

INDIA'S ECONOMIC DEVELOPMENT: MAINTAINING FOOD QUALITY STANDARDS

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The WTO, through its Sanitary and Phytosanitary (SPS) Agreement as well as its Technical Barriers to Trade (TBT) Agreement encourages member states to set up a framework of maintaining nutritional standards. It is pertinent to mention here that since these agreements do not specifically prescribe a particular standard, countries such as India have a particularly important role in developing stringent standards for products, particularly those in the domestic market. While the Indian food regulator, the FSSAI, has released regulations in an attempt to mirror global standards, a lot requires to be done. Currently, the guidelines issued by the FSSAI have allowed industries to function with minimum checks on their decisions. Such a stance goes against the very objective of labelling standards. Moreover, considering India's requirement of a healthy population for economic progress, stringent labelling requirements have to be implemented in a robust manner. This paper seeks to focus on specifically contentious issues such as the standards of labelling of nutritional information on packaged products as well as labelling of genetically modified food products. In this regard, this paper seeks to critique the regulation issued by the FSSAI in 2018 and further compares it with the positions of the European Union as well as China.

I. INTRODUCTION

Health and safety standards of citizens are of utmost importance to a State. Implementing and regulating food standards assures consumers, who are often unaware of such regulations, of the quality and authenticity of what they eat. It is for the availability of quality products that the State must implement certain guidelines. These guidelines that each country implements domestically, nevertheless need to conform with wider guidelines that are in place at the international level. In this regard, emphasis has to be laid on the World Trade Organization (WTO).¹ The WTO is the sole inter-governmental international organization assigned with the task of assisting producers of goods and services, exporters as well as importers around the world to beneficially conduct their

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¹ Marrakesh Agreement establishing the World Trade Organisation, 1867 U.N.T.S. 154

business in order to allow the global economy to achieve substantive economic development – especially with the realization that not all countries exist at the same level of economic development.

In order to formulate guidelines that allow Member States to create standards or regulations suiting their own requirements as well as acting within the scope of WTO guidelines, emphasis has to be laid on the Technical Barrier to Trade (TBT)² as well as the Sanitary and the Phytosanitary (SPS)³ Agreements. A common objective of both the SPS and the TBT Agreements is to grant Member States the liberty to create regulations and standards for the purposes of ensuring larger objectives of food safety and consumer protection, and at the same time, to ensure that such domestic regulations and standards do not lead to the creation of unjust barriers to trade.

The SPS Agreement sets out broad guidelines for food safety and also sets out requirements for animal and plant health. The Agreement attempts to assist governments of Member States to guarantee the safety of food for consumers and further to take steps to prevent the spread of diseases among plants and animals to eliminate the presence of toxins or disease causing organisms in food products or beverages.⁴ The Agreement covers all types of measures in order to meet the above stated purposes, whether the measures employed by the Member State are requirements for final products, processing requirements or even certification requirements related to food safety.⁵

In comparison to the SPS Agreement, the TBT Agreement has a much broader scope insofar as it concerns the trade of agricultural as well as industrial goods.⁶ It includes measures taken by governments to fulfill public policy objectives, through the application of technical regulations, by setting standards as well as by implementing conformity assessment procedures. The TBT Agreement thus attempts to regulate measures that may have serious international implications if proven to be unnecessary and arbitrary.

It becomes crucial to note that neither of the Agreements specify mandatory standards to be followed by the Member States, rather, these Agreements limit themselves solely to guide governments in implementing measures that are feasible and necessary owing to differing domestic requirements. Nevertheless, the Agreements seek to enforce limits to the discretion

² *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

³ *Agreement on Application of Sanitary and Phytosanitary Measures*, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

⁴ Jong Woo Kang and Dorothea Ramizo, *Impact of Sanitary and Phytosanitary Measures and Technical Barriers on International Trade*, Munich Personal RePEc Archive, Paper No. 82352, (2017), p.4, https://mpra.ub.uni-muenchen.de/82352/1/MPRA_paper_82352.pdf.

⁵ *Trade And Food Standards*, published by the Food and Agriculture Organization and the World Trade Organization, (2017), p.13, https://www.wto.org/english/res_e/booksp_e/tradefoodfao17_e.pdf.

⁶ Article 1.3, *Agreement on Technical Barrier to Trade*, Apr. 15, 1994, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120.

provided to the governments of Member States beyond which a measure would be unjustifiable – that is, the measure must not be arbitrary, unjust or a disguised restriction.⁷

Though not setting mandatory regulations, both the SPS and the TBT Agreements encourage WTO Member States to follow international standards created by bodies such as the *Codex Alimentarius Commission*. While each Member State can pursue their own standards for trade depending on the requirements of their country, emphasis is placed on the need to harmonise with international standards owing to the benefits it provides. Harmonization with international standards has an enhancing effect on trade;⁸ it allows for easier dissemination of technology, facilitates the movement of goods. Most importantly, it allows developing countries to enact sound scientific and technical regulations, in line with the procedures laid down by developed countries, which would further allow them to meet their obligations under the WTO agreements.⁹

Underlining the benefits of the SPS and the TBT Agreements, this paper seeks to critique the manner in which India, an important participant in international trade, has made use of the WTO framework, particularly the SPS and TBT Agreements – to fulfill universal objectives of implementing robust and stringent standards, particularly in the area of food production. This paper seeks to compare the use of the multilateral forum by India alongside the experiences of advanced economies such as the European Union and China through case studies. This paper concludes by suggesting possible policy lessons for India by specifying the potential impact the WTO framework could have on India's trade competitiveness in the multilateral framework.

In addition, this paper attempts to initiate academic discourse in an area of research wherein an extensive debate currently ensues. The paper is merely indicative of the problems faced by India in the international market.

II. THE TBT AND SPS AGREEMENTS

In addition to the need to improve food safety and consumer protection, as discussed above, both the TBT and the SPS Agreements' stress on the benefits that standardisation guidelines as well as technical recommendations have on improving efficiency in production as well as in simplifying trade.¹⁰ As a result, the phraseology leads to the understanding that the numerous qualifications as suggested by the Agreements are not seen as a burden for countries, rather, they must be seen as enablers of trade.

⁷ *Supra* note 2.

⁸ *Supra* note 4, at p.8

⁹ *Trade And Food Standards*, Food and Agriculture Organization and the World Trade Organization, (2017), p. 15, https://www.wto.org/english/res_e/booksp_e/tradefoodfao17_e.pdf.

¹⁰ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Recital 3, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S. 120; *Agreement on Application of Sanitary and Phytosanitary Measures*, Recital 5, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

Following this understanding, under the TBT Agreement, Article 2.2 states that no technical regulation enforced by a Member should result in unnecessary obstacles to international trade and further, that all such regulations must be implemented solely on the basis of a legitimate objective.¹¹ In order to assist in identifying the legitimate objectives of a particular measure, the Appellate Body in *US – Tuna II (Mexico)* noted that the panel must not solely refer to the justifications provided by a Member on the legitimacy of the measure. Instead, the panel must undertake an objective assessment on its own.¹² Interestingly, the addition of “*inter alia*” in Article 2.2 must be interpreted as widening the scope of the definition of a legitimate objective. Thus, national security, prevention of deceptive practises will be acknowledged in the panel’s assessment. A wider scope benefits Member States, particularly younger nations, in defending their measures before the Dispute Settlement Body.

While Article 2 may appear to limit the discretion available to Members, Article 6 ensures that obligations under the TBT Agreement solely arise out of negotiations and consensus among Members. The provision allows for two possible outcomes, firstly, that both Members enter into negotiations and agree to a common standard which meets the conformity assessment requirements of both countries, and secondly, the Agreement also allows for instances wherein it becomes difficult to agree on a single conformity assessment standard. Members can have different procedures and standards as against another Member insofar as both Members are satisfied that the procedures implemented by either country are equivalent to the standards and technical regulations implemented in their own country.¹³

A natural consequence of negotiation and consensus-building is the sharing of information between Members. Information exchange proves extremely beneficial to all Members – developed economies as well as developing economies. Information exchange is not limited to providing information about the standards and procedures implemented in Member countries, rather, it also includes the need for Members to allow for clarifications about regulations implemented at the federal as well as local levels of government.¹⁴ By requiring each Member to set up mechanisms to answer queries as well as provide additional information which may be required on a case to case basis, the Agreement promotes transparency and fairness in international trade.

The TBT Agreement, keeping in mind the varying levels of economic development across the world, has sought to provide leniency in compliance for developing countries. The Agreement places an additional responsibility on developed nations to assist developing nations to establishing

¹¹ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 2.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S. 120

¹² *TBT Agreement – Article 2 (Jurisprudence)*, World Trade Organisation Analytical Index, p.15, https://www.wto.org/english/res_e/publications_e/ai17_e/tbt_art2_jur.pdf

¹³ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 6.1, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

¹⁴ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 10.1, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

world-class standardising bodies¹⁵. The Agreement asks developed countries to grant developing countries necessary expertise in order to ensure that producers in such countries are able to meet and compete with the stringent standards available in importing countries.¹⁶ Though the Agreement encourages Members to negotiate and implement standards and regulations, such negotiation cannot occur in the absence of an understanding of a Member's financial standing and its trading needs – especially if such a negotiation is with a developing country.¹⁷ Article 12.4 ensures that no developing country is forced to adopt regulations or standards that are inappropriate to the needs of that nation and which may “create unnecessary obstacles to exports from developing countries”.¹⁸

While allowing certain exemptions to developing countries, the TBT Agreement seeks to reduce the burden on developed countries as well – in the instance of *US – COOL*, the Panel denied Mexico's submission that Article 12.3 granted two obligations on developed countries, namely, to view the country's financial trade needs, and to not create obstacles for export, stating that acknowledging the country's economic development was the sole obligation and the second claim put forth by Mexico was merely the purpose of inclusion of the said provision.¹⁹ This understanding was furthered by the Panel in *US – Clove Cigarettes* wherein it distinguished between Article 12.3 and Article 2.2. It clarified that Article 12.3 obligated the developed countries to “take account of” the developing countries financial and trade needs. The Panel confirmed that simply finding a measure to be more trade-restrictive than necessary under Article 2.2 would not answer the question whether the Member failed to account for the developing country's requirements.²⁰ The Panel did not read Article 12.3 as an obligation against creating obstacles for exports from developing countries. As a result, though the provision creates an obligation of a separate analysis under Article 12.3, it does not seek to overburden.

It is a similar emphasis on consensus and mutual satisfaction between Members that characterises the SPS Agreement as well. As discussed above, the WTO would fail in fulfilling its objective if each nation was allowed to have their own mechanisms to process food products. Harmonisation of standards for processing of food products to certify them for trade allows countries the means to mirror similar processes. While analysing the objective of Article 3.1, the Appellate Body, in *EC – Hormones*, disagreed with the understanding that the provision places an obligation on Member countries to abide by existing international standards and regulations. In contrast, it stated that though the provision seeks harmonisation on a wide scale, it recognises the right of Members

¹⁵ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 11.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

¹⁶ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 11.5, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

¹⁷ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 12.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

¹⁸ *Agreement on Technical Barriers to Trade*, Apr. 15, 1994, Article 12.3, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1868 U.N.T.S 120

¹⁹ *TBT Agreement – Article 12 (Jurisprudence)*, World Trade Organisation Analytical Index, p.2, https://www.wto.org/english/res_e/publications_e/ai17_e/tbt_art12_jur.pdf

²⁰ *Ibid*, p.3-4

to protect the health of their populations.²¹ The only limit placed is that the measures must have commensurate scientific justification.²² Such an interpretation was justified by the Appellate Body in order to prevent arbitrary measures resulting in unjustifiable discrimination.²³

This serves as a distinction between the stated Agreements – while all measures under the SPS Agreement must have a scientific justification, scientific regulations under the TBT Agreement would largely depend on the Member States objective behind the measure.²⁴

Similar to the TBT Agreement, the SPS Agreement also insists on Member countries to understand phytosanitary measures adopted by other Members though they may not be similar to their own measures. Through consultations, the exporting country must demonstrate to the importing country that its measures achieve protections similar to those of the importing country.²⁵ Interestingly, despite accepting that the SPS Agreement does not require Members to determine appropriate levels of protection, the Appellate Body, in *Australia – Salmon*, acknowledged that several provisions implicitly require Members to determine their standards.²⁶ Similarly, in *US – Poultry (China)*, the Panel held that the equivalence regime under the SPS Agreement must not be understood to be limited to Article 4 alone, rather a Member must also comply with other provisions in the SPS Agreement, for instance, Articles 2 and 5.²⁷

The SPS Agreement guides Member countries in implementing protective measures considering the latest available scientific information, technical processes as well as information on diseases available in the market.²⁸ Such considerations are bound to prove beneficial for all Members especially underdeveloped or developing economies – though applying such standards may be difficult owing to limited resources, the benefits outweigh the hardships faced as such protective measures create new markets for export in addition to the consequent sustainable economic development.

²¹ *SPS Agreement – Article 3 (Jurisprudence)*, World Trade Organisation Analytical Index, p.4, https://www.wto.org/english/res_e/publications_e/ai17_e/sps_art3_jur.pdf

²² *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 2.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493; *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 3.3, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

²³ *Supra* note 21.

²⁴ *Part 2: Basic principles of the Agreement on Technical Barriers to Trade (contd)*, International Trade Centre, <https://www.intracen.org/Address-non-tariff-measures-encountered-in-export-markets---Part-23/>

²⁵ *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 4.1, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493; *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 4.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

²⁶ *SPS Agreement – Article 4 (Jurisprudence)*, World Trade Organisation Analytical Index, p.1, https://www.wto.org/english/res_e/publications_e/ai17_e/sps_art4_jur.pdf

²⁷ *Ibid*, p.1-2

²⁸ *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 5.2, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

Importantly, with emphasis on protection from diseases, the SPS Agreement allows Member countries to implement strict sanitary or phytosanitary measures in order to meet emergency situations wherein scientific evidence is inadequate.²⁹ The SPS Agreement thus achieves a balance by granting adequate leeway to countries to counter emergencies while also requiring strict commitments to developing just and reasonable standards. A similar measure allowing countries to counter unforeseen situations is absent in the TBT Agreement.³⁰

In order to ensure that every region beneficially takes part as well as contributes to international commerce the SPS Agreement urges countries to ensure sanitary and phytosanitary measures in accordance with the sanitary and phytosanitary characteristics of the region.³¹ Such a requirement proves beneficial for both importing and exporting countries, as it allows an exchange of information that is country-specific as well as region-specific – another means to achieve harmonisation. Crucially, the obligation to adapt was broadly viewed in *India – Agricultural Products*, wherein the Appellate Body opined that “adaptation” under Article 6.1 referred to adaptation to existing measures in the region as well to the changes in the characteristics of the region that may occur in the future.³² Hence, adaptation remains a continuous process.

Similar to Article 12 of the TBT Agreement, the SPS Agreement grants certain relaxations to developing countries, especially in terms of compliance durations. It must be noted that the SPS Agreement aims to have greater participation from the least developed as well as the developing countries³³. The Agreement can be termed a success only when developing countries also adopt suitable measures. The relaxations provided under this provision, however, are not binding on developed countries – by simply denying longer time-frames to developing countries, one cannot claim a violation under Article 10.3 of the Agreement, Article 10.1 requires that developed countries merely “take account of” the financial situations of developing countries. Hence, a decision on relaxations in the compliance framework between countries can be analysed based on the country profile of the Member States in a dispute. This must be read into the objective of the SPS Agreement as drafted in Article 5.4, namely, to “minimise negative trade effects”.

While both Agreements have successfully formalised international trade into a durable and integrated trading system, this has not occurred without contributions from developing economies. Abiding by the TBT and SPS Agreements would have a net positive impact on the economies of the least developed as well as the developing countries by ensuring efficient trade and high standards for health and safety of the ultimate beneficiaries – the consumers. As discussed later,

²⁹ *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 5.7, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

³⁰ *Supra* note 24.

³¹ *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 6.1, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

³² *SPS Agreement – Article 6 (Jurisprudence)*, World Trade Organisation Analytical Index, p.4-5, https://www.wto.org/english/res_e/publications_e/ai17_e/sps_art6_jur.pdf

³³ *Agreement on Application of Sanitary and Phytosanitary Measures*, Article 10.4, Marrakesh Agreement establishing the World Trade Organisation, Annex 1A, 1867 U.N.T.S. 493

the compliance costs have disadvantaged exporting countries, nevertheless, implementing scientifically sound and technologically relevant measures will also ensure that countries are equally investing on improving their health systems.

III. INTERNATIONAL EXPERIENCE WITH TBT AND SPS MEASURES

a. Experiences of the EU and the US in the pre-WTO period

Even before the Uruguay Rounds and the establishment of the WTO, major overhaul of food quality legislations and implementation of strict regulations occurred owing to widespread food scares. This forced individuals, especially consumers to express concerns for the safety of the food products available in markets.³⁴ The outbreak of the mad cow disease in the United Kingdom in the 1990's managed to affect several countries in the world because of large volumes of trade in livestock. The impact of the outbreak was disastrous as nearly 4.4 million people were killed and 170,000 cattle were directly affected.³⁵

The spread of such viruses across the world through the medium of trade in goods forced several countries in the European Union to harmonize their risk assessment mechanisms and hence the European Food Safety Authority was established in 2003.³⁶ The European Union published a "White Paper on Food Safety"³⁷ which became the basis of several food safety policies. The White Paper of the Union aimed at controlling the entire food production chain and held it responsible for ensuring the highest quality of food.³⁸ Hence, the implementation of the TBT and SPS Agreements in the following years allowed the European Union to further enact stringent laws and regulations to promote food safety.

Similar occurrences in the United States led to an overhaul of the food safety mechanisms with the passage of the Food Safety Modernization Act, 2011³⁹ which implemented several technical regulations for food safety, plant protection as well as labelling of food products.⁴⁰

³⁴ Dima Faour-Klingbeil and Ewen C. D. Todd, *A Review on the Rising Prevalence of International Standards: Threats or Opportunities for the Agri-Food Produce Sector in Developing Countries, with Focus on Examples from the MENA Region*, (2018), p.2, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5867548/pdf/foods-07-00033.pdf>.

³⁵ *Ibid*, p.2

³⁶ *Id*, p.3

³⁷ Commission of European Communities, *White Paper on Food Safety*, (12th January 2000), https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_white-paper_food-safety_2000_en.pdf.

³⁸ Ministry of Agriculture, Nature and Food Quality & Food and Consumer Product Safety Authority of Netherlands, *European Food Safety Control Systems: New Perspectives on Harmonized Legal Basis*, Agenda Item 4.2, Global Forum of Food Safety Regulators, FAO & WHO, Proceedings of the Forum, (2004), <http://www.fao.org/3/y5871e/y5871e01.htm#TopOfPage>.

³⁹ Food Safety Modernization Act, 21 U.S.C. §§ 2201 – 2252 (2011)

⁴⁰ *Supra* note 34, at p.3

b. Trade in the post-WTO period

The WTO, in its initial years, focussed on implementing measures that would reduce the monetary cost of international trade, as a result, the multilateral organisation aimed at regulating tariff measures to dispel the notion of protectionism. While these aims were fulfilled by implementing provisions of the General Agreement on Tariffs and Trade (GATT), 1947⁴¹, there arose a need to ensure that goods and services made available to the public as a result of trade were also in accordance with the larger objectives of the WTO, that is, to ensure overall development of the global economy. This could not be achieved solely through the regulation of tariff rates, and as a result there was a realisation that the body needed to focus on the social requirements of the developing economies. Hence, the emphasis of the WTO shifted towards non-tariff measures.

Non-tariff measures are important owing to the impact such measures have on ensuring human health and safety. Such measures have a direct impact on the standards and technical regulations implemented domestically by the governments of Member States. Moreover, the shift towards non-tariff measures has shown that they are far more crucial than tariff barriers in terms of their impact on international trade – non-tariff measures have a direct correlation with how open or closed a Member State's economy is.⁴² It is in this context that the need for regulation of non-tariff barriers through the usage of the SPS and TBT Agreements needs to be judged.

An issue raised on several occasions is the negative impact non-tariff barriers create particularly for developing rather than developed nations. That measures implemented by governments under the TBT and SPS Agreements often create a trade disruption in so far as they demand efficient trade infrastructures, improved production processes or even adaptation of new technology, are a source of concern as such standards or conformity assessment measures systematically increase the costs of trade which developing and least developed countries cannot sustain.⁴³ Further, it is also argued that implementation of stringent non-tariff barriers by developed countries has led to a cession of sovereignty by developing countries in terms of their independent trade policies. While a raging debate on the impact of non-tariff barriers continues to exist, it must be noted that it does not form the subject matter of this paper.

Nevertheless, from an economic perspective, technical regulations or standards under the TBT Agreement cannot be termed as detrimental or discriminatory towards developing countries owing to the larger beneficial impact such measures have on trade. Implementation of such measures significantly reduce trade costs by replacing the existing structures with transparent mechanisms which in turn would enable availability of more information of the product. Further, the demand for goods on which such measures become applicable would progressively increase.⁴⁴

⁴¹ *General Agreement on Tariffs and Trade*, 1947, 55 U.N.T.S. 194

⁴² *Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries*, United Nations Conference on Trade and Development, UNCTAD/DITC/TAB/2012/1, (2013), p.vii, https://unctad.org/en/PublicationsLibrary/ditctab20121_en.pdf.

⁴³ *Ibid*, p.28

⁴⁴ *Id*

It must be noted that the objective of the SPS and the TBT Agreements is to allow frictionless trade while at the same time ensuring that the standard of goods being traded do not deteriorate. It is for this reason that both the Agreements allow Member States to develop their standards and at the same time stress on the need to harmonize standards across countries. However, in practise, it is seen that developing countries tend to implement stricter non-tariff measures in order to protect domestic industry.

This is understood through empirical studies conducted by the International Trade Centre, wherein 66% of all European exporters have stated that their exports to developing countries faced restrictions owing to complex certification procedures, and more than 90% confirmed that such certificates led to delays often to the extent of 105 days owing to complex bureaucratic procedures.⁴⁵ Moreover, strict labelling requirements were also seen as an obstacle to trade. Evidence of rigid bureaucratic procedures could be found in an instance wherein a firm incorporated in the United Kingdom had been asked to apply for residency in India even though the firm had no establishment in India – specific information on the need for such an application was not provided to the firm and as a result, the firm could not account for the potential costs.⁴⁶

Similarly, exporters from the European Union state that a company witnessed an average of 1.2 non-tariff measures per transaction when exporting to a developed economy as against an average of 1.25 non-tariff measures when exporting to a developing economy – the data revealed that it was even higher in certain instances such as in the case of China where the average stands at 1.28 non-tariff measures per transaction.⁴⁷ Thus, such a scenario depicts a complicated relation between trade and multiple non-tariff barriers. In such a system, the quality of the product becomes the key casualty.

c. Increase in the notification of Food Regulations

Incidentally, the TBT and the SPS Agreements were meant to maintain the quality of products in order to protect human health. The relationship above stated drastically increases the cost of trade between Member States and further, has a damaging impact on trade competitiveness of a country. It must be realised that implementing standards often contrary to or less stringent than the standards set by the importing country would only lead to expensive trade. Countries must aim to harmonize standards, technical regulations or conformity assessment procedures used by domestic industry with the broader guidelines as provided by international institutions such as the *Codex Commission*.

The setting of common food standards between all Member States is an instance where the TBT and the SPS Committees have proved to be indispensable. In the committees, Member States seek

⁴⁵ *Navigating Non-Tariff Measures: Insights from a Business Survey in the European Union*, International Trade Centre, (MAR-16-66.E), (2016), p.8-9,

[http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Navigating_Non_Tariff_Measures_ITC_EC_final_Low-res\(1\).pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Navigating_Non_Tariff_Measures_ITC_EC_final_Low-res(1).pdf).

⁴⁶ *Ibid*, p.20.

⁴⁷ *Id*, p.19-20.

to monitor food safety regulations. In recent years, there has been a steady increase in the participation of developed as well as developing countries in the SPS as well as the TBT Committees. Moreover, there is a significant increase in SPS notifications regulating food safety, while only 44% of all SPS notifications referred to food safety measures in 2007, nearly 74% of all SPS notifications referred to food safety measures in 2016 – interestingly, the number of notifications referring to Codex standards have also increased between 2007-2017. Following this trend, TBT notifications, which generally have few notifications concerning food measures owing to the wider scope of the TBT Agreement, also saw an increase in such notifications. From only 14% of all TBT notifications in 2006 to 28% in 2016.⁴⁸

The raising of Specific Trade Concern's (STC's) by members within the WTO framework, has also witness a drastic change. The proportion of STC's wherein members have referred to Codex standards for food safety regulations in the TBT Committees has sharply increased from a mere 6% in 2007 to 23% in 2016.⁴⁹

Hence, the rise in the proportion of disputes before the WTO and the increased reliance on Codex standards must be directly related to an increase in the number of members utilising the multilateral platforms to further make their exports more competitive. The rise in the usage of the SPS and TBT Committees, particularly for food products, must also be seen as an implied acceptance of the need to ensure that citizens purchase products that are not damaging to their health.

With the understanding that in recent years, countries have increased their usage of the international fora particularly for matters concerning trade in food products and raw materials, one must also realise that product safety has also become a determinant of beneficial trade. A case study evidencing this shift towards product safety can be found in the manner in which Member States adopted standards and regulated the production of Genetically Modified food crops. The following section analyses the measures adopted by the European Union, China and India in this regard.

IV. TRADE IN GMO PRODUCTS: THE GLOBAL RESPONSE

Commercialisation of Genetically Modified (GM) products began two years after the founding of the WTO, hence, no regulations administering the trade of GM products had been created. As a result, the manner in which trade of GM products took place completely depended on the independent governments of Member States. Nevertheless, both the SPS and the TBT Agreements were seen as positive steps towards creation of an international consensus on the health implications and economic impact on trade of genetically modified products.

The SPS Agreement, while not prescribing a set guideline, allowed governments to implement regulations most suitable to their own needs. Nevertheless, these regulations had to be limited in

⁴⁸ *Supra* note 5, at p.22-25.

⁴⁹ *Supra* note 5, at p.25

nature in order to not be termed as discriminatory or unjust. Moreover, the SPS Committee encouraged the *Codex Alimentarius Commission* to set up a task force in order to undertake a risk assessment exercise in the case of GM foods, however, the Codex task force remained non-committal on the proposal of effective regulation of GM products till 2011, owing to persistent reservations from several countries.⁵⁰ Further, labelling of GM products had become a trade concern and had been raised at several TBT Committee meetings by countries such as Canada, USA and Brazil.⁵¹ In such an instance of uncertainty, members have been given the discretion to employ standards which may either not differentiate between genetically and non-genetically modified products or implement stricter labelling standards for GM products.⁵²

i. Position in the European Union

The Deliberate Release Directive 2001/18/EC⁵³, was the first regulation concerning GM products which had been passed by the European Parliament. This regulation had been passed as a result of a citizen led campaign against the development of GM products all across Europe. This had occurred owing to the fear among the people of the health impacts of modified agricultural produce. Passage of the Directive inevitably led to the reduction of government approvals for GM crops for a long period of time.⁵⁴ The European Commission nevertheless re-initiated the approval procedure owing to the fact that several scientific assessments had failed to identify a negative impact on human health.⁵⁵ Thus, the European Union sought to meet the criteria set by the SPS Agreement.

The European Union, owing to public pressure nevertheless implemented a scheme of mandatory labelling. Moreover, the European Union also agreed upon amendments to the Deliberate Release Directive to improve traceability of genetically modified organisms throughout the supply chain.⁵⁶ However, by 2006, several countries claimed that the European Union had violated its SPS

⁵⁰ Dr. Steve Suppan, *The GMO labelling fight at the Codex Alimentarius Commission: How big a victory for consumers?*, Institute for Agriculture & Trade Policy, (13th Jul, 2011), <https://www.iatp.org/blog/201107/gmo-labeling-fight-codex-alimentarius-commission-how-big-victory-consumers>

⁵¹ *Toy Safety and Genetically modified organisms top WTO Standards Committee agenda*, World Trade Organization, (2015), https://www.wto.org/english/news_e/news15_e/tbt_15jun15_e.htm.

⁵² Timothy Josling, *A review of WTO rules and GMO Trade*, International Centre for Trade and Development, Biores, Vol. 9, No. 3, (2015), <https://www.ictsd.org/bridges-news/biores/news/a-review-of-wto-rules-and-gmo-trade>. ; *Compilation of Codex Texts Relevant to Labelling of Foods Derived from Modern Biotechnology*, Food and Agriculture Organisation, (2011), http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B76-2011%252FCXG_076e.pdf

⁵³ Directive 2001/18/EC of the European Parliament and the Council of 12th March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0018>.

⁵⁴ Paulette Kurzer and Alice Cooper, *Consumer Activism, EU and Global Markets: The Struggle over Biotech Foods*, Cambridge University Press, *Journal of Public Policy*, Vol. 27, No.2 (2007), p.110, <https://www.jstor.org/stable/40072017>.

⁵⁵ *Ibid*, p.110-111

⁵⁶ *Id*, p.111

obligations as each member state within the Union could independently ban or restrict the use of GM crops, this meant that the European Union had initiated a *de facto* measure which created undue delay.⁵⁷ Recently, to remove a possible source of confusion and comply with the provisions of the SPS Agreement, the European Union issued a new directive namely, Directive 2015/412⁵⁸ which granted the flexibility to Member States to adopt different policies in accordance with their policy objectives.

ii. Position in China

Interestingly, China too has a policy of mandatory labelling for all GM products. This is primarily owing to the fear of potential health risks of consuming genetically modified products. The Food Safety Law, 2009 was amended in 2015 in order to specifically insert a provision making all labelling norms, particularly for GM foods, mandatory.⁵⁹

Even though the food regulation laws are divided into multiple categories, they are closely linked to the right of the population to be informed of the constituents of a particular product. It is pertinent to note, that the standards in Chinese law that allow consumers to make an informed choice are missing in the food protection legislations of the European Union.⁶⁰ Similar to the provisions in the standards set by the European Union, Chinese laws require complete information on the use of genetically modified ingredients in the supply chain. Despite the existence of stringent norms aimed at a higher social purpose, the sole inadequacy that plagues the Chinese legal system is the inconsistent implementation of the existing regulations across the country.⁶¹

iii. Position in India

Initiation of mandatory labelling, especially for GM products, had been envisaged in 2006. The amendment sought to be made to the Prevention of Food Adulteration Act, 1955, included provisions that made labelling mandatory and penalised violation of such regulations. The amendment, however, could never be implemented owing to a specific trade concern raised by the

⁵⁷ Jasper Wauters and Marcus Sohlberg, *Do the new EU GMO rules comply with its WTO obligations?*, Lexology, (2015), <https://www.lexology.com/library/detail.aspx?g=db9d9679-c98c-4eeb-9789-b6e8dfb2fd28> (last visited on 03rd Aug, 2020)

⁵⁸ Directive 2015/412 of the European Parliament and of the Council of 11th March 2015 amending Directive 2001/18/EC as regards the possibility for Member States to restrict or prohibit the cultivation of genetically modified organisms in their territory, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0412>

⁵⁹ China's Food Safety Law, USDA Global Agricultural Information, (2015), <https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Amended%20Food%20Safety%20Law%20of%20China%20-%20Peoples%20Republic%20of%20China%20-%20Beijing%20-%205-18-2015.pdf>

⁶⁰ Xiao Zhu, Michael T. Roberts and Kaijie Wu, *Genetically Modified Food Labelling in China: In Pursuit of a Rational Path*, published by Georgetown Law Editorial Board, Food and Drug Law Journal, Vol.71, (2016), p.44 https://law.ucla.edu/~media/Files/UCLA/Law/Pages/Publications/RES_PUB_GMO.ashx.

⁶¹ *Ibid*, p.39

USA before the TBT Committee stating that the said procedure was discriminatory towards GM products specifically as it had inadvertently creating a distinction between food products produced using modern biotechnology methods and those without.⁶² Nevertheless, while the Union Government consolidated the Prevention of Food Adulteration Act, 1955 and other similar statutes into the Food Safety and Standards Act, 2006⁶³, subsequent regulations of the newly created regulator, the Food Safety and Security Standards Authority of India (FSSAI) did not notify labelling requirements for GM products.⁶⁴

The Draft Food Safety and Standards (Labelling and Display) Regulations released in 2018⁶⁵ stated that GM products would require mandatory labelling, however, the stated policy objective remains unclear since domestic production of GM foods is prohibited, implying that such a provision could only be applied to imports.⁶⁶ As the Regulation has till date not been notified, no uniform policy can be said to be applicable. Further, there is no clear stance as to whether the regulation is compliant with the SPS or the TBT Agreements owing to a lack of notification by the government.

Interestingly, after receiving comments and suggestions, the FSSAI published a new draft of the Food Safety and Standards (Labelling and Display) Regulations in 2019⁶⁷ as well. However, unlike the 2018 draft, the draft regulation of 2019 completely omits any mention of labelling requirements for GM products. It can be inferred that owing to specific trade concerns with countries as discussed above, India currently does not have an effective policy for labelling of GM products.

Hence, it becomes clear that in comparison to both the European Union and China, India has been unable to regulate the genetically modified food industry. Such a situation has led to the question as to whether Indian food products can authentically be termed GMO free. It has also been pointed out on several instances that India requires to create the infrastructure for its agencies to be able to implement prescribed standards more efficiently.⁶⁸ It is for this very reason that India must make adequate use of the TBT Committee to create long-term and enduring labelling standards.

⁶² Kavitha Kuruganti, *GM Labelling in India: A Step Forward?*, Economic and Political Weekly, Vol.47, No. 37, (2012), p.16, <https://www.jstor.org/stable/41720130>

⁶³ *Food Safety and Standards Act, 2006*, No. 34 of 2006

⁶⁴ *Ibid*, p.17

⁶⁵ *Food Safety and Standards (Labelling and Display) Regulations, 2018*, Food Safety and Standards Authority of India, https://www.fssai.gov.in/upload/uploadfiles/files/Draft_Notice_Comments_Labelling_Display_11_04_2018.pdf.

⁶⁶ Letter from Centre for Science and Environment to Food Safety and Standards Authority of India, (10th June 2018), p.5, [http://cdn.cseindia.org/attachments/0.38567700_1528706044_CSE-Recommendations_Food-Safety-and-Standards-\(Labelling-and-Display\)-Regulations.-2018.pdf](http://cdn.cseindia.org/attachments/0.38567700_1528706044_CSE-Recommendations_Food-Safety-and-Standards-(Labelling-and-Display)-Regulations.-2018.pdf). (last visited on 03rd Aug, 2020)

⁶⁷ *Food Safety and Standards (Labelling and Display) Regulations, 2019*, Food Safety and Standards Authority of India, https://www.fssai.gov.in/upload/uploadfiles/files/Draft_Notification_Display_Labelling_02_07_2019.pdf

⁶⁸ *Supra* note 62, at p.15

V. THE RAMIFICATIONS OF EFFECTIVE TBT AND SPS MEASURES FOR INDIA

Several developing countries, particularly in the North African region, have not established adequate risk assessment mechanisms for food domestically consumed as well as that which is exported. Moreover, taking into account the stage of economic development of these nascent countries, it has been seen that food safety has not been a priority for such countries. Such a stance has, in turn, made it difficult for these countries to meet WTO requirements and to comply with international standards requiring countries to set up risk assessment agencies.⁶⁹

a. *The Existing Scenario*

India for instance, has, as per the Export (Quality Control and Inspection) Act, 1963⁷⁰, been operating export control systems which allow the Central Government to notify products for pre-shipment inspection as well as specific standards which Indian goods designated for export must abide by. While it can be said that the Government of India is actively seeking to enact stringent quality assessment procedures, such procedures have been selectively applied. Only a limited number of products such as egg, dairy and poultry products are mandatorily required to obtain a pre-shipment inspection certificate, inspection and subsequent certification for other products, though notified, have been made voluntary and only on the basis of requests of the importing country.⁷¹

If one were to implement the “White Paper on Food Safety”, similar to that published in the European Union, in India, one would find that Indian agriculture is dominated by farmers having small land holdings and insufficient financial resources to maintain them. In such a scenario, while they may be keen to export, they would not be in possession of the right inputs or the required technology standards that importing countries may impose.⁷² Hence, such a situation requires the government to implement international best practices as well as those devised by the *Codex Commission* and further use the SPS as well as the TBT Committees to improve the manner in which food is grown and sold in the market.

Similar to India’s pre-shipment inspection policy, the European Union through its agency, the RASFF, inspects consignments received from exporting countries. In this regard, it is pertinent to note that Indian products have received the maximum notifications and warnings as compared to other developing countries in the region – in 2017, India had received 2240 notifications from the RASFF owing to non-compliance with European Union norms. Even according to the United

⁶⁹ *Supra* note 66, at p.3-4.

⁷⁰ *The Export (Quality Control and Inspection) Act, 1963*, No. 22 of 1963.

⁷¹ Shashi Sareen, *Food Control and Certification*, Agenda Item 4.5, Global Forum of Food Safety Regulators, FAO & WHO, Proceedings of the Forum, (2004), <http://www.fao.org/3/y5871e/y5871e0m.htm#TopOfPage>.

⁷² Tanu M. Goyal, Arpita Mukherjee & Avantika Kapoor, *India’s Exports of Food Products: Food Safety Related Issues and Way Forward*, Working Paper No. 345, (2017), the Indian Council for Research on International Economic Relations, p.8, http://icrier.org/pdf/Working_Paper_345.pdf.

States Food and Drug Administration (USFDA), Indian food products were a source of concern.⁷³ Non-insistence on imposition of quality control measures has resulted in Indian products facing rejections and bans owing to non-compliance with international standards. Indian exports of fresh produce have not only been rejected by developed countries like the United States and the European Union, but have also been subjected to stricter supervision, sometimes even being banned, in developing countries like Vietnam and Bhutan.⁷⁴ Such a scenario has negatively impacted the trade competitiveness of India's exports.

The common concerns regarding Indian food exports raised by importing countries refer to issues such as pest infestation – Vietnam had suspended its import of groundnuts from India in 2015 due to the presence of beetles in the consignment. Moreover, the European Union banned import of Indian mangoes in 2014 owing to the presence of pests.⁷⁵ Another source of concern has been the presence of pesticide residues at unacceptable levels – in 2015, Saudi Arabia and Bhutan had banned the import of Indian green chilly owing to high levels of pesticide residues.⁷⁶

Further, concerns continue to be raised regarding the hygiene standards followed in India. This has resulted in a peculiar situation wherein even though India is the largest producer of dairy-based products, it is unable to export its produce owing to the health risks involved. Japan, for instance, rejected consignments from India owing to bacterial infestation.⁷⁷ It must not be forgotten that such situations have arisen despite having agencies such as the Export Inspection Council setting mandatory standards.

b. Inadequacies in the Domestic Market

Domestically, the Indian Parliament passed the Food Safety and Standards Act⁷⁸ in 2006. The legislation established the Food Safety and Standards Authority of India (FSSAI) with the objective of enacting scientific standards to regulate manufacture, storage, distribution and subsequent sale of food products so as to provide wholesome food to the consumer.⁷⁹ While the establishment of the FSSAI was a welcomed decision, countries have repeatedly requested India to harmonize its standards with those set by the *Codex Commission* in order to allow for a swifter and economically viable flow of trade.

The FSSAI, which published the draft Food Safety and Standards (Labelling and Display) Regulations, 2018⁸⁰ sought to reduce the information asymmetry between producers and consumers and had further introduced labelling for GM foods in India. Moreover, it has also issued

⁷³ *Ibid*, p.10-11.

⁷⁴ *Id*, p.2.

⁷⁵ *Supra* note 72, at p.13-14.

⁷⁶ *Supra* note 72, at p.16.

⁷⁷ *Supra* note 72, at p.22.

⁷⁸ *Supra* note 63.

⁷⁹ Food Safety and Standards Authority of India, <https://fssai.gov.in/home/about-us/introduction.html>.

⁸⁰ *Supra* note 65.

directives prohibiting the advertisement of products having high fat, salt or sugar levels to children.⁸¹ While the directives could be termed as a step in the right direction, not all measures have been welcomed. The draft regulations provide for an exemption from labelling to products having a GM content below 5% - it has been argued that an exemption of this nature must be more stringent and thus harmonized with similar exemptions in other countries and hence should be restricted to 0.9%, that is, a rate currently in application in the European Union.⁸²

The new draft published by the FSSAI in 2019⁸³ also worked to make the consumer more aware of what she was consuming. The draft proposed compulsory labelling of salt content in pre-packaged food products and also required companies to declare the percentage of added sugar in food products – such a practice is in line with labelling requirements in the global food labelling system.⁸⁴ If finalized, this draft will allow consumers to make informed decisions for healthier food products. Moreover, the 2019 draft regulation promotes front of pack labelling, a standard which is mandatory in several countries.⁸⁵ Despite this, the draft remains silent on other aspects of international concern, namely, labelling obligations for GM products, which was specifically mentioned in the draft of 2018, thereby creating ambiguity and further endangering the consumers health.

Also, emphasis must be laid on the fact that standards created by the FSSAI are limited to manufacturers only, and as a result nearly 90% of the food products available in the market have met the standards and regulations implements by the FSSAI.⁸⁶ This must not lead to the conclusion that all products available in the market have met quality assessment procedures. The quality of food products, which are ideally judged at the primary production stage are beyond the purview of the regulator.⁸⁷ This leads to the conclusion that the quality of grains, fruits as well as vegetables sold in Indian markets are wholly unregulated.

In order to reinforce its commitment to food safety and protection of the citizenry from diseases originating from food products, India must reduce ambiguity in its regulations and must effectively use the WTO forum to enact scientifically sound regulations in a consistent manner.

⁸¹ *FSSAI's draft labelling regulation has major gaps, weak on regulating GM food: CSE*, DownToEarth, (13th Jun, 2018), <https://www.downtoearth.org.in/news/food/fssai-s-draft-labelling-regulation-has-major-gaps-weak-on-regulating-gm-food-cse-60837>. (last visited 3rd Aug, 2020)

⁸² *Ibid.*

⁸³ *Supra* note 67.

⁸⁴ Sonal Dhingra, *FSSAI's new draft regulation for food safety will promote informed consumer choice*, DownToEarth, (08th Jul, 2019), <https://www.downtoearth.org.in/blog/food/fssai-s-new-draft-regulation-for-food-safety-will-promote-informed-consumer-choice-65491> (last visited 04th Aug, 2020)

⁸⁵ *Ibid.*

⁸⁶ Amita Bhaduri, *Toxins on our plate*, India Water Portal, (08th Aug, 2018), <https://www.indiawaterportal.org/articles/toxins-our-plate>. (last visited 04th Aug, 2020)

⁸⁷ *Ibid.*

VI. POSSIBLE SUGGESTIONS AND REMARKS

A. Policy Suggestions

Till March 2018, nearly 146 products had been regulated in India through the process of mandatory certification. However, these regulations were largely limited to electronics and products developed by the IT sector which accounted for 27% and 25% respectively. Moreover, the “Compulsory Registration Scheme” initiated in 2012 had also been enacted sensing the strategic importance of the electronic and IT Sector.⁸⁸ Interestingly, products concerned with food safety constituted merely 9% of the standardization regulations.⁸⁹ It is desired that just as the Indian government is willing to create stringent quality control norms for strategically important industries, it must do the same for the food industry as well.

Owing to the economic conditions of farmers, they have been unable to improve the methods used in production of food crops – this has had a negative consequence as it has severely impacted the quality of products made available in domestic markets. Hence, it is suggested that the government enact policies to overhaul the production process and to introduce modern scientific means of production. For the purposes of export, the government must implement product traceability measures in order to obtain accurate information on the nature of the produce at its source.

There is an urgent need for India to harmonize its practices with those of its significant trading partners as well as implement Codex standards domestically. India must amend its laws to adhere to global best practices – to benefit consumers as well as improve its trade competitiveness. For instance, chemicals and fertilizers that have been banned in other countries must be similarly removed from the Indian market. Further, promotion of new agricultural methods must be encouraged – the Indian government has attempted to popularize organic farming; however, it has not been successful in its attempts owing to a lack of financial assistance to farmers, this has led to organic farming becoming an unviable alternative.⁹⁰

Currently, there exist multiple agencies that attempt to regulate the food industry, both domestically as well as for the purposes of exporting. Each agency has different registration requirements and these must be fulfilled in order to be allowed to export. The three larger regulatory bodies currently functioning in India are the FSSAI, the Export Inspection Council (EIC) and the Agricultural and Processed Food Products Export Development Authority (APEDA). While the FSSAI intends to regulate the domestic food products, both the EIC and APEDA regulate the export of food products.⁹¹ This leads to the conclusion that the Ministry of

⁸⁸ Philip Grinsted, Alok Kesari & Khushwant Singh, *Quality rules in India: Trade, technical regulations and consumer protection*, Observer Research Foundation, (29th Jun, 2018), <https://www.orfonline.org/research/41996-quality-rules-in-india-trade-technical-regulations-and-consumer-protection/>. (last visited 05th Aug, 2020)

⁸⁹ *Ibid.*

⁹⁰ *Supra* note 72, at p.29-30.

⁹¹ *Supra* note 72, at p.24.

Agriculture is disconnected from the Ministry of Commerce and Industry – this cannot be permissible. Regulation by multiple agencies has resulted in poor enforcement and as a result, the quality of food products sold domestically as well as those exported suffer. In many instances, it has been seen that the EIC and APEDA have implemented standards far more stringent than those imposed by FSSAI.

A lack of coordination between the two departments has made it impossible for farmers to export directly. The government must release a uniform policy that equally impacts all sectors within the food industry. It is thus suggested that standards and technical regulations for both imports and exports should be enacted by a single agency as it would allow a more efficient allocation of resources to improve overall food safety.⁹²

With the aim of improving its trade competitiveness, government policy has shifted more towards emphasizing on the export sector, as a result, regulation of the domestic market has suffered. Establishing food standards are a concern of public policy – while exported products must meet the standards of the importing countries, Indian consumers should not be neglected.⁹³

B. A Comparison

Below provided is a comparison of the performance of the European Union, China and India on parameters which enable us to analyze the extent to which these countries have sought to make international trade more competitive. As per the analysis of the Trade Policy Reviews conducted by the WTO Secretariat for the above-mentioned countries, the following information has been collected:

Table 1: A Comparison on simplification of Trade Regulations

S. NO	PARAMETERS	EUROPEAN UNION (EU)	CHINA	INDIA
1.	Nominal GDP (\$, 2019)	\$15.59 trillion	\$14.34 trillion	\$2.87 trillion
2.	Population (2019)	447 million	1.3 billion	1.3 billion
3.	Extent of regulation	High	Moderate	Low
4.	Kind of regulation	TBT	TBT and SPS	TBT

⁹² *Supra* note 72, at p.31-32.

⁹³ *Supra* note 72, at p.32-33.

5.	Sectoral Coverage	Air and space, bio-based products, consumer products, food, health and safety, innovation, services	Medicines, food hygiene, pharmaceuticals, transportation, veterinary drugs	Computer/electronic software, automobiles sector, pharmaceuticals
6.	Harmonization	High (several mandatory regulations)	Moderate (many mandatory regulations)	Low (few mandatory regulations)
7.	Institutional Capacity (food standards)	EFSA (Both import and exports)	AQSIQ (Both import and exports)	FSSAI (imports) APEDA and EIC (exports)
8.	WTO Compliance	High Compliance	Increasing Compliance	Moderate Compliance

Source: World Bank, *WTO Trade Policy Reviews of the EU (2017), China (2019) & India (2015)*. (accessed on 20th Jan, 2020)

It must be noted that the creation of international initiatives like the SPS and TBT Agreements, is in no way a substitute for domestic policy. These international agreements play an integral part in establishing a business environment in the domestic economy of all countries and thus should be actively promoted and popularized by developing countries owing to not just the monetary gain, but also the social benefits such agreements have on the lives of the people.⁹⁴

VII. CONCLUSION

Health emergencies occurring across the world have exposed the inability of the international community to frame policy and act against such illnesses. Resultantly, it becomes imperative for countries to structure and implement a system of trade that emphasizes on health, nutrition and hygiene just as much as it emphasizes on economic development. As discussed in the paper, the SPS and the TBT Agreements have these issues at the core – both Agreements assist countries to develop measures that aren't detrimental to the health of humans, animals and plants. Moreover, both Agreements have a positive impact on trade.⁹⁵

It is clear that under-developed and developing countries have a lot to gain by adopting efficient measures based on scientific evidence. In this regard, India can benefit immensely. As shown in Table 1, India is seen as having moderate compliance with the SPS and TBT Agreements – a sign that India continues to resist more efficient standards and measures as required by importing

⁹⁴ Prema Chandra Athukoral, *Food Safety Issues, Trade and WTO Rules: A Developing Country Perspective*, Research School of Pacific and Asian Studies, Australian National University, (2003), p.18, https://ageconsearch.umn.edu/record/57831/files/2003_athukorala.pdf.

⁹⁵ *Supra* note 4, at p.22.

countries. While official Indian policy with respect to consumer products have radically changed with the introduction of the FSSAI, the APEDA and the EIC as regulatory bodies for improving domestic and export production, a harmonized framework open to adopting suitable standards and scientific procedures across the domestic market as well as for exports will significantly benefit India.

A stable and predictable trade protection regime would assist India in the long term to fulfill its objective of becoming a food processing hub. Moreover, an export policy which is based on the requirements of the country would assist India in reducing instances of rejections and bans on consignments and would allow India to enhance its trade competitiveness globally.