

Phytosanitary Program Oversight

Effective phytosanitary measures are the foundation of successful phytosanitary programs, but good measures alone don't ensure success. There are other factors to consider such as the feasibility of the program, the availability of resources to support the program, and the capacity of industry and other non-official entities to do their part. Official aspects of program implementation begin with specific commitments by the importing and exporting countries to ensure and assure that requirements are met, but implicitly also extend to understanding when and what adjustments are needed to make programs more effective.

The degree to which these factors are working well together ultimately determines not only the effectiveness of the phytosanitary program but also its credibility and sustainability. The point on credibility is important because regardless where the blame rests for program failures, all involved entities are damaged. From this standpoint, it is worth highlighting the need for a high-degree of collaboration and a shared commitment by the three primary entities: the NPPO of the importing country, the NPPO of the exporting country, and the regulated industry. Shared commitment comes with shared accountability, which raises a range of questions about how to verify that programs are operating as they are intended, issues are identified before they become problems, and appropriate adjustments are made. These questions point to the need for oversight mechanisms tied to accountability and ultimately to program effectiveness.

The International Plant Protection Convention (IPPC) assumes a relationship that emphasizes the official roles of the importing country in establishing appropriate phytosanitary measures and the official role of the exporting country in certifying that those requirements are met. This design supports the Phytosanitary Certification process and relates only to the regulatory roles of NPPOs, not necessarily the broader issue of program effectiveness.

As the phytosanitary community has evolved, NPPOs have invented increasingly more creative ways to implement the certification process involving variations on the roles of NPPOs and adding roles for the regulated industry and third parties. The objective has likewise evolved from a focus on simply issuing phytosanitary certificates to a shared responsibility for ensuring that phytosanitary programs are successful. This requires a higher level of collaboration and designs that focus on providing confidence based on different levels and types of oversight. While the IPPC directly addresses the official aspects of "what should be done by whom", it does not provide explicit guidance on "how well".

Although questions of competence, feasibility, capacity, and trust are not currently disciplined by the IPPC and associated standards, there is growing awareness that these important issues are imbedded to some degree in every phytosanitary program and need to be dealt with fairly and transparently in the framework of principles provided by the IPPC and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement).

The United States has a long history with different types of oversight programs and continues to explore variations on this theme. The concept of preclearance programs for inspection and

treatment certification was created by the United States and predates the SPS Agreement by decades. In the more recent past, our Quadrilaterals partners (Canada, New Zealand and Australia) have moved strongly toward accreditation and audit arrangements both domestically and for import/export programs, taking full advantage of the flexibility in the IPPC to “...make arrangements for the issuance of phytosanitary certificates ... under the authority of the [NPPO]...” (Article V.2). The European Union takes a slightly different approach by mixing phytosanitary programs into EuroGap certification schemes that may also cover consumer issues, environmental issues, and even human rights issues under a series of overarching product standards. In this case, the issuance of a phytosanitary certificate is secondary to certification under EuroGap standards.

All of this is accelerating toward phytosanitary programs that are more sophisticated, but also more effective as a result of linking the success of the program to reliability and the capacity for proper implementation. Key aspects of this evolution are the development of roles and responsibilities, criteria for the establishment, reduction, or elimination of oversight, and a harmonization/policy framework for consistent and transparent implementation.

In 2013, the North American Plant Protection Organization initiated work around a standard with these elements in draft RSPM 41, *Guidelines for Oversight Programs*. The work was stopped after the Country Consultation process because of critical feedback from industry stakeholders who were uncomfortable with the idea that there could be degrees of oversight linked to levels of risk, cost, and capacity. The processes for the establishment, reduction, transfer, elimination, and reestablishment of oversight programs also generated strong reactions. Despite this setback in harmonization, the application of the concept in practice continues to develop and spread in bilateral arrangements. Evolving in this fashion has the great advantage of promoting flexibility and creativity but it also encourages greater disparity between export views and import views and tends to work against the principles of consistency, transparency, predictability, non-discrimination, and equivalence – bulwarks of safe trade.

The awkwardness of pursuing mechanisms to improve phytosanitary program effectiveness through better oversight without a harmonization background may reflect reluctance by the phytosanitary community and stakeholders to wrestle with the sensitive issues underlying the concept of oversight, particularly the question of trust. This results in a strong tendency to approach phytosanitary programs from a point of distrust – anticipating failure even in the absence of evidence that it will occur with any probability. The effect is trade restrictive and opposes the spirit of the SPS Agreement. Whether it directly violates the Agreement remains to be seen in jurisprudence.

The United States has been a pioneer in this area and, as such, U.S. regulatory officials have more experience and insight into oversight designs than similar officials in other countries. The opportunity currently exists to better define the concept in a phytosanitary context, establish transparent and fair policy frameworks for its application, and set the right example for others and for harmonization based on two fundamental concepts: Safe Trade and Trust but Verify.