

IMPLEMENTING SPS MEASURES TO FACILITATE SAFE TRADE

STDF THEMATIC SESSION

26 MARCH 2014

1 INTRODUCTION

1.1. The increasing attention on trade facilitation as a means to stimulate economic growth and competitiveness has generated a renewed focus on sanitary and phytosanitary (SPS) measures, how they are applied to imports, exports and transit goods, and the extent to which, if any, these measures unnecessarily increase the cost (including time) of doing business. At the same time, the recent adoption of the WTO Trade Facilitation (TF) Agreement is expected to give further impetus to technical assistance programmes in this area, which provides opportunities to build and strengthen SPS border management capacity.

1.2. Since 2012, the Standards and Trade Development Facility (STDF)¹ has been carrying out work, in collaboration with relevant international and regional organizations, on the interface and linkages between SPS measures and trade facilitation. The aim of this work is to identify, analyse and foster dialogue on experiences, lessons and good practices to improve the implementation of SPS controls in way that facilitates safe trade, while minimizing SPS transaction costs.² Moreover, the work could provide timely inputs towards the integration of SPS-related components in broader trade facilitation programmes.

1.3. In this context, the STDF will hold a thematic session entitled "Implementing SPS Measures to Facilitate Safe Trade" in Geneva on 26 March 2014, back-to-back with the WTO SPS Committee meetings. The session will be open to SPS and Trade Facilitation delegates as well as STDF Working Group participants.³ It will provide an opportunity to hear about the preliminary findings and recommendations of three regional studies conducted in Africa, Asia and Latin America and to assess similarities and differences among them. In addition, participants will be able to exchange experience and comments, including on possible follow up work by governments and the broader trade and development community, including the STDF, on a topic of widespread interest which has not been systematically addressed until now. The programme of the session is included in Annex I.

2 TRADE FACILITATION IN THE CONTEXT OF THE SPS AGREEMENT

2.1. All countries maintain SPS measures to protect human, animal and plant health and gain and maintain market access. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) establishes a framework of rules on how governments can apply SPS measures, which may directly or indirectly affect international trade. It maintains the right of governments to provide the level of health protection they deem appropriate, but seeks to ensure that these rights are not misused and do not result in unnecessary trade barriers.

2.2. Trade transaction costs occur every time a party 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, inadequate or contradictory documentation).⁴ Direct and indirect costs from import/export-related procedures and required documents are estimated to vary between 1 to 15% of a product's cost, depending on the nature of the product. With the

¹ The Standards and Trade Development Facility (STDF) is a global partnership in SPS capacity building and technical cooperation established by the Food and Agriculture Organization of the United Nations (FAO), the World Organisation for Animal Health (OIE), the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO). More detailed information on the STDF, and this work on SPS and trade facilitation, is available at: www.standardsfacility.org.

² The STDF work focuses on the general concept of trade facilitation, defined as the simplification, harmonisation, standardisation and modernisation of trade procedures, and not specifically on the new Trade Facilitation Agreement, which was adopted in December 2013.

³ Interpretation will be provided.

⁴ Grainger, A. 2008. "[Customs and Trade Facilitation: from concepts to implementation](#)", *World Customs Journal*, Volume 2, Number 1.

lowering of tariffs, the cost of complying with customs formalities exceeds in many instances the cost of duties to be paid. The Organization for Economic Co-operation and Development (OECD) calculates that each 1% saving in trade-related transaction costs yields a worldwide benefit of around US\$43 billion.⁵

2.3. While the implementation of SPS measures understandably results in some trade transaction costs – which may be justified by the need to ensure health protection – the SPS Agreement requires that they should not be higher than necessary and be based on science. Article 8 and Annex C of the SPS Agreement set out provisions on Control, Inspection and Approval procedures and require that procedures to check and ensure the fulfilment of SPS measures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products.

2.4. WTO Members discuss systemic issues as well as specific trade concerns related to the implementation of SPS measures in the SPS Committee. During the Second and Third Review of the SPS Agreement, completed in 2005 and 2010 respectively, the Committee adopted recommendations to consider the most effective way of facilitating the implementation of Article 8 and Annex C of the SPS Agreement.⁶ During the Third Review, Codex, IPPC and OIE were invited to provide information on their work in this area.⁷ The Second Review also recommended the Committee to facilitate Members' practical implementation of specific provisions of the SPS Agreement, including the identification of good regulatory practices.⁸ Despite these recommendations, the Committee has not followed up with systematic discussions on this topic.⁹ At the same time, some specific trade concerns raised in the SPS Committee relate to issues covered by Article 8 and Annex C.¹⁰

2.5. The implementation of SPS measures is challenging in any situation, and requires countries to have a certain level of capacity in place (adequate legislation, management capacity, scientific knowledge and skills, infrastructure, etc.). In many developing countries, the capacity and resources are limited. Other issues, linked to unclear SPS mandates, inadequate coordination, institutional rivalries and/or weak understanding of international standards and how to implement them, etc., sometimes exacerbate the challenges.

2.6. Studies have highlighted a variety of issues, linked to inadequate SPS capacity and SPS measures, which occasionally act as a greater barrier to trade than tariffs. These may include unjustifiable measures, excessive documentary requirements, inefficient procedures, unnecessarily long waiting times, inadequate transparency, predictability or consistency in the implementation of SPS controls, and higher-than-necessary fees.¹¹ As a result, SPS measures are sometimes implemented in a way that offers insufficient health protection, while being more costly than necessary. In addition to the formal SPS requirements, "informal" requirements may represent additional costs. Combined with poor infrastructure, these challenges increase transaction costs and lengthen delays in border clearance procedures, with negative effects on trade flows, safety and quality of products, competitiveness and foreign investment.

2.7. In recent years, several capacity building initiatives, backed by substantial resources, have emerged to support trade facilitation in developing countries. Customs agencies have generally been the main focus and beneficiary of these initiatives, while the modernization of SPS systems has tended to lag behind. Nevertheless, SPS agencies in some countries have launched and/or are involved in various initiatives, sometimes in cooperation with other border agencies and the private sector, to harmonize, simplify and enhance the implementation of SPS controls and procedures to achieve gains in trade facilitation. The adoption of the new WTO Trade Facilitation Agreement is expected to provide further impetus to technical assistance programmes in this area and also provides opportunities to build and strengthen SPS border management capacity.

⁵ OECD Trade Facilitation Indicators, Transforming Border Bottlenecks into Global Gateways, 2013.

⁶ G/SPS/36, para 101 and G/SPS/53, para. 139-146.

⁷ Accordingly, Codex, IPPC and OIE circulated papers describing their work in this area (see G/SPS/GEN/947, G/SPS/GEN/927 and G/SPS/GEN/929 respectively).

⁸ G/SPS/36, para 98.

⁹ The Fourth Review of the SPS Agreement will be conducted during the course of 2014.

¹⁰ For example, see STCs 266, 273, 290, 297, 299 and 341 in the SPS Information Management System (spsims.wto.org).

¹¹ See Chapter 16 (Sanitary and phytosanitary measures and border management, by Kees van der Meer and Laura Ignacio) of: World Bank, 2011, Border Management Modernization.

3 THE NEW WTO AGREEMENT ON TRADE FACILITATION

3.1. Trade facilitation became a topic of discussion at the WTO's Singapore Ministerial Conference in December 1996.¹² After several years of exploratory work, Members agreed to launch negotiations on trade facilitation in July 2004¹³ with a view to "further expediting the movement, release and clearance of goods, including goods in transit". The negotiations focused on further clarifying Articles V (transit issues), VIII (fees and formalities connected with importation and exportation) and X (publication and administration trade regulations) of the General Agreement on Tariff and Trade 1994 (GATT 1994). They also aimed at "enhancing technical assistance and support for capacity building in this area" and at developing "provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues".

3.2. Related to these negotiations, the WTO Secretariat has been providing technical assistance to enable developing country Members to assess their trade facilitation needs and priorities. These assessments, carried out in cooperation with the International Monetary Fund (IMF), OECD, United Nations Conference on Trade and Development (UNCTAD), the World Customs Organization (WCO), the World Bank and experts from national customs agencies, have aimed to assist countries: (i) better understand the implications of proposed trade facilitation measures; (ii) negotiate more effectively on the proposed measures, special and differential treatment and technical assistance; and (iii) acquire a basis for the implementation of the results of the negotiations. During the first phase of this work, from 2007-2010, 94 trade facilitation needs assessments were completed. A further 52 assessments were completed in 2013.

3.3. During the negotiations, Members were encouraged to ensure that all agencies engaged in border activities (including SPS agencies) were involved in developing national positions through their participation in the needs assessment activities and in the national task forces and/or committees on trade facilitation. The actual involvement of SPS agencies in this process has varied among countries.

3.4. After more than nine years of negotiations, Members reached consensus on a Trade Facilitation Agreement at the Bali Ministerial Conference in December 2013, as part of a wider "Bali Package".¹⁴ The TF Agreement 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.¹⁵

3.5. The TF Agreement consists of two main sections: the first section sets out the substantive obligations on facilitating customs and other border procedures in 13 articles and the second section contains special and differential treatment provisions. Article 13 establishes a WTO Committee on Trade Facilitation and also mandates Members to establish and/or maintain a national committee on trade facilitation.

3.6. Several provisions of the TF Agreement relate, directly or indirectly to provisions of the SPS Agreement, including Article 7 and Annex B on Transparency (publication of regulation, notifications, Enquiry Points, etc.) and Article 8 and Annex C on Control, Inspection and Approval Procedures. Possible conflicts between the TF and SPS Agreements are addressed in paragraph 6 of the Final Provisions of the TF Agreement, according to which "nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the TBT and SPS Agreements." Still, some of the provisions in the TF Agreement may be considered as "SPS-plus", possibly resulting in obligations, which go beyond what is contained in the SPS Agreement.

¹² Singapore Ministerial Declaration (WT/MIN(96)/DEC), paragraph 21.

¹³ July 2004 Package (WT/L/579), Annex D.

¹⁴ WT/MIN(13)/36, WT/L/94.

¹⁵ In particular, the Preparatory Committee will conduct the legal review of the TF Agreement, receive notifications of commitments from developing and least developed country Members, and draw up a Protocol of Amendment to insert the Agreement into Annex 1A of the WTO Agreement. The General Council will meet no later than 31 July 2014 to annex to the Agreement notifications of Members' commitments, adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol will enter into force in accordance with Article X:3 of the WTO Agreement, i.e. following ratification by two-thirds of Members.

3.7. Hence, the efficient and effective implementation of WTO rights and obligations will require further reflection on the linkages between these Agreements. One crucial aspect in this regard will be the involvement of SPS agencies in the national trade facilitation committees and related technical assistance programmes.

4 STDF WORK ON SPS MEASURES AND TRADE FACILITATION

4.1. Discussions on trade facilitation in the STDF date back to December 2009, when the World Bank proposed it as an area of future work. Following preliminary reflections and discussions, it was decided in 2012 that the work would focus on identifying, analysing and fostering dialogue on experiences, lessons and good practices to improve the implementation of SPS controls in a way that facilitates safe trade. More specifically, the objectives are to: (i) raise awareness about the synergies between the implementation of SPS measures and trade facilitation; (ii) identify key needs, opportunities and good practices to improve the implementation of SPS measures in a way that ensures the appropriate level of health protection while minimizing trade transaction costs; and (iii) make recommendations to enhance future work and technical cooperation focused on SPS and trade facilitation. It is targeted at policy-makers and practitioners in SPS and trade facilitation authorities including customs and private traders.

4.2. Towards these objectives, the STDF has commissioned research in selected countries in Africa and Asia. The research examines the SPS controls applied to selected agri-food products by exporting and importing countries, and how they are implemented in practice, in light of the relevant provisions of the SPS Agreement, principles of trade facilitation and the standards and guidelines of the international standard-setting bodies (Codex, OIE and IPPC) where applicable. It focuses in particular on the level of transparency/availability of information, excessive documentation requirements, avoidable costs (including informal payments) in terms of time and money, cases of lack of consistency, discrimination or arbitrariness, technical challenges as well as positive initiatives (existing or suggested) to facilitate trade. Data have been collected mainly through surveys with relevant public and private sector representatives and complemented by desk research and national stakeholder workshops.

4.3. In the Asia region, surveys have been conducted in four countries, namely Cambodia, Laos, Philippines and Thailand by an international SPS expert, Kees van der Meer, assisted by national consultants. The focus has been on four main product groups: milled rice and other field crops; fruit and vegetables; shrimp and other fisheries products; and chicken and other meat products. In the Africa region, the STDF has been working in close collaboration with COMESA and TradeMark Southern Africa (TMSA) as well as Robert Black, an international SPS expert, assisted by experts from the region. Six countries were identified for research and surveys, namely Botswana, Malawi, Mozambique, South Africa, Zambia and Zimbabwe. The products being studied include beef, fisheries products, maize, milk, groundnuts, fresh citrus and other products identified in the course of the study. In addition, the Inter-American Development Bank (IDB) has undertaken, in coordination with the STDF, a study on the Quarantine Control Situation in Latin America. This work was launched in 2012 with the distribution of a questionnaire to relevant government agencies and was complemented by desk research and interviews.

4.4. The preliminary findings and recommendations of the aforementioned studies will be presented during the thematic session on 26 March 2014. The purpose of the session is to assess similarities and differences among the three regions and to share experiences and comments, including suggestions for possible follow up work on this topic by governments and the broader trade and development community, including the STDF. Following the thematic session, and the subsequent STDF Working Group meeting, the three reports will be finalized taking into account the inputs and comments received.

4.5. The following tangible outputs are expected to be finalized by mid-2014: (i) regional reports, published jointly with the organizations/experts concerned, presenting and analysing key findings and recommendations; (ii) national reports which form the basis for the regional reports; and (iii) an STDF Briefing note, summarizing the key messages and conclusions. All the materials produced will be disseminated to STDF's network of stakeholders through the STDF website and electronic distribution list, as well as through relevant events organized by the STDF, Working Group members and other external events.

ANNEX I:

STDF THEMATIC SESSION

IMPLEMENTING SPS MEASURES TO FACILITATE SAFE TRADE

Wednesday, 26 March 2014

15.00-18.00, World Trade Organization

Interpretation will be provided

Programme

- 15.00-15.15 Welcome remarks and overview of the STDF's work on SPS measures and trade facilitation, *STDF Secretariat*
- 15.15-16.45 Presentation of the findings and recommendations of the research work conducted in Latin America, Asia and Africa
- Latin America: Ms Juliana Salles Almeida, Operations Specialist, Inter-American Development Bank*
- Asia: Mr Kees van der Meer, SPS expert, STDF consultant*
- Africa: Mr Robert Black, SPS expert, STDF consultant*
- 16.45 -17.45 Discussion, questions and comments from participants
- 17.45-18.00 Wrap-up and concluding remarks, *STDF Secretariat*