

# **Implementing SPS Measures to Facilitate Safe Trade**

**Principles and Practice in Cambodia, Lao PDR,  
Philippines and Thailand<sup>1</sup>**

**by**

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<sup>1</sup> The findings, interpretations and conclusions expressed in this paper are entirely those of the author. They do not necessarily represent the views of the STDF or any of its partner agencies or donors, or of national authorities in the countries considered in this research.

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## Foreword

In 2013, the STDF initiated research work in Africa and Asia on the implementation of SPS measures in the context of trade facilitation.

In the Asia region, Cambodia, Lao PDR, the Philippines and Thailand indicated their interest in participating in this work. The research work in Asia was led by an international consultant, Kees van der Meer ([cljvdmeer@gmail.com](mailto:cljvdmeer@gmail.com)), and supported by three national consultants; namely Sakura Samrith ([ssamrith@yahoo.com](mailto:ssamrith@yahoo.com)) in Cambodia, Sittthiroth Rasphone ([sittthiroth@hotmail.com](mailto:sittthiroth@hotmail.com)) in Lao PDR and Maribel Marges ([mgmarges@yahoo.com](mailto:mgmarges@yahoo.com)) in the Philippines.

In all four countries, initial workshops were held to explain the purpose of the research and to consult stakeholders on the modalities of the field work. Field work was carried out in:

- Cambodia from 23 September to 31 October 2013.
- Lao PDR from 9 to 31 October 2013.
- The Philippines from 30 September to 31 October 2013.
- Thailand during October and November 2013.

Field work included interviews with staff of competent authorities responsible for food safety, animal and plant health, research into the legal and institutional framework, interviews with exporting and importing private enterprises, freight forwarders, logistic companies and other private institutions. A total of 20 specialists from the private sector were consulted in Cambodia, 15 in Lao PDR, 20 in the Philippines, and 10 in Thailand. Preliminary findings from the field work were presented at confirmation workshops for stakeholders in:

- Cambodia on 14 November 2013 for private sector representatives and on 15 November 2013 for government officers.
- Lao PDR on 11 November 2013 for government officers and on 12 November 2013 for private sector representatives.
- The Philippines on 18 November 2013 for private sector representatives and on 19 November 2013 for government officers.

In Thailand no confirmation workshop could be held.

Draft country reports were prepared and sent to the main government contact points in each country for review and comments, prior to their finalization.

This regional report was prepared on the basis of the country reports and analysis of literature. The preliminary findings and recommendations of the draft report were presented at an STDF information session on 26 March 2014 in Geneva, on the margins of the WTO SPS Committee and STDF Working Group meetings. The draft report was circulated for comments to relevant officials in Cambodia, Lao PDR, the Philippines and Thailand, and STDF partners. Comments received have been taken into account in this revised final report.

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Any mistakes in this report are the responsibility of the author. Opinions and judgment in this report are those of the author and do not necessarily reflect opinions and judgment of STDF and organizations and contributors involved in the study.

## Abbreviations and Acronyms

### General

ADB	Asian Development Bank
AFF	Agriculture, Food and Forestry
ASEAN	Association of Southeast Asian Nations
CCIC	China Certification and Inspection Group
CO	Certificate of origin
Codex	Codex Alimentarius Commission
DTIS	Diagnostic Trade Integration Study
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FMD	Foot and mouth disease
GAP	Good agricultural practices
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GHP	Good hygiene practices
GMP	Good manufacturing practices
GMS	Greater Mekong Subregion
GNI	Gross national income
HACCP	Hazard Analysis and Critical Control Points
HQ	Head Quarters
HPAI	Highly Pathogenic Avian Influenza
ICT	Information and communication technology
IICA	Inter-American Institute for Cooperation on Agriculture
IPPC	International Plant Protection Convention
ISO	International Organization of Standardization
ISPM	International Standards for Phytosanitary Measures
ISSB	International standard setting bodies
IT	Information technology
LC	Letter of credit
LPI	Logistics performance index
LTO	License-to-operate
MRA	Mutual Recognition Agreement
MRL	Maximum residue level
NPPO	National Plant Protection Organization
NSW	National single window
OECD	Organisation for Economic Cooperation and Development
OIE	World Organisation for Animal Health
PC	Phytosanitary certificate
PDR	People's Democratic Republic
PPP	Purchasing power parity
PRA	Pest risk assessment
SITC	Standard International Trade Classification
SOP	Standard operating procedures
SPS	Sanitary and Phytosanitary
STDF	Standards and Trade Development Facility
TBT	Technical Barriers to Trade
TPR	Trade policy review
TRS	Time release studies
UN COMTRADE	United Nations Commodity Trade Statistics Database
UNCTAD	United Nations Commission for Trade and Development
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
USA	United States of America
US FDA	United States Food and Drug Authority

WHO	World Health Organization
WITS	World Integrated Trade Solutions
WTO	World Trade Organization

**Cambodia**

CoM	Council of Ministers
CTIS	Cambodia Diagnostic Trade Integration Study
DAHP	Department of Animal Health and Production
FiA	Fisheries Administration
GDA	General Department of Agriculture
GDCE	General Department of Customs and Excise
ILCC	Industrial Laboratory Center of Cambodia
MAFF	Ministry of Agriculture Forestry and Fisheries
MEF	Ministry of Economy and Finance
MOC	Ministry of Commerce
RGC	Royal Government of Cambodia
SNEC	Supreme National Economic Council

**Lao PDR**

DOA	Department of Agriculture
DOLF	Department of Livestock and Fisheries
DOP	Department of Planning and Coordination
FDD	Food and Drug Department
LNCCI	Lao National Chamber of Industry and Commerce
MAF	Ministry of Agriculture Forestry
MOIC	Ministry of Industry and Commerce

**Philippines**

AO	Administrative Order
BAI	Bureau of Animal Industry
BFAR	Bureau of Fisheries and Aquatic Resources
BIR	Bureau of Internal revenue
BPI	Bureau of Plant Industry
BOC	Bureau of Customs
DA	Department of Agriculture
DOH	Department of Health
DOT	Department of Tourism
DTI	Department of Trade and Industry
EO	Executive Order
EU	European Union
FAO	Fisheries Administrative Order
FDA	Food and Drug Administration
IFM	Inward Foreign Manifest
NMIS	National Meat Inspection Service
PNSW	Philippine National Single Window
SEC	Security Exchange Commission
TIN	Tax Identification Number
VQMILC	Veterinary Quarantine and Meat Inspection and Laboratory Certificate

**Thailand**

ACFS	National Bureau of Agricultural Commodity and Food Standards
DLD	Department of Livestock Development
DMS	Department of Medical Science
DOA	Department of Agriculture
DOF	Department of Fisheries
FDA	Food and Drug Administration

MOAC	Ministry of Agriculture and Cooperatives
MOPH	Ministry of Public Health
RGC	Royal Government of Thailand
THB	Thai Baht
TPR	Trade Policy Review
TFFA	Thai Frozen Food Association

## Executive summary

There is increased interest in trade facilitation by developing countries and among the trade and development community, which is also evidenced by the recent conclusion of negotiations towards the new WTO Trade Facilitation Agreement. It is based on the common understanding that trade can be an important tool for economic growth and poverty reduction. In this context, questions are raised about the relation between trade facilitation, simply put, the reduction of transaction costs for cross-border trade and sanitary and phytosanitary (SPS) measures. Are they in synergy or is the balance skewed in favor of one? This study addresses this question in two ways. First, it analyzes the SPS Agreement and relevant rules of the World Trade Organization from the perspective of trade facilitation. Second, the study collects information on how SPS measures are implemented in Cambodia, Lao PDR, the Philippines and Thailand, in light of the relevant provisions of the SPS Agreement, in particular those most directly related to trade facilitation principles. This study does not question the legitimate objectives of food safety, plant or animal health protection of these countries, but looks at whether these objectives could be achieved in a more effective and less costly manner, including through greater compliance with the relevant international standards.

**WTO framework** Members of the WTO have the sovereign right to restrict trade for the protection of human, plant and animal life or health against trade-related risks, provided that they follow the relevant principles of the WTO and in particular the SPS Agreement. The main principles of the WTO framework are that SPS measures should be non-discriminatory, transparent, science-based and not more trade-restrictive than required to achieve the appropriate level of protection. SPS measures that meet these principles are considered as legitimate non-tariff measures.

Trade facilitation refers to the simplification and harmonization of required processes, procedures and information flows for border clearance. This study focuses on this general concept, not on the new Trade Facilitation Agreement. Trade facilitation is optimal if transaction costs for legitimate trade are as low as possible. If the transaction costs of SPS measures to traders are higher than necessary to achieve the appropriate level of protection they should be considered as trade-disruptive. If SPS measures do not disrupt trade more than necessary to achieve the appropriate level of protection, then they are in harmony with trade facilitation. The SPS Agreement is mainly about principles to observe when applying measures to protect human, animal or plant life or health, but it also provides obligations in several articles and in particular in Annex C on avoiding unnecessary trade disruption and transaction costs for traders.

Most WTO Members are still in the process of incrementally applying WTO obligations correctly, and SPS measures applied in many countries ensure a lower level of health protection than desirable and disrupt trade more than necessary.

**Methodology in data collection** This study focuses on the transaction costs of SPS release processes for exports and imports in the four Southeast Asian countries. In each country, information was collected about the SPS policy and institutional framework, the release processes, and on key issues that were expected to affect transaction costs, such as



transparency, requirements for traders and products, application of risk management, document requirements, waiting time, payments, and internal business costs for traders caused by the range of requirements. The focus was on four main product groups: (i) milled rice and other field crops; (ii) fruit and vegetables; (iii) shrimp and other fisheries products; and (iv) chicken and other meat products. Live animals, seed and propagation material, and less common products were not included. Data were obtained from the SPS competent authorities (mainly on the formal requirements) as well as from a number of traders for each product group (mainly on transaction costs).

**Findings and analysis** The SPS systems in the countries differ considerably. Cambodia and Lao PDR are still making efforts to establish a basic system, and their capacity is still very limited. Thailand and the Philippines have more established systems. Thailand's system is more developed, with greater capacity for implementation, and more trade-friendly. The Philippines' SPS control system is characterized as being more prescriptive than that of Thailand.

From the perspective of traders, transparency regarding sanitary and phytosanitary requirements, fees, standard waiting time, document requirements and use of internet is poor in Cambodia and Lao PDR, moderate in the Philippines and fair to good for Thailand. Traders, in particular in Cambodia and Lao PDR, and to a lesser extent also in the Philippines, are dependent on information from personal contacts with officers of the SPS competent authorities. Knowledge among traders in Cambodia and Lao PDR about legislation is very limited or absent.

The most important finding about transaction costs incurred by traders is that in all four countries traders indicate that administrative and other business costs related to control measures are more disruptive than formal and informal payments. Official fees for SPS services in Thailand for import controls and export of shrimp are absent or low, and in the Philippines low or absent for exports and moderate for imports. In Cambodia and Lao PDR information about official fees was not transparent because (i) in both countries agencies reported to apply fee rates from legislation that was not yet in force, and more importantly, (ii) traders reported that they often do not receive receipts for their payments or only for parts of what they pay. Informal payments are reported in all countries, but they seem to be relatively low in the Philippines and high in Cambodia and Lao PDR. SPS transaction costs for traders are part of the total regulatory and logistic costs, but generally not the highest part. Nevertheless, they affect profitability and competitiveness in all four countries. Evidence was found in each of the four countries of enterprises that gave up trading or reverted to informal trade because costs were considered excessive. In Cambodia and Lao PDR, high transaction costs contribute at least in part to the extensive informal (i.e. uncontrolled) exports and imports.

The study analyzed the findings in these four countries based on the principles of the SPS Agreement, trade facilitation concepts and relevant recommendations of the international standard-setting bodies (ISSB), notably the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC), and the World Organisation for Animal Health (OIE). The study shows that the following practices<sup>2</sup> contribute, to a varying degree (sometimes

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<sup>2</sup> This list reflects general practices identified in this research work. Not all of these issues are relevant to each of the countries considered in this research. For detailed analysis about the particular country findings, see

substantially), to high and unnecessary transaction costs and trade restrictions in the four countries:

1. Waiting times that are longer than necessary.
2. Informal payments are costs in themselves, but often also contribute to other kinds of costs and undermine health protection because of inappropriate application of SPS measures.
3. Lack of transparency contributes to increased costs and business risks.
4. No or insufficient application of risk-based controls, meaning more controls are conducted than are justifiable or necessary.
5. Duplicative and unnecessary administrative requirements among SPS agencies and with Customs augment waiting times and costs.
6. Costly requirements for registration of products, and use of licenses for enterprises and permits for imports and exports that are not justified on the basis of risk management.
7. Use of quotas in licenses and permits are trade restrictive and cannot be justified as health protection measures.
8. Unnecessary control of traceability through ex ante requirements in import permits restricts commercial freedom and adds to costs.
9. Unjustifiable requirements for obtaining phytosanitary certificates by exporting and importing countries and the use of certificates for purposes not compliant with international standards.
10. Lack of application of the equivalence principle in the SPS Agreement and of recognition of controls by other countries and the private sector lead to unnecessary duplication of controls in exporting and importing countries.
11. Mandatory export requirements that are not based on requirements of the importing countries are mostly superfluous.
12. Requirements from a competent authority in the exporting country for exporters to obtain an import permit from a competent authority in the country of destination, as a pre-condition for issuance of a sanitary or phytosanitary certificates, is mostly unnecessary and involves extra time and effort for enterprises.

Unnecessary costs and trade restrictions are encountered in all four countries but especially Cambodia, Lao PDR and the Philippines have considerable possibilities to reduce costs and facilitate trade, without reducing legitimate health protection.

***Effectiveness and efficiency*** An important question for policy makers is what does their country get back for its SPS control efforts? What is the effectiveness of controls against health hazards and to increase market access? What is the efficiency with which this is achieved in terms of costs to business and public agencies?

The **effectiveness** of public efforts to gain and maintain market access and to protect health is still limited in Cambodia and Lao PDR and fair in the Philippines. The SPS systems of Cambodia and Lao PDR have limited effectiveness owing to several reasons, one of which is capacity. These systems are characterized by their excessive controls that lack scientific basis

and are often used to generate fiscal income thus eroding their use as protection against health risks and as a tool for export market access. The SPS system of the Philippines still functions too much as a tool for market control, and insufficiently as a control system against health hazards and tool for gaining market access. The Thai SPS system functions effectively as a tool for market access for shrimp exports, and is moderately effective as a tool for assuring food safety. The effectiveness of health protection measures especially in Cambodia and Lao PDR, but also the Philippines and Thailand is jeopardized by significant amounts of products in informal trade and markets, which face limited controls.

The **efficiency** of public efforts in SPS control measures in Cambodia and Lao PDR is still low. Both countries get limited health protection for the high transaction costs and efficiency is hampered for exports because many of the controls applied do not add to market access and some are too costly to the private sector and, hence, erode competitiveness of exporters. In the Philippines many implementation modalities, especially the use of licenses, permits and product registration for implementing SPS measures cause high transaction costs, and thus reduce the efficiency of measures. In Thailand, overall efficiency of the system seems to be fair in food safety on imported food and good in export of shrimp products. Efficiency in food safety management is negatively affected by insufficient application of risk management for some imports. In all countries, use of licensing and permits for implementing SPS measures, where applied, is not risk-based and seems to add significantly to cost of doing business and little to achieving the appropriate level of protection.

**Capacity and institutional constraints** Awareness of the impact of transaction costs on trade is generally low among SPS agencies. Moreover, awareness among senior policy makers about performance of SPS systems is limited because of insufficient internal monitoring for management purposes and lack of indicators for measuring performance and international comparison. This hampers effective policy oversight.

In particular in Cambodia and Lao PDR, lack of human skills, technical capacity and operational funding also constrain cost-effective SPS management. Lack of funding, in particular, can result in use of regulatory powers for para fiscal purposes, which can have undesirable consequences for health protection, SPS Agreement compliance and trade facilitation.

SPS control systems are the responsibility of the public sector. Therefore, transaction costs of SPS release processes for traders and effectiveness and efficiency of SPS controls are affected by broader issues such as investment climate and governance. The assessment of SPS performance systems in the four countries in the current study are generally in line with the international assessments in the Doing Business Report, the Logistic Performance Indicators, World Governance Indicators and the Corruption Perceptions Index. This provides strong arguments for an integrated approach that addresses SPS system performance both through targeted SPS technical capacity building and general initiatives targeted at improving trade facilitation through strengthening of governance and the investment climate. As recommended by the OECD and the WTO TBT Committee, attention must be paid to good regulatory practice (GRP), which means that greater attention must be paid to the quality of SPS legislation and the role of the regulatory framework in general in providing a sound basis for the performance of the SPS system.

**Balance** Is the balance between trade facilitation and sanitary and phytosanitary (SPS) measures skewed in favor of one? If properly implemented, SPS measures should not be more disruptive of trade than necessary to achieve the appropriate level of protection, as required by Articles 2.2 and 5.6 of the SPS Agreement. This study found that there are many deficiencies in implementing the SPS Agreement and that sometimes SPS measures disrupt trade more than necessary. It identifies options to implement SPS measures in ways that facilitate trade while achieving at least the same level of protection. Improved implementation of SPS measures is in the interest of Members. They can achieve more benefits from both trade facilitation and health protection through better implementation modalities of SPS measures. Unnecessarily restrictive practices by importing and exporting countries may originate in rent-seeking, over-protection, ignorance of inspectors, or lack of consideration of cost caused to traders.

**Recommendations** The study results in various recommendations for facilitating trade through improved implementation of SPS measures for the consideration of governments, international level policy makers and also the technical assistance community in general. The primary recommendation for governments is to pay special attention to implementation modalities for SPS measures that are less trade-restrictive and result in lower transaction costs. Some suggested actions are:

1. Improve transparency, for example by using regularly updated online tools where possible
2. Reduce possibilities for rent-seeking
3. Implement and improve risk-based SPS management
4. Limit the use of import and export licenses and permits for implementing SPS measures, focusing on high risk products if deemed necessary
5. Rely on product registration in limited circumstances only, for example for special groups of high risk products
6. Apply the equivalence principle, and also seek mutual recognition agreements or unilaterally recognize controls by other countries and the private sector, where relevant to prevent duplicative controls in exporting and importing countries
7. Abolish mandatory export certifications that are not required by the foreign buyer/importer
8. Reduce document requirements and document duplication among agencies
9. Reduce waiting times for issuance of certificates and inspections
10. Adopt automation of SPS import and export release processes and fully integrate these processes in the National Single Window (NSW) systems

The following recommendations, for the attention of STDF and the WTO SPS Committee, should also be considered by the broader trade and development community in their assistance to developing countries to facilitate trade in the SPS context:

1. *Develop a comprehensive tool box of good practice recommendations for implementation modalities of SPS measures from a trade facilitation perspective.* The STDF may consider initiating and facilitating this work. Also, in its upcoming review of the SPS Agreement, the SPS Committee may also consider further clarifying provisions in the SPS Agreement, such as Article 8 and Annex C, which directly address implementation, taking into consideration best practice with respect to trade facilitation.

2. Based on experiences from this and parallel studies, STDF may consider coordinating and facilitating the *preparation of performance assessment tools* on the implementation of SPS measures from a trade facilitation perspective.
3. The SPS Committee may consider developing *good practice guidelines for SPS regulatory frameworks*, especially for legislation that governs SPS systems that are established, and function in line with, international health and trade principles.
4. The STDF is recommended to conduct *additional studies on implementation of SPS measures for facilitating safe trade* with a view to: (i) strengthening the methodology of these surveys; and (ii) obtaining more information for comparison and formulation of good practice.
5. STDF may consider further *studies on the role, constraints and potential of SPS transit modalities in the Greater Mekong Subregion (GMS)* within the broader framework of bilateral and multilateral transit agreements.
6. STDF is recommended to consider *options to bridge institutional and knowledge gaps between SPS and trade facilitation entities*, both at international and national levels.
7. National and international organizations engaged in the trade facilitation agenda are recommended to strengthen their *focus on implementation modalities of SPS measures*.

## I. Introduction

This is a study of four countries in Southeast Asia (Cambodia, Lao PDR, the Philippines and Thailand) on “Implementing SPS Measures to Facilitate Safe Trade”. Parallel regional studies have been undertaken in Africa by the STDF in collaboration with TradeMark Southern Africa and the Common Market for Eastern and Southern Africa (COMESA), and in Latin America by the Inter-American Development Bank (IDB).

The inspiration for these studies is the increased interest in trade facilitation by developing countries and the trade and development community, based on the common understanding that trade can be an important tool for economic growth and poverty reduction. In this context, questions are raised about the relationship between sanitary and phytosanitary (SPS) measures and trade facilitation. Are they in synergy with each other or is the balance skewed in favor of one? There are two ways to address this question. One way is to analyze the rules of the WTO framework, in particular the SPS Agreement, and the other is by collecting information on how SPS measures are implemented in light of the relevant provisions of the SPS Agreement, in particular those most directly related to trade facilitation principles. This study does both.

**Background** All countries maintain sanitary and phytosanitary (SPS) measures in order to protect domestic public health, plants, crops and livestock, and in order to gain and maintain market access. These measures aim to contribute to economic growth, poverty reduction, food security and environmental protection. The WTO SPS Agreement establishes a framework of rules on how governments can apply food safety, animal and plant health measures, which may directly or indirectly affect international trade.

WTO Members adopted a new Agreement on Trade Facilitation in December 2013, which will strengthen focus on implementation of trade-related measures and transaction costs. This study focuses on how SPS measures are implemented based on the general concept of trade facilitation, not on the WTO Agreement on Trade Facilitation. Trade transaction costs occur every time one of the parties within the supply chain is required to submit information to government agencies. These costs might be direct (e.g. preparation/ submission of documents, charges and fees, inspection costs) or indirect (e.g. border delays, uncertainty about procedures) (Grainger, 2008). The OECD calculates that each 1% saving in trade-related transaction costs yields a worldwide benefit of US\$43 billion.

**Implementing SPS measures in the context of trade facilitation** Trade facilitation initiatives focus on wide-ranging issues and constraints that exist in many countries that hinder regional and international trade and increase the costs of doing business. Some of these issues are related to how SPS measures are applied, i.e. what the implementation modalities are and the extent to which, if any, they unnecessarily increase the cost and time of doing business. While the implementation of SPS measures understandably results in some trade transaction costs – which are necessary to ensure health protection – the SPS Agreement requires that they should not be more trade restrictive than necessary, which generally implies that transaction costs for traders should not be higher than necessary.

The implementation of SPS measures is challenging in any context, and requires countries to have a certain level of capacity. In some developing countries, capacity and resources are limited and other issues (linked to unclear SPS mandates, inadequate coordination, institutional rivalries and/or weak understanding of international standards, etc.) exacerbate the challenges. On the other hand, some developing and upper middle income countries have made considerable progress in upgrading their SPS capacity and infrastructure, and have a number of useful lessons and experiences to share.

Some studies have highlighted a variety of issues linked to inadequate SPS capacity and SPS measures, which may act as a greater barrier to trade than tariffs. These may include measures that are unjustifiable from a scientific perspective (i.e. they are not risk-based), excessive documentary requirements, inefficient procedures, unnecessarily long waiting times, inadequate transparency, insufficient predictability and consistency in the implementation of SPS controls, and/or higher-than-necessary fees. As a result, SPS measures are sometimes insufficient to protect health, while being more costly than necessary.

In recent years, several capacity building initiatives, backed by substantial resources, have emerged to support trade facilitation in developing countries. Customs authorities have generally been the main focus and beneficiaries of these initiatives, while the modernization of SPS systems has tended to lag behind.

***STDF work on SPS measures and trade facilitation*** The STDF is carrying out work, in collaboration with relevant partners and other international and regional organizations, on the interface and linkages between SPS and trade facilitation. This report contributes to the STDF's work program in this area by analyzing the implementation of SPS measures in the context of trade facilitation in selected Southeast Asian countries. The term "trade facilitation" in this report refers to facilitating national and international transactions, through the simplification and harmonization of processes, procedures and information flows, and which thus contribute to the growth of global commerce. The objectives of this report are:

1. to draw attention to the synergies between the implementation of SPS measures and trade facilitation;
2. to identify key needs, opportunities and good practices to improve the implementation of SPS measures in a way that ensures an appropriate level of health protection while minimizing trade transaction costs; and
3. to make recommendations to enhance future work and technical cooperation focused on SPS and trade facilitation.

The study aims to generate new knowledge and information on a topic of widespread interest, which has not been systematically addressed. It provides a starting point for the identification of approaches and opportunities to improve the implementation of SPS measures in a way that ensures an appropriate level of protection and advances trade facilitation goals.

The target audiences of this report are specialists in trade facilitation and SPS management in government, private enterprises, and international and development agencies. Senior policy makers in government will see the importance of good implementation of SPS measures for health protection and trade promotion by using trade facilitation principles. Policy and trade specialists will find useful the technical information that needs to be considered in designing

SPS and trade policies. Staff in international and development agencies may find the linkage between trade facilitation and SPS implementation helpful for further developing good practice recommendations in SPS implementation and supporting government agencies in SPS and trade facilitation capacity building.

This report is organized as follows. Chapter II explores the relevant WTO principles and framework for SPS management and trade facilitation. Chapter III presents the scope and methodology of the study. It is followed in Chapters IV and V by a presentation of findings and comparative analysis of the country studies against the provisions of the SPS Agreement and selected texts of the three international standard setting bodies (ISSB) referenced in the SPS Agreement, namely the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC), and the International Organisation for Animal Health (OIE). The last Chapter offers recommendations to governments for improved implementation of SPS measures through the perspective of trade facilitation, and draws the attention of the international trade and development community to the need for additional external support in this area. Annex I provides background information about exports and imports of agriculture, food and forestry (AFF) products in the four countries involved in the research.

## **II. The Nexus between Trade Facilitation and Health Protection**

Trade is a main driver of growth and poverty reduction and, hence, trade promotion receives much attention from countries and development partners. The WTO agreements form a multilateral framework with binding disciplines for Members that are aimed at promoting global trade. Trade does not only have beneficial contributions, it can also increase the risk of spreading unsafe food, and animal and plant pests and diseases. Therefore, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, generally referred to as the SPS Agreement, explicitly recognizes the sovereign right of WTO Members to take measures to protect themselves against such risks, and allows countries to restrict trade when necessary for the protection of human, plant and animal health or life, provided that they follow certain principles and procedures. The SPS Agreement itself tries to strike a balance between health protection needs and trade promotion.

In practice, there are often questions on how SPS measures and trade facilitation relate to each other. This chapter clarifies the international framework and the similarities and differences in principles and practice of both areas of public policy.

### **Trade facilitation: concepts, scope, importance and approaches**

The term “trade facilitation” in this report refers to facilitating national and international transactions, through the simplification and harmonization of processes, procedures and information flows, and which thus contribute to the growth of global commerce. It is a commonly used term by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the Organization of Economic Cooperation and Development (OECD), and other agencies involved in trade and economic development. Although there is no internationally agreed definition, the consensus is that trade facilitation focuses on the reduction of transaction costs for cross-border trade for legitimate trade and traders. Higher transaction costs also ultimately affect consumers.



A broad range of public requirements, procedures, and practices, different from country to country and even within a territory from border post to border post, can affect trade. Hence, the scope of trade facilitation is broad (Box 1) and the topics that can be subject to trade facilitation are numerous (Box 2). The new WTO Agreement on Trade Facilitation, mentioned above, covers part of this broad agenda. It will enter into force after the fulfilment of a number of requirements by Members. A newly established Preparatory Committee has been mandated to ensure the expeditious entry into force of the Agreement and to prepare for its efficient operation. Much work will be required to facilitate the implementation of the Trade Facilitation Agreement and to further clarify linkages with the SPS Agreement.

**Box 1. General scope of international trade facilitation**

- Trade procedures
- Customs and regulatory bodies
- Provisions for official control procedures applicable to import, export and transit including: general arrangements, Customs controls, official documentation, health and safety, financial securities, and transshipment
- Provisions relating to transport and transport equipment, including: air transport; sea transport; and multimodal transport
- Provisions relating to the movement of persons
- Provisions relating to the management of dangerous goods
- Provisions relating to payment procedures
- Provisions relating to the use of information and communication technologies
- Provisions relating to the commercial practices and the use of international standards
- Legal aspects of trade facilitation

**Source:** (UN/CEFACT and UNCTAD 2002) cited in Grainger 2007

Improvement of the regulatory interface between government bodies and traders at international borders can be seriously constrained by lack of budget, human and technical capacity, and an inadequate legal framework. Therefore, effective approaches to trade facilitation will in many cases require significant amounts of investment, training and time.

The traditional core task of border agencies is control. The main tasks of Customs are revenue collection and prevention of illegal import and export. SPS agencies have the mandate to ensure appropriate sanitary and phytosanitary protection, including implementation of controls to protect consumers, animals, plants and the environment against trade-related health risks. Immigration and border police control the movement of peoples across the border. Although promotion of trade for many years has been a clearly established goal in most countries, according to a World Bank publication on border management modernization, many border agencies play only lip service to trade facilitation. One of the objectives of trade facilitation, therefore, is to improve the operation of border agencies, which have generally developed a culture over many years of not prioritizing ways to reduce transaction costs for legitimate traders.

**Box 2. Common themes in reforming trade and customs**

- Simple rules and procedures
- Avoidance of duplication
- Memoranda of Understanding (MoUs)
- Alignment of procedures and adherence to international conventions
- Trade consultation
- Transparent and operable rules and procedures

- Accommodation of business practices
- Operational flexibility
- Public-service standards and performance measures
- Mechanisms for corrections and appeals
- Fair and consistent enforcement
- Proportionality of legislation and control to risk
- Time-release measures
- Risk management and trader authorizations
- Standardization of documents and electronic data requirements
- Automation
- International electronic exchange of trade data
- Single Window System

**Source:** Wikipedia. [http://en.wikipedia.org/wiki/Trade\\_facilitation](http://en.wikipedia.org/wiki/Trade_facilitation) (accessed 03-02-2014)

### Protection against trade-related health risks

The basic aim of the SPS Agreement is to maintain the sovereign right of any government to impose SPS measures to provide the level of health protection it deems appropriate, but also to ensure that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade. The definition of an SPS measure is contained in Annex A of the SPS Agreement (See Box 3).

#### Box 3. Definition of SPS measures

SPS measures include 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; and
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.

These measures include sanitary and phytosanitary measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora.

The definition in the Agreement is: "Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety."

**Source:** WTO 1998. "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures". [http://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm)

According to the WTO, the main principles with which SPS measures must comply are:

- 1) **Nondiscrimination.** Measures are applied equally to trading partners as well as domestic producers, when health conditions are similar. Similarly, there should be no unjustifiable discrimination between WTO Members with similar conditions.
- 2) **Use of science-based measures.** Measures to protect plant, animal, and human health are based on scientific principles with sufficient scientific evidence. Generally, this requires the assessment of risks involved and the definition of the level of risk that is acceptable.

- 3) **Transparency.** Information on SPS measures is easily accessible. There are set procedures for notification of new or amended SPS measures to the WTO and each Member has to establish a Notification Authority and an Enquiry Point.
- 4) **Minimal trade disruption.** Measures are not more trade-restrictive than required to achieve the Member's appropriate level of sanitary or phytosanitary protection.
- 5) **Equivalence.** There is recognition (sometimes mutual) among trading partners of different measures that achieve the same level of protection.
- 6) **Regionalization.** SPS measures are adapted to the SPS characteristics of the area from which the products originate and to which they are destined (all of a country, part of a country, or all or parts of several countries) and recognize the possibility of allowing exports from pest- or disease-free areas and areas of low pest or disease prevalence, based on the provision of necessary evidence.

In addition, the SPS Agreement strongly encourages Members to harmonize their measures by adopting international standards, guidelines and recommendations developed by three international standard setting bodies (ISSB), notably the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC), and the World Organisation for Animal Health (OIE). However, countries are allowed to apply stricter requirements as long as these measures are based on scientific justification, which includes an assessment of risks. Countries may also apply fewer and less stringent standards, or opt not to apply SPS international standards, provided that this does not affect the rights of other countries under the multilateral trade rules.

These main principles seek to ensure that SPS measures are not disguised non-tariff barriers that unnecessarily restrict trade and that they are not used for protectionist purposes. In particular, the principle that measures should not be more trade restrictive than necessary to achieve the appropriate level of protection (principle 4 above) could be said to create a legal foundation for many trade facilitation measures under the WTO SPS framework. In addition, Article 8 and Annex C of the SPS Agreement set out requirements on control, inspection and approval procedures which are most directly related to trade facilitation. A summary of the contents of Annex C is provided in Box 4.

<b>Box 4. Summary of issues covered in Annex C of the SPS Agreement</b>	
Annex C requires that WTO Members shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:	
<b>Article</b>	<b>Issues (summarized)</b>
a	procedures are undertaken without undue delay
b	<ul style="list-style-type: none"> <li>- the standard processing period is published, or anticipated period communicated upon request;</li> <li>- there is prompt examination of completeness of documentation and information of applicant of all deficiencies;</li> <li>- the results are transmitted as soon as possible, so that corrective action can be taken if necessary, and even with deficiencies proceeds as far as practical, if requested;</li> <li>- the applicant is informed about stage of procedure, with any delays explained</li> </ul>
c	information requirements are limited to what is necessary
d	confidentiality is respected
e	requirements for control, etc. are limited to what is reasonable
f	fees are not higher than actual cost of service
g	siting of facilities is non discriminative

h	in case of change of descriptions, the procedure is limited to what is necessary to control for changes
i	a complaint procedure is in place
Source: Compiled by the author from the official text of Annex C of the SPS Agreement	

Most relevant for the countries included in this study is that the WTO principles are used by members of the Association of Southeast Asian Nations (ASEAN) and countries of the Greater Mekong Sub-Region (GMS) as the basis for harmonization and it is intended that countries in the region are progressively implementing the same SPS principles and standards in their own trade and domestic policies. Chapter 5 of the ASEAN Free-Trade Agreement addresses SPS measures and reiterates the commitment to apply the principles of the SPS Agreement “in the development, application, or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the parties while protecting human, animal or plant life or health ...” (article 4). This Chapter emphasizes the importance of the principle of equivalence arrangements and decisions to facilitate trade (article 5(3)).

### Standards and Trade

The purpose of the WTO framework is to facilitate trade. The SPS Agreement strikes a balance between trade facilitation and health protection. The main work of the ISSB – Codex, IPPC and OIE – in this context is the development of international standards with the objectives of food safety, plant health and animal health respectively. Standard-setting can enhance trade and reduce transaction costs. Protection of health is the primary objective in formulating international standards. Trade facilitation principles are also taken into account, but may receive less attention. In general, countries’ adoption of international standards contributes to harmonization that can lead to reduction of transaction costs. Adoption of improved inspection and approval procedures following good international practice can also lead to predictability of trade and reduction of unnecessary measures. However, if harmonization implies that countries adopt additional or more restrictive standards than they had before, transaction costs for traders can increase.

The relation between SPS measures and trade facilitation is not straightforward. The impact of adoption and implementation of SPS measures and standards depends very much on local conditions, preferences and capacities to implement them in line with WTO principles. Ineffective and burdensome administrative procedures and rent-seeking behavior can reduce the effectiveness of controls, add unnecessary controls and increase the regulatory burden for traders. Adopting more SPS measures in an unsuitable environment can easily result in more transaction costs and delays without significantly reducing health risks, and adopting international standards which are not necessary for health protection in the country is not justifiable.

Unnecessarily trade restrictive measures can be introduced during decision making on implementation modalities of SPS measures. For example, a draft legal text and technical advice may aim at adopting international standards. However, during the decision making process, a series of control measures and procedures can be added to the legislation and the promulgated texts can include significantly more and different control measures than proposed in the draft. Moreover, the SPS authorities may apply complex control measures and

procedures that greatly affect transaction costs and waiting time. Box 5 illustrates how well-intended control measures can affect the cost of doing business and health protection.

#### **Box 5. Hypothetical measures affecting cost of doing business and health protection**

##### **Illustration 1**

Simple control measures for import of food products based on Codex standards could be that the inspectorate takes samples based on risk profiles to get them tested in a food laboratory. Additional complex requirements by the importing country could variously include:

- the foreign producer and/or exporter needs one or more pre-requirements (ISO 9000, HACCP, etc.)
- the importer needs an import license that needs regular renewal
- the product needs registration and approval before it can be imported
- import permits have to be obtained for a certain volume of import or for each import shipment
- safety assurances and health certificates from the exporting countries have to be provided with the import documents
- all imported shipments are sampled and tested

Note: Each step of the above requirements involves application of procedures with fees and waiting time, and may or may not be necessary to achieve the appropriate level of protection.

##### **Illustration 2**

The movement of animals and animal products is controlled to reduce the risk of spread of animal diseases, preferably based on OIE standards. In case of outbreaks, tight control of movement and trade will be necessary. In times without outbreaks, simple control measures should be applied, which could, for example, consist of monitoring at international borders and selected market places. However, additional complex requirements in situations where there is no-emergency situation could variously include:

- movement permits are required for all animals transported from farms to markets or other farms
- movement permits are required for transit through each local administrative entity
- all bovine animals have to be registered
- traders need to be registered and obtain periodically renewable licenses

Note: each step of the above requirements involves application procedures with fees and waiting time and the additional requirements may be excessive for many developing countries.

In both illustrations, complex requirements will result in high transaction costs, which especially in least developed countries with weak administrative capacity, makes smuggling and informal trade financially attractive and more difficult to prevent, and thus at least to some extent, undermine the effectiveness of health protection.

**Source:** the author

## **WTO principles and practices**

Countries such as the Philippines and Thailand that were Members of the GATT and ratified the new WTO agreements within the given timeframe automatically became Members of the WTO in 1995. The SPS Agreement allowed a brief transition period for Least Developed Countries (LDCs) and developing countries, which has already lapsed. Countries that joined the WTO later, such as Cambodia and Lao PDR, had to go through an accession procedure which required the adoption of WTO principles. However, the actual process of accession often does not necessarily fully achieve that. There is widespread misunderstanding that during its WTO accession process, a country has to comply with all WTO provisions and that a successful accession means that its framework is fully compliant.

Accession to the WTO is essentially a negotiation process during which the acceding Member's government and a WTO working party, comprised of interested Members, discuss the terms of accession, which must subsequently be agreed by all WTO Members. The agenda for negotiation usually contains requirements for many areas under the WTO agreements, including the area of SPS measures. It reflects the interests or preoccupation of Members of the working party and has much of an *ad hoc* character. The accession agreement reached at the end of the negotiation process usually includes commitments from the acceding Member that it will correct some specific non-compliance issues and build some capacities within a certain period. However, there is usually no comprehensive post-accession monitoring mechanism and no sanctions for not meeting the commitments. For example, Cambodia acceded to the WTO in 2004 with commitments to solve non-compliances within a certain period. During the Trade Policy Review (TPR) in 2011, it appeared that progress had been made but that there were major outstanding compliance issues in the SPS and TBT areas. TPRs of other countries, original and new Members alike, also point to similar questions about compliance.

Another common misunderstanding is that when a Member submits a notification regarding a new or modified draft SPS measure, which does not receive any objections, then it is compliant with WTO principles. In general, compliance is an evolving agenda. While it may be difficult for any WTO Member to fully comply with all provisions and recommendations of the WTO SPS Agreement, it is clear that to benefit from WTO membership, a fair degree of harmonization with the principles of the international system is necessary. Since WTO membership may not bring automatic benefits, Members face a challenge to prioritize their SPS policies and capacity building efforts in ways that will realize benefits from WTO membership and improve compliance. Members have room for prioritization based on their product mix, pest and disease situation, level of development, and the specific requirements of potential markets.

**Implementation** The SPS Agreement mainly focuses on principles to govern SPS measures and less on practical implementation modalities, which are typically the focus of trade facilitation initiatives. The guidance is general with little specificity. It might be worth noting that the SPS Committee has developed some guidelines to further the implementation of the SPS Agreement. One which might be of particular relevance for this work is the Decision on the Implementation of Article 4 (Equivalence) (G/SPS/19/Rev.2) as Members can also reach agreement regarding the equivalence of their control and inspection systems. The Committee has also adopted decisions/guidelines related to transparency (G/SPS/7/Rev.3), regionalization (G/SPS/48), and consistency (G/SPS/15). To date, the Committee has not developed further guidance on the implementation of Article 8 and Annex C of the SPS Agreement on control, inspection and approval procedures, which is most closely related to issues of trade facilitation.

The work of the ISSB focuses in particular on standards and good practice for the protection of health. Less guidance is provided for good practice in implementation with regards to topics such as those referred to in Annex C of the SPS Agreement and principles of trade facilitation. The available guidance is scattered over many texts and there is currently no comprehensive compilation of good practice guidance for implementing SPS measures with the aim of minimizing trade restriction and transaction costs to traders.

## Review of implementation of SPS measures

WTO Members adopt many different SPS measures, which are often technically complex. However, there is little *ex ante* assessment of the effectiveness and efficiency of these measures from the perspective of gaining and maintaining market access and ensuring food safety, animal and plant health. Once implementation commences, there is often limited attention to the intended and unintended outcomes of the measures. Or, in other words, what the effectiveness and efficiency of the financial and human resources devoted to the SPS measures is. And there is no systematic *ex post* assessment of compliance with WTO principles.

Traders sometimes complain about the SPS system in their own countries and in countries with which they trade, including its costs, inefficiencies and ineffectiveness, but without systematic collection of complaints and analysis no conclusions can be drawn.

### III. Scope and methodology

This study assesses SPS measures for particular agri-food product groups in four countries, what such measures cost to traders and whether these costs are necessary to achieve the appropriate level of protection.

The following paragraphs look at key terms used in the study and delineate the parameters and scope of the data collection, analysis and findings.

**Definition of trade restriction** As indicated already, a main principle of the SPS Agreement is that measures are not more trade-restrictive than required to achieve a Member's appropriate level of sanitary or phytosanitary protection (Article 5.6). There is also reference to "minimizing negative trade effects" (Article 5.4), and to "reasonable" measures and time-frames. However, the Agreement does not provide a definition of trade restriction. Unnecessary transaction costs will generally restrict trade, and reversely, restrictive measures may cause higher transaction costs for traders than needed.

**Definition of costs** The SPS Agreement does not define transaction costs. In principle, it should include all costs that may affect trade, and therefore this study recognizes the following four kinds of costs incurred by traders.

1. Official fees and charges for services based on regulation and imposed by SPS measures, including the cost of application forms, service charges, inspections, sampling, testing and diagnostics, treatment and quarantine costs, issuance of certificates, etc.
2. Informal payments, not based on regulation, under many different names, including tea money, under the table payment, payment for entertainment, meals, transport, speeding up service provision, overtime fees, special presents, gratitude, payments for services for which no formal fees apply, etc.
3. Administrative costs for enterprises, including cost and staff time for preparation of documents, submission, consultation with officers, tracking the status of decision making, reminders by phone, actions to speed up the process, and contingency planning.

4. Internal business costs, including long lead-time from planning to sale, extra storage and interest costs, spoilage of goods, missed orders, uncertainty.

Official fees and charges involve monetary payments based on legislation for which receipts should be available. Annex C of the Agreement states that fees should not be higher than costs (without specifying whether these costs should incorporate fixed costs). Informal payments are generally in monetary form, but there is mostly no written evidence and estimates have to come from interviews. Administrative and internal business costs are largely non-monetary internal costs in enterprises for which most enterprises do not record costs separately and estimates of the magnitude of these costs have to come from interviews with managers and specialists in these enterprises.

**Waiting time** Waiting time for import and export clearance can contribute significantly to costs and uncertainty, but it is not easy to measure such costs in an unambiguous way. Time release studies (TRS) provide meaningful information on aggregate general performance of border handling, but the results do not tell much about the performance of SPS handling specifically. Four reasons can be identified why TRS are not very suitable for measuring waiting time for the implementation of SPS controls. First, there are differences in controls among the subsectors (i.e. plant health, animal health and food safety). Second, the percentage of shipments subject to SPS controls is small, and application of TRS type recording for waiting time would be very expensive because of the considerable amount of time this would require for recording staff at the border. Third, TRS is losing part of its relevance because there is a clear trend towards carrying out controls away from the border, and less time on the border does not necessarily mean that total transaction time and costs for the release of goods is declining. Especially for SPS release, many costly steps are taking place away from the border, such as applications, inspections, conformity assessment, and certifications. Fourth, attribution of waiting times on the border to SPS and other agencies raises problems because controls for different border agencies can partly be conducted in parallel or sequentially, and coordination and interaction between SPS and other border agencies can be good or bad. Analysis of interaction of agencies on the border would be expensive and could not be included in this study.

For these reasons this study only measured waiting time for specific steps in particular SPS controls and generally not for the total release time.

**Country selection** The Southeast Asian countries included in the survey are Cambodia, Lao PDR, the Philippines and Thailand. The motivation for this selection was to have: (i) two low income countries – Cambodia and Lao PDR – which still face the challenge of establishing a basic functioning SPS system; (ii) a successful middle income country – Thailand – which has extensive trade in agriculture and food products and a fairly well-developed SPS system; and (iii) a country with a middle position – the Philippines – which has some successful exports, varied imports of agriculture and food products, and a basic functioning SPS system.

Cambodia, Lao PDR and Thailand share porous land borders with mutual dependence in combating transboundary endemic pests and diseases. Much of their bilateral trade goes through land border crossings. The Philippines is an island economy, which means that it has some natural quarantine against invasion of pests and diseases from foreign countries, and only sea and airports for clearance of goods.



The countries are different in terms of size and economic development (Table 1). The population size of the Philippines is 15 times bigger than that of Lao PDR, while Thailand has a 40 times bigger economy than Lao PDR. Real income level per capita in the Philippines is almost two times higher than in Cambodia but less than half of the Thai level. Life expectancy does not show major differences among the countries.

**Table 1. Country indicators**

	<b>Cambodia</b>	<b>Lao PDR</b>	<b>Philippines</b>	<b>Thailand</b>
population (millions) 2012	14.9	6.6	96.7	66.8
GDP (billions) (2012)	14.0	9.4	250.2	366.0
GNI / capita PPP (current 2012)	2330	2690	4380	9280
life expectancy (2011)	71	67	68	74

**Source:** World Bank, World Development Indicators (accessed 20-01-2014)

**Product selection** SPS measures can vary widely for products because of their risks as carriers of pests, diseases and food safety hazards, their physical characteristics, their origin, and their intended use. For these reasons the project focused on four core products and groups of products:

- 1) rice and other field crops
- 2) fruit and vegetables
- 3) shrimp and other fisheries products
- 4) chicken and other meat products

Obviously, not all countries in the region have significant amounts of exports and imports of all of these products, but in most cases proxy products subject to similar SPS requirements from the same product group could be selected. The study did not cover products with special risks such as seed and propagation materials, and live animals. In the case of Thailand, the study focused on exports and imports of shrimp, and food safety controls on imports.

A complication for selection of products is that Cambodia and Lao PDR have significant amounts of unrecorded exports and imports, often simply not controlled by border agencies, or smuggled. Significant flows of agricultural products enter Thailand (and also Vietnam, which was not included in this research work) from Cambodia and to a lesser extent from Lao PDR, without registration and SPS control, which means that these trade flows are underreported in mirror trade statistics. In order to have the best trade estimates available for these countries, mirror trade data was used from WITS (World Integrated Trade Solution) COMTRADE, which are based on the Standard International Trade Classification (SITC).

An overview of the recorded imports and exports in the four countries is presented in Annex I. Table 2 summarizes more detailed data for recorded export and import for the selected products. Countries can be typical exporters for particular products, but can also be importers of the same products depending on the seasons, product qualities/varieties and geographic areas of their territory. For the same reasons, typical importing countries for a particular product can also have exports of that product. Cambodia, Lao PDR and Thailand are exporters of milled rice, maize (corn) and dried cassava. The Philippines is an importer of milled rice and maize. Thailand also imports these products. The Philippines and Thailand are exporters of fruit, while Cambodia and Lao PDR are importers. The Philippines and Thailand are major exporters of

shrimp, Cambodia has small-scale recorded shrimp exports. Each of the countries have imports and exports of fruits and vegetables, and imports of beef and meat products. Thailand and the Philippines have exports of chicken meat and other meat products. Exports of beef products are negligible, except for Thailand. The four countries have extensive tourist industries, which import a wide range of food products from within and outside the region.

**Table 2. Formal trade for selected product groups**

ISIC Code	Product	2011 Gross Imports (USD millions)				2011 Gross Exports (USD millions)			
		Cambodia	Lao PDR	Philippines	Thailand	Cambodia	Lao PDR	Philippines	Thailand
011	Beef, fresh/chilled/frozen	18	32	238	53	-	.0004	0	31
012	Meat nes, fresh/chilled/frozen	4	76	195	31	-	-	43	131
0123	Poultry fresh/chilled/frozen	3.6	71.2	90	3	0	0	43	116
0361+0362	Crustaceans, frozen/not frozen	0.4	0.1	8	61	14.2	0.3	104	1786
0423	Rice, milled	4.4	11.7	373	9	119.6	2.1	1	6307
0449	Maize ex sweet corn nes	0.1	0	19	28	17.7	34.2	0	99
05481	Manioc(cassava), fresh/dried	0	0.1	5	32	89.8	2.3	2	979
0545	Vegetables nes, fresh/chilled	2	9	3	120	.094	11	22	119
0579	Fruit fresh/dried nes	6	10	16	84	.0005	.0006	169	833
05797	Avocado/mango/guava fresh	2	2.6	0	3	0.1	0	96	96

nes: not elsewhere specified

Source: COMTRADE, WITS

Data for Cambodia and Laos are mirror trade data

**Imports and exports** This study focuses on imports and exports of the above mentioned product groups. It is important to note that WTO SPS disciplines apply to imports, and therefore exports of a country are largely regulated from the perspective of the SPS requirements of importing countries. The general thrust of the WTO disciplines is that if all Members comply with WTO principles, including the principle that SPS measures should be least restrictive to trade, then trade opportunities would be optimal. The SPS Agreement does not impose similar disciplines on exports, however, it defines obligations of exporting countries to provide information about their SPS-related restrictions on trade, as well as on their pest and disease situation and food safety hazards, at the request of importing countries. The ISSB provide guidance on import and export-related procedures such as inspections, conformity assessment, and certification. However, the SPS Agreement is not concerned directly with any possible unnecessary costs to exporting countries, which may stem from their own costly and unnecessary measures. By contrast, trade policy departments in most countries and the development community place significant emphasis on promoting exports through trade facilitation because of its impact on growth, employment and poverty reduction.

Finally, while transit trade is important to Cambodia, Lao PDR and Thailand, it could not be covered in this research because regional and bilateral agreements for goods in transit are still deficient, only partly implemented and/or not fully clear on provisions for SPS requirements (see Box 6).

**Box 6. Note on SPS issues linked to transit in Cambodia, Lao PDR and Thailand**

WTO obligations on goods in transit are only broadly and indirectly defined. The SPS Agreement does not make explicit reference to goods in transit, but general provisions such as quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport, do apply to goods in transit. Article V of the GATT 1994 refers to freedom of transit. Sub-article 4 stipulates that "All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic". Article 11 of the new WTO Agreement on Trade Facilitation introduces additional provisions regarding Freedom of Transit. ISSB have made recommendations on handling goods in transit. In practice the scope of transit agreements goes far beyond SPS controls because of requirements on vehicles and containers used for transport, and financial guarantees required by Customs for compliance with transit requirements. Trans-loading requirements, which exist in some countries, may actually conflict with SPS sealing requirements.

Lao PDR is emerging as a major transit country for trade between Thailand and China, and between Thailand and Viet Nam. Cambodia is also emerging as a transit country for trade between Thailand and Viet Nam, and between Lao PDR and Viet Nam. Lao PDR is a land-locked country and is dependent on transit through its neighboring countries, especially Thailand and Viet Nam. Although Cambodia is not land-locked, its Northwest and Northeast regions have land-locked characteristics because trade through Thailand and Viet Nam respectively, potentially faces lower logistic costs than trade through its national port Sihanoukville. Therefore, while transit agreements in the region, including SPS aspects, are of increasing importance, practical solutions, political agreements and implementation are still needed.

**Source:** the author

**Sources of information** Government agencies responsible for food safety, animal and plant health, and the private sector, were both important sources of information for this research. The survey in each country started by interviewing headquarter (HQ) staff of the SPS competent authorities in detail to obtain information about the applicable legal framework, mandates, procedures for application of export and import release, number of documents required, fees that apply, official waiting time, ICT application and sources of information for traders. This was followed by interviews with traders, usually at their premises, to collect information on how the procedures are actually implemented in practice. The possibility of different views, different experiences, conflicting information, and gaps between formal procedures and actual implementation was taken into account.

**Number of interviews** Given the diversity in enterprises, but also different experiences they might have, it is not possible to give a firm indication about the number of interviews needed to get a reliable picture. For most questions, information from the competent authorities was reliable and did not need to be repeated in detail to traders in the four countries. Where data from traders was required, in general the number of interviews for each market segment was considered sufficient if the responses from at least three of the enterprises interviewed gave a stable/robust picture. In some cases there were time constraints and difficulty to identify sufficient enterprises for interviews.

**Use of questionnaire** Detailed questionnaires addressing many relevant items of transaction costs associated with SPS measures were designed and used as a general guide for interviews with government officials. A shorter questionnaire was used with the private sector based on the business processes for SPS clearance of goods (Box 7). Most private enterprises had only an hour available for interview, which put limits on the details that could be collected. Sometimes, some issues that were not very relevant for the overall picture could be ignored. More

importantly, some important country-specific issues, such as institutional and policy issues, had to be captured by expanding information gathering beyond the questionnaires.

#### **Box 7. Questions for interviews with private traders**

##### **For imports, questions included:**

- 1) Describe the steps required for SPS clearance for import of [product], agencies involved, pre-requirements of foreign producers/traders, foreign product safety assurances etc., requirements importer/buyer, warehouse/cold storage, licenses, import permits, traceability requirements, if any.
- 2) Document requirements at the border, fees, waiting times, standards to comply with, testing and quarantine requirements, etc.
- 3) Is information about SPS import requirements readily available? What are main sources of information? Websites, printed material, information from officers, legislation, trade associations, broker/trade forwarder? Is information fully available and reliable?
- 4) Availability of IT for submitting applications. Can applications be submitted online? Can forms be downloaded?
- 5) Closing questions: Describe any bottlenecks in the SPS release process from the perspective of the importer. Recommendations?

##### **For exports, questions included:**

- 1) Describe the steps required for SPS clearance for export of [product], agencies involved, pre-requirements of foreign producers/traders, foreign product safety assurances etc., requirements importer/buyer, warehouse/cold storage, licenses, export permits, foreign import permits, traceability requirements, if any.
- 2) Document requirements at the border, fees, waiting times, standards to comply with, testing requirements, etc.
- 3) Is information about SPS export requirements readily available? What are main sources of information? Websites, printed material, information from officers, legislation, trade associations, broker/trade forwarder? Is information fully available and reliable?
- 4) Availability of IT for submitting applications. Can applications be submitted online? Can forms be downloaded?
- 5) Closing questions: Describe any bottlenecks in the SPS release process from the perspective of the exporter. Recommendations?

**Source:** the author

**Limitations** Time and funding constraints focused this study on SPS release requirements for main product groups and on traders in the national capital region in each of the countries included. Owing to the novel character of this kind of SPS survey, it was considered that one purpose of this study was to get experience that could provide guidance for future surveys on SPS implementation from a trade facilitation perspective.

Data gathering did not include release processes of Customs and other border agencies. For this reason, the study cannot provide total release time for all requirements. Only in a few specific instances, interaction between border agencies was taken into consideration, notably when it was considered to affect SPS release.

Most interviews were conducted in the national capitals, and no interviews were conducted with provincial authorities and staff at border crossings. This may give some bias to the findings, in particular where there are important differences between provinces, regions, border crossings and variance in implementation between local authorities.

## IV. Findings from four countries

This Chapter gives a summary of the research findings about the status of the SPS system and performance in border release processes in Cambodia, Lao PDR, the Philippines and Thailand. Country reports providing a detailed analysis of the findings from each country were also prepared and are available as stand-alone documents.

### General development of the SPS systems

**Cambodia** became a WTO Member in 2004. Since then, it has improved its legal framework and laboratory capacity, and major efforts are being made to establish active and passive surveillance for plant and animal health and food safety. Although significant progress has been made, the 2011 WTO Trade Policy Review and the draft 2014 Cambodia Trade Integration Study (CTIS) indicate that there are still several important pending commitments for improvement, which are included in a government action plan and in the 2014 CTIS Roadmap. The quality of legislation is still weak with remaining gaps, overlaps, weak compliance with WTO principles and challenges in implementation. The country does not have a modern food law. Adoption of a phytosanitary law is still pending. A draft law on animal health and production is in the process of approval. There is a 2007 law on fisheries. Efforts have been made to streamline mandates in food safety management through the 2010 Joint Prakas (ministerial regulation) 868 and risk-based border management through the 2006 Sub-Decree 21. However, in both cases, implementation is pending. Mandates for management of plant and animal quarantine are not yet streamlined. Cambodia has few national standards and MRLs adopted through national legislation. Cambodia requires licensing of importers and exporters of animal and fisheries products, as well as import and export permits for these products.

**Lao PDR** became a WTO Member in 2013. In preparation for its membership, the country improved its legislation and set up the Lao PDR Trade Portal where all trade-related legislation is published. Lao PDR has a list of commitments to comply with under the WTO framework. Major efforts are being made to establish active and passive surveillance for plant and animal health and food safety. More work is needed to build a basic SPS system; given the country's small size and development history, it faces major human and technical capacity constraints. One area of continued effort is the further upgrading of SPS legislation aimed at enhanced legal quality and improved compliance with WTO principles. Related to this are efforts to improve implementation of legislation in import and export procedures, which are likely to lead to modifications of the border release practices reported in this study. Lao PDR has only a few international standards and MRLs adopted through national legislation. Testing and diagnostic capacity remains very limited. Lao PDR requires licensing and permits for importers of animal and fisheries products, licenses for importers of packaged food and permits for all processed food.

The **Philippines** became a WTO Member in 1995. It is a main importer of rice, field crops and meat products. It has a fairly well established SPS system. It has been able to eradicate Foot and Mouth Disease (FMD) and to remain free of Highly Pathogenic Avian Influenza (HPAI). Technical and analytical capacity in the Philippines is still limited to moderate. There is a large body of SPS legislation, which is in need of some upgrading and consolidation. Characteristic of the SPS system in the Philippines is that: (i) all food products need to be registered; (ii) all

exporters and importers need to be licensed with the relevant SPS competent authorities; and (iii) permits are needed for each import and export shipment. Importers and exporters need multiple licenses from the Bureau of Customs (BOC) and SPS agencies. The Philippines is an active Member of the WTO Committee on Sanitary and Phytosanitary Measures.

**Thailand** became a WTO Member in 1995. It is one of the main agricultural exporters in the world with diversified exports. Because of its relatively high income, urbanization rate and modern retail systems domestic consumers demand much diversity, quality, and safety of food. Thailand started to develop its SPS capacity earlier than the other three countries covered in this research, and has relatively well-developed technical and analytical capacity to implement SPS controls. However, given the country's diversified production, exports, imports and consumer markets, it continues to face many SPS challenges. Thailand is an active Member of the WTO Committee on Sanitary and Phytosanitary Measures. Thailand requires licensing for all food importers.

### Transparency and rule of law

Transparency about SPS requirements for export and import border release is very limited in Cambodia, limited in Lao PDR, moderate in the Philippines and fair to good in Thailand.

**Cambodia** Cambodia has thus far not complied with the requirement in Annex B.1 of the SPS Agreement that all SPS regulations (including laws, decrees, and ordinances) are to be published promptly, nor has it submitted any SPS notifications to the WTO.

In Cambodia, traders generally have no knowledge about the legislation that applies and legislative texts are not readily available. Ministries and agencies involved in the SPS area have websites, but maintenance is poor and information on SPS requirements limited. Almost no written information is available, except for a pamphlet on how to request phytosanitary certificates. Criteria for granting import and export licenses for fisheries and animal products are not public. SPS agencies reported, during the research, that there were drafts of Joint Prakasses (ministerial regulations) between the Ministry of Economy and Finance (MEF) and other ministries about fees to be charged for SPS services. Although they had not been approved at the time of the research, and thus were not yet published, SPS agencies all stated that they were applying the rates provided in the draft texts. Verbal information from SPS officers is virtually the only source of information for traders about procedures, forms to be used, SPS requirements, waiting time, and fees.

**Lao PDR** Trade-related legislation in Lao PDR is available on the Lao PDR Trade Portal website. The website of the SPS Enquiry Point is part of this portal. Traders see the portal as an improvement in transparency, even those who reported that they have not read the legislation. Traders claim that regulations are too complex and difficult to read. In general they feel uncertain about what regulations actually apply. The SPS agencies agree that the website still needs additional information that explains: (i) step by step what has to be done for different types of agricultural products; (ii) standard waiting times and fees/charges; and (iii) most importantly, the specific SPS requirements that apply. Agencies reported that they base fees on a new draft Presidential Decree, which is not in force yet. Ministries responsible for SPS issues have websites, but the contents are limited and have no specifics on SPS measures. Pamphlets

are not available. Therefore, verbal information from SPS officers is virtually the only source of information for traders. Lao PDR has submitted one SPS notification to the WTO to date.

**Philippines** The Philippines has a good record in notifying new SPS legislation to the WTO SPS Committee. Since 1995, it has submitted 367 SPS notifications, including regular and emergency notifications and addenda. SPS agencies in the Philippines have websites, but both government officers and traders remark that they need updating and improvement. Websites have no information on fees, and application forms cannot be downloaded. Decisions on licenses and permits are not transparent because criteria are not published. Government agencies have the obligation to provide information about time required for provision of services, but dissemination of such information is poor. In general, verbal information from officers remains the main source of information on procedures, forms, SPS requirements, waiting time, and fees. Traders complain about the complexity of SPS requirements for import and export, and about deficiencies in transparency.

**Thailand** Thailand also has a good record in submitting notifications to the WTO SPS Committee, with 299 SPS notifications, including regular and emergency notifications and addenda, to date. The Thai Food and Drug Administration (FDA) and the Department of Fisheries (DOF) have well-established websites in Thai language. The English version of the FDA website is good but less detailed; the one of DOF is limited. The Thai websites have information about procedures and requirements, where relevant per product, forms that can be downloaded, waiting time for procedures, and some information on fees. There are also some written pamphlets. There is a government rule about target time for each service to be provided, which DOF monitors. DOF hardly charges fees and there is no information about fees on the website. The exporters association for shrimp and other seafood, the Thai Frozen Food Association (TFFA), issues a monthly newsletter about seafood. Fish exporting companies always inquire first with their customers about requirements for import in the country of destination. If they are not sure they will ask staff of TFFA to check information with their database. Because of complex and diverse requirements for fisheries, many exporters call DOF for confirmation. For established traders, information availability is not a real constraint.

**Rule of law** The rule of law relating specifically to border management is weak in many countries, and this was also found to be the case in this study. In Cambodia and Lao PDR, as indicated already, traders are generally not aware about the legal framework that applies and they rely on verbal information from officers. The general picture from interviews is that border officers tell traders that they should ask officers and that traders do not need to know the regulations. The implementation procedures are not fully based on legislation in many cases. In Lao PDR, implementation of border release processes is the responsibility of provinces and what they actually implement may differ from what is in legislation. In the Philippines, public sector respondents state that the legal framework needs updating to achieve better consistency with WTO principles. Private sector respondents ask for non-discrimination between importers and domestic producers. There is also a need to better define requirements, rights and duties of traders. In Thailand, allegedly the Customs law gives much discretionary power to officers, which can be used against traders.

## Costs incurred by traders

Information from government staff in Cambodia and Lao PDR about fees and charges attributable to SPS measures was generally incomplete and in most cases different from the information obtained from traders. While most traders were forthcoming with information about payments made, some were reluctant to speak. Some traders had insufficient information because they contract service providers (freight forwarders or customs brokers) to do all paperwork and payments for border release on their behalf, in which cases formal and informal payments for SPS services are usually integrated in the total fee. This practice was also reported in Thailand. Some service providers were willing to share information, some were not.

The different cost categories that constitute transaction costs were explained in the previous chapter. The findings are discussed below.

**Formal fees and charges** In Cambodia and Lao PDR, exporters and importers often do not receive receipts for the fees they pay, or are issued receipts for only part of the payments. In the absence of receipts, it is not possible to identify the formal rates that were applied. As explained earlier, at the time of interviews in Cambodia and Lao PDR, officials from SPS agencies confirmed that they were using draft legislation, not the actual legislation in force. With the exception of Camcontrol, copies of draft legislation could not be obtained. In Cambodia, the proposed fees seem to be higher than the fees in the existing legislation. In Lao PDR, most fees in the draft legislation are higher and the draft also includes a wider group of items that are subject to fees. Thailand has hardly any SPS-related fees, with the exception of a significant mandatory fee for licensing (registration) of food importers. The Philippines hardly has fees on exports. In both Thailand and the Philippines, information obtained from government officers and traders was generally consistent.

**Informal fees and charges** All respondents in Cambodia and Lao PDR reported important amounts of informal payments (tea money and payment under the table) for exports and imports. In many cases, informal payments are said to be higher than formal fees, although lack of receipts for formal payments blurs the evidence. In the Philippines, most respondents report small informal payments (tea money). Larger companies state that they have no-payment policies with border agencies, but they report to maintain good relations at senior management level, which can also involve informal payments. In general, informal payments for imports tend to be lower than formal fees. In Thailand, rent-seeking among border agencies has reportedly declined but remains an issue with differences in practices among agencies.

Respondents in all countries dislike informal payments much more than formal payments. For companies, the main problems with informal payments and lack of receipts are that they cannot control payments made by their own staff, they cannot prove the payment of taxes (this applies to payments made to Customs), and they cannot deduct fees as costs for tax declarations. Related problems are unpredictability of release processes.

Most traders say that individually they cannot do much about informal payments because of the possible negative consequences of a conflict. Given the commercial costs of possible delays (missing shipment dates, extra storage costs, spoilage of goods, not being able to serve customers in time) and the reliance on the agencies, paying to maintain good contacts is often the only option.



**Administrative and internal business costs** Inefficiencies in SPS border release processes generate extra administrative and internal business costs to traders. Rent-seeking by SPS agencies and officers results in extra steps and unproductive staff time, and contributes to inefficiencies and complexity in processes. Inefficiencies can also be the result of poor coordination between border agencies, as well as collusion between border agencies in rent-seeking practices.

**General impression on costs** Most traders generally perceive administrative and internal business costs as a greater burden than formal and informal payments. Some examples are provided below.

In Lao PDR, one provincial authority reportedly applied a procedure for the issuance of a phytosanitary certificate, which included several unnecessary public-private interactions/steps, that were at odds with the legislation and that involved high administrative costs to traders. In another case, while a phytosanitary certificate could reportedly be issued near a major production area and the border post, a Certificate of Origin (CO) had to be obtained before the shipment could cross the border, involving significant travel costs and 2-3 days delay.

In Cambodia, reported formal and informal fees for rice exports tend to be lower than for other products. Payments and procedures may have been rationalized as a consequence of the existing government policy to promote exports of rice. Obtaining import and export licenses for fisheries and animal products requires many interactions between applicants and public officers. Government agencies and traders reported differences in the number of control steps, in particular for fisheries.

In the Philippines, formal and informal payments are generally low to moderate. Administrative and business costs represent a more important burden on traders than formal and informal payments. This is directly related to mandatory registration of all food products, which requires applications and long waiting times for licenses. Also the use of permits, even when automated, adds significantly to administrative and business costs, in part because of the many requirements and inflexibility involved. The prescriptive nature of the SPS controls adds to cost.

In Thailand, although there are also further options to reduce costs by rationalizing import and export release processes, total costs for enterprises, including administrative and business costs, caused by SPS measures are generally considered reasonable by traders. Release processes are generally efficient and traders have room to implement SPS requirements in a cost-effective manner.

Non-government fees can also be high because of lack of competition among service providers, such as fumigation plants and inspection companies. In three countries, private traders complained about poor services and the high cost of services provided by the private China Certification and Inspection Group (CCIC), which allegedly has a monopoly position for handling exports to China.

## Document requirements

The study shows that the number of documents required as annexes to SPS applications can involve a significant cost to enterprises. It ranges from a few documents that describe the products in a shipment, to a large number of documents about the supply chain, including: (i)

business registration; (ii) taxation status and status of the trader premises; (iii) the origin and destination of products; (iv) premises and safety assurances of producers and customers; and (v) various quality and safety characteristics of production and products. While some authorities accept simple photocopies, others require certified or notarized copies of various documents which can be time consuming and costly to obtain. Some basic documentation is required for each shipment, and some other for license applications that are required annually or perennially only. In several cases, the same documentation is required for each shipment, which also duplicates the requirements of Customs and other agencies.

In the Philippines, document requirements are more burdensome than in other countries because of the need for licenses for all traders, permits for each shipment, registration of all food products, and *ex ante* information on the supply chain. Licensing and permit requirements can involve high document requirements. In Cambodia, this applies to all trade in animal and fisheries products, and in Lao PDR to permit requirements for import of animal and fisheries products, processed food, food products registration, and foreign import permit for plant products (the latter is needed for applications for phytosanitary certificates).

In Thailand, all food importers need to be registered, but unlike in the Philippines, registration requirements are not considered difficult. Thailand also has requirements for registration of groups of food products that are considered risky, for which it also requires import permits.

Table 3 provides examples of document requirements in the four countries.

<b>Table 3 Examples of application plus supporting document requirements</b>				
	<b>Cambodia</b>	<b>Lao PDR</b>	<b>Philippines</b>	<b>Thailand</b>
import meat products	10	8 <sup>b</sup>	NA	NA
import fisheries products	10	8	NA	NA
import plant products	NA	10 <sup>c</sup>	NA	NA
permit import of processed food	NA	8 <sup>d</sup>	NA	NA
export of plant products	4 <sup>a</sup>	4	NA	NA
export of fisheries products	10	NA	NA	NA
import license plant products	NA	NA	9	NA
import license animal industry	NA	NA	8	NA
import license meat inspection service	NA	NA	15	NA
import license fisheries products	NA	NA	18	NA
import/ex[port license processed food	NA	NA	10	NA
import permit meat inspection service	NA	NA	8	NA
import permit fisheries	NA	NA	4	NA
food import license	NA	NA	NA	10
import fresh of plant products for food	NA	NA	NA	4 <sup>e</sup>

**Source:** Compiled by the author on the basis of the country studies

**Notes:** Comparison between countries and services is complicated because of different content details of documents and sub-documents and sequential requirements for licenses, permits and actual shipments. NA = Not Available.

**Cambodia:** figures include requirements for license and first-time registration; duplicate controls by Camcontrol and line agencies; <sup>a</sup> for first-time exporters 3 documents are required about the enterprise.

**Lao PDR** (applies for Vientiane Capital): <sup>b</sup> at least 10 for live animals; <sup>c</sup> 12 for seed; <sup>d</sup> 7 for unpackaged food

**Philippines:** for all imports and exports there are control steps for licenses, permits and actual shipments; import of animal products requires control steps by two agencies (Bureau of Animal Industries and the National Meat Inspection Service).

**Thailand:** importers need an import license before they can import; <sup>e</sup> in addition GAP, GMP and HACCP may be required

## Waiting time

In this study, data collected on waiting times are for specific SPS services and, generally, do not indicate the total export or import release time. The data allowed an analysis of the time required for different steps.

In all cases where permits are required, the total waiting time increases significantly because of sequential processes for the permit application and the subsequent import and export controls. Licenses also require time, but that is related to the period for which they are valid, usually one or two years, and not to each shipment.

In Cambodia, in most cases, the waiting times reported by private and public sector respondents are about the same. To obtain annual export and import licenses for animal and fisheries products, long waiting periods are reported by traders with many necessary interactions with a range of government officers, which can require up to three months. For meat import licenses, the process is similar and the waiting times are at least three weeks and usually significantly more.

In Lao PDR, competent authorities at the national level do not have official lists of standard or targeted waiting times and no estimates based on operational practice. Waiting times can differ between provinces because of decentralized implementation and major geographic differences. In Vientiane province, waiting time is 3-5 days for a phytosanitary certificate, one week for a health certificate (at request of exporter), and 3-4 days for import permits for processed food. A particular feature of Lao PDR is that issuance of a Certificate of Origin (CO) appears to be mandatory for export of plant products and it can only be requested after the phytosanitary certificate has been issued. Issuance of a CO by the Lao National Chamber of Commerce and Industry (LNCCI) generally takes only one day according to traders, and 3 days according to the Ministry of Industry and Commerce.

Obtaining a license in the Philippines requires, on average, a waiting time of about one month with a range of 7 to 69 days at different agencies. In most cases, the reported waiting time by traders and the target or maximum waiting time by the agencies is about the same. However, in some cases traders report longer waiting times, which may be the result of mistakes in applications, rejections or authorities not meeting their deadlines. Product registration for export takes 45 days. Waiting times for most SPS import and export permits and inspections are one to two days for most products, and two to four days for issuance of health certificates. For some import and export permits, relatively long waiting times are reported. Time required for fumigation and testing depends mostly on technical processes, for example, up to seven days for microbiology testing, but for testing seafood it is 2-4 weeks.

In Thailand, private respondents report that waiting times for border clearance are much lower than in the past. Usually, it is a matter of one day only. Nevertheless, differences remain in waiting times because of differences in management between border posts and dedication of staff of Customs and other agencies. Also efficiency and performance among SPS agencies reportedly differs. Performance in the area of fisheries exports is considered relatively favorable.

A health certificate for export of shrimp requires three days, during which all documentation from the company regarding traceability from fish pond to factory are checked.

### **Risk-based SPS controls**

Application of risk-based controls in import and export release procedures can greatly contribute to reduce costs both for traders and government, in the case of low and medium risk products. However, hardly any start has been made to adopt risk-based border management in Cambodia and Lao PDR, while the Philippines has made only small steps in this regard. Particularly in Cambodia and Lao PDR, much effort will be needed to develop and implement risk-based border management. The Philippines has better capacity to adopt risk-based border management but will first need thorough SPS reforms since the present license and permit system to implement SPS measures is not risk-based. Thailand has made progress in risk-based management, but it is not fully applied for imports and exports of all product groups.

For import controls of fisheries and meat products in Cambodia, Lao PDR and the Philippines, no consideration is given to the safety of the source and the reputation of traders. Under the SPS Agreement's equivalence principle, authorities should accept safety assurances (GMP, HACCP, veterinary and sanitary certificates) from foreign sources where control capacity is generally better than in their own countries, and the application of risk-based management should result in a lower incidence of inspection of products from less risky sources. By contrast, controls in Cambodia and Lao PDR do not cover extensive informal imports of animal and fisheries products and many other products that are likely to create higher risks for the import of unsafe food and the entry of pests and diseases. While risk-based management is now a recognized policy direction in the Philippines, as indicated above much reform has yet to be done to implement it. All products need to be registered and all imports and exports require licenses and permits, regardless of the risk profile of the goods.

In Thailand, traders reported that some controls are not risk-based. For example, all imported shipments of shrimp and temperate fruit and vegetables are sampled, regardless of safety assurances that come with the product, the origin of the product, and the performance record of the importer. While controls of shrimp exports are risk-based, traders report that for plant products export permits are required for each shipment of 16 fruit and vegetable products to the EU and Japan, regardless of the hazard prevention systems in place and the performance of the exporters. This involves much loss of time, which is a problem for the export of fresh products, and duplication of public and private controls.

## **V. Assessment**

The findings of this research raise important policy questions about what countries gain from their efforts to implement SPS measures. Are the SPS measures implemented effective in terms of health protection, and gaining and maintaining access to export markets? Are they implemented efficiently or could the same level of protection be obtained with lower costs and less trade disruption? Before trying to answer these key questions, a number of findings on specific measures will be discussed with regards to questions on the extent to which costs are necessary and the compliance of measures with principles of the SPS Agreement. The chapter ends with a discussion of broader issues that affect the performance of SPS measures. These

include technical and human capacity, funding of the SPS system, general performance of the public sector and quality of legislation.

## General measures and issues

A general observation from this study is that many practices in SPS implementation are far from optimal for diverse reasons. Unnecessarily restrictive practices by importing and exporting countries may originate in rent-seeking, over-protection, ignorance of inspectors, or lack of consideration of cost caused to traders. Below a number of measures are discussed.

**Waiting time** Waiting times required for release of goods on export and import are costly to traders. Time taken for carrying out controls and administrative requirements should be as little as possible. Annex C of the SPS Agreement requires that (subparagraph a) release processes be carried out without undue delay; and (subparagraph b) the standard processing period be published or the anticipated period communicated upon request. In practice, transparency about the time required is insufficient, particularly in Cambodia and Lao PDR, and better but still insufficient in the Philippines. In several cases, there is scope for reducing waiting times in each of the four countries, but relatively more in Cambodia, Lao PDR and the Philippines, than in Thailand.

**Informal payments** Just as with Customs, SPS agencies face challenges of rent-seeking. Rent-seeking in the SPS domain is the use of discretionary and political power by public officers to influence the application of SPS measures and their implementation with the purpose of achieving institutional and/or personal benefits. Rent-seeking can, among others, result in:

- more controls conducted than necessary to achieve an appropriate level of protection;
- more complex and lengthy decision making processes applied to increase opportunities for informal payments;
- priority to controls that provide fee income or informal payments, which results in increased risks of entry or spread of pests and diseases since decisions are not made on health grounds;
- less adoption of risk-based management than desirable;
- higher costs for traders;
- reduced waiting time in return for payment;
- waiver of controls in return for payment; and
- reduced transparency.

Rent-seeking often results in serious non-compliance with WTO principles and ISSB recommendations. In each of the four countries, rent-seeking and corruption create problems for the effectiveness and efficiency of SPS measures. Governments in the four countries are making efforts to improve governance and reduce rent-seeking for which, in several cases, they are receiving support from bilateral donors and development banks. By contrast, it is remarkable that the SPS Agreement, the new Trade Facilitation Agreement and the ISSB give little or no attention to rent-seeking and good practices for strengthening governance.

**Fees and costs** Annex C of the SPS Agreement (subparagraph f) requires that fees be no higher than the actual cost of the service. Fees differ from country to country but not obviously in line with the costs involved in providing different types of services, the quality of service

provided, etc. The SPS Agreement gives no definition of costs, and no operationalization is found in ISSB texts. Obviously, the main purpose of this requirement is that fees are not used as an implicit import levy. Since fees are also part of transaction costs, an additional purpose would be that they are not restricting trade more than necessary. Another purpose would be that SPS measures are not used as a tool for generating net fiscal income for SPS agencies/inspectorates. High fee levels or fiscal targets for raising fee income could create undesirable incentives to use SPS measures for income generation, resulting in mandatory services that cannot be justified on health grounds, and undermine the risk-based approach.

In Cambodia and Lao PDR, (formal and informal) fee income and fiscal incentives for SPS agencies seem to affect their implementation of SPS measures. This was not observed in Thailand and the Philippines.

**Transparency** Transparency is a basic requirement in the SPS Agreement, in line with GATT Article X, and is referred to in many ISSB texts. This includes publication of regulations, notifications to the WTO, establishing an Enquiry Point and designating a Notification Authority. However, the needs of traders are much broader; they require much hands-on practical information about a range of issues that affect predictability and transaction costs. From the perspective of trade facilitation, a lack of transparency will generally increase costs and business risks to private traders. In all countries, transparency requires continuous efforts. Cambodia, Lao PDR and the Philippines need to make major efforts to improve transparency for traders.

**Adoption of risk-based border management** Risk-based control systems are good practice for SPS control, as well as trade facilitation. Many references in the SPS Agreement and ISSB texts support this. Risk-based management aims at more rational use of capacity for health controls and reduction of cost for low- and medium-risk shipments. While the four countries considered in this research have adopted relevant principles in their legislation, implementation is lacking. Cambodia and Lao PDR still have to make a start with implementation. The Philippines has made limited steps only. Thailand has made most progress but as indicated above, it still faces some challenges.

**Duplicative and unnecessary administrative requirements** Administrative requirements add to cost for traders. Unnecessary requirements do not contribute to health protection and are at odds with the principles of the SPS Agreement. Attention is needed to reduce administrative requirements, especially in the Philippines and Cambodia.

**Registration of processed food products** The Philippines requires registration for all food products before they can be sold in the market. Thailand (like most countries) only requires it for high-risk processed food products, not for low-risk products. Lao PDR has registration requirements for packaged food. Registration of processed food products is expensive for both government and enterprises. For government, there are costs in terms of staff time to review applications and maintain databases. For the private sector, it involves submitting an application of registration with supporting documents, waiting time, fees and restriction of business, which can be unnecessarily costly. This is most relevant for the SPS Agreement since SPS measures need to be based on risk and science and be least trade disruptive. Codex states that a clear

rationale should exist for product registration. It should be noted that particular risks can also be addressed by standards and technical regulations.

**Cost of SPS measures to traders and possible consequences** Cambodian and Lao exporters and importers face high logistic and regulatory costs. SPS costs are part of these but not generally the highest part. Yet, total costs of SPS measures form relatively high burdens for formal traders. They erode profitability and competitiveness of formal trade and form an incentive for informal trade. The study came across a few cases, in all four countries, where formal exporters gave up and among others they cited high costs as a reason. The large amount of informal trade in Cambodia and Lao PDR is, at least in part, a result of the high transaction costs of formal trade. Informal exports go generally to neighboring countries at low prices and without value added. Unfortunately, informal imports and exports contribute little to tax revenue (VAT, business tax) and escape from health controls. Therefore, it is important for governments to keep transaction costs of SPS measures as low as possible.

High SPS costs in the Philippines, owing to seas that form natural borders, cause fewer problems of informal trade and smuggling than in the three other countries which have porous land borders. However, particularly in the southern part of its archipelago, the Philippines also faces problems of smuggling that are a threat to containing risks of pests and diseases. In each of the four countries, price differences at international borders form incentives for rent-seeking and corruption.

**Sampling** In many cases sampling practices do not follow international standards and recommendations. Sampling takes place in cases where it is unlikely that samples are being used for testing or diagnostics, and likely that samples go directly into consumption. In some cases the samples are suspiciously large. In several cases, traders report that they have to take samples themselves and bring them to the office of regulators, which undermines the basic purpose of sampling and conformity assessment. Sampling frequency can be excessive in situations where no risk-based control system is in place. Issues with sampling were reported in all four countries, although to different extents.

**License-to-operate (LTO) for food businesses** Most countries require food businesses to obtain a LTO. That is also the case for the four countries considered in this research. Requirements usually involve minimum hygiene standards and hazard prevention principles adopted by the food authority based on GHP/GMP or HACCP principles. The requirements are usually differentiated by the type of business (different inherent food safety risks, size of enterprise, location, etc.). Food inspectors periodically visit establishments to check conformity with the requirements. Since there is general agreement that preventive measures give better protection than end-of-pipe controls, registration for LTO is not an issue of debate.

LTO are different from other registration requirements, including import and export licensing and permits discussed in next sections of this chapter. However, the cost of obtaining an LTO deserves attention, because it may involve unnecessary cost and duplications with general business registration and other licensing requirements, including import and export licensing.

The downside of demanding LTO requirements is usually that more enterprises will seek to escape from controls by operating in the informal market. An option may be to have requirements differentiated by kind of business. A possibility to reduce the burden of duplicative



registrations is also to have a “one stop shop” for all submissions/applications necessary to have a business, with reviews carried out by relevant line ministries.

## Measures on imports

Under the WTO framework, countries may implement a variety of measures on imports. This section discusses the range of SPS-related import measures which were identified during this research. Some of these involve administrative requirements, which SPS authorities have introduced to implement SPS measures (although it was at times unclear to what extent such administrative requirements were directly linked to SPS objectives). Some of these administrative requirements, such as various registration or licensing arrangements, could arguably fall under the SPS Agreement or the WTO Agreement on Import Licensing Procedures, or both.

### ***General issues related to the use of licensing to implement SPS import measures***

Import licenses discussed here are different from LTO discussed in the previous section. They need to be obtained from SPS Agencies through different application processes. While recognizing that SPS Agencies can set licensing requirements that go beyond the implementation of SPS measures, this report focuses only on the use of import licensing for implementing SPS measures. As described in the previous chapter, import licensing is mandatory for all import of food in the Philippines and Thailand, and for import of several product groups in Cambodia and Lao PDR.

Import licensing in general can range from light requirements for applicants, such as mentioned earlier for the US FDA with easy renewal on the one hand, to demanding and costly registrations and annual (or even more frequent) renewal requirements for importers of fisheries and animal products (such as in the Philippines). Costs for the implementing agencies can also vary. Import licensing of businesses for implementing SPS measures on imports, is mostly additional to general business registration, registration required by Customs and a LTO for food businesses, and generally involves much duplication in documentation for application requirements. Importers can face multiple mandatory registrations with each SPS agency and Customs. Hence, use of import licensing for implementing SPS import measures should be seen in the larger context of the investment climate and cost of doing business.

Import licensing implemented by SPS agencies, as observed in this study, encompasses a variety of measures adopted for multiple purposes (such as protection of the ecosystem, promotion of food security, achievement of SPS/health protection, implementation of a trade quota system). Sometimes the purpose is vague. In several cases, this study found that there is a clear obligation for importers for registration (licensing) based on an approval process as a pre-requirement for obtaining SPS import permits, while the specific requirements for the importer and the SPS requirements for the imports are vague. The SPS requirements for obtaining an import permit are sometimes not clear. This research found that the import licensing approval criteria for implementing SPS measures were not clearly defined in Cambodia, Lao PDR and the Philippines.

Any SPS measure for which import licensing is used for implementation should, as all SPS measures, be based on science and the use of licensing should not be more trade restrictive than alternative implementation modalities that provide the same appropriate level of protection.



Since import licensing for implementing SPS import measures can involve significant costs and time for businesses, it needs to be justified by showing that the appropriate level of protection can only be achieved through the licensing and/or registration modality chosen. In practice, it appears that many countries do not use import licensing for implementing SPS import measures, or apply it for importers of limited product groups only.

With respect to the Agreement on Import Licensing Procedures, although the SPS authorities in their legislation generally do not specify the licensing regime they apply in WTO terms (automatic or non-automatic), it can be inferred that it is generally non-automatic licensing. Article 3.2 states: “Non-automatic licensing shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure”.

Codex states: “The competent authority may consider developing a system where registration of importers is mandatory. Advantages include the ability to provide the importers and exporters with information about their responsibilities and mechanisms to ensure imported food complies with requirements.” The point that registration can be used to provide information to importers will generally not be enough to justify mandatory registration as a legitimate SPS measure. Preferably, all information on import requirements should be publicly available (on-line and in writing). Further it should be taken into consideration that in many developing countries registration systems are not efficient and are a cause of delays, and sometimes used for rent-seeking purposes. Therefore, alternative methods should be explored to ensure importers are aware of their obligations. Voluntary registration might be considered as good practice. And, if registration (import licensing) is deemed necessary it should be ensured that such registration is as simple and easy as possible, with online options etc.

Finally, it is important to point at governance and transparency issues for licensing. Criteria for importers for obtaining a license in the Philippines, Cambodia and Lao PDR appeared insufficiently transparent and deserve improvement.

***Import license requirements with quota*** In some cases SPS agencies add a quota to a license. Cambodia requires annual import licenses with annual quotas for fisheries and animal products. Health protection and food security are among the purposes given. Lao PDR requires annual import licenses for animal and some fisheries products, although there is no clear legal basis. These quota requirements can be costly for traders and restrict trade. Without a justification based on their necessary role in health protection, they are not legitimate SPS measures as defined in the SPS Agreement and should therefore be justified on other grounds.

***Import permits for each shipment*** The Philippines and Lao PDR require importers to request import permits for all import shipments. Cambodia only requires this for imports of animal and fisheries products. This falls in principle under the Agreement for Import Licensing Measures. Import permits provide specification of SPS requirements, and with the import permit the importer must request a sanitary or phytosanitary certificate from the relevant competent authority in the exporting country. In several cases, licenses, usually valid for a year, can be a pre-condition for requesting import permits. However, in other cases import permits are required without licensing for a longer period.

Use of import permits causes higher costs for traders and constrains their flexibility given the cost of application, the fees and longer planning and waiting times involved. According to ISPM 20, in relation to plants and plant products, general import authorization is preferable and specific import authorization should be applied for specific conditions only. Although this standard is for plant products, it would be good practice to extend this concept to food and animal product imports as well. This would mean having a published general import authorization that clearly states the SPS requirements and where no permits are required. In this way, transaction costs would be lower. Only for special cases not covered by the general authorization (e.g. restricted goods, high risk products, emergency shipments) or uncertainty about application of the general authorization, can the use of import permits be considered good practice.

Cambodia and Lao PDR have not published general SPS import authorizations, and those for the Philippines are insufficient.

**Import permits with quota for each shipment** Cambodia and Lao PDR attach quota to mandatory SPS import permits for animal and fisheries products. In the Philippines, the application for an import permit has to specify the amount of product, and an approved amount is shown on the import permit. Private sector respondents in the Philippines claim that the permits are used to control the volume of trade, but SPS agencies downplay this. Since traders report serious difficulties and extra costs in cases where the actual imported amount significantly exceeds the amount on the import permit, the authorities appear to treat the amount as a quota.

Use of quota on SPS import permits is more trade restricting than a permit only. The quantity of the product has no impact on the safety of the product. Therefore, it is highly questionable whether there is a justification from a health protection perspective to add quota or approved quantity.

ISPM 12 states that indication of the quantity on the phytosanitary certificate helps NPPOs to verify the contents of a consignment. However, from an SPS perspective, a quantity indication on a phytosanitary certificate, and certainly on an import permit, should not be used as a quota.

**Import permits and traceability** Import permits in the Philippines include *ex ante* specification of sources and destinations of the imported goods, apparently for the purpose of traceability. Cambodia and Lao PDR have similar requirements for animal and fisheries products. Requirements on traceability can be legitimate SPS measures. However, the necessity and modality require attention because of the cost involved. The way requirements are implemented imply that for the long period between the request for an import permit and the actual delivery to a customer, the importer has little commercial flexibility to adjust to market conditions. For example, if the prices in different exporting countries diverge importers cannot shift to other sources with similar risk conditions. Nor can they sell or buy from a shipment that is underway from any exporting country, whereas commercial practice in many countries is that goods for import are often sold before entering the country.

The requirement to specify buyers at the time when an import permit is requested is commercially constraining and costly. Moreover, it assures a better level of protection only in a few situations where the risks from the import are different for different parts of the country, or

where different buyers may have significantly different abilities to safely process the imported goods. A better way of implementing traceability, as practiced in many other countries (including Thailand), is to have general import authorizations and to require importers to keep good documentation of sources and customers (points of delivery) for the traded product.

***Prescription of point of entry*** Prescription of point of entry in legislation or on a permit can be legitimate from a health control perspective, for example for restricted products and products that need post-entry quarantine. In addition, available capacity on entry points can be an important consideration for prescribing a specific point of entry. However, if there is no health or capacity justification the decision about the route should be left to commercial preferences of importers.

***Unjustifiable requirements for phytosanitary certificates*** There is a general tendency among many importing and exporting countries to require a phytosanitary certificate for every shipment of plant products, regardless of the product imported and regardless of the risks involved. According to ISPM 12, NPPOs of importing countries may require phytosanitary certificates for regulated articles only. ISPM 32 states that NPPOs should not require phytosanitary certificates for products that have been processed to the point where they have no potential for introducing pests; a second consideration for NPPOs is the intended use. It lists a range of products that should not be regulated and recommends not controlling frozen fruit and vegetables for plant pests and diseases because of the low risk involved. In general, there seems to be no justification to require phytosanitary certificates for cassava starch, green coffee exported for consumption (and certainly to countries without coffee cultivation), roasted coffee, malt and frozen vegetables. However, this research observed requirements for phytosanitary certificates on imports and exports of these products. For instance, in Lao PDR, one implementing provincial agency was reported to require a phytosanitary certificate for all exported plant products. In this and other cases, import requirements by China, Thailand and other countries were given as reasons. Rent-seeking is also mentioned as a reason for requirements of phytosanitary certificates beyond guidance given in the international standards.

***Phytosanitary certificate used for non-legitimate purposes*** In Lao PDR, phytosanitary certificates are required by MOIC for (mandatory) issuing of Certificates of Origin (COs), regardless of whether the country of destination requires the phytosanitary certificate. Sometimes phytosanitary certificates are also required by banks for a Letter of Credit. According to ISPM 12, the purpose of such a certificate is only to attest conformity with phytosanitary requirements of the importing country.

***Consultation on the requirement for phytosanitary certificates*** According to ISPM 12, NPPOs should consult bilaterally when there are differences between their views regarding the technical justification for requiring phytosanitary certificates. This study found that small countries with limited capacity are not ready for this kind of SPS diplomacy and negotiation, since they are not in a position to challenge other countries.

***Accept control mechanisms of other countries*** Double controls are costly to traders and should therefore be avoided where possible. However, this principle receives little attention among competent authorities of the four countries included in this research, even when products are imported from countries with good control systems and enterprises with

safeguards (such as HACCP), and have adequate certification. For example, in Cambodia and Lao PDR, products from safe sources face costly control measures, whereas larger amounts of imports from informal sources escape from SPS controls. This is not good practice.

The SPS Agreement calls for accepting equivalence, which in many cases should eliminate double controls. In addition, Codex recommends that the importing country should establish mechanisms to accept control systems in an exporting country where these systems achieve the same level of protection required by the importing country. Acceptance can be based on mutual recognition agreements and unilateral recognition.

## Measures on exports

**Export requirements** Each of the four countries has some SPS export requirements, especially the Philippines. Export requirements generally constitute a cost to traders and they erode profitability and competitiveness. A general principle of good practice for trade facilitation is not to require any export certification or other export controls unless they are specifically required by the country of destination. Specific requirements may be in place to respond to published general import requirements of the country of destination or conditions agreed in specific bilateral market access protocols. The SPS Agreement and ISSB texts do not address this important point of trade facilitation.

**License requirements for exporters** Export licenses, similar as import licenses discussed in the previous section, are different from a LTO. Cambodia requires a license for all exports of fisheries products and for export of cassava to China; the Philippines requires export licenses for all food products. Licensing for export is costly to exporters and therefore is generally not good practice. Unless explicitly required by importing countries, such as for export of cassava from Cambodia to China, licensing should be avoided. The SPS Agreement and ISSB texts do not address this important point of trade facilitation.

**Information on foreign phytosanitary requirements** According to ISPM 7, NPPO staff should make efforts to access information on phytosanitary import requirements of relevant importing countries. However, this recommendation is not always complied with. Particularly in Lao PDR, but also in Cambodia and the Philippines, when a phytosanitary certificate is requested, the exporter may routinely be required to first obtain an import permit from the country of destination, which states the phytosanitary import requirements. This reduces responsibility and effort on the part of the NPPO in the exporting country, and also imposes an extra cost and burden on the exporter. This practice is only justifiable for non-routine exports for which phytosanitary requirements in the importing country are not readily available.

**SPS export permit with quota** Cambodia has quota attached to SPS export permits, and the Philippines, similar to what was discussed in the previous section on import permits, allegedly, may also apply quantity controls to export permits. Quantity controls restrict trade and are not justifiable on grounds of health protection. The SPS Agreement and ISSB texts do not address this important point of trade facilitation.

## Effectiveness of SPS Controls

In Cambodia and Lao PDR, border release processes generally appear to be based on document controls only and not (or rarely) on control of health risks with inspections backed up

by testing and diagnostics. Traders confirm that document controls are always carried out but physical inspections generally not. Border release processes in the Philippines are in essence also based on documentary controls but to some extent backed-up by substantive controls and surveillance for particular products. In Thailand, border release processes are backed up by substantive controls and focused on hazard prevention.

***Effectiveness in market access*** Issuance of phytosanitary certificates for plant products and health certificates for fisheries and animal products is generally necessary for access to formal markets. Most other export release controls do not contribute to export market access. Hence, it is important to implement certifications according to standards required by the importing countries. For access to the more demanding markets, safeguards (GAP, GMP, HACCP, etc.) and capacity for bilateral and multilateral SPS negotiations are also required.

Issuance of phytosanitary certificates is highly centralized in Cambodia and exporters in most regions have limited access to these services. This means that many potential formal exporters have no effective access to these services.

***Substantive controls*** In many cases, there are only paper controls which are not, or hardly, supported by physical controls (including visual inspection, sampling, testing and quarantine measures), which together are referred to as substantive controls in this report. As indicated before, flaws in sampling can undermine the validity of findings from conformity assessment. More often, lack of laboratory capacity and inspection programs are a bottleneck. Laboratory capacity in Cambodia and Lao PDR is limited; more importantly, there are hardly budgets and skilled staff for testing and diagnostics. In the Philippines, laboratory capacity and inspection and surveillance programs are better but still limited. For instance, there are hardly any food safety controls on imported plant products.

Thailand has advanced public and private laboratory capacity. Inspection and testing programs for imported products are largely in place. A notable exception is the absence of controls on large-scale informal imports from neighboring countries. Thai exporters of shrimp with good ratings do not have mandatory testing for each shipment and apply rapid testing themselves. If the rapid test indicates a problem, which is sometimes a false alarm, they keep the container in cold storage until a full microbiology confirmation testing has been done. While this delay is costly, it is preferable to the risk of losing their “A” rating because of a non-compliance notification from abroad.

***Effectiveness in health protection*** In general, import licenses, permits and product registration in Cambodia, Lao PDR and the Philippines do not seem to contribute much to the protection of health. No risk assessments have been carried out that justify their use. Major parts of the domestic markets are informal and largely uncontrolled.

In Thailand, food safety depends on hazard prevention, inspections and surveillance on import and domestic production. SPS food safety controls on products from developed countries and formal processing plants seem to be effective. It is not clear how much licensing of importers contributes to the effectiveness of food safety controls. Food from domestic production and neighboring countries still has many gaps in the control system. As is generally the case with food safety systems in developing countries, the Thai system has relatively demanding controls for formal imports and formal urban markets, and weak controls in informal local markets (a dual

system). Better control of imports from neighboring countries and informal markets remains a challenge.

Major imports of food and agricultural products enter Cambodia and Lao PDR uncontrolled. This jeopardizes the effectiveness of health protection of the whole SPS system. In addition, large amounts of commodities are exported informally from these countries to low-price markets in neighboring countries. These informal exports are vulnerable to changes in policies in the neighboring countries since products from Cambodia and Lao PDR may not meet formal requirements and these countries do not have capacity to expand formal controls at short notice over such large amounts of product. Cambodia and Lao PDR have phytosanitary market access protocols with China for a number of products. Exports of milled rice and cassava from Cambodia to China have started. However, Lao PDR still lacks capacity to meet the agreed requirements for corn, milled rice and other products and, therefore, informal trade remains its only option for export to China.

**No risk-based management** In Cambodia, Lao PDR and the Philippines, import and export controls are generally not risk-based. Formally imported fisheries and animal products mainly originate from safe sources and, therefore, controls on these imports have a limited impact on food safety. The same applies to controls on imported fruit and vegetables from developed countries. By contrast, in Cambodia and Lao PDR, controls do not cover the extensive informal imports of animal, fisheries and many other products that are likely to create higher risks for import of unsafe food and the entry of pests and diseases. Import permits are required for all products regardless of the health risks they pose, as illustrated with the requirement of import permits for malt for breweries.

The Thai shrimp export sector has risk-based SPS controls in which hazard prevention and performance of enterprises are major factors. It has market access all over the world and can meet demanding requirements of importers. Imports of shrimp and many other food products are not fully risk-based.

**General status** The SPS systems of Cambodia and Lao PDR function too much as a source of fiscal revenue and additional income which hampers trade, and still insufficiently as an effective system against health hazards and for promoting market access.

The SPS system of the Philippines still functions too much as a tool for market control, and still insufficiently as a system to control against health hazards and promote market access.

The Thai SPS system functions effectively as a tool to ensure market access for shrimp, and is moderately effective in assuring food safety.

### **Efficiency of SPS Controls**

**Efficiency in health protection** In Cambodia and Lao PDR, the efficiency of SPS measures in terms of health protection seems low. Both countries appear to get limited health protection for high transaction costs. Waiting times are long in many cases and add unnecessarily to higher transaction costs.

Despite efforts in the Philippines to reduce SPS transaction costs for requesting permits through the adoption of ICT, transaction costs remain high because of the use of import licenses, import

permits for each shipment, and because of procedural inefficiency. Registration of food products is expensive for government and the private sector, and for most products it does not contribute significantly to the protection of health. Overall, the Philippines pays high transaction costs for moderate health outcomes, especially in food safety.

Costs of food safety controls on imports by the Thai FDA are high because, reportedly, some controls are not risk-based. For example, all imported shipments of shrimp and temperate fruit and vegetables are sampled, regardless of safety assurances that come with the product, the origin of the product, and the performance record of the importer. Sampling always involves some cost for the importer for the samples taken and waiting time of one day. In addition, the cost to the Government of 100% sampling and testing can be very high and is most likely higher than necessary. Licensing fees for food importers are significant, certainly for small enterprises. Overall efficiency of the system seems to be fair in food safety on imported food and good in export of fisheries products.

**Efficiency in market access** In Cambodia and Lao PDR, efficiency of SPS measures in terms of market access is mixed. Many of the controls applied on exports do not contribute to market access. Some controls are too costly to the private sector and, hence, erode competitiveness of exporters. In particular, double controls may be useless. For example, if products have received certification there is no point in checking these products again at the border when they are exported.

Efficiency of SPS measures in the Philippines in terms of market access is mixed. Many of the controls are too costly to the private sector and some do not add to market access and, hence, erode competitiveness of exporters.

Thai controls of export of shrimp are risk-based and seem to be cost-efficient. Private service provision in testing for exporters is competitive and there are no major duplications between public and private efforts. In this respect, the shrimp export sector is ahead of the plant sector, which requires export permits for each shipment of 16 fruit and vegetable products to the EU and Japan, regardless of the hazard prevention systems in place and the performance of the exporters. This involves higher costs and loss of time, which is critical for the export of fresh products, and duplication of public and private controls. The efficiency of the Thai SPS control system in terms of market access seems moderate to good.

### Specific constraints for SPS performance

Some general factors contribute to relatively weak compliance with WTO principles, high transaction costs, as well as limited effectiveness and efficiency of SPS border release processes. They include lack of awareness, inadequate human skills and technical capacity, and lack of operational funding.

**Awareness of trade facilitation** Awareness among border agencies about the importance of trade facilitation in border controls is limited. As explained above, border agencies generally consider taxation, prevention of smuggling and protection of health as their core functions, and generally not trade facilitation. There are no systematic surveys that measure transaction costs of release processes, and no indicators that compare SPS performance among countries. As indicated already, time release studies (TRS) provide some useful information about processing

time on particular border posts for a particular time period, but they do not provide good indicators of transaction costs in general and not at all for SPS controls. In Thailand, there is some monitoring of release time by DOF, which helps to show performance, but other countries do not yet have such systems in place. The lack of indicators constrains possibilities for managers and policy makers to assess performance and provide oversight.

***Human skills and technical capacity*** Implementation of effective and efficient release processes, including risk-based management and provision of adequate transparency, requires skilled staff. Effective release processes require simple technical facilities on the border and, more importantly, laboratories that can conduct testing and diagnostics if required. In particular, Cambodia and Lao PDR face major capacity and funding constraints in this regard. Although such constraints necessitate urgent prioritization of controls, no such prioritization mechanisms and approaches are in place.

***Funding of the SPS system*** Building and operating an effective SPS system is expensive and cannot succeed without public funding of operational costs. In particular, surveillance and inspection are expensive since they require field work for collecting information, diagnostics and laboratory testing. Many of the services SPS agencies deliver are public goods for which costs cannot be recovered from the private sector. In many developing countries, including Cambodia and Lao PDR, lack of operational funding severely constrains the effectiveness of the SPS system and reduces the impact of public and private investments in SPS capacity. Insufficient operational funding results in the under-utilization of available technical capacity and human skills, and as a result acquired skills erode over time because of limited use.

In Cambodia and Lao PDR, there is hardly any public funding for the SPS system; the prevalent fiscal policy is that SPS agencies need to collect fees to fund their own operations, regardless of the public or private nature of the services delivered. SPS agencies often try to mitigate the lack of public funding through the use of regulatory powers as para-fiscal instruments, which generally has undesirable consequences. First, because of institutional rent-seeking there is a tendency to conduct unnecessary controls in order to raise institutional income. Second, although international good practice is to apply risk-based controls, this reduces possibilities for charging enterprises for regulatory controls. Third, it is generally impossible to charge fees for inspection of informal trade and therefore this market segment remains largely uncontrolled. Fourth, by escaping from the regulatory burden, the informal sector undermines the competitive edge of the formal sector and incentives for remaining informal are strengthened. Fifth, informal trade and smuggling often pose higher risks to health than formal trade.

In Thailand SPS agencies receive funding for services provided as public goods and most import controls and some export controls are without charge. In the Philippines, SPS agencies receive much better funding than in Cambodia and Lao PDR, but still significantly less than in Thailand.

## **General public sector performance**

SPS control systems are part of the public sector and do not operate in isolation. Transaction costs of SPS release processes for traders and the effectiveness and efficiency of SPS controls are affected by the investment climate and governance issues. This section provides



information about the annual Doing Business Survey, the Logistic Performance Index, the World Governance Indicators and the Corruption Perceptions Index.

**Doing business** In 2012-2013, Thailand ranked 18<sup>th</sup> among 189 countries and territories in ease of doing business, Cambodia and Lao PDR ranked 137 and 159 respectively, and the Philippines ranked 108 (Table 4). The Philippines ranks relatively much better in trading across borders, which may be biased because licensing is not included in the definition. Lao PDR performs poorly in cost per container imported and exported, which probably reflects its landlocked status. The number of days to export and import is over 20 days in Cambodia and Lao PDR, and close to 15 days for the Philippines and Thailand, with little difference between time for export and import. The number of documents (generally not including SPS documents) needed for export and import is five in Thailand and 10 in Lao PDR. It is surprising that despite trade promotion policies there are apparently as many document requirements to export than to import.

**Logistics Performance Index (LPI)** Thailand performs favorably with a ranking of 35 among 160 countries and territories in the LPI. However, Lao PDR and Cambodia rank only 131 and 83 respectively. The Philippines is doing relatively well with a rank of 57.

**Table 4. Selective indicators on cost of doing business**

	Cambodia	Lao PDR	Philippines	Thailand
<b>Doing Business 2014</b>				
Ease of doing business (rank)#	137	159	108	18
Ease of trading across borders (rank)#	114	161	42	24
Documents to export (number)	8	10	6	5
Time to export (days)	22	23	15	14
Cost to export (US\$ per container)	795	1950	585	595
Documents to import (number)	9	10	7	5
Time to import (days)	24	26	14	13
Cost to import (US\$ per container)	930	1910	660	760
<b>Logistics Performance Indicator 2014</b>				
Rank+	83	131	57	35
Score % of highest performer	55.8	44.5	64.2	77.8

**Sources:** World Bank 2013. *Doing business 2014*. <http://www.doingbusiness.org/reports/global-reports/doing-business-2014>

World Bank 2014. *Connecting to compete 2014. Trade logistics in the global economy*  
[http://lpi.worldbank.org/sites/default/files/LPI\\_Report\\_2014.pdf](http://lpi.worldbank.org/sites/default/files/LPI_Report_2014.pdf)

**Notes:** # 185 countries and territories; + 160 countries and territories

**Governance** Table 5 indicates that in 2012, governance in the four countries included in this research was poor to average among 215 countries and territories. For five of the six governance indicators, Lao PDR is in the lowest quintile. Cambodia is doing a little better with four out of six indicators in the second quintile. Thailand has four indicators in the third quintile and the Philippines three. Voice and accountability are by international comparison very weak in Lao PDR and Cambodia. The Philippines has more pressure from civil society and business organizations. Political stability is relatively good in Lao PDR. Government effectiveness is relatively good in the Philippines and Thailand, and weak in Cambodia and Lao PDR. Regulatory quality is weakest in Lao PDR. Although it is better in Cambodia, implementation is weak as evidenced by the lowest rankings of the rule of law and control of corruption indicators.

In 2012, Thailand scored best in these indicators with 50.2% and 46.9% respectively. All four countries score high to very high on the 2013 Corruption Perceptions Index, with Cambodia ranked highest and the Philippines lowest.

**Table 5. Selective indicators on quality of governance**

	Cambodia	Lao PDR	Philippines	Thailand
<b>World Governance Indicators 2012<sup>&amp;</sup></b>				
Voice and accountability (% rank)	19.4	5.2	47.9	37.4
Political stability/absence of violence/terrorism (% rank)	40.8	47.4	14.7	12.8
Government effectiveness (% rank)	22.0	21.1	57.9	60.8
Regulatory quality (% rank)	39.2	22.1	51.7	57.9
Rule of law (% rank)	17.1	23.2	36.5	50.2
Control of corruption (% rank)	14.4	14.8	33.5	46.9
<b>Corruption Perceptions Index 2013</b>				
Rank*	160	140	94	102
Index**	20	26	36	35

**Sources:** World Bank 2012a. *World governance indicators 2011*.

<http://info.worldbank.org/governance/wgi/index.aspx#reports>

Transparency International 2012. *Corruption perceptions index 2012*.

<http://cpi.transparency.org/cpi2013/results/>

**Notes:** <sup>&</sup> 215 economies; \* 177 countries and territories; \*\* score ranges from 0 to 100 (0 means that a country is perceived as highly corrupt and 100 means that a country is perceived as very clean).

The different rankings of the four countries in doing business and governance generally show fair similarities with their comparative performance in SPS implementation. Therefore, efforts to strengthen governance and public sector reform, targeting an improved investment climate for trade facilitation, should include the SPS area where possible. Because of its complex technical requirements and technical, human, management and institutional capacity constraints, the actual performance of SPS services in many developing countries, including several ASEAN countries, is poor. The regulatory power of SPS agencies, combined with poor governance, provides room for discretionary power to be used for rent-seeking activities that can seriously affect the quality and cost-effectiveness of SPS operations.

### Quality of legislation

SPS measures have to be enacted in laws, decrees, regulations, decisions, etc., referred to in this study as legislation. SPS legislation refers to a wide body of texts that cover a number of areas including individual texts in each SPS area and a number of implementing regulations addressing specific sub-areas of SPS.

The principal role of legislation is to establish rights and obligations. Good legislation establishes clear rules for the exercise of public powers, and also outlines the rights and responsibilities of citizens (traders). Legislation provides a means for a country to comply with its obligations under the WTO framework, as well as providing a means to enforce SPS measures through various sanctions and penalties. This creates a transparent framework that provides certainty and confidence for traders and trading partners, thereby serving as an important tool for trade and investment. In other words, a good SPS legislative framework can:

(i) provide a more stable business climate and thereby enhance predictability and innovation; (ii) help to maintain a competitive environment thereby contributing to economic growth and consumer confidence; and (iii) cut unnecessary administrative costs that may result from overly complex and ineffective regulations.

Accordingly, the quality of legislation is a major determinant of the performance of SPS measures. Many deficiencies, weaknesses and malfunctions in SPS systems and measures can be attributed to the design of the regulatory framework. Of course, such legislative framework itself needs to be underpinned by clear technical health and trade policy direction. Legislation provides legitimacy for these policy choices. Thus, the process of developing legislation itself should be transparent and participatory. Broad participation in legislative processes should have beneficial effects on both trade facilitation and health protection as the process would bring together the perspectives of the various actors involved in SPS management and services delivery (both private and public, at different levels).

The WTO SPS Agreement places emphasis on principles, including the requirement that measures should not be more trade restrictive than necessary to achieve the appropriate level of protection; it does not provide good practice guidance for designing the regulatory framework. The WTO TBT Committee has given attention to the quality of regulations. In particular, in its Fourth and Sixth Triennial Reviews of the TBT Agreement, the Committee has addressed good regulatory practice. While principles of good regulatory practice should generally be similar for the SPS and TBT areas, the SPS Committee has not adopted a similar document; its work is more focused on health protection issues that are regulated, than on regulatory practice. This orientation on health protection is even stronger among the three SPS standard setting bodies – Codex, IPPC and OIE – which through their standards provide much of the scientific basis for SPS regulations.

General principles of good regulatory frameworks have been elaborated and promoted by the OECD in various publications. The OECD considers that good regulation should: (i) serve clearly identified policy goals and be effective in achieving those goals; (ii) have a sound legal and empirical basis; (iii) produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels. The OECD guidelines, summarized in Box 8, have played important roles in formulating good practice in specialized areas such as trade facilitation and TBT, but as already indicated, less so in the area of SPS.

**Box 8. OECD Guiding principles for regulatory quality and performance**

- 1) Adopt at the political level broad programs of regulatory reform that establish clear objectives and frameworks for implementation.
- 2) Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
- 3) Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
- 4) Review and strengthen where necessary the scope, effectiveness and enforcement of

competition policy.

- 5) Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
- 6) Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
- 7) Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

**Source:** OECD 2005

Practice in preparing and reviewing SPS legislation in many countries falls short of OECD and TBT recommendations on good regulatory practice. This is unfortunate since good regulatory practice can help to avoid unnecessary obstacles to trade in the preparation, adoption and application of regulations for SPS measures, standards and conformity assessment procedures.

## **VI. Recommendations**

The previous chapters have shown that there are many deficiencies in the implementation of SPS measures in the countries covered in this study, both from the perspective of trade facilitation and from the perspective of health protection. This chapter makes recommendations to improve the implementation of SPS measures and enhance safe trade. It has two main sections. The first provides specific recommendations to governments based on findings from this study. The second makes general recommendations to the trade and development community about how support for implementation of SPS measures could be strengthened and better aligned with the trade facilitation agenda.

### **How can SPS measures be implemented to better facilitate safe trade?**

The scope and capacity of SPS systems differs among countries. An advanced and mature economy will usually have an SPS system with much more detail, specialization, and sophistication in legislation, skills, laboratories, and other technical facilities as compared to a less developed economy. The size of a country, in terms of production, population and territory, also matters. But whether sophisticated or basic, core elements and capacities of an effective SPS system are essentially the same for all countries. In qualitative terms, an effective national SPS system should include a regulatory system, standards, information on pests, diseases and food safety, capacity to respond to outbreaks, risk management, conformity assessment and certification systems, capacity for SPS trade negotiations, inspection systems, testing and diagnostics, and preventive safety mechanisms (Box 9). The legal framework, and import handling and export certification (items 1, 5 and 6), are of direct importance for import and export release processes, the other points are at least indirectly important.

#### **Box 9. An effective SPS system**

An effective SPS system has at least the following elements and characteristics:

1. A legal framework that is feasible for the country context, enforceable, and implemented in a manner that is compliant with WTO principles.

2. A suitable number of mandatory regulations with Maximum Residue Levels (MRL), tolerances, etc. and related requirements, compliant with international principles in place that can be used for conformity assessment and enforcement.
3. Availability of information on food safety, and on the pest and disease situation for crops and livestock, which can be made available to international bodies and trading partners. This information provides the basis for risk analysis.
4. Capacity to respond to outbreaks and emergencies.
5. Risk-based import handling and inspection systems in place.
6. Systems of conformity assessment and certification in place.
7. Capacity to engage effectively with trading partners in SPS market access negotiations, including risk mitigation measures and MRAs.
8. Capacity for conformity testing and diagnostics that are recognized by trade partners.
9. Systems of quality assurance and risk management adopted that can be applied by the private sector, such as Good Agricultural Practices (GAP), Good Hygiene Practices (GHP), Good Manufacturing Practices (GMP), Hazard Analysis and Critical Control Points (HACCP).
10. Effective coordination across stakeholders with SPS mandates, including an enquiry point and a notification authority.

**Notes:** a. Certain functions can only be conducted by government services and not be delegated, such as issuance of phytosanitary and veterinary certificates.

b. For services that can be delegated, service providers for inspection, conformity assessment, diagnostics, and certification need not be in the country, but there is a need for work by foreign providers to be recognized under law and government should have basic capacities to provide oversight.

c. Items 2, 6, 8, and 9 combine SPS and TBT issues.

**Source:** The author. Similar schemes are included in the Lao PDR DTIS (2012) and the Cambodia DTIS (2014).

No SPS system is perfect and all countries have areas that deserve capacity improvements. Gaps in capacity can cause ineffective and inefficient implementation. From an SPS and trade facilitation perspective, the essential question is how can transaction costs be reduced, while the measures applied still achieve the appropriate level of health protection?

The findings of this study suggest that there is significant room to reduce transaction costs, while meeting health requirements. Or in the wording of the SPS Agreement, the appropriate level of protection can be achieved in less trade restrictive ways. Recommendations to reduce transaction costs identified in this study include the following:

1. Improve transparency, using frequently updated online tools where possible.
2. Reduce possibilities for rent-seeking.
3. Implement and improve risk-based management.
4. Limit the use of import and export licenses and permits for the implementation of SPS measures, focusing on high risk products if deemed necessary.
5. Rely on product registration in limited circumstances only, for example for special groups of high risk products.
6. Apply equivalence and seek mutual recognition agreements where relevant to prevent duplicative controls in exporting and importing countries.
7. Do not require mandatory export certifications that are not required by the foreign buyer.

8. Reduce document requirements by eliminating unnecessary documents and duplication among agencies.
9. Reduce waiting times for the issuance of certificates and inspections wherever possible.
10. Adopt automation of SPS import and export release processes and fully integrate these processes in national single window systems.

## **How can countries be assisted to implement SPS measures to facilitate safe trade?**

Additional support is needed to improve the implementation of SPS measures in a way that facilitates safe trade. Three recommended areas of support include: (i) development and compilation of good practice recommendations focused on the modalities to implement SPS measures; (ii) development of tools to measure the performance of SPS systems; and (iii) application of good regulatory practice.

**Good practice recommendations** Countries would benefit significantly from a comprehensive collection of good practice recommendations for (modalities of) implementation of SPS measures. As indicated already, while the SPS Agreement and its Annex C provides some guidance on implementation, this is mainly focused on principles to observe. Hands-on guidance and good practice is not available for SPS managers charged with complex questions related to implementation. The ISSB and their parent organizations have developed substantial detailed information about implementation in their standards and related texts. This information is mainly focused on health aspects and, to a lesser extent, on trade facilitation issues, and the recommendations are spread over many documents. More importantly, from a trade facilitation perspective the information is not complete, and often not sufficiently practical.

SPS officers in developing countries need good practice recommendations in the form of manuals, technical notes and training kits on a range of practical topics such as: (i) how to provide good information to traders about SPS requirements, procedures, transparency about fees, and target times for various steps in the SPS release processes; (ii) advantages and disadvantages related to the use of licenses, permits and product registration; (iii) awareness raising about trade facilitation issues related to SPS measures, possible trade disruptions linked to SPS measures, transaction costs involved in various implementation modalities for SPS measures, etc. Such good practice materials would also be an important contribution to practical training programs. STDF might facilitate the development of such materials and seek support from the Enhanced Integrated Framework (EIF), donors and ISSB.

The SPS Committee is recommended to strengthen its attention on transaction costs involved in implementing SPS measures by Members, and on good practice in modalities for the implementation of SPS measures, including points covered in Annex C of the Agreement and the new Trade Facilitation Agreement. In its upcoming review of the SPS Agreement, the SPS Committee may consider developing further guidance on these topics.

**Diagnostic tools for performance in the implementation of SPS measures** The development of performance assessment tools with indicators for SPS agencies would be helpful to improve oversight, management and transparency of implementation of SPS measures, especially with respect to import and export release processes. The tools should in

particular cover issues related to transaction costs, such as the number of documents required, use of licenses and permits (if any), waiting time, fees and other payments, transparency about requirements for traders, use of internet, and application of risk-based controls.

Different tools are proposed. One would be a basic tool for periodic assessment of the SPS system including interviews with competent authorities and traders (this could be somewhat similar to the country studies conducted for this research, but modified where relevant and focused on implementation of border release measures). In addition, there is a need for more targeted and simple tools for internal monitoring by SPS agencies themselves. The development of tools and indicators could take stock of experiences with tools developed for Customs.

There are various options to assess the implementation of SPS measures. One option would be to include the basic SPS implementation assessment tool (proposed above) to trade facilitation assessment tools, such as those applied by EIF and the World Bank. A second option would be to add implementation/trade facilitation modules to the SPS-related capacity evaluation tools used by FAO, OIE, IPPC, IICA and others to provide a measure of the capacity of national food safety systems, veterinary services, and phytosanitary services. These sector-specific tools include the FAO Guidelines to Assess Capacity Building Needs for Food Control Systems (currently being revised), OIE's Tool for Evaluation of the Performance of Veterinary Services (OIE-PVS Tool) and the PVS Gap Analysis Tool, and the IPPC's Phytosanitary Capacity Evaluation (PCE) Tool. These tools contain many technical parameters for describing competence and capacity. However, confidentiality in the application of some of these tools may restrict the usefulness of this option from a trade facilitation perspective. A third option would be to add an SPS module to one of the World Bank's tools that provide comparative international performance indicators, such as the Doing Business or Investment Climate Assessments.

***Apply good regulatory practice in SPS legislation*** There is an ongoing need to update SPS legislation because of: (i) the changing economic environment; (ii) changes in the demand for health protection; (iii) new food safety, pest and disease risks; (iv) international commercial challenges; and (v) improved compliance with international requirements. As indicated already, the legal system can be a major factor in effectiveness and efficiency of the SPS system, and improvements in performance often also require upgrading of the legal framework. International organizations and bilateral donors provide much support for legal upgrading but, still in many cases, external support is not sufficiently available. There are few regulatory good practice recommendations for the SPS area. Useful information can be found on good regulatory practice from the WTO TBT Committee's Fourth and Sixth Triennial Reviews.

The development of guidelines for good regulatory practice would be useful to support the preparation and review of general SPS legislation in general, and regulations for implementing SPS measures in particular. A proposed outline of key principles to include in such guidelines is presented in Box 10, which could be elaborated further. Systematic application of these recommendations would provide a more holistic approach to SPS legislation and give more weight to trade facilitation principles. It should be noted that application would probably change the demand for expertise from development partners to facilitate these processes.

The SPS Committee may consider developing good regulatory practice recommendations for SPS legislation and, in particular, for regulations to implement SPS measures.

**Box 10. Proposed principles to include in Good Regulatory Practice Guidelines for SPS Legislation**

1. Begin by clearly identifying the problem to be addressed, including its magnitude and the legitimate objective sought, and then consider alternative approaches that can fulfill that legitimate objective;
2. Carefully consider whether other instruments (not legislation) can achieve the same objective (such as providing information, investment, financial incentives, improved technology etc.). Also consider whether existing regulations can be maintained with simple amendments or whether new legislation is needed. It is important to avoid developing legislation which may not be necessary, or cannot be enforced;
3. Regulatory impact assessments (RIA) can be a useful tool to facilitate regulatory decision-making, including with respect to assessing whether or not government intervention is necessary. When the option to regulate is considered, the costs and benefits of proposed regulations may be assessed, including the likely impact on consumers, trade and industry;
4. Keep legislation (regulations) as simple as possible, without any internal inconsistencies or repetition. Also ensure the consistency of the legislative framework as a whole, by ensuring consistency of SPS legislation with other areas, and possibly identifying sections of other legislation that may need revision accordingly;
5. Legislation should incorporate relevant international (and regional) standards, concepts and definitions found in the SPS Agreement and elaborated by the ISSBs in a manner that: (a) is feasible for the country context; (b) addresses unique and specific needs; and (c) is enforceable given the country's capacity and resources;
6. Legislation/measures should be developed in an open and participatory manner, with the inclusion of all relevant stakeholders, and made widely available following approval;
7. Create an appropriate institutional structure in the legislation, without any dysfunctional overlap of mandates of SPS agencies by clearly delineating scope of the law and functions of the key agencies involved. Linkages should be created where relevant, as well as means for collaboration and coordination among different agencies (and at different levels of the same agency, e.g. province, district, central levels). Also, explore ways to streamline functions, for example by delegating non-specialized tasks to one of the SPS agencies or Customs in order to prevent double inspections;
8. Ensure that SPS measures and content of SPS legislation have a basis in science, and are based on sound technical and policy decisions (which can be guided by good practice modalities for implementing SPS measures). SPS measures should not be more trade-restrictive than necessary to achieve the appropriate level of protection and conformity assessment procedures shall not be stricter or be applied more strictly than is necessary. Excessively strict controls that have no significant health protection benefits in practice, but that disproportionately affect business and trade should be avoided;
9. Consider trade facilitation and other related principles by having a holistic and broad view of the application of specific legislation or measures in the broader regulatory framework of trade in general. Having this broad overview will also reduce the likelihood of conflicts and inconsistencies with other legislation;
10. Minimizing the use of mandatory measures, and relying on voluntary instruments, can facilitate adaptability and innovation and create incentives for businesses, open up market access opportunities and increase competitiveness while still being effective in achieving legitimate objectives;
11. Wherever appropriate, preference should be given to requirements that guarantee a health outcome rather than prescribing technical means. Performance-based regulations have the benefit of being easily adaptable and encouraging innovation;
12. The powers of public officers should be set out in legislation, with provisions for a meaningful appeals process against decisions by the agencies and its officers. The principles of good governance and accountability can also be enhanced through legislation that creates sanctions for offences by public officers (in accordance with the country's legislative tradition);



13. Provisions through which the legislation can be enforced should be given attention, with clarity as to what constitutes an offence and what the corresponding penalty is; and
14. Legislation should be subject to periodic review to: (a) identify any challenges in implementation; (b) to determine and ensure effectiveness and; (c) to address issues that arise in practice that may not have been unforeseen during drafting.

**Source:** Prepared by the author, taking stock of good practice guidance on good regulatory practice provided by OECD and TBT.

***Proposed agenda for further work*** The following additional areas for further work are proposed for consideration by the STDF and other entities involved in trade facilitation.

1. The STDF is recommended to take stock of the findings of the present studies on the implementation of SPS measures to facilitate safe trade, also regarding methodologies used, and follow up with a few additional studies, which should preferably include some developed and developing countries. This would have a double purpose: (i) it would further strengthen the methodology of these surveys; and (ii) it would help to generate more information to enable comparison and support formulation of good practice.
2. Although transit trade is very important for the Greater Mekong Subregion (GMS), it was not possible to include it in this study because of the complexity, time and cost involved. STDF is recommended to conduct a study on the role, constraints and potential of SPS transit modalities in GMS, within the broader framework of bilateral and multilateral transit agreements.
3. At the international and national level, there are institutional and knowledge gaps between entities engaged in trade facilitation and SPS management. STDF is recommended to consider options to bridge these gaps. National and international organizations engaged in the trade facilitation agenda are recommended to strengthen their focus on implementation modalities for SPS measures.

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## **Annex I Trade in Agriculture, Food and Forestry (AFF) Products**

Foreign trade in Cambodia and Lao PDR is poorly registered. Even mirror trade statistics underreport actual trade since it is known that large amounts of trade are also unregistered by neighboring countries Thailand and Viet Nam. This is especially the case for exports of paddy and milled rice, dried cassava, corn, rubber and probably other field crops as well. In Cambodia also cashew and fisheries products are underreported. Significant amounts of imported products are also unrecorded. AFF trade figures for the Philippines and Thailand are much more reliable, since smuggled and underreported trade is at much smaller relative to total export and import.

Thailand has by far most exports and imports in terms of value as indicated in Table 1 below. It has strong AFF export performance –13 times more than the Philippines – but of the four countries it is also the biggest importer which can be attributed to its relatively open trading system, its role as a major trading country in the region – it imports many commodities from its neighbors – its relatively high income and large tourist sector. The Philippines is mainly an importing country, less trade oriented and lower income. Lao PDR is a net exporter of agriculture commodities and forest products. Its imports include many processed foods for its own population and the relatively large tourist sector. Cambodia is probably also a net exporter, because the exports are more underreported than imports. Its exports are mainly agricultural commodities and fishery products, and its imports consist mainly of processed foods.

**Annex Table 1. Exports and Imports of AFF Products (2011; million USD)**

	Cambodia		Lao PDR		Philippines		Thailand	
	imports	exports	imports	exports	imports	exports	imports	exports
<b>All products</b>	<b>11,199</b>	<b>7,737</b>	<b>4,247</b>	<b>2,897</b>	<b>63,693</b>	<b>48,042</b>	<b>228,483</b>	<b>228,824</b>
<b>Total AFF products</b>	<b>979</b>	<b>796</b>	<b>427</b>	<b>843</b>	<b>5,877</b>	<b>3,174</b>	<b>10,425</b>	<b>44,080</b>
<b>Food &amp; live animals</b>	<b>973</b>	<b>376</b>	<b>417</b>	<b>189</b>	<b>5,642</b>	<b>3,055</b>	<b>8,772</b>	<b>29,784</b>
Live animals except fish	52	12	16	5	18	6	45	126
Meat & preparations	27	..	112	..	441	60	98	2,363
Dairy products & eggs	73	..	31	..	872	177	620	229
Fish/shellfish/etc.	29	17	5	..	173	646	2,685	8,088
Cereals/cereal preparation	106	138	52	46	1,629	110	962	7,310
Vegetables and fruit	55	177	40	35	356	1,395	1,057	4,228
Sugar/sugar prep/honey	293	16	42	3	243	448	160	4,083
Coffee/tea/cocoa/spices	33	2	30	100	269	14	438	320
Animal feed ex un-milled cereals	121	13	30	..	899	62	1,719	1,119
Miscellaneous food products	184	..	59	..	742	137	988	1,918
<b>Non-food products</b>	<b>6</b>	<b>421</b>	<b>10</b>	<b>654</b>	<b>235</b>	<b>119</b>	<b>1,653</b>	<b>14,295</b>
Oil seeds	2	6	..	9	122	1	1,184	17
Natural rubber	4	321	9	38	..	80	17	13,176
Wood and wood products	..	93	1	603	108	37	430	1,071
Nat. gum/resin/pharm plants etc	..	1	..	5	5	2	23	30

Source: Data for Cambodia, Lao PDR and Thailand obtained from ADB GMS SPS Project Preparatory Technical Assistance (PPTA) team; for Philippines from the author.

Notes: For Cambodia and Lao PDR based on mirror export and import data of trading partners obtained through World Integrated Trade Solution (WITS) from Commodity Trade (COMTRADE) data base of UNSD.

.. less than 0.5 million US\$.