

TERMS OF REFERENCE
PILOTING THE USE OF REGULATORY IMPACT ASSESSMENT WITHIN THE REALM OF
GOOD REGULATORY PRACTICES IN THE AGRICULTURE AND FISHERIES SECTOR IN
THE PHILIPPINES
STDF PROJECT PREPARATION GRANT (STDF/PPG/722)

1 BACKGROUND TO PPG

1.1. Good Regulatory Practices (GRPs) are internationally recognized processes, systems, tools and methods to improve the quality of regulations and ensure that regulatory outcomes are effective, transparent, inclusive, and sustained. GRPs help ensure that regulations are "fit for purpose" and deliver what they set out to achieve. As such, they can be of considerable benefit to developing countries to support the development, implementation, and/or review of regulations and other measures. Various GRP tools are available, such as public consultations, private sector consultations, impact assessments, forward planning, notice-and-comment, ex-post review, e-registries, and regulatory oversight bodies. For example, GRPs can help to identify and evaluate critically trade and other intended or unintended effects of regulatory action and alternatives in the context of Regulatory Impact Assessments (RIAs).

1.2. Since the late 1980s, the Philippines have led a series of reforms to the business environment, recognizing the need to foster a strong regulatory environment and a stable investment climate. In recent years, efforts were notably made to increase transparency, improve public-private dialogue, as well as simplify rules and reporting requirements, with a view to improving the overall business environment. There has also been some progress in the area of GRPs, but the country is still at an early stage. Significant potential exists to promote the use of GRPs in the Philippines, in particular in the context of SPS measures.

1.3. In 2008, the Government of the Philippines partnered with the Asian Development Bank (ADB) to assess the institutional framework in the Philippines. Several key weaknesses were identified, such as: (i) overlapping regulatory functions and interests; (ii) a lack of systematic reporting and stocktaking of new regulations; (iii) a lack of consideration of regulations' impact; and (iv) limited consultation with relevant stakeholders before the issuance of new regulations. Following this, the Government of the Philippines led several projects to improve its regulatory framework. One of these was the adoption of GRPs through pilot projects focused on logistics, infrastructure, and tourism to roll out RIAs in three government agencies: the Department of Tourism (DOT); the Department of Labour and Employment (DOLE); and the National Economic and Development Authority (NEDA). The pilot agencies recognised RIAs to be highly useful as they relate to individual policies as well as to entire programs creating synergies within departments. Progress achieved during the implementation of these pilots included the use of preliminary impact assessments and RIAs as well as the development of manuals and guidelines.¹

1.4. Since then, there have been various efforts to increase awareness among relevant agencies in the Philippines about the meaning, role and value of GRPs as means to strengthen outcomes or regulatory efforts and reduce costs, including in the context of agri-food trade. During the Asia Pacific Economic Cooperation (APEC) forum of 2015, hosted by the Philippines, the APEC Sub-Committee on Standards and Conformance led a conference on GRPs. This conference served as a starting point for the PPG applicant to build its understanding of GRP elements and discuss actions undertaken by other APEC members focused on standards related to the agri-food sector. Other activities were spearheaded by

¹ DB (2016), *Completion Report: Philippines, Increasing Competitiveness for Inclusive Growth Program (Subprograms 1 and 2)*, <https://www.adb.org/sites/default/files/project-document/185678/43396-014-pcr.pdf>.

various government agencies of the Philippines to deliver GRP and RIA training and develop guidance.

1.5. Within the Department of Agriculture (DoA), the Philippines Council for Agriculture and Fisheries commissioned a study on the Review of Laws and Regulations to Enhance Policy Environment towards Agriculture and Fisheries Modernization in the Philippines, to be conducted by the Development Academy of the Philippines. The final report was published in 2017. The report identifies several issues for agencies involved in regulating in the agriculture and fisheries sectors, such as: (i) unnecessary regulatory burdens; (ii) conflicting jurisdictions and weak coordination among agencies; (iii) limited capacity and budgetary allocations for the implementation of regulations; and (iv) overlapping regulations leading to difficulties in enforcement.² In follow up, the Bureau of Agriculture and Fisheries Standards (BAFS), as the standard setting agency within the DoA, drafted guidelines for GRPs and RIAs. However, BAFS did not follow through with the implementation of these guidelines and, at this stage, they remain drafts for discussion.

1.6. The PPG application was submitted by BAFS to provide support towards the implementation of GRPs (including RIAs) within relevant agencies.³ The PPG application is supported by other agencies within the DoA, namely: (i) the Office of Policy, Planning, Research and Development and Regulations; (ii) the Office of the Assistant Secretary for Regulations; (iii) the Philippine Council for Agriculture and Fishery; and (iv) other regulatory agencies, such as the Bureau of Plant Industry, the Bureau of Animal Industry, the Bureau of Fishery and Aquatic Resources, the Sugar Regulatory Administration, and the Fertilizer and Pesticide Authority. It is also supported by: (i) NEDA; (ii) the Bureau of Philippine Standards of the Department of Trade and Industry; (iii) the Anti-Red Tape Authority (ARTA); and (iv) the Development Academy of the Philippines (DAP).⁴

1.7. The PPG was approved by the STDF Working Group in October 2019. In approving this application, the STDF Working Group noted that the PPG had the potential to generate practical lessons and approaches to support implementation of GRPs. Results from the PPG would also feed into the STDF's ongoing work on GRPs.

1.8. This document sets out the Terms of Reference (ToRs) for the International Consultant contracted by the STDF to implement this PPG in close collaboration with BAFS and other relevant stakeholders. BAFS will be responsible for ensuring that the work carried out under the PPG is linked and aligned to other relevant work in the Philippines, identifying stakeholders to be consulted and engaged, sharing copies of relevant documents, and providing necessary local logistical support (coordinating field work, interviews/meetings, workshops, etc.) as required under the PPG.

2 OBJECTIVES AND EXPECTED RESULTS OF THE PPG

2.1. The purpose of this PPG is to develop a project proposal to operationalize GRPs in agencies regulating in the agriculture and fisheries sectors in the Philippines in view of improving the development, implementation, and review of SPS-related regulations and other measures. The PPG will be used to:

- a. Take stock of how SPS measures are currently developed, implemented, and reviewed by relevant agencies in the agriculture and fisheries sectors in the Philippines, analyze constraints and challenges faced by these agencies, including

² A copy of relevant parts of the report will be provided to the International Consultant.

³ PPG application (STDF/PPG/772).

⁴ Letters of support have been received from the Assistant Secretary-designate for Policy, Research and Development, Office of the Secretary, as well as from the Bureau of Animal Industry, the Sugar Regulatory Administration, and the Fertilizer and Pesticide Authority. BAFS will seek to obtain letters of support from the other agencies listed here.

SPS-related provisions of bilateral/regional trade agreements as appropriate, and assess critical needs to operationalize the use of GRPs.

- b. Explore possible synergies with ongoing/planned efforts in other departments/agencies in the Philippines as well as with any other relevant work on GRPs led by the STDF and other partners (e.g. OECD, World Bank Group).
- c. Develop a focused project proposal to pilot the use of GRPs to strengthen the development, implementation, and review of SPS measures in the Philippines.

3 DESCRIPTION OF TASKS

3.1. The main tasks of the International Consultant are detailed below. These tasks shall be carried out under the overall supervision of the STDF Secretariat, and in close collaboration with BAFS and other relevant stakeholders in the Philippines and beyond.

Desk research and analysis

- a. Familiarise him/herself with the activities proposed in the PPG application as well as with GRP provisions/requirements relating to SPS measures in relevant regional trade agreements and existing resources, tools, experiences pertaining to the use of GRPs in the Philippines, including:
 - The ADB study referred to in paragraph 1.3 above.
 - The Review of Laws and Regulations to Enhance Policy Environment towards Agriculture and Fisheries Modernization in the Philippines referred to in paragraph 1.5 above.
 - ERIA Discussion Paper Series: Towards a Requisite Regulatory Management System : Philippines.⁵
 - Part 5 of the 2017-2022 Philippine Development Plan.⁶
 - The Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Republic Act No. 11032), establishing RIAs and Regulatory Management in the Philippines.⁷
 - National Quality Infrastructure initiatives of the Philippines.⁸
- b. Familiarise him/herself with relevant work on the use of GRPs, in particular in the context of SPS measures, conducted by the STDF and other partners, as well as with any relevant initiatives at the regional level, notably:
 - The findings of STDF's online survey on the use of GRPs⁹, the current preparation of a document on the use of GRPs related to SPS measures¹⁰, as well as relevant

⁵ <https://www.eria.org/ERIA-DP-2016-21.pdf>.

⁶ <http://pdp.neda.gov.ph/wp-content/uploads/2017/01/PDP-2017-2022-07-20-2017.pdf>.

⁷ <https://www.officialgazette.gov.ph/2018/05/28/republic-act-no-11032/>.

⁸ References will be provided in due course.

⁹ https://standardsfacility.org/sites/default/files/STDF_GRP_Survey_Summary_Report_FINAL.pdf.

¹⁰ https://www.standardsfacility.org/sites/default/files/Revised_STDF_concept_note_GRP_Mar18.pdf.

recommendations from STDF projects that have touched on GRPs (STDF/PG/345¹¹, STDF/PG/358¹², STDF/PG/460¹³).

- The World Bank's Global Indicators of Regulatory Governance, which cover a number of GRP measures in 185 countries¹⁴, including its Global Database for Regulatory Impact Assessment.¹⁵
 - The OECD's work on GRPs, including its Recommendation on Regulatory Policy and Governance¹⁶, and accompanying tools, such as best practices on stakeholder engagement¹⁷, ex-post evaluation¹⁸, and RIAs.¹⁹ The OECD is also due to publish a report specifically assessing the state of RIAs in the Philippines.²⁰
 - The work of the ASEAN-OECD Good Regulatory Practice Network.²¹
- c. Develop forms/questionnaires for interviews/meetings, and lead interviews/meetings with relevant agencies of the DoA as well as other relevant stakeholders in the Philippines (including agencies spearheading GRP/RIA implementation in the Philippines, namely, NEDA, DAP and ARTA, and other relevant agencies, such as DOT and DOLE) and beyond as appropriate.
- d. Based on desk study, as well as information gathered through interviews/meetings, make a preliminary analysis of the way SPS measures are currently developed, implemented, and reviewed by relevant regulating agencies and the state of GRPs in the agricultural and fisheries sectors in the Philippines, map out the constraints and challenges faced by relevant regulating agencies, assess critical needs to operationalize the use of GRPs to shape the remainder of the work under the PPG, and compare the result of this preliminary assessment with findings of existing studies in the Philippines. This preliminary analysis should also assess existing GRP policies/regulations in the Philippines more widely to relate GRP implementation in the agricultural and fisheries sectors to the use of GRPs in other sectors. The preliminary assessment will be expected to take the form of a short report to be shared for comments with BAFS and other relevant stakeholders.

¹¹ STDF/PG/345 aimed to promote regulatory coherence in the animal feed sector in Latin America. This included attention to strengthening cooperation between the public and private sectors in ten countries to achieve greater regional convergence in regulations affecting trade in animal feed. (<https://www.standardsfacility.org/PG-345>)

¹² STDF/PG/358 aimed to strengthen the Official Veterinary Services of OIRSA member countries. It included work to develop harmonized regulatory criteria for veterinary services across eight OIRSA member countries, addressing gaps in secondary legislation as well as inconsistencies of national laws and regulations with OIE standards. The project built strong connections between public and private stakeholders. (<https://www.standardsfacility.org/PG-358>)

¹³ STDF/PG/460 evaluated the impacts of the international wood packaging standard (ISPM 15) on the trade flows of four African countries. Under the project, four country reports were produced, analyzing all the national policies, laws, regulations and procedures relevant to ISPM 15 implementation. This work formed the basis for succinct policy briefs to enhance the participating countries' capacity to implement ISPM 15, and to disseminate lessons learned and best practices in implementation also to non-participating countries and international stakeholders. (<https://www.standardsfacility.org/PG-460>)

¹⁴ <https://rulemaking.worldbank.org/>.

¹⁵ <https://rulemaking.worldbank.org/en/ria-documents>.

¹⁶ <http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>.

¹⁷ <https://www.oecd.org/regreform/public-consultation-best-practice-principles-on-stakeholder-engagement.htm>.

¹⁸ <http://www.oecd.org/regreform/regulatory-policy/public-consultation-oecd-best-practice-principles-reviewing-the-stock-of-regulation.htm>.

¹⁹ <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>.

²⁰ <http://www.oecd.org/gov/regulatory-policy/ria.htm>.

²¹ <http://www.oecd.org/gov/regulatory-policy/grpn.htm>.

Consultations, engagement

- e. On the basis of the preliminary analysis described in sub-paragraph d., conduct consultations with key stakeholders in order to incorporate their views, experiences and insights into the PPG where appropriate, to ensure that the resulting project is fully aligned with expectations, and to enhance ownership for the resulting project. In particular, government agencies and departments involved in the development, implementation and/or enforcement of SPS measures, other public sector agencies involved in GRPs more broadly, as well as representatives of private sector stakeholders responsible for compliance with SPS measures should be consulted. A one-day inception workshop could be held in the Philippines or organised virtually, depending on travel restrictions due to the COVID-19 pandemic.
- f. Actively consult international organizations, development partners and potential donors (including the World Bank, FAO, ADB, APEC, ASEAN etc.) to learn from and identify synergies to any other relevant work, and explore opportunities to leverage funds to implement all or part of the project to be developed through this PPG. The consultant is expected to explain the reasons for selecting particular organizations, development partners and donors.

Project development

- g. Develop a project proposal to pilot the use of GRPs in agencies responsible for developing, implementing and/or reviewing SPS measures in the agriculture and fisheries sectors within the DoA. Broadly speaking, this project is expected to: (i) identify and apply specific types of GRP tools and principles, building on relevant existing work and any GRP provisions or GRP requirements relating to SPS measures in relevant regional trade agreements; (ii) increase awareness among relevant regulating agencies about the meaning, role, and value of GRPs to improve the outcomes of SPS measures in terms of health protection and reduced trade costs; (iii) assess and learn about the use of selected GRPs to develop, implement, and review SPS measures, possibly focusing on a particular commodity or specific SPS area; and (iv) identify options (and highlight relevant interrelations and synergies of these options) to scale-up the use of GRPs throughout relevant agencies in the future, including options relating to the adoption of national guidelines on GRPs. The project proposal should:
 - Clearly identify existing GRP tools and experiences in the Philippines, as well as the specific challenges faced by relevant regulating agencies, assess capacity building needs, and consider the feasibility of various approaches or solutions to operationalize GRPs in these agencies.
 - Clearly identify and map out linkages, synergies, and complementarities to related activities and projects, supported by the government, donors, development partners, or international organizations in the Philippines.
 - Take account of, and build on, what has worked in other regulating agencies in the Philippines to date²² and learn from other relevant experiences, including successful experiences of other countries implementing GRPs in the SPS area.
 - Assess how GRP principles and tools (e.g. public consultations, private sector consultations, impact assessment, forward planning, notice-and-comment, ex-post review, e-registries, regulatory oversight bodies) can be used to improve the

²² In that context, ARTA, DOT, DOLE, and other agencies that have undergone RIA Training under the Modernizing Government Regulations Program of DAP should be consulted.

development, implementation, and/or review of SPS-related regulations and other measures.

- Clearly elaborate the purpose, expected outcomes, outputs and activities of the proposed project, based on a coherent logical framework. The logical framework should include indicators to measure performance, sources of verification and any key assumptions.
 - Clearly identify the roles and responsibilities of all concerned stakeholders and outline a practical mechanism for project implementation and management.
 - Include a detailed estimate of the budget required to implement the proposed project and, where possible, identify possible donors and/or private sector investors.
 - Include a detailed work plan and timetable for project implementation covering, among other things, the following activities: (i) trainings, workshops, and other activities on relevant GRP tools to increase awareness among relevant regulating agencies about the meaning, role, and value of GRPs to improve the development, implementation, and review of SPS-related regulations and other measures; (ii) a pilot implementation of GRPs, which may include RIAs, as well as the monitoring and evaluation of this pilot project; and (iii) the rolling-out of this pilot in other relevant agencies. Ideally, the project proposal will also lay groundwork for knowledge sharing and disseminating solutions and good practices among other regulating agencies in the Philippines. ARTA should be invited as an observer during the pilot implementation of GRPs.
 - Identify and assess the possible risks and challenges faced in the proposed project, as well as risk mitigation strategies to ensure its success.
 - Set out how the project proposal ties to the work carried out by the STDF, STDF partners, and other organizations on GRPs.
 - The proposal should be submitted in the STDF format (available at: http://www.standardsfacility.org/sites/default/files/PGApplicationForm_en.doc), unless another donor is identified as a potential source of funding.
- h. Discuss the draft project proposal with BAFS and other relevant stakeholders in the Philippines, as well as any relevant regional/international stakeholders, including development partners and donors. On the basis of comments and suggestions received, revise the proposal as necessary.
- i. Present the revised draft project proposal to BAFS, other relevant stakeholders and the STDF Secretariat, and make any further revisions necessary. A one-day validation workshop could be held in the Philippines or organised virtually, depending on travel restrictions due to the COVID-19 pandemic. Several rounds of comments can be expected.
- j. Finalize the project proposal on the basis of all comments received on successive versions of the documents and provide explanations as to why certain suggestions or comments could not be reflected in the revised document.

Logistics

- k. Together with BAFS, make arrangements for interviews and consultations with relevant stakeholders in the Philippines, including travel to the Philippines if feasible subject to the COVID-19 pandemic.

- l. With the support of BAFS and relevant stakeholders, take the lead in (online and/or face-to-face) meetings and other activities during implementation of the PPG. Prepare all necessary documentation, including meeting agendas and summaries etc.
- m. In collaboration with BAFS, coordinate letters of support for the proposed project from key stakeholders. These letters should include a clear expression of support for the proposed project, and demonstrate clear commitment to take actions needed to ensure the success and sustainability of the project.
- n. Provide the STDF Secretariat with electronic copies of relevant documents produced under the PPG for inclusion in the STDF Virtual Library.

4 DELIVERABLES

4.1. The International Consultant shall deliver the following key outputs to the STDF Secretariat:

- a. A short report that includes a preliminary analysis of the way SPS measures are currently developed, implemented, and reviewed in the Philippines, addresses the state of GRPs in the agricultural and fisheries sectors in the Philippines, maps out the constraints and challenges faced by relevant regulating agencies, and assesses critical needs to operationalize the use of GRPs. This report should be delivered following the initial desk research and analysis described above and prior to work on the project proposal.
- b. A complete project proposal to pilot the use of GRPs in the agriculture and fisheries sectors in the Philippines, as described above.
- c. A brief report of work carried out under the PPG, including a description of the key activities, a bibliography of the documents consulted (with web links and/or electronic copies), as well as a list of stakeholders met and consulted together their contact information. The PPG implementation report should be provided within one month of PPG completion.

5 TIMEFRAME

5.1. The PPG is scheduled to start in **1 February 2021** and is expected to be completed within one year.

6 BUDGET

6.1. The STDF will cover expenses related to implementation of this PPG by the International Consultant **up to** a maximum amount of **US\$39,850**.