

# SPS measures in Nepal's agricultural trade

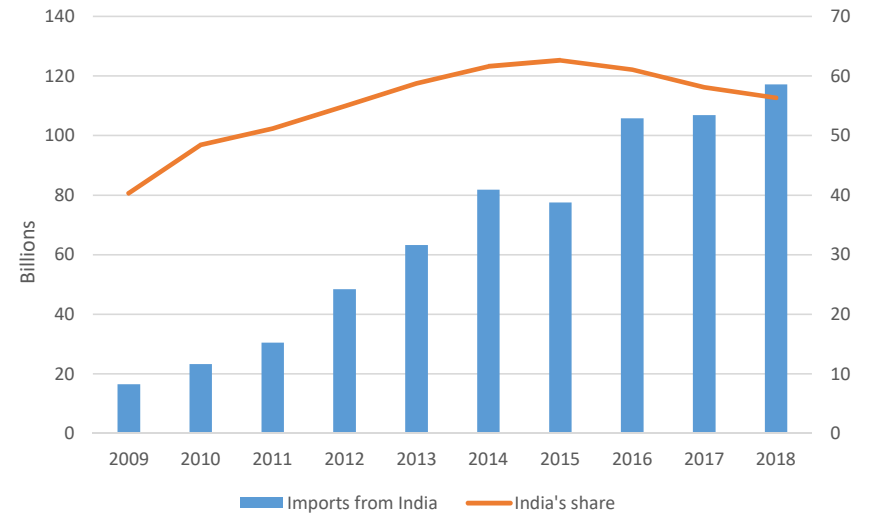
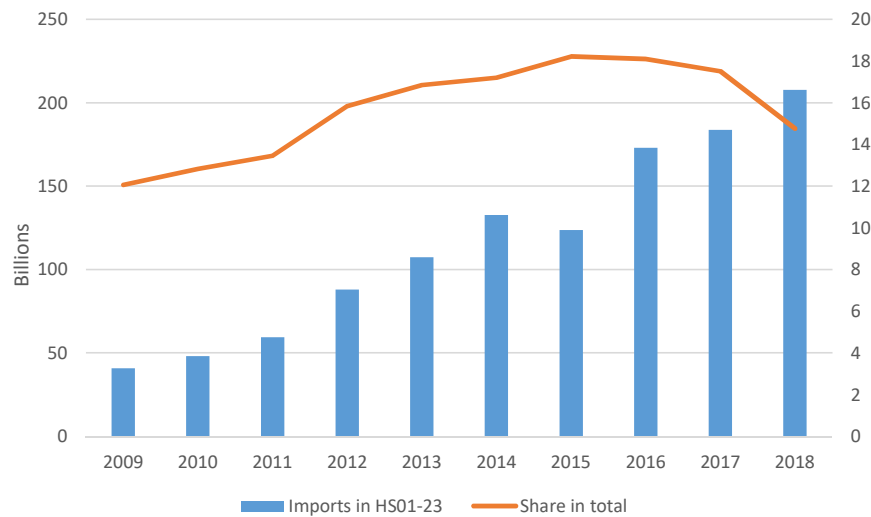
Paras Kharel, PhD

South Asia Watch on Trade, Economics and Environment (SAWTEE)

Presented at “Agricultural trade and Sanitary and Phytosanitary-related international laws and practices”, organized by Government of Nepal, Ministry of Industry, Commerce and Supplies, and SAWTEE, 5 August 2019, Kathmandu.

# Trends in food and agricultural trade

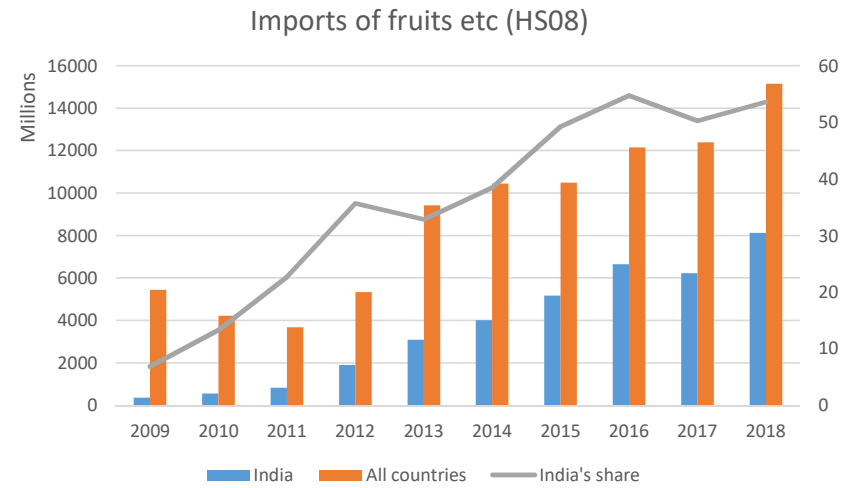
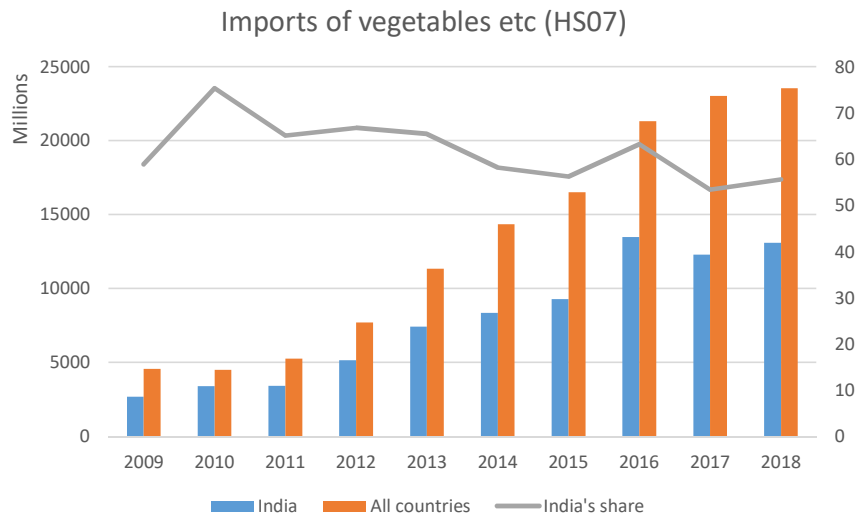
## Imports of food and agricultural products (HS01-23)



Source: Author's computation based on TEPC's online data bank

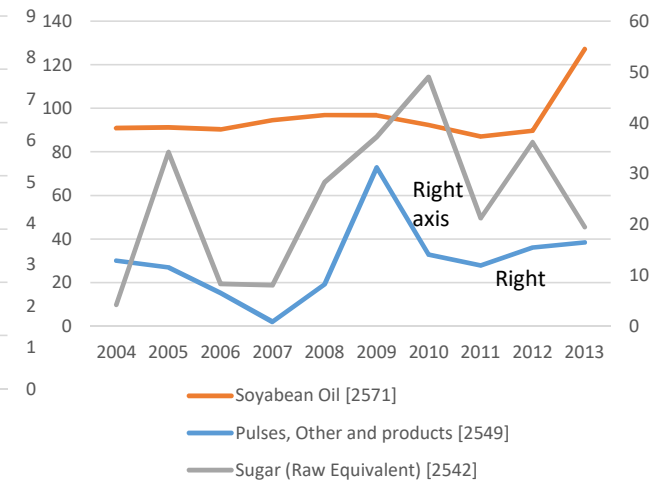
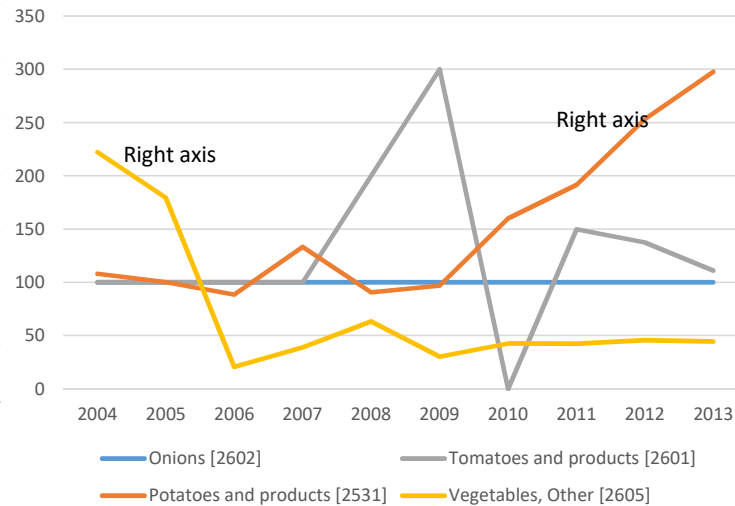
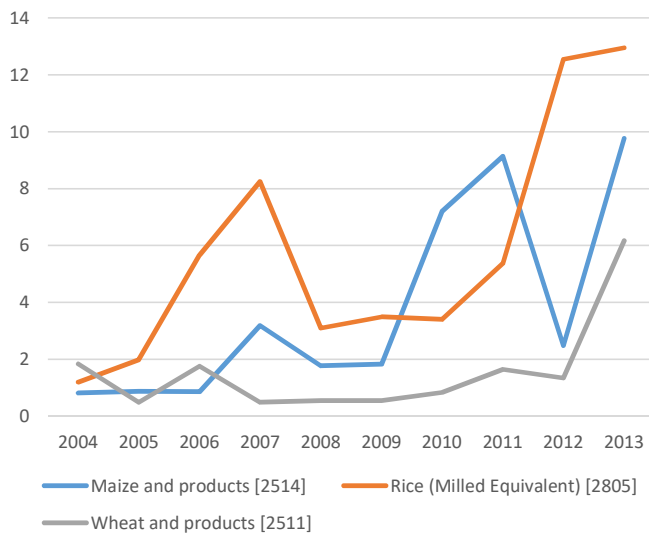
# Trends in food and agricultural trade

## Imports of vegetables and fruits



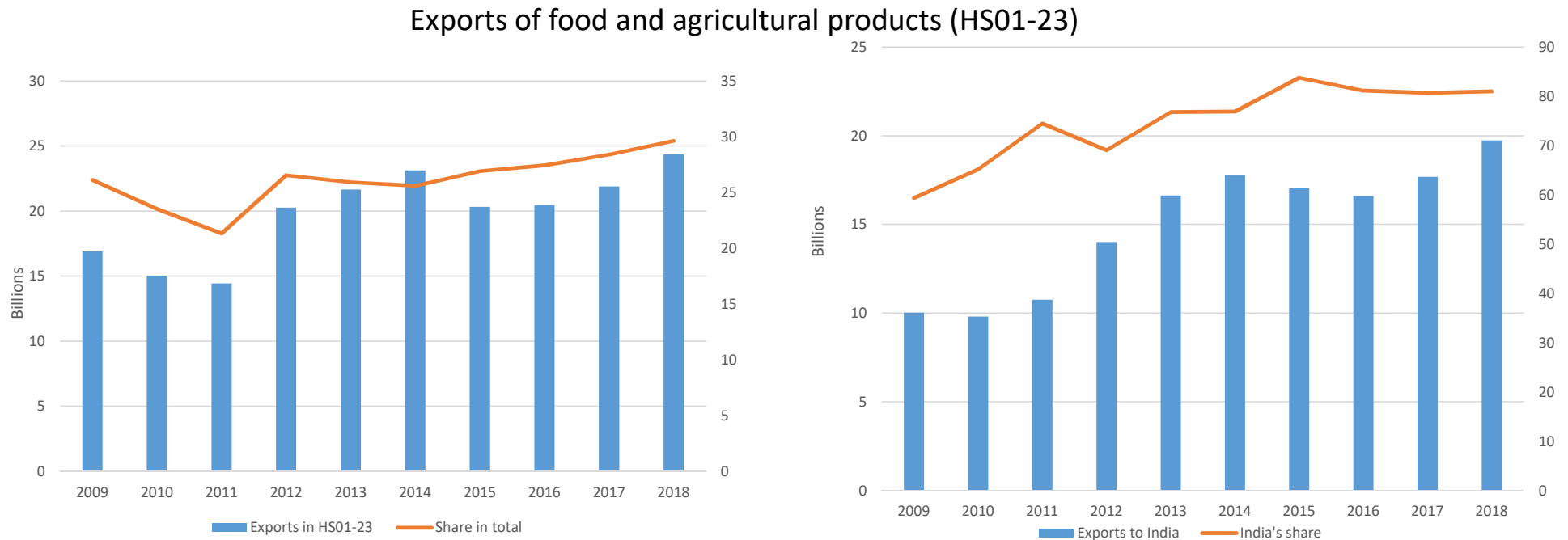
Source: Author's computation based on TEPC's online data bank

# Import penetration ratio (%)



Source: Author's computation based on FAO's food balance sheet

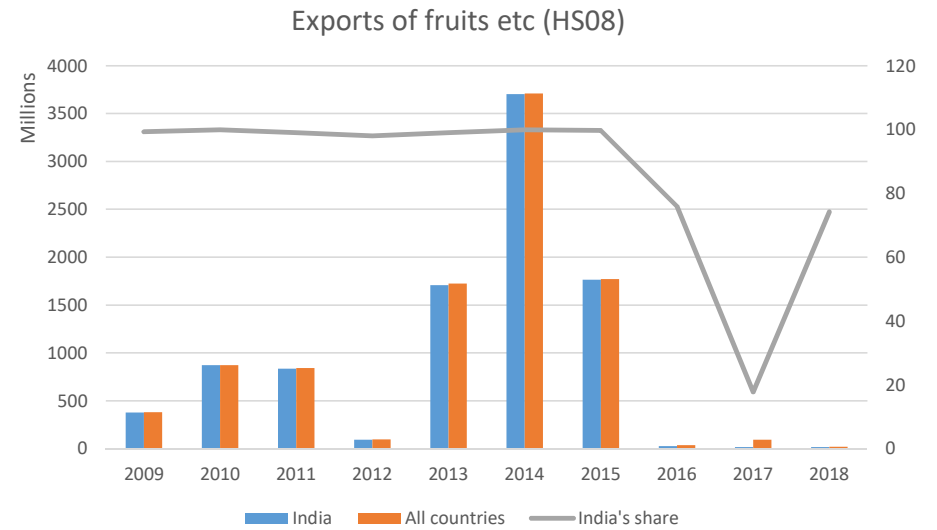
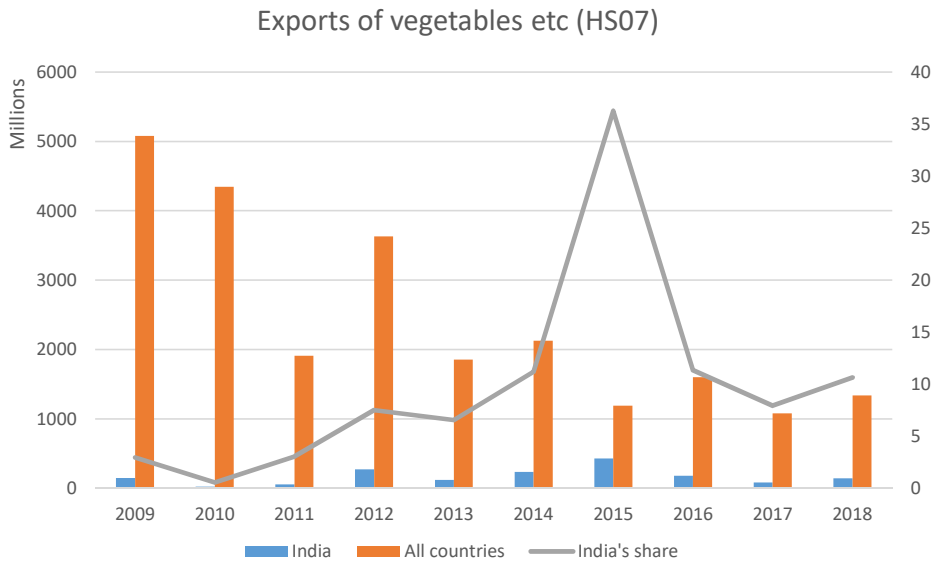
# Trends in food and agricultural trade



Source: Author's computation based on TEPC's online data bank

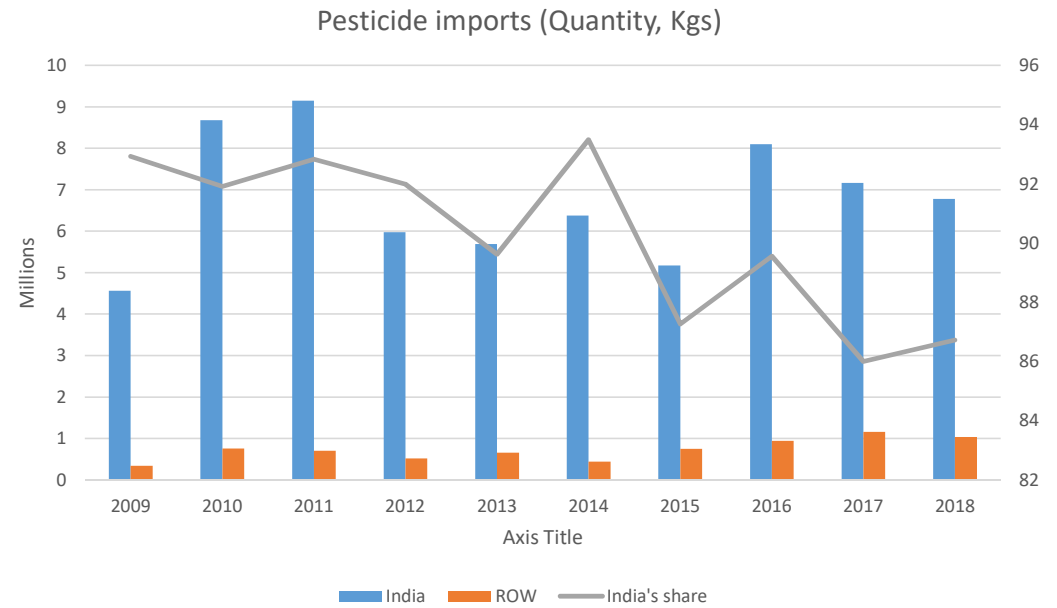
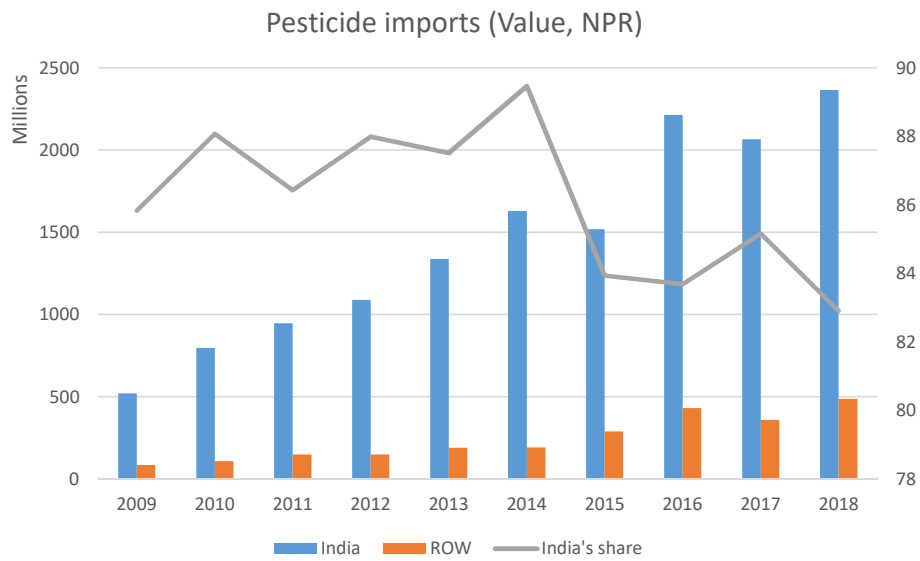
# Trends in food and agricultural trade

## Exports of vegetables and fruits



Source: Author's computation based on TEPC's online data bank

# Trends in pesticide imports



Source: Author's computation based on TEPC's online data bank

# The “letter”

- National Plant Protection Organization (NPPO)/ Agricultural and Processed Food Products Export Development Authority (APEDA) have been issuing phytosanitary certificates
  - These were acceptable to Nepal in the past
  - Nepal did not notify as per ISPM-13 of IPPC
  - Wants Nepal to comply with IPPC and WTO norms related to phytosanitary measures, and bilateral trade arrangements
- Terms Nepal’s action “NTB”
- Asks Nepal to remove the “NTB” and continue to accept phytosanitary certificates issued by NPPO/APEDA
- Seeks justification (with notifications/documents) that led to “urgent imposition of NTB”



# Questions

- Since a phytosanitary certificate does not mention pesticide residues, does any other document accompanying imports from India provide information on pesticide residues?
- The “letter” mentions phytosanitary certificate issued by NPPO/APEDA. Is it issued by NPPO or both? What extra information (e.g., pesticide residue) is provided by APEDA?

# International rules

## WTO: SPS Agreement

- The Agreement on the Application of Sanitary and Phytosanitary Measures
- SPS measures are defined as any measures applied:
  - to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food;
  - to protect human life from plant- or animal-carried diseases;
  - to protect animal or plant life from pests, diseases, or disease-causing organisms;
  - to prevent or limit other damage to a country from the entry, establishment or spread of pests.

# International rules

## WTO: SPS Agreement

- Countries are allowed to take measures to protect animal, plant and human life and health, provided the measures are:
  - based on scientific principles and evidence
  - based on risk assessment
  - not a disguised means of trade protection; not be more trade restrictive than necessary to achieve health protection objectives
  - consistent with national treatment and MFN treatment
  - notified to WTO
- Encouraged: Basing measures on international standards, guidelines or recommendations [Article 3.1]
- Allowed: Measures resulting in SPS protection higher than that resulting from measures based on international standards, guidelines or recommendations, provided they are justified by science or risk assessment [Article 3.3]

# International rules

## WTO: SPS Agreement

- International organizations named in SPS Agreement that set standards/guidelines/recommendations:
  - FAO/WHO Codex Alimentarius Commission: for food
  - International Office of Epizootics: for animal health
  - The FAO's Secretariat of the International Plant Protection Convention: for plant health

# International rules

## WTO: SPS Agreement – Article 7 (Transparency)

- Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

## International rules

### WTO: SPS Agreement – Annex B (Transparency)

- 1. Members shall ensure that all sanitary and phytosanitary regulations (5) which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.
- 2. Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.
- “reasonable interval” → 6 months [Ministerial decision: WT/MIN(01)/17]

# International rules

## WTO: SPS Agreement – Annex B (Transparency)

- 5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:
  - (a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;
  - (b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;
  - (c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;
  - (d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.
- Timing: 60 days, 6 months (to developing members, if requested) [G/SPS/7/Rev.3; G/SPS/33/Rev.1]

## International rules

### WTO: SPS Agreement – Transparency

- 8. Members are encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if they are expected to have a significant effect on trade of other Members. [G/SPS/7/Rev.3]



# International rules

## WTO: SPS Agreement

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# International rules

## Phytosanitary measures: IPPC

- The International Plant Protection Convention (IPPC) is a multilateral treaty for international cooperation in plant protection
- Deals with application of measures by governments to protect their plant resources from harmful pests (phytosanitary measures) which may be introduced through international trade
- Inspection and other related activities leading to issuance of phytosanitary certificates required to be carried out only by or under the authority of the official national plant protection organization
- Does not deal with pesticide content

# International rules

## Notification requirements in IPPC

- ISPM 13 [International Standards for Phytosanitary Measures 13]
  - Guidelines for the notification of non-compliance and emergency action
- "Notifications are provided by the importing country to the exporting country to identify significant failures of consignments to comply with specified phytosanitary import requirements or to report emergency action that is taken on the detection of a pest posing a potential threat. The use of notification for other purposes is voluntary, but in all instances should only be undertaken with the aim of international cooperation to prevent the introduction and/or spread of regulated pests (IPPC Articles I and VIII). In the case of non-compliance the notification is intended to help in investigating the cause of the non-compliance, and to facilitate steps to avoid recurrence."

# Nepal-India trade treaty

- Article IX: “Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such restrictions as are necessary for the purpose of ... (b) Protecting human, animal and plant life,...”

# Nepal-India trade treaty

## Protocol to Article I:

- “...The Government of India, on request from the Government of Nepal, will make best endeavour to assist Nepal to increase its capacity to trade through improvement in technical standards, quarantine and testing facilities and related human resource capacities...”
- “...The Contracting Parties shall undertake measures to reduce or eliminate non-tariff, paratariff and other barriers that impede promotion of bilateral trade...”

# Nepal-India trade treaty

## Protocol to Article II:

- “...It is further understood that when notifications regarding restrictions on exports to each other are issued, adequate provisions will be made therein to allow the export to each other of the goods which are already covered under the forward contract or by Letter of Credit or goods which are already in transit and/or booked through the railways or other public sector transport undertakings or goods which have already arrived at the border customs posts on the day of the notification...”
- “...Both parties shall grant recognition to the Sanitary and Phytosanitary certificates (including health certificates) issued by the competent authority of the exporting country, based on assessment of their capabilities, in the area of food and agriculture product (including primary, semi processed and processed), and shall allow entry of these products into their markets on the basis of these certificates subject to meeting the mandatory requirement of the importing country...”

# Nepal-India trade treaty

## Protocol to Article XI

- “...In case of problems arising in clearance of goods at the land customs stations, provided that the quality of goods in questions would deteriorate or perishes due to delays, such problem shall be dealt at the joint meeting of the local authorities comprising of the followings:
  - a. Customs officers
  - b. Quarantine/ food test officers
  - c. Representatives of local chambers
  - d. Any other local officials nominated by the respective government...”
- “...Such consultation will be carried out with a view to resolving the issue in an expeditious manner and at facilitating trade through resolving the issues in situ. However the case will be referred to the respective government, if the resolution could not be settled through such consultation...”

# Key SPS inadequacies in Nepal

- Institutional
  - Gaps in standards/delay in standards-setting
    - Some chemicals and other contaminants considered dangerous are not included in the Nepalese Food Standards
    - DFTQC Food standardization committee meeting (10 July 2018) proposed maximum residue limit on pesticide residues in 10 vegetables and fruits: apple, banana, bitter gourd, egg plant, cabbage (head), cauliflower, okra, potato, tomato, tea (green tea, black tea—fermented and dried)
    - Yet to be/in the process of being adopted
  - Traceability requirements, HACCP not addressed; little attention to food contact materials; Food Act more focused on quality than safety; labelling requirements do not meet Codex Alimentarius standards in many instances; GMOs
  - Inadequate capacity to conduct Pest Risk Analysis
  - Lack of quality human resources (competent food inspectors, risk analysis related employees, quality control officers, animal quarantine officers, veterinary officers, plant protection/plant quarantine officers, etc.); Constant transfer of employees, number of employees stagnant
  - Awareness and capacity at grassroots level



# Key SPS inadequacies in Nepal

- Infrastructure
  - Accredited testing laboratories and certification bodies limited
    - only limited products and parameters covered
  - Microbiological laboratories, food contaminants/Additives Laboratories, food and feed laboratories not accredited leading to double-certification; Soil, seed, fertilizers, pesticides, quarantine related services, veterinary and animal quarantine related tests not accredited

# SPS gaps relative to India and Bangladesh

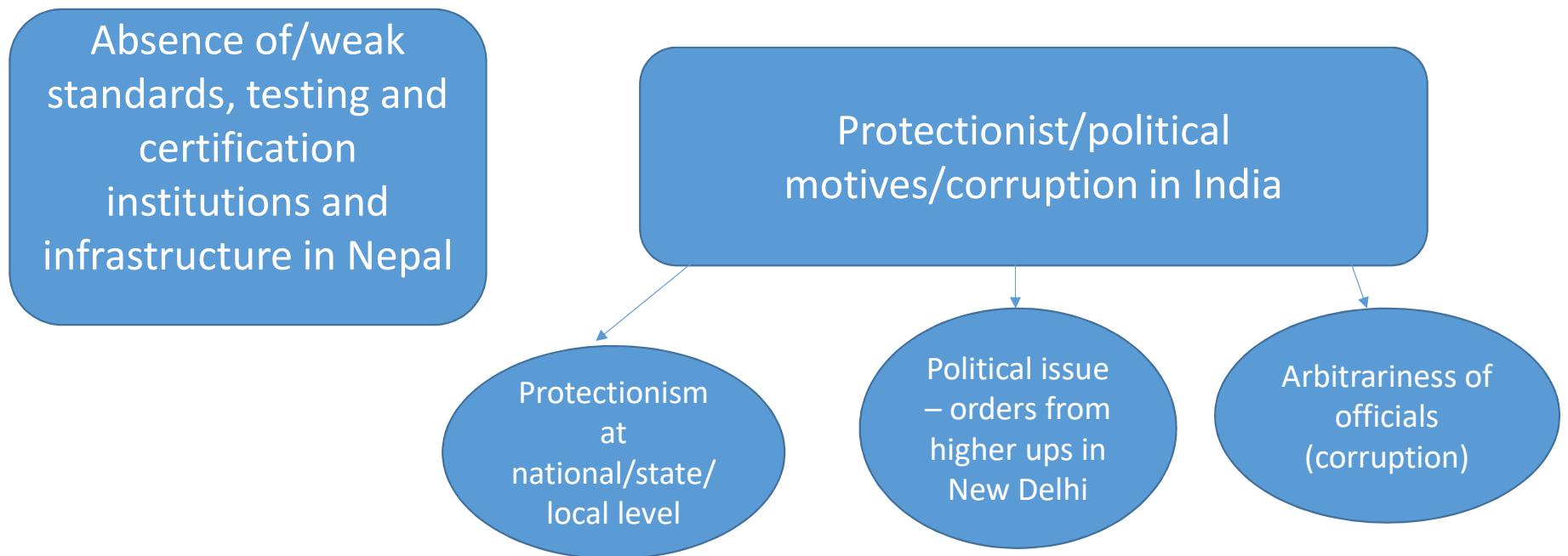
- India: Steviol Glycoside, Good Manufacturing Practice (GMPs), irradiated food products, GMOs, strict labelling requirements, mandatory certification for some products, etc.
- Bangladesh: Radioactive Materials; mandatory certification for some products etc.

# Evidence of pervasive procedural obstacles to Nepali exports

- Procedural obstacles include extreme inspection, double testing, double certification, arbitrariness of behavior (ADB-SAWTEE, 2018)
  - conformity assessment and procedural obstacles cause significant problems in terms of cost and delay
  - Are more trade restricting than gaps in standards
- Testing and certification requirements a major problem while exporting to India (especially for perishable food items)
- Other procedural obstacles while exporting to India: Arbitrary and inconsistent behavior; Informal Payments; Misclassification of products (e.g.: Ginger)

# SPS measures in India: Which factor is most important?

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# Possible way forward

## Regulatory reforms for SPS

- Implement systems approach (GAP, GMP, HACCP, traceability requirements)
- Adopt a risk-based preventive approach to food safety
- Focus on food safety parameters while forming technical regulations
- Update and harmonize SPS requirements with international standards

# Possible way forward

## Institutional reforms for SPS

- Enhance institutional capacity to conduct pest risk analysis and implement integrated pest management
- Increase institutional capacity for food surveillance
- Allow SPS agencies to hire workers on demand and prevent constant transfers/rotations
- Trainings, technical support, increasing awareness, knowledge sharing, etc.

# Possible way forward

## Establish national accreditation body

- Establish an internationally recognized National Accreditation Body, certified to issue accreditation to the laboratories
- Essential parameters that need accreditation: Microbiological, Chemical, Pesticide residues, ISO 9001 (quality management systems), ISO 22000 (food safety management)

# Possible way forward

- Harmonize standards with major trade partners
- Enter into Mutual Recognition Agreements for conformity assessment
- Upgrade testing laboratories
- Develop national quality policy to strengthen national quality infrast.
- Implement targeted human resources development
- Enhance SPS diplomacy
- Provide information to private sector about availability of private laboratories in India



# Possible way forward

- Transitional arrangement for imports
  - Adopt international standards (e.g., Codex Alimentarius)
  - Make it mandatory for imports to be accompanied by test certificates issued by internationally accredited conformity assessment bodies in India
- Transition to MRAs
  - Begin with MRAs for conformity assessment services where Nepal has the required technical competence, focusing on key products of export interest (e.g., In April 2017 FSSAI [Food Safety and Standards Authority of India] authorized BSTI [Bangladesh Standards and Testing Institution] to issue certificates of test analysis for 20 food items).
  - For other products, MRAs should be carried out after upgrading labs

Thank you