MANAGEMENT OF SANITARY AND PHYTOSANITARY MEASURES
– THE MALAYSIAN EXPERIENCE

By Wan Normah Wan Ismail and Ricky Yong

1. Legal Framework and Institutional Responsibilities

The present Malaysian law that governs the movement of plants into and from the country is the Plant Quarantine Act 1976, Plant Quarantine Regulations 1981. The present law in general is not comprehensive, has no legal power in terms of regulating external trade, outdated and does not comply with the international rules in trade particularly the WTO Agreement and the SPS Agreements. However the Government is currently promulgating a new law to replace the existing one. The new law is in the final draft stage.

Implementation of the Plant Quarantine Act and Regulations in Malaysia comes under the purview of the Plant Quarantine Services of three Departments of Agriculture (DOA), namely DOA Peninsular Malaysia, DOA Sabah and DOA Sarawak. While using a common governing legislation, implementation of the Act by the three agencies is quite independent. Under the Act, they are defined as “component regions” with individual “Directors” to supervise all matters pertaining to carrying out all the provisions of the Act including enforcement of the Act between the regions. There are 56 gazetted entry points (land border, seaport and airports) and another 50 “official” entry points manned by the Plant Quarantine officers. Their responsibilities include to regulate imports of plants to protect our agriculture from foreign pest infestations by issuing import permits, inspection at the entry points of both passengers and cargoes, treatment supervisions, post-entry quarantine and also facilitate export of plants by inspection of plants/nurseries and issuing phytosanitary certificates as specified under ISPM No.12.

With the enforcement of the SPS Agreement, the Department of Agriculture, which is the NPPO for Malaysia is also mandated with the responsibility to manage the SPS requirements including the implementation of the International Standards for Phytosanitary Measures (ISPMs) established under the IPPC.

By virtue of the nature of our responsibilities, we interact daily with the private sectors particularly the exporters and importers. Due to the changing trading requirements, our ties with the private sector has moved away from being an enforcer of the plant quarantine law to that of a partner in improving our phytosanitary measures and increasing market access for our agricultural produce. We are working hand in hand with the fruit exporters associations, flower

growers and exporters associations, forwarders associations, treatment providers and also the air freight and sea freight operators to enhance our trading system.

Malaysia is signatory to most of the important agreements that relates to trade in agriculture. For plants, we are members of the IPPC, CBD, CITES, APEC, CODEX and APPPC. We have been very active members in these Agreements particularly in APPPC (Malaysia was the chair for 2004 –2005), CITES (DOA is the Management Authority for flora), IPPC (member of the Standards Committee of ICPM).

2. Experience in Managing SPS

Under the SPS Agreement, Governments explicitly have the right to impose sanitary and phytosanitary measures when these are considered necessary to protect human, animal and plant health. However, the SPS Agreement removes the rights of countries to arbitrarily restrict access to domestic markets and calls on members to harmonize sanitary and phytosanitary measures on a global basis by adopting international standards, guidelines and recommendations. The underlying objective of this is to ensure that governments do not use food safety and quarantine requirements as unjustified trade barriers in order to protect their domestic agricultural industries from import competition. The SPS Agreement also identifies the IPPC as the international organization responsible for phytosanitary standard setting and harmonization of measures affecting trade.

Despite the guidelines provided under the Agreements and the international standards established, we are still facing problems with several trading partners. Some countries which trade with us do not observe the SPS principles of transparency and scientific justification. Our consignments had been rejected because the importing countries had changed their import regulations without prior official notice to the industry or to us as the NPPO. We have also received several notifications from importing countries on phytosanitary actions taken on our consignments because of pest infestation. However, the notification for pest identification did not comply with ISPM No. 13, Guidelines for the Notification of Non-Compliance and Emergency Action, for example the pest intercepted were not properly identified and information sent were not complete for us take remedial actions. Some countries did not send any official notification at all.

Meanwhile, some countries still impose very stringent phytosanitary measures which are non-science based, discriminatory and non-transparent. For example recently our consignments had to undergo mandatory fumigation on arrival although treatment had already been carried out in our country prior to export. Some countries do not practice a harmonized phytosanitary rules at their ports of entry, whereby different ports have different set of rules for phytosanitary measures, making it very difficult for our exporters to carry out compliance phytosanitary treatments.
With the implementation of the SPS Agreement, some of our trading partners had amended their law to be in line with the SPS requirements. These new laws are either enforced immediately or the change in the regulation is very drastic. This puts us in a difficult position because the whole production system of the farmer’s field or exporters in our country has to be revamped. On the other hand, as the NPPO, we are also responsible for supplying reliable information on plant health status to enable importing countries to carry out risk assessment based on ISPM No 2 and No 8. Our host pest list in general is not complete and those available are either not updated or not properly verified. While we as the NPPO and our farmers struggle both physically and financially to comply with the new requirements, trade is temporarily disrupted and the country suffers income losses.

One of the main achievements brought about by the implementation of the Agreement on SPS Measures is that more doors are opened to us to trade. Because of the SPS requirements that any phytosanitary measures imposed need to be based on scientific principle, countries cannot unjustifiably deny our request to trade. During the last three years, we have succeeded in spearheading bilateral meetings or discussions for market access with several countries which were “not approachable” before because of stringent phytosanitary requirements.

Another benefit of the SPS requirements is that our farms have greatly improved under the Governments programmes for the production of safe and phytosanitary compliant produce. The Government has established the farm accreditation scheme based on the principles of GAP and EUREPGAP. This means that agriculture produce from these accredited farms can compete with other products in the international market.

3. **Main Challenges Ahead**

The SPS Agreements have provided an agreed, scientifically focused basis on which trade negotiations can take place. Their operation is however dependent on harmonization of national legislation and practices, and on the adoption of standards which are acceptable to all. The translation from agreements enshrined in international legislation to adoption as practical measures presents enormous challenges to most developing nations including Malaysia. To cope with the new requirements of the NPPO of our trade partners, Malaysia needs to invest considerable amount of fund and to make available the relevant expertise to carry out research on crop protection and quarantine treatments, diagnostic tests, pest surveillance, pest risk analysis, taxonomic verification, and the establishment of plant health information and pest reference collection. This means that the present organization in charge of the SPS and quarantine need to be revamped and enlarged. This exercise need the will power and total commitment of the central government, which at present is rather slow.
Private buyers on the other hand are more demanding than before in terms of quality (including size, varieties), safety and packaging. Our main challenge as far as the private sector is concerned is to meet the individual countries’ food safety and quality assurance requirements. The lack of a harmonized quality assurance or food safety law makes our production more expensive and tricky because we have to install or establish different set of procedures to comply with individual country’s food safety or quality requirements. Some country even practice discriminatory rules whereby to penetrate their markets, we have to become members of specific organizations or implement specific treatment using their equipments.

The private sector in Malaysia particularly the Fruit Exporters Association has raised concern over several food safety issues namely:
- insufficient information exchange on food safety and quality between countries and within the chains;
- the non-availability of MRL’s for certain tropical fruits and vegetables;
- the need to comply with EUREPGAP specifications by Jan 2005
- quarantine and SPS measures on fruits and vegetables could become a non-tariff barrier. The need for transparency, harmonization and equivalence of government and non-government standards as there is tendency by importing countries to develop more standards and regulations to the effect of becoming non-tariff barriers like EUREOGAP and EU Directives.
- Non-compliance with quality and safety systems hampers market access for small farmers;
- Lack of post harvest infrastructure and technologies for ensuring quality products.

4. Main Opportunities

Access to new markets is one major achievement of the implementation of the SPS Agreement. There is tremendous potential to expand our export base from the traditional industrial crops of palm oil and rubber products to our exotic local fruits and vegetables because there are still vast stretches of land not being fully utilized in Malaysia. Some of our fruits such as durians (Durio zibethines) and rambutans (Nephelium lappaceum) are currently in surplus. Access to new markets especially those with high purchasing power is an opportunity which must be tackled seriously.

The pressure of the requirements to gain access to new markets and to maintain existing markets has expedited the acceptance and implementation of the DOA’s Farm Accreditation Scheme by farmers under the principle of GAP. Through the establishment of this scheme, our farms has seen great improvement in terms of farm operation and the quality of produce. This will inevitably make our produce more competitive in the international market.
We have also implemented several certification schemes to comply with international standards such as ISPM No. 7 (Export Certification Scheme), ISPM No. 14 (The Use of Integrated Measures in a Systems Approach For Pest Risk Management) and ISPM no 15 (Guidelines for Regulating Wood Packaging Material in International Trade). The implementation of these schemes has greatly reduced red tapes with the cessation of end point inspection and treatment supervision by the Plant Quarantine Officers. The issuance of phytosanitary certificates is now done based on auditing system of the certified farms/packing houses or treatment providers. This has considerably reduced the overall exportation cost while exportation handling is run more efficiently.

While there is a great need to improve regional cooperation, prospects for cooperation especially in trade facilitation is tremendous. For the ASEAN region, most nations are either formal or adherent members of the IPPC, and those that are not (currently Brunei Darussalam, Myanmar, Singapore and Vietnam) are working actively for SPS cooperation on a regional basis. These include guidelines for key technical activities such as pest risk analysis, surveillance, eradication and the establishment of pest-free areas. In fact, based on Malaysian initiative for a regional “virtual resource center” for plant health, the ASEAN Ministers on Agriculture and Forestry, at their 25th Meeting in August 2003 agreed to the establishment of an **ASEAN Plant Health Cooperation Network** to harmonize and coordinate regional capacity-building in quarantine and plant health. The network would come up with various projects to improve capacity building in SPS to facilitate market access of ASEAN agricultural products to the international market.

Cooperation within the Asia and Pacific region under the ambit of APPPC or other groupings are already in existence and progressing very well. Among them are the establishment of regional standards for phytosanitary measures, information exchange mechanism for the APPPC, SALB Pest Risk Analysis and the agricultural pesticide management in the Asia and Pacific region. The FAO had provided Technical Assistance for regional projects specifically for SPS compliance. These include Regional Workshop for Pest Risk Analysis of rubber SALB and Regional Workshop on Phytosanitary Capacity Evaluation (PCE). Australia had also provided Technical Assistance for several projects including the establishment of regional standards and capacity building in PRA.

Besides the above initiatives, there are other areas of cooperation which are of concern to the region. The results of the recent PCE Workshop in Malaysia could highlight the areas which need to be further enhanced and tackled in a coordinated manner.