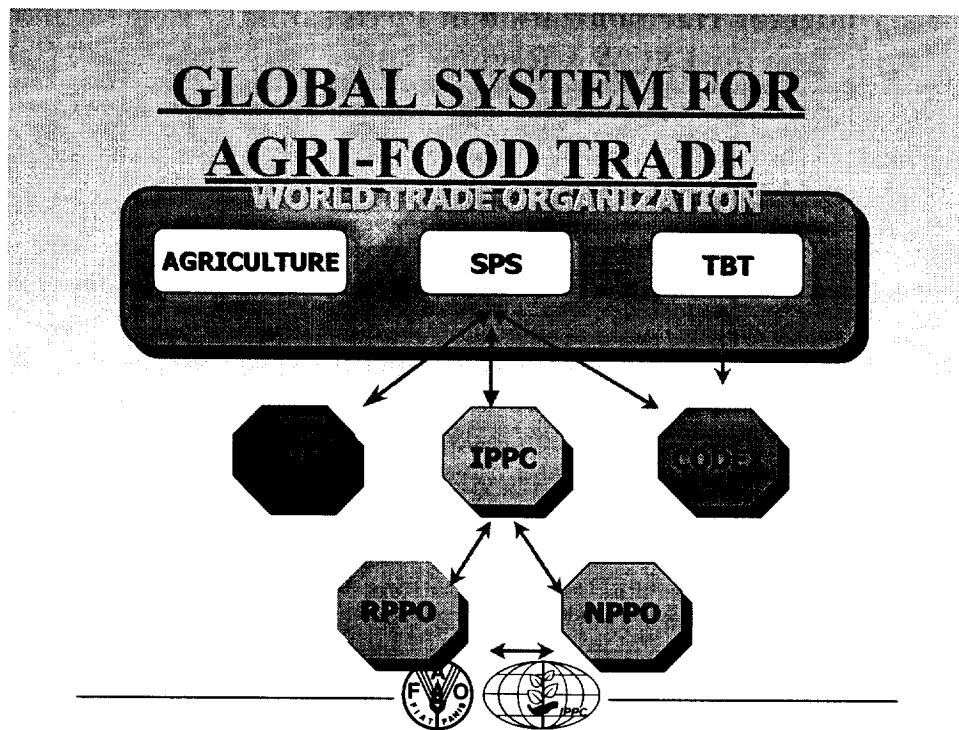
Member countries require adjustments in their legislation, management structure, institutional capacities and infrastructure for compliance with these treaties, in order to benefit from the provisions of trade liberation and avoid trade disputes. Member countries are urgently addressing their national inadequacies and making the necessary adjustments to their sanitary and phytosanitary systems.

The establishment of harmonized procedures and measures within regional groupings such as ESCWA is strategic, and lays the foundation for consistent, effective regulatory action and establishing less restrictive measures towards trade in agricultural commodities. Important quality, regulatory and technical issues need to be addressed in advancing the harmonization process with regard to establishing norms and standards for agricultural inputs/products.

This paper presents an overview of the contemporary trading environment in order to establish the background and rationale for harmonization of sanitary and phytosanitary measures. It explores in some detail important considerations for the development of a model for harmonization of phytosanitary legislation. These considerations should be relevant to other areas that this meeting will consider.

Background

The Uruguay Round Negotiations of 1994 was the first to consider issues regarding agricultural trade. One of the outcomes of these negotiations is the Agreement on Sanitary and Phytosanitary Measures –the SPS Agreement, which complimented the 1979 Agreement on Technical Barriers to Trade (TBT), and the World Trade Organization was formalised to oversee the implementation of these two legally binding international treaties.



Three international organizations were recognized and named by the WTO as the international standard setting bodies for Sanitary and Phytosanitary Measures:

1. Codex Alimentarius Commission: This Commission was given the responsibility for setting standards, guidelines and recommendations for Food Safety and it addressed areas that include:
 - food additives
 - veterinary drugs and pesticide residues
 - contaminants
 - methods of analysis and sampling
 - codes of hygiene practices

2. International Office of Epizootics: Responsible for setting standards, guidelines and recommendations for Animal Health. This organization
 - informs Governments of occurrence and control of animal diseases world wide
 - coordinates studies on surveillance and control of animal diseases
 - facilitates trade in animals and animal products.

3. International Plant Protection Convention (IPPC)- responsible for setting standards, guidelines and recommendations in phytosanitary measures. It is
 - a multilateral treaty for international cooperation in plant protection
 - global instrument for harmonization of phytosanitary measures

The relationship of the IPPC to the SPS Agreement is created by reference in the SPS Agreement, to the IPPC as the international organization responsible for standard setting and harmonization of phytosanitary measures affecting international trade. Both agreements are distinct in their scope, purpose and membership. Neither agreement is covered by the other. Instead, they are complementary in the areas where their objectives overlap. The SPS Agreement makes provision for plant protection in a trade agreement, while the IPPC makes complementary provision for trade in a plant protection agreement.

The Agreement on the Application of Sanitary and Phytosanitary Measures requires that WTO Members base their phytosanitary measures on international standards. In this regard, the international standards, guidelines and recommendations of the IPPC, CAC and OIE apply.

These international treaties emphasise the need for harmonization of /measures/procedures through international standards established by these organizations. They require both national and regional responses to advance the harmonization process. They require adjustments in legislation, administrative structure and management authority, institutional capacities, human resources, among other things, for compliance.

Principles of Plant Quarantine as Related to International Trade

The SPS Agreement has as its core several important principles. These same principles are reflected in the New Revised Text of the IPPC and the International Standards for Phytosanitary Measures (ISPMs). These principles provide the foundation for the elaboration of the standards, guidelines and recommendations noted in the SPS Agreement as the basis for the international harmonization of phytosanitary measures.

ISPM no.1 -The principles of plant quarantine as related to international trade, provides a concise summary of the principles found in both the SPS Agreement and the IPPC. These are given as follows:

GENERAL PRINCIPLES

1. Sovereignty

With the aim of preventing the introduction of quarantine pests into their territories, it is recognized that countries may exercise the sovereign right to utilize phytosanitary measures to regulate the entry of plants and plant products and other materials capable of harbouring plant pests.

2. Necessity

Countries shall institute restrictive measures only where such measures are made necessary by phytosanitary considerations, to prevent the introduction of quarantine pests.

3. Minimal impact

Phytosanitary measures shall be consistent with the pest risk involved, and shall represent the least restrictive measures available which result in the minimum impediment to the international movement of people, commodities and conveyances.

4. Modification

As conditions change, and as new facts become available, phytosanitary measures shall be modified promptly, either by inclusion of prohibitions, restrictions or requirements necessary for their success, or by removal of those found to be unnecessary.

5. Transparency

Countries shall publish and disseminate phytosanitary prohibitions, restrictions and requirements and, on request, make available the rationale for such measures.

6. Harmonization

Phytosanitary measures shall be based, whenever possible, on international standards, guidelines and recommendations, developed within the framework of the IPPC.

7. Equivalence

Countries shall recognize as being equivalent those phytosanitary measures that are not identical but which have the same effect.

8. Dispute settlement

It is preferable that any dispute between two countries regarding phytosanitary measures be resolved at a technical bilateral level. If such a solution cannot be achieved within a reasonable period of time, further action may be undertaken by means of a multilateral settlement system.

SPECIFIC PRINCIPLES

9. Cooperation

Countries shall cooperate to prevent the spread and introduction of quarantine pests, and to promote measures for their official control.

10. Technical authority

Countries shall provide an official Plant Protection Organization.

11. Risk analysis

To determine which pests are quarantine pests and the strength of the measures to be taken against them, countries shall use pest risk analysis methods based on biological and economic evidence and, wherever possible, follow procedures developed within the framework of the IPPC.

12. Managed risk

Because some risk of the introduction of a quarantine pest always exists, countries shall agree to a policy of risk management when formulating phytosanitary measures.

13. Pest free areas

Countries shall recognize the status of areas in which a specific pest does not occur. On request, the countries in whose territories the pest free areas lie shall demonstrate this status based, where available, on procedures developed within the framework of the IPPC.

14. Emergency action

Countries may, in the face of a new and/or unexpected phytosanitary situation, take immediate emergency measures on the basis of a preliminary pest risk analysis. Such emergency measures shall be temporary in their application, and their validity will be subjected to a detailed pest risk analysis as soon as possible.

15. Notification of non-compliance

Importing countries shall promptly inform exporting countries of any non-compliance with phytosanitary prohibitions, restrictions or requirements.

16. Non-discrimination

Phytosanitary measures shall be applied without discrimination between countries of the same phytosanitary status, if such countries can demonstrate that they apply identical or equivalent phytosanitary measures in pest management. In the case of a quarantine pest within a country, measures shall be applied without discrimination between domestic and imported consignments.

The IPPC has already published 10 international standards towards advancing the process of harmonization of phytosanitary measures. These are listed as follows:

1. Principles of Plant Quarantine as related to International Trade
2. Guidelines for Pest Risk Analysis
3. Code of Conduct for the Import and Release of Exotic Biological Control Agents
4. Requirements for the Establishment of Pest Free Areas
5. Glossary of Phytosanitary Terms
6. Guidelines for Surveillance
7. Export Certification (Import Regulatory Structure in draft)
8. Determination of Pest Status in an Area
9. Guidelines for Pest Eradication Programmes
10. Requirements for the Establishment of Pest free Places of Production and Pest Free Production Sites

Many other standards are in various stages of development based on priorities of Contracting Parties. These include:

1. Pest Risk Analysis for Quarantine Pests
2. Guidelines for Phytosanitary Certificates
3. Guidelines for an Import Regulatory System

4. General Guidelines and Specific Requirements for Regulated Non-quarantine Pests
5. Guidelines for the Notification of Non-compliance
6. Guidelines for the Preparation of Regulated Pest Lists
7. Guidelines for Regulating Non-manufactured Wood packing in use for the Transport of Commodities

Phytosanitary Legislation

The development of a model for harmonization of phytosanitary measures must necessarily have as its focus trade facilitation and regional cooperation to prevent the introduction and spread of pests and to promote measures for their effective control. In this regard, the international standards of the IPPC give useful guidance.

Phytosanitary Legislation (laws, acts, regulations etc) provides the basis for establishing legal frameworks regarding phytosanitary measures.

Focus of Phytosanitary Legislation

- provides protection of local plant resources by setting conditions that limit/minimize the risk of introduction and spread of exotic pests;
- facilitates production and diversification through safe introduction of planting material/germplasm;
- provides a basis for transparency among trading partners;
- guides the establishment of import and export regulatory structures;
- provides a basis of bilateral and multilateral understanding, cooperation as well as compliance with national requirements.

National phytosanitary legislation

- supports the principle of sovereignty- the right of an NPPO to utilize phytosanitary measures to regulate the entry of plants, plant products and other materials capable of harbouring pests;
- operates within the confines of national/political boundaries;
- may encourage over-regulation in context of regional phytosanitary/trade realities
- requires national resources to enforce legislation

Harmonization of phytosanitary legislation within ESCWA region should:

- be consistent with the SPS Agreement and the IPPC.
- promote the principle of cooperation among ESCWA member countries and foster wider international cooperation
- encourage resource sharing for effective phytosanitary control
- widen the boundaries of the endangered area in the case of regional groupings
- provide for consistency in approach in order to protect the region from exotic pest introduction
- strengthen the pest exclusion capabilities of member countries

- facilitate safe movement of produce within the region
- minimize the risk of phytosanitary measures being used as trade barriers
- strengthen the phytosanitary/technical responses against external threats
- reduce the risk of trade disputes
- supports economic alliances in terms of market integration and policy convergence

Concerns to be addressed in the harmonization of phytosanitary legislation

The process of harmonization of phytosanitary legislation among ESCWA countries must take into account the current status and scope of the various national phytosanitary legislation, and the provisions for the conduct of the range of phytosanitary measures and activities as required in the New Revised Text of the IPPC.

- Is there a National Plant Protection Organization mandated by National Legislation for each of the ESCWA Countries
- What is the current status of phytosanitary legislation
- Does the legislation comply with the requirements of the New Revised Text of the IPPC
- Is the basic law comprehensive enough to allow for flexibility in the regulations in view of the New Revised Text of the IPPC
- Is the NPPO responsible for such activities as
 - surveillance for plant pests on growing plants
 - issuing of phytosanitary certificates to comply with the importing country requirements
 - inspection of consignments of plants and plant products and other regulated articles
 - disinfestation of consignments regulated articles to meet phytosanitary requirements
 - research
 - maintenance of pest free areas
 - pest risk analysis
 - training and staff development
- Is there consistency in terminology based on the *Glossary of Phytosanitary Terms*
- Are key terms adequately identified and defined
- Does it provide for an appropriate management authority in which responsibilities are well designated
- Are phytosanitary overly restrictive or are they scientifically justified
- Are procedures scientifically, technically sound and consistent with the ISPMs
- Does it support phytosanitary measures based on pest risk analysis and pest surveillance
- Are regulated pests identified and included in schedules
- Does it allow for compliance with reporting obligations

Harmonization Initiatives in the Region: Issues to be addressed

The attempts by the Arab Gulf Cooperation Council States to update and harmonize their legislation for greater consistency with the IPPC and the SPS Agreement are a very progressive step. This process apparently seeks to harmonize measures to the extent where single phytosanitary legislation will replace the different national legislation. The draft law was reviewed by FAO, and arrangements are now being made for a mission of a legal and phytosanitary consultants from FAO to discuss and finalize the draft legislation.

The process has been hindered in the past by, among other things, inadequate information on national and regional legislative frameworks and conditions in which the draft legislation would function, inconsistencies with the IPPC, and the limited scope of the legislation.

This current initiative taken by the ESCWA countries broadens the scope for regional harmonization but in any event, the requirements remain the same and should take into account national, regional and international obligations and requirements.

The initiative emphasizes the vital role of the countries of the region in international trade. It also indicates the willingness of the member countries to capitalize on the provisions and benefits of the international treaties with regards to international trade in agricultural commodities.

Certainly, the harmonization of the legal frameworks in support of phytosanitary measures is critical. The same is true for the specific areas which this meeting will address, that is, the harmonization of norms, standards and legal instruments for selected agricultural inputs especially pesticides, fertilizers animal feed and veterinary drugs in the Arab region with a view to strengthen regional cooperation. This should provide a good basis for addressing phytosanitary as well as quality issues regarding agricultural trade, environmental and human health based on international standards, guidelines and recommendations.

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