

**Proceedings of the Training Programme
on Economic Diplomacy**

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CUTS International

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Introduction

The second edition of the Training Programme on Economic Diplomacy for middle/entry level officials was organised by CUTS International in Jaipur during November 24-26 2014. With support from the Department of Commerce, Ministry of Commerce and Industry, Government of India through the Centre for WTO Studies these programmes seek to fill the lack of an institutional base that exists in economic diplomacy.

The programme brought experts and resource persons together to explore and deliberate various aspects of economic diplomacy with a special focus on the Sanitary and Phytosanitary (SPS) Agreement of the WTO. Over the three-day period, participants were able to sharpen their skills on economic diplomacy through lectures, simulation exercises and group discussions. Towards the end of the programme, participants acknowledged that the learning they obtained from the programme was extremely valuable. Based on the feedback received from them and resource persons, the programme was successful in terms of:

- quality of participation;
- resource persons;
- resource material; and
- administrative and logistical arrangements.

Objectives

The objectives of the programme were to:

- train middle/entry level officials government officials on economic diplomacy;
- aid in facilitating coherence between India's domestic economic policies, on the one hand, and its present international commitments and future economic opportunities, on the other; and
- develop and strengthen the capacity of relevant government officials on economic diplomacy (particularly in relation to the SPS Agreement) relating to bilateral, regional and multilateral negotiations.

Scope

The programme covered the following areas related to economic diplomacy and the SPS Agreement:

- **An Introduction to Economic Diplomacy:** This section covered topics including: commercial diplomacy as a subset of economic diplomacy; the evolution of economic diplomacy; and the importance of economic diplomacy in standards compliance.
- **Understanding the WTO Agreement on the Application of SPS Measures:** This included: an introduction to the WTO SPS Agreement; differences between SPS and Technical Barriers to Trade (TBT) measures; the WTO SPS Committee, the 'Three Sister' organisations; notifications to the WTO SPS Committee; the role of developing countries in standard-setting; and 'protection vs protectionism.'
- **India's Implementation Concerns of the WTO SPS Agreement and Emerging issues on SPS Matters in India:** This covered India's specific trade concerns on SPS issues at the WTO; special and differential treatments; transparency requirements;

scientific justification; scientific risk assessment; equivalence; mutual recognition arrangements; SPS notification authorities; national enquiry points; information management system; dispute settlement; technical assistance and capacity-building measures; steps taken by other developing countries and sector-specific SPS barriers faced by India and how they are addressed; other emerging SPS-related issues in India; expected impact of mega-regional trading agreements (such as Trans-Pacific and Trans-Atlantic) on SPS standards, India's market access and possible counter-measures.

- **Operations of Private/Voluntary Sustainability Standards in India and the Role of United Nations Forum on Sustainability Standards:** This covered the history of private standards and the current understanding on private/voluntary sustainability standards, particularly those related to SPS measures; their impact on India's trade; challenges and opportunities regarding the operations of private/voluntary sustainability standards in India.

Group discussions were held on the use of the SPS Agreement as a protectionist measure; the implications of multiple standards; the classification of products made in India; the role of customs; and the importance of inter-agency coordination.

Participants

The programme was attended by 14 officials from the Ministry of Food Processing Industries, Agricultural and Processed Food Products Export Development Authority (APEDA), the Indian Council of Medical Research, the Food and Safety Standards Authority of India, the Marine Products Export Development Authority, the Bureau of Indian Standards, Export Inspection Agency, the Export Inspection Council of India, and the Coconut Development Board and Quality Council of India.

These officials have been handling work related to promotion of trade and investment and negotiations on various bilateral, regional and multilateral issues in their respective territorial divisions. The list of participants is attached herewith as Annexure 1.

Resource Persons

Resource persons comprised of an eminent group of experts and practitioners in the field of economic diplomacy and SPS standards.

- T.S. Vishwanath, Principal Advisor (Trade Policy), APJ-SLG Law Offices
- Murali Kallumal, Associate Professor, Centre for WTO Studies, Indian Institute of Foreign Trade
- Arpit Bhutani, Observer, United Nations Forum on Sustainability Standards in India
- Bipul Chatterjee, Deputy Executive Director CUTS and Faculty in Diplo Foundation programme on Economic Diplomacy

Day One

Opening and Introduction

The training programme commenced with a warm welcome by **Pradeep S Mehta**, Secretary General, CUTS International to all the participants. In his address, he articulated the importance of economic diplomacy, particularly for developing countries such as India. He pointed out that the core problem regarding negotiations on SPS issues is the growing number of multiple regulatory standards. With the advent of mega regionals, especially the on-going discussions on Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), which are likely to have higher standards for products, it is important for Indian representatives to increase their capacity to negotiate well in order to tackle the challenges that higher standards will pose for the Indian industry.

Mehta highlighted issues, such as information asymmetry between industry associations and the government; poor feedback from industries on the impact of free trade agreements; lack of continuity with negotiators; and harmonisation and equivalence were some of the hurdles that hamper economic negotiations on India's behalf.

He concluded by wishing participants an enriching training session and appealed to them to gain as much as they could from the programme.

This was followed by a brief round of introductions and expectations of participants and an introduction of all the resource persons.

Introduction to Economic Diplomacy

Bipul Chatterjee, Deputy Executive Director CUTS and Faculty in Diplo Foundation programme on Economic Diplomacy

Bipul Chatterjee's session covered issues related to economic diplomacy. He noted that economic diplomacy can be divided into three elements, notably: trade promotion, investment promotion and negotiations. He further stated that commercial diplomacy specifically is a subset of economic diplomacy and comprises of technology, aid management, tourism and investment.

He highlighted that specific to SPS measures, economic diplomacy held significance as it was important that negotiators were sufficiently equipped with: the technical skills to take a stand in negotiations; the ability to understand India's ability to improve domestic standards and make them compatible with international standards; the ability to ensure effective participation in standard making bodies like Codex; the ability to make sure India increasingly becomes a standard makers versus a standard taker; and the ability to identify whether sudden changes in SPS were genuine or protectionist measures amongst others.

Given the diversity of the participants in the programme, they were each able to express different views regarding their experience with a number of related issues including: domestic standard-setting, quality control-related issues, marketing concerns, private standards, Mutual Recognition Agreements, inter-agency coordination, process-related standards, and free trade agreement negotiations.

Five important points emerged from the conversations:

- While often the various departments that are involved in economic diplomacy are faulted for a lack of interagency coordination, participants noted that of more importance was the need to emphasise the mandates of each agency to reduce the duplication of efforts.
- Regarding the grievance redressal mechanisms, the discussion of export promotion councils as an external enforcer was discussed to address issues related not only to standards but their interpretation. It was noted that such an authority should not be involved in standard-setting to ensure that the adjudicating agency is neutral. It was also discussed that in order to improve this process, perhaps a proposal should be made to the SPS Committee that Members begin to make notifications based on HS codes however this could be difficult.
- The role of customs agencies was also discussed and it was noted that customs officers should be equipped to understand the documents they receive and not be involved in the testing of products themselves. It was agreed that there is a need to sensitise customs officials regarding SPS issues and their role in enforcing them so that they do not overlap with the role of other agencies, such as the Food Safety and Standards Authority of India (FSSAI).
- There was also discussion on the need for the government to begin to focus on global geopolitics. It was raised that given that most government offices are involved in trade one way the other, all concerned ministries should have trade divisions and that in order to improve the functioning of trade policy, it was imperative that state governments be involved in policy formulation.

Chatterjee concluded the session by noting that all relevant agencies need to work together on common issues to help the Department of Commerce in future negotiations on standards.

Understanding the WTO Agreement on the Application of SPS Measures

T S Vishwanath, Principal Advisor (Trade Policy), APJ-SLG Law Offices

T S Vishwanath provided an industry perspective of the workings of the SPS Agreement in India given his extensive experience both with the government and various industries on issues related to SPS notifications in the WTO. He emphasised the need for a policy framework to deal with SPS issues as India's non-participation in these issues could work against India's international trade interests. He noted however that India has started to raise issue in the SPS Committee however questioned the role that all institutions were playing in feeding into India's overall agenda in the Committee.

He noted that SPS issues in India were increasingly being characterised by three problems:

1. SPS measures are gradually becoming market access-related rather than solely concerned with the food safety and animal and plant health. He referred to a recent situation where the import of India's Alphonso mangoes was pitted against the opening of India's market to the US's Harley Davidsons.
2. While India is a country with standards it has very little to no enforcement. This is the case with other developing countries as well.
3. The gap between developed and developing countries is increasing as SPS measures seem to be headed towards the gold standards being negotiated in the mega-regional agreements.

He raised several important questions:

- When India questions a country on an SPS notification, should export be the sole focus or should the domestic conditions in India also be looked at?
- Why has India not come up with a more substantial number of SPS notifications?

He noted that, in his opinion, industries in India do not have much information on how to deal with SPS-related concerns; even provisional measures are looked at as NTBs by them. There is a need to develop a clear strategy on educating the industries sector and on how to use the SPS Agreement and its standards to their benefit. He said that the issue of harmonisation has to be addressed immediately to avoid confusion over product categories. Government agencies need to take a proactive approach to gaining inputs from industries and India needs more effective participation at the SPS committee.

He then described in detail the issues with notifications that countries make to the WTO. Many times notifications say that they are in line with particular norms, but upon further scrutiny it is found that they are more stringent than the standards as laid out by the Three Sister organisations. He also noted problems with interpretation as some notifications are given in the national language of the notifying country. He highlighted that in developed countries, most notifications tend to be industry-led and in developing countries such notifications are government-driven. Such standards, because they are industry driven, are therefore much more dynamic due to the fact that industries are more organised in developing countries, hurting market access opportunities for Indian firms.

In the EU regulations are made and then individual countries are given a chance to adopt. Individual countries themselves at times do not notify the WTO of certain requirements, and as separate countries they may have a different standard, which at times leads to exports being rejected.

He noted that in addressing SPS measures in India, three important questions needed to be raised:

- Is there scientific justification for the issues that has been raised?
- Can India seek a Mutual Recognition Agreement?
- Is the measure more trade restrictive than necessary?

Brief discussions then took place on the following issues:

- What is the best way forward in light of the growing number of FTAs - Should India be focussed on standard setting or their adoption?
- What is the role of industry in setting some of those standards?
- What is India's preparedness regarding the inevitable harmonisation of standards given that the world today is driven by regional or global value chains?

He explained that although strictly speaking, SPS measures are about protection of human, plant and animal health and should not be a part of economic diplomacy and negotiations, the reality is that it tends to be a *quid pro quo* exercise in order to achieve various policy objectives. He recommended that reciprocity is an issue within SPS that needs more work from an economic diplomacy perspective. He also underlined the need for coordination to respond to other market requirements and economic intelligence as well as the need to sensitise SMEs to these issues as well.

Day Two

The day started with **Archana Jatkari**, Coordinator, CUTS CITEE, welcoming everyone. A brief summary of the sessions the previous day was given by **Chenai Mukumba**, Assistant Policy Analyst, CUTS CITEE. Participants were then divided into two groups and requested to make presentations on the usefulness of the previous day's sessions so also if the sessions were useful in their work.

India's Implementation Concerns of the WTO SPS Agreement

Dr. Murali Kallumal, Associate Professor, Centre for WTO Studies, Indian Institute of Foreign Trade

Dr. Kallumal began his presentation with an explanation of non-tariff barriers (NTBs) highlighting that over the years, the relevance of tariffs has declined therefore non-tariff measures (NTMs) are beginning to play a more important role in trade; he then explained that SPS- and TBT-related issues which fall under technical NTMs are only one of the 14 different types of NTMs as listed by the Organisation for Economic Cooperation and Development (OECD). He then provided an overview of countries with the most number of notifications under the SPS agreement *vis-à-vis* India and noted that India has increasingly started to become a top player in NTMs.

His presentation touched on the lacklustre impact that the Uruguay Round has had on developing countries noting that the global economy has seen a decline in food trade over the years. He shed light on the importance of adhering to global standards in today's economy and cited the 2008 food safety incident of melamine in Chinese dairy products explaining that often, cases such as these lead to heavy economic losses, a loss of confidence between trading partners and consumers and trade bans.

Kallumal went on to explain the key provisions of the SPS Agreement, namely: non-discrimination, scientific justification, equivalence, regionalisation, transparency, technical assistance/special treatment and control, inspection and approval procedures. He said that countries have to be careful to ensure that they meet Codex standards and that their harmonisation should be a priority for countries like India. He also explained the process of notification under the agreement and expressed the need to streamline the national enquiry points responsible for responding to SPS-related queries in India.

The session also covered the process that ought to be followed in situations of export refusals based on SPS measures. He highlighted the stages of dispute for issues under the SPS Agreement and gave an overview of the dispute settlement system under the WTO. He also discussed Mutual Recognition Agreements (MRAs) as a tool for overcoming SPS barriers. Kallumal noted that MRAs can be in existence as long as they do not become a means of discrimination and exclusion. Participants were then taught to use the SPS-IMS effectively.

The session concluded with a presentation on systemic issues related to the SPS Agreement. These included matters, such as several notifications from the same country, on the same day about the same product. Kallumal also noted that sometimes notifications are not in not in English which at times makes it difficult to react accordingly if the notifier does not provide a translation.

Additionally, often times the notifying countries give a very broad based category of product coverage without the accompanying HS codes (or sometimes incorrect HS codes) and as such this leads to difficulty in responding to notifications.

Emerging issues on SPS Matters in India

Murali Kallumal, Associate Professor, Centre for WTO Studies, Indian Institute of Foreign Trade

Kallumal began with an explanation of the importance of standards and regulations in today's economy. He stated that standards impact exports by increasing the compliance cost of production. There has been a shift in policy from tariff-based protection to non-tariff based production and the US and the European Union are the highest users of these instruments as a measure of trade policy. This was followed by an in depth analysis of the fall in tariffs imposed by countries, the rise in the number WTO compliant NTMs generally, and the phenomenal increase in the number of SPS and TBT notifications to the WTO. He then discussed the inter play between tariff and NTMs and this by a discussion on the role of non-*ad valorem* (NAV) duties. He then gave practical examples of the classification of NTMs into SPS and TBT measures.

Regarding the use of SPS measures as protectionist measures, Kallumal opined that the present scenario is such that a decrease in simple ad valorem tariff rates is being corroborated by an increased use of NTMs. He said that NTMs, tariffs and NAV duties as well as subsidies are increasingly influencing price and ultimately functioning as trade distortion tools.

He then turned to a discussion of the agencies involved in the formulation of trade policy in India. The participants discussed the role of various agencies in India in trade policy formulation and the reasons for the lack of participation of state level and district level bodies. Some of the participants were of the view that even Central agencies, at times, were not directly involved in such deliberations and had no idea if the feedback given on specific trade policies was considered in policy formulation at the Central level.

Regarding the states' participation in the preparation of NTMs, Kallumal stated that in addition to protecting their own domestic citizens, sometimes states seek to make use of NTMs in order to protect their livelihood, generate employment and investment, and set standards in industrial processing. He then gave a distinction between the roles of Central agencies, state governments and stakeholders in the formulation of TBT and SPS regulations.

The session then focused on case studies of products refused by the EU and US and their impact on emerging markets. In the EU, India has the highest number of agricultural product refusals in South Asia, particularly in the nuts, nut products and seeds category.

In the US, India has the highest number of refusals of total imports amongst the BRICS (Brazil, India, Russia, China and South Africa) countries. It was noted that Maharashtra has had the highest number of consignment-wise refusals to the US between 2002 and June 2014 and that human and animal drugs constituted the largest number of these during this period. He then turned the discussion to the role of US federalism in SPS measures and also spent some time on the precautionary principle and its criticisms.

He concluded the session by highlighting that with the growing interdependence between countries, effective international cooperation on NTMs is a key priority however, over the last couple of years, NTMs have increasingly been used for the attainment of broad policy objectives and this will likely become a key challenge in the future.

Simulation Exercise

Upon the request of participants, Kallumal conducted a final session on how to use the international trade mapping software, World Integrated Trade Solutions (WITS) and the SPS notification database of the Centre of WTO Studies. There was a detailed discussion on how to use these databases, Kallumal carried out a live demonstration from website by doing the exercising which enabled the participants to use these software practically. Further, Jatkar drew attention of participants' a website called the Global Trade Alert which provides real time information on measures taken by countries which affect trade between the countries. Participants found this hand on exercise very useful and appreciated the learning therein.

Day Three

The day started with **Archana Jatkar**, Coordinator, CUTS CITEE, welcoming everyone. A brief summary of the sessions the previous day was given by the participants who were divided into two groups. They made presentations on the usefulness of the previous day's sessions so also if the sessions were useful in their work.

Operations of Private/Voluntary Sustainability Standards in India

Arpit Bhutani, Observer, United Nations Forum on Sustainability Standards in India

Arpit Bhutani began with an explanation of the concept of Voluntary Sustainability Standards (VSS) as private standards in WTO. These include Programme Portfolio Management (PPMs) of products and services related to environmental, social, economic and animal welfare issues. He then said that while legally these standards are voluntary, they can de facto become mandatory through market power of VSS-applying companies or as supply chain management tools. They are mostly present in food, textiles, building and forest products.

Bhutani highlighted the importance of VSS as they have increasingly become tools for market entry and sustainable development. However, they are also becoming a serious market entry hurdle for small scale producers. He provided data on VSS-compliant production and showed the rapid growth of VSS particularly in agricultural markets for products such as bananas, cocoa, coffee and cotton. The growth in private food standards include food safety concerns due to the lack of confidence in regulatory agencies, consumers awareness, the dominance of few players at the global level, social and environmental concerns and corporate social responsibility.

This was followed by a discussion on how regulations and private standards interact. Bhutani noted that the SPS Committee recognises Codex Alimentarius as the international reference for food safety standards, which highlights that they are accepted as a bench mark. VSS however go beyond that to ensure sustainability over and above the justified, scientific regulations in trade.

He then raised some questions regarding whether the WTO SPS Committee is the appropriate forum for substantive discussions on SPS-related private standards. Up until March 2014, there has still been no consensus on a definition of SPS-related private standards. This led to another interesting question about whether private standards come within the ambit of the SPS agreement at all. To understand this, he went over the provisions of the SPS Agreement which does not limit the application of the Agreement to government standards. Responsibility and obligations under the Agreement however, rests with the WTO Members, therefore certain Members have argued that governments of importing countries are responsible for standards by their private sector.

In Bhutani's opinion, some of the challenges of VSS include: their multiplicity and lack of interoperability, the stringency and complexity of multi-dimensional standards, the risk of being used as anticompetitive instruments, deviation from international standards, burden on SMEs and green washing. He said that VSS can be used for advancing sustainable production and consumption, promotion of competitiveness, and internalisation of environmental and social costs. They also ensure more inclusive governance across global supply chains and compliance with core ILO labour standards.

He also discussed the growing recognition of VSS in free trade agreements and mega regionals like TTIP, which may lead to even higher gold and platinum standards. It is, therefore, pertinent that countries like India come up with a suitable strategy to address them.

Case studies were then presented on:

- Indian Organic Standard under the National Programme on Organic Production (NPOP)
- Eco labelling
- Good Agricultural Practice (GAP) standards in Malaysia and Thailand

The Role of United Nations Forum on Sustainability Standards

Arpit Bhutani, Observer, United Nations Forum on Sustainability Standards in India

United Nations Forum on Sustainability Standards

Bhutani began with an overview of the United Nations Forum on Sustainability Standards (UNFSS) and spoke about the circumstances surrounding its establishment in March 2013. He then discussed the link between UNFSS and the WTO discussions in Geneva and noted that private (sustainability) standards have been discussed at great length in the WTO SPS Committee since 2006 however discussions have not been very fruitful as Members are yet to even agree on a definition of private (sustainability) standards.

Members have however agreed that the three international standard-setting organisations on SPS measures should monitor the role of private standards and draw the attention of the SPS Committee to any particular problem.

He noted that UNFSS was created to emphasise VSS as means to sustainable development and not as ends in themselves. He highlighted that UNFSS works to contextualise VSS into the macro-economic development perspective and not only in terms of the market access and supply-chain management agenda. VSS need to be recognised as a strategic policy issue and understood within overall life cycle of products and related services.

VSS are also of growing importance in South-South trade and represent a new meta-governance system for international supply chains, outside the WTO.

UNFSS plays a proactive surveillance, supportive and facilitating role in:

- Governance/standard setting
- Overcoming capacity gaps
- Devising flanking/supporting policies
- Assuring policy coherence
- Facilitating stakeholder dialogue

UNFSS comprises of a Steering Committee, Advisory Panel and members of the UNFSS. The cluster of UNFSS activities include informed policy dialogue on developmental and market-access impact of VSS; analytical and empirical work; and upon specific request from developing countries, assistance with specific analysis of VSS and implementation of UNFSS recommendations.

UNFSS has a three pillar approach which includes informed policy dialogue; working groups that look into impact assessment, interoperability and support to emerging standards initiatives; and national and regional level VSS platforms for facilitating continuous and an institutionalised dialogue process within stakeholders.

He concluded that there are arguments both for and against VSS however in many international markets VSS have become a reality and have long since graduated from niches. Therefore, there is a need to discuss and analyse VSS more systematically. In light of this, he stressed on the need for a national platform in India in order to put Indian standard setting at par with its developed counterparts.

UNFSS India National Platform on Voluntary Sustainability Standards

The existing VSS in India are: IndGAP, Fruit Product Order (FPO), Global Organic Textile Standard (GOTS) and Ecomark. A current flagship project is NPOP. APEDA in India has also set sustainability standards for agriculture products with a web-based traceability system to monitor products from farm to fork like Grapenet, Tracenet, Anarnet. This has made Indian exports more competitive and ready for market access.

A UNFSS National Platform in India would be demand-driven and steered by Indian policy makers and would serve as a communication channel between stakeholders. The UNFSS focal point in India will be to coordinate between UN Geneva (FAO, ITC, UNEP, UNIDO and UNCTAD) and Indian policymakers, public/private sector and industry.

The objectives of the platform are to:

1. foster regular dialogue on a regular basis within a core group of stakeholders;
2. assist Indian standard-setting organisations in arranging for training and developing effective VSS frameworks;
3. strengthen cooperation between relevant stakeholder groups to the benefit of more inclusive standards development; and
4. study specific success examples of VSS development and both use and supportive government action in India, such as the NPOP.

The outcome of the platform is expected to be:

- increased understanding of VSS in the Indian industry;
- a contribution to achieving specific sustainable developmental objectives, competitiveness and facilitating market access;
- assisting in the development of a roadmap for standards in India;
- raising industry awareness on private standards through platform by workshops;
- policy level guidance on new and emerging VSS India;
- analytical work on trade creating and inhibiting impact of VSS in terms of growth potential of sustainable export in South-North and South-South trade perspective;
- research policy studies on how VSS can contribute to trade promotion, sustainable development; and
- provision of assistance on building national capacity, both at the level of producer associations and for supportive/flanking policy measures.

Special emphasis will be placed on fostering participation of small and medium sized enterprises (SMEs) in the national platform and specific research topics could include: the use of VSS in Free Trade Agreements; how Indian entrepreneurs/farmers can use existing or new standards to meet sustainability performance requirements etc.

Simulation Exercise

At the end of the session participants undertook a simulation exercise to increase their understanding of the impact of VSS. They were divided into teams were asked to represent different interest groups, namely: importers, exporters, manufacturers, consumers, farmers and brands. The simulation exercise covered the topic of eco-labels in Indian Textiles & Clothing (T&C) sector. They deliberated on the topic depending on the group they represented and discussed on how ecolabels are operating from their perspective and what can be done to address those issues. Based on their perspective, participants then presented their recommendations. Other case studies that were discussed in this session included GAP. The participants applauded this exercise as this provided them with a flavour of negotiations/diplomacy as well as subject understanding and how to use the knowledge gained.

Closing and Evaluation

In the closing session, Jatkar thanked everyone for their participation in the programme. She emphasised that in the fast changing dynamics of international trade, SPS negotiations can be successful only when government officials are updated on the latest developments in the field.

The participants were then requested to provide their feedback and views on the programme and how to further improve it. Participants expressed that the training programme provided them with a better understanding and increased exposure to various SPS-related issues. They acknowledged the expertise of resource persons, noted the quality of resource materials as well as overall administration of the training programme.