



Assessment of the Status of Implementation of the SPS Annex to the SADC Protocol on Trade

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**Submitted by:
AECOM International Development**

**Submitted to:
USAID / Southern Africa, SADC Secretariat**

Gaborone, Botswana

August 2010

USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P)

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ACRONYMS

ASPM	Agreement on the Application of Sanitary and Phytosanitary Measures
CAADP	Comprehensive African Agriculture Development Plan
COPE	Centre of Phytosanitary Excellence
CAC	CODEX Alimentarius Commission
CBT	Commodity-based trade
COMESA	Common Market for Eastern and Southern Africa
CAADP	Comprehensive African Agriculture Development Plan
EDB	Ease of Doing Business
EAC	East African Community
EU	European Union
FAN	Farm Assured Namibian Meat Scheme
FAO	Food and Agriculture Organization
FSCBRCP	Food Safety– Capacity Building on Residue Control Project
FANR	Food, Agriculture and Natural Resource Directorate
FMD	Foot and Mouth Disease
GATT	General Agreement on Tariffs and Trade
HASSP	Harmonised Seed Security Project
ICIPE	International Centre for Insect Physiology and Ecology
ISPM	International Phytosanitary Measure
KEPHIS	Kenya Plant Health Inspection Service
LIMS	Livestock Information Management Systems
LPI	Logistics Performance Index
MRL's	Maximum Residue Levels
NPPO	National Plant Protection Organizations
PRINT	Promotion of Regional integration in the SADC Livestock Sector
RAPID	Regional Activity to Promote Integration through Dialogue and Policy Implementation
RPPC	Regional Plant Protection Committee
SPS	Sanitary and Phytosanitary
SACCT	Southern African Commission for the Control of Transboundary Animal Diseases
SADC	Southern African Development Community
SQAM	Standardization, Quality Assurance Accreditation, and Metrology
IPPC	The International Plant Protection Convention
TA	Tripartite Agreement
TAD's	Transboundary Animal Diseases
TFTA	Tripartite Free Trade Area
USAID	United States Agency for International Development
WHO	World Health Organization
OIE	World Organization for Animal Health
WTO	World Trade Organization

EXECUTIVE SUMMARY

A review of the Southern African Development Community (SADC) Sanitary and Phytosanitary (SPS) Annex to the SADC Protocol on Trade which was signed in Lusaka in November 2008 shows that Member States have some way to go in implementing the provisions of the SADC SPS Annex. Furthermore in two parallel studies that were carried out together with this study on intra SADC trade in horticultural and animal products (see footnote 3) it is clear that the SADC SPS Annex has yet to have any significant effect on SPS sensitive trade.

Other data shows that regional trade is also hampered significantly by poor logistics and business difficulties – notably in the category trading across borders. While SPS constraints play some part in the poor ratings by sub Saharan Africa and SADC Member States in logistics and business rankings it is important to realize that with the analytical methods available it is sometimes impossible to distinguish between SPS and non-SPS related trade restrictions. Because many SPS sensitive categories consist of perishables unrelated delays in border crossings can affect SPS sensitive items more than other goods such as manufactured goods.

Nevertheless SPS related restrictions on the movement of goods do exist in the SADC region including absolute barriers such as that posed by invasive fruit flies and animal diseases such as Foot and Mouth Disease (FMD) or lesser constraints caused by unnecessary additional documentation and clearance times. However beyond adherence at the policy level to the principles of the WTO SPS Agreement in the form of national commitments as well as regional and supra-regional agreements (the SADC SPS Annex and the Tripartite SPS Annex) there has been no clear and concerted effort at a practical level by SADC Member States to address the SPS components of difficulties experienced by regional businesses in carrying out regional trade.

Apart from the slowness in implementing the SADC SPS Annex many SADC Member States have yet to fully comply with the transparency provisions of the World Trade Organization (WTO) SPS Agreement itself and much of the required details of national SPS implementing agencies are simply not in the public domain. Similarly it is difficult to obtain copies of national legislation, regulations, and standards from many of the SADC Member States.

In seeking a way forward it is necessary to revisit some of the conventional approaches to resolving the apparent lack of progress in promoting regional trade in SPS sensitive products. In fact the suggestions made in this report are not new in themselves but represent a practical approach derived directly from the principles of Pillar II of the Comprehensive African Agriculture Development Plan (CADDP). In the context of this study it is necessary to understand that CADDP Pillar II 'Framework for the Improvement of Rural Infrastructure and Trade-Related Capacities for Market Access' (FIMA) consists of the following proposed steps;

- Step 1: (a) identification of a range of strategic commodities and commercial products.
- Step 2: review and align investment and trade policies so as to exploit demand trends.
- Step 3: Identify the needed regulatory and institutional changes.
- Step 4: Identification by all stakeholders the needed strategic investments and , models of public-private partnerships (PPPs)

- Step 5: Stakeholders under the leadership of the REC's including SADC, specify the necessary efforts and roles to (a) harmonize country strategies (b) link these sectors to transport/communications corridors
- Step 6: Design rural infrastructure strategies to link the above development domains with national consumption centers and links to foreign export markets.

From these CADDP general principles three specific approaches are advocated in this study;

1. The integration of the private sector into the SPS problem solving process. A regional approach based on the national model that has evolved in South Africa is proposed.
2. A more pro-active stance by relevant governments and SPS implementing ministries to comply with the provisions of various agreements such as the SADC SPS Annex itself but others including the WTO SPS Agreement and the Tripartite SPS Annex of the draft agreement between SADC, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) establishing the Tripartite Free Trade Area (TFTA).¹ These are all worthy policies and agreements and can and will promote trade in SPS sensitive products if implemented
3. A focused effort on three selected commodities (maize, bananas and chilled deboned beef) as an exercise in regional capacity building and, additionally, in the delivery of tangible outcomes for the international and regional trade agreements

¹ The existence of three SPS Agreements to which most SADC countries are parties to can be slightly confusing. Where possible in the context of the current study these various agreements are distinguished in the text as follows;

1. **WTO SPS Agreement**; the SPS agreement which came into force on 1st January 1995 together with the WTO itself
2. **SADC SPS Annex**; the Sanitary and Phytosanitary (SPS) Annex to the SADC Protocol on Trade approved by the SADC Committee of Ministers of Trade on 12 July 2008, Lusaka, Zambia
3. **Tripartite SPS Annex**; Annex on SPS Measures Under Article 29(3) of the Agreement between the COMESA, the EAC and SADC Vers. 11 November 2009

1. INTRODUCTION

1.1 Background to the study

Increasingly there is a worldwide insistence on the part of consumers for safe and accurately labeled food is sold and that the risk of food borne health hazards is minimized. Similarly plant and animal health is a significant concern of governments and producers. As a result governments have taken international action through the World Trade Organizations (WTO) Sanitary and Phytosanitary Agreement (SPS Agreement and referred hereafter as the **WTO SPS Agreement**) and domestically through legislative action to ensure trade in safe food and plants in order to avoid the adverse effects on both consumers and economies when the safety of products or where animal and plant health is compromised or in doubt. The WTO SPS Agreement grants the sovereign right of any government to provide the level of plant, animal and human health protection deemed nationally appropriate while ensuring that such rights are not misused for protectionist purposes or result in unnecessary barriers² to international trade. Countries have the right to enforce more stringent measures and standards as long as these can be scientifically justified.

Southern African Development Community (SADC) Member States signed an agreement in July 2008 to conduct trade in safe products and protect regional animal and plant health in the form of a Sanitary and Phytosanitary (SPS) Annex to the SADC Trade Protocol (hereafter referred to as the **SADC SPS Annex**) which is in line with the WTO SPS Agreement but includes a number of additional obligations to SADC Member States in terms of regional information sharing and cooperation. More specifically the SADC SPS Annex requires that the Member States harmonize and/or recognize as equivalent their food standards by using the Codex Alimentarius standards, guidelines and recommendations; the International Plant Protection Convention (IPPC) for plant health; and the International Office of Epizootics (OIE) for animal health.

Mention must be made of a third SPS Agreement which is Annex 9, Annex on SPS Measures under Article 29(3) of the Tripartite Agreement (hereafter referred to as the **Tripartite SPS Annex**). The Tripartite Agreement (TA) is between COMESA, EAC and SADC. Through tripartite cooperation, work has now begun towards harmonization of tariffs, customs protocols and procedures. The Kampala Tripartite Summit of 22nd October 2008 reached agreement on key areas of collaboration, including the agreement on the establishment of a FTA with the ultimate goal of a customs union that involves tripartite member states.

The rules and disciplines of the SADC SPS Annex are designed to minimize the potentially negative effect on trade of those health and non-health requirements that cannot be objectively justified. They also preserve Members' rights to develop, maintain and enforce measures necessary for the protection of human, animal or plant life or health and for achieving other legitimate public policy objectives provided for under the Annex. Member States obligations under the Annex include the notification of new SPS measures to a SADC SPS coordinating committee, the implementation of an intra-SADC consultation and resolution agreement and the establishment of several regional initiatives to encourage the harmonization of SPS regulations as well as the mechanisms to recognize equivalence

² 'barrier' implies an absolute and insurmountable obstacle and there is a preference in the literature to use the word 'constraint' instead.

among the SPS regulations of Member States.

Since 2007, the SADC Secretariat with the help of the Trade Facilitation and Capacity Building (TFCB) Project has had annual Audits to assess the implementation of the SADC Protocol on Trade. Subsequent to August 2008 SADC Member States officially launched the SADC Free Trade area (FTA). Subsequent audits have found that although more than 85% of the tariff lines in most Member States schedules were at zero the value of intra-SADC trade has not increased proportionately. One of the major reasons for this underperformance is the existence of non-tariff hurdles including SPS requirements and procedures.

This document is an assessment of the status of implementation of the SPS Annex among SADC Member States and is part of two other studies at the regional level where two sectors horticulture and livestock were analyzed to examine in more detail the process of harmonization of SPS regulations within SADC Member States.³ These sectors were selected on the basis of the potential for positive impact of regional SPS regulations on intra-SADC trade. The studies examined the extent of harmonization, costs and difficulties associated with the process and recommendations for future steps. Detailed recommendations from the sector studies have been incorporated into this document which gathers the separate findings so as to come up with a consistent set of recommendations across the various sub disciplines that come together in the SPS field.

1.2 The CAADP agenda and its objectives

The recommendations of this report are based in large part on the proposed objectives and their implementation of the CAADP Pillar II; Agenda and Objectives Framework for the Improvement of Rural Infrastructure and Trade-Related Capacities for Market Access (FIMA). In the context of this report to briefly review these objectives and implementation strategy at this point.

1.2.1 Summary of CADDP objectives

CAADP is at the heart of efforts by African governments under the African Union (AU)/New Partnership for Africa's Development (NEPAD), a program of the AU to accelerate growth and eliminate poverty and hunger. As such, CAADP emanates from and is fully owned and led by African governments. Although continental in scope, it is integral to national efforts to promote agricultural growth and economic development. As a common framework for agricultural development and growth for African countries, CAADP is based on the following:

- the principle of agriculture-led growth as a main strategy to achieve the Millennium Development Goal (MDG) of poverty reduction;

³ The reports on horticulture and livestock are presented in separate reports;

Cassidy, Dermot (2010), Regional Trade in Horticultural Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P)

Cassidy, Dermot (2010), Regional Trade in Livestock and Livestock Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P)

- the pursuit of a 6 percent average annual sector growth rate at the national level;
- the allocation of 10 percent of national budgets to the agricultural sector;
- the exploitation of regional complementarities and cooperation to boost growth;
- the principles of policy efficiency, dialogue, review, and accountability, shared by all NEPAD programs;
- the principles of partnerships and alliances to include farmers, agribusiness, and civil-society communities; and
- The implementation principles, which assign the roles and responsibilities of program implementation to individual countries, coordination to designated RECs, and facilitation to the NEPAD Secretariat.

CAADP defines four major intervention areas, or pillars, to accelerate agricultural growth, reduce poverty, and achieve food and nutrition security in alignment with the above principles and targets:

- Pillar I. Extending the area under sustainable land management and reliable water control systems
- Pillar II. Improving rural infrastructure and trade related capacities for market access
- Pillar III. Increasing food supply, reducing hunger, and improving responses to food-emergency crises
- Pillar IV. Improving agriculture research and technology dissemination and adoption.

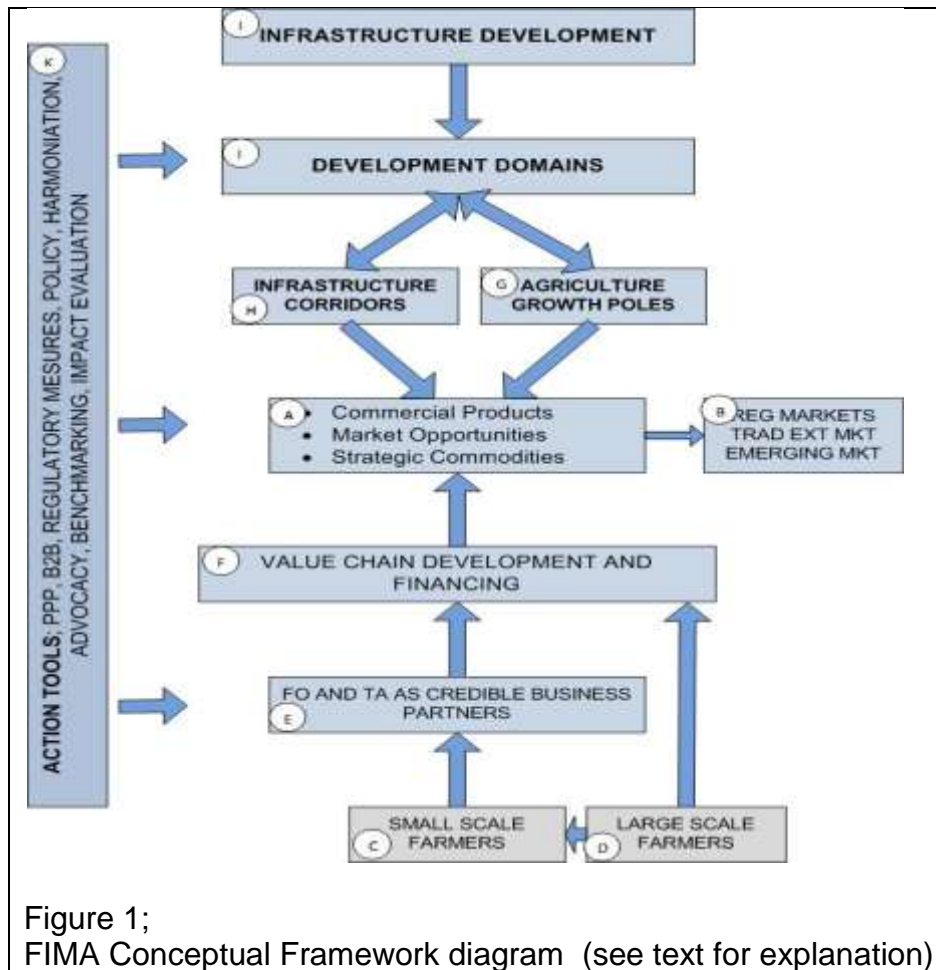
1.2.2 Pillar II Agenda and Objectives Framework for the Improvement of Rural Infrastructure and Trade-Related Capacities for Market Access (FIMA)

The ultimate objective of Pillar II is to accelerate growth in the agricultural sector by raising the capacities of private entrepreneurs, including commercial and smallholder farmers, to meet the increasingly complex quality and logistics needs of domestic, regional, and international markets, focusing on strategic value chains with the greatest potential to generate broad-based income growth and create wealth in the rural areas and the rest of the economy. The Pillar agenda focuses on policy and regulatory actions, infrastructure development, capacity-building efforts, and partnerships and alliances that could facilitate smallholder-friendly development of agricultural value chains to stimulate poverty-reducing growth across African countries.

The strategic Approach of Framework for the Improvement of Rural Infrastructure and Trade-Related Capacities for Market Access (FIMA) are targeted at expanding the supply base to respond to future demand opportunities and develop value chains to raise the competitiveness in domestic, regional, and foreign export markets. The steps followed in developing country strategies and investment programs at the national and regional levels are shown in the Conceptual Framework diagram (Figure 1) and are as follows:

- Step 1: (a) identification of a range of strategic commodities and commercial products that exhibit short- and long-term market opportunities that would potentially accelerate broad-based poverty-reducing growth and (b) organize country and regional resources around the selected commodities (Box A).

- Step 2: review and align investment and trade policies so as to fully exploit demand trends in domestic and regional markets, traditional export markets, and emerging markets, in particular in Asia, associated with these commodities (Box B).
- Step 3: Identify at country and sector level the needed regulatory and institutional changes together with the partnerships and alliances required to build the technical and commercial capacities of farmer organizations and trade associations (FO/Trade Associations). The overall strategy is to expand the supply capacity of farmers to be responsive to markets. (Boxes C, D and E)
- Step 4: Identification by government, agribusiness, financial sector, and farmer organizations of strategic investments, models of public-private partnerships (PPPs) and business-to-business (B2B) alliances necessary to overcome the limitations and necessary inputs in the development of smallholder-friendly value chains in the considered commodity sectors. (Box F)
- Step 5: Parallel to national processes, interested country and regional bodies under the leadership of the REC's including COMESA, specify the necessary efforts and roles to (a) harmonize country strategies to facilitate the emergence of cross-border agricultural growth sectors and (b) link these sectors to the main transport/communications corridors within and across regions in order to create regional development spheres with more diversified growth patterns. (Boxes G, H & I)
- Step 6: Based on the above, RECs and member governments design rural infrastructure strategies to develop the required complementary infrastructure to link the above development domains with national consumption centers and exit points to foreign export markets. (Box J)



Strategic Areas of Pillar II

Actual implementation of the agenda under Pillar II is to be carried out through the following main clusters of activities, or strategic areas, guided by the vision described:

- Area A: raising competitiveness and seizing opportunities in domestic, regional, and international markets;
- Area B: investing in commercial and trade infrastructure to lower the cost of supplying domestic, regional, and international markets;
- Area C: developing value-chain and financial services; and
- Area D: strengthening the commercial and technical capacities of farmer organizations and trade associations.

1.2.3 **Strategic Area A: Raising competitiveness and seizing opportunities in domestic, regional, and international markets—Program Sanitary and Phytosanitary (SPS) Components**

Strategic Area A aims at raising competitiveness and expanding trade in domestic and regional markets by eliminating regulatory and administrative barriers and disincentives impeding or raising the unit cost of the movement of goods across local and cross-border

markets and by developing quality management and certification services systems and harmonize standards, norms, and grades across national markets. Other related aims include the modernization of regional trading systems, including the development of regional and national commodity exchanges together with trade surveillance and knowledge systems within RECs to monitor policies and barriers to trade and provide information on demand dynamics and long term trends in regional markets;

1.2.4 Strategic Area B: Investing in commercial and trade infrastructure to lower the cost of supplying national, regional, and international markets—Core Program Components

There are no direct SPS components to Strategic Sector B other than in terms of governance and policy CAADP aims at establishing institutional tools to harmonize regional policies and regulations related to infrastructure, using the European Union's experience as a possible model;

1.2.5 Strategic Area C: Developing Value-Chains and Financial Services—Core Program Components

In Strategic Area C, CADDP aims at building capacity for international trade advocacy and negotiation to better articulate African interests in bilateral and multilateral trade negotiations in order to remove foreign-policy distortions that limit market access and affect the competitiveness of African exports. Furthermore it is a stated aspiration to develop quality management and trade certification service systems to facilitate compliance with international trade agreements and overcome nontechnical barriers affecting the growth of African exports.

1.3 Nature of the WTO Sanitary and Phytosanitary (SPS) Agreement

SPS refers to the protection of potential risks to human, animal and plant health associated with the consumption of domestic and foreign food products as well as introduction and spread of diseases through international trade in animals, plants and food. It is a key domain of public health, and failure to adequately address this issue can result in animal and plant disease epidemics, food-borne illnesses, long-term disabilities and even deaths. Due to a series of crises concerning human food and animal feed, food safety has become a major concern for consumers, industries and governments all over the world. As with many economic regions of the world, the Southern Africa Development Community (SADC) has launched comprehensive reforms of their SPS policy programs in order to promote coordination and improved efficiency in services as a way to increase intra-regional trade of agriculture and food products.

Free trade in goods and services between countries is generally accepted as a positive aim for economists and policymakers worldwide. The World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT) were founded on the essential principle that free trade is welfare increasing. However not all free trade is necessarily beneficial to trading countries and the SPS Agreement contains elements which seek to ensure that certain welfare issues are not neglected by unrestricted trade in animals, plants and food. Furthermore there have been real or imagined instances where the SPS Agreement has been used to prevent fair trade. Thus there has been some debate and

research into the effects of the SPS Agreement in the years since its adoption but these have not developed into a consensus as to the true effects on trade caused by the agreement given its highly technical nature and deficiencies in regard to the proposed econometric analytical methods.

At the core of the WTO SPS Agreement is the principle of risk assessment which was intended to provide a scientific foundation to SPS sensitive trade. In practice, the WTO dispute panels have been accused of accepting views on risk analysis that force or allow policy makers to use the conclusions of scientists without leeway for other objectives or social considerations. The arguments presented make the case for a renegotiation of the SPS Agreement so as to move the issues from a scientific debate to one of economics and policy. Others have argued, with some justification, that pessimistic views by some analysts from a 'standards as constraints to development' perspective are perhaps exaggerated and that the question for developing countries is one of exploiting their own economic strengths while overcoming weaknesses by using help that is built into the WTO SPS Agreement.⁴

Even in studies strictly limited to the terms of the SPS Agreement the debate is further complicated due to the construction of the WTO SPS Agreement itself. The multiple layers in the debate can be summarized as follows:

“The SPS Agreement is a legal trade instrument that is based on balancing the economic benefits of trade against a scientifically based notion of public welfare”

The public good in this case is represented by that of human health in terms of food safety, as well as animal and plant health. The arguments and discussions involve politicians, lawyers, economists, and various specialists within the scientific community. This has generated a fractured literature in which ongoing discussions, problem diagnosis and prescribing remedies are being carried out. So far these have failed to coalesce into a foundation for a coherent framework for problem identification and resolution, and there remains a lack of concerted effort in resolving the issues. In particular the effects of trade negotiations between developing countries and richer countries have on occasion been quite controversial. In the Uruguay Round, developing countries argued that the SPS Agreement would exclude their agricultural products from richer country markets through technical trade constraints. Increasingly however there has been an influential movement among economists to refocus the debate on encouraging developing countries to take advantage of the opportunities to improve the quality of their exports to meet these standards, notably the financial and technical assistance, presented by the SPS Agreement.

1.4 The WTO SPS Agreement

Under the WTO SPS agreement, the WTO outlines the rules and sets constraints on member-states' policies relating to food safety (microbial contaminants, pesticides, inspection and labeling) animal and plant health issues. The main concerns of trading countries that were addressed by the SPS agreement are the potential for trade in certain products to result

⁴ There is a considerable body of literature on the analysis of SPS constraints experienced by poorer countries. For example see Rios, R. D., Jaffee, S, Henson, S., NOT YET UP TO STANDARD: the Legacy of Two Decades of Private, Governmental, and Donor Efforts to Promote Ugandan Horticultural Exports, World Bank Discussion Paper, July 2009.

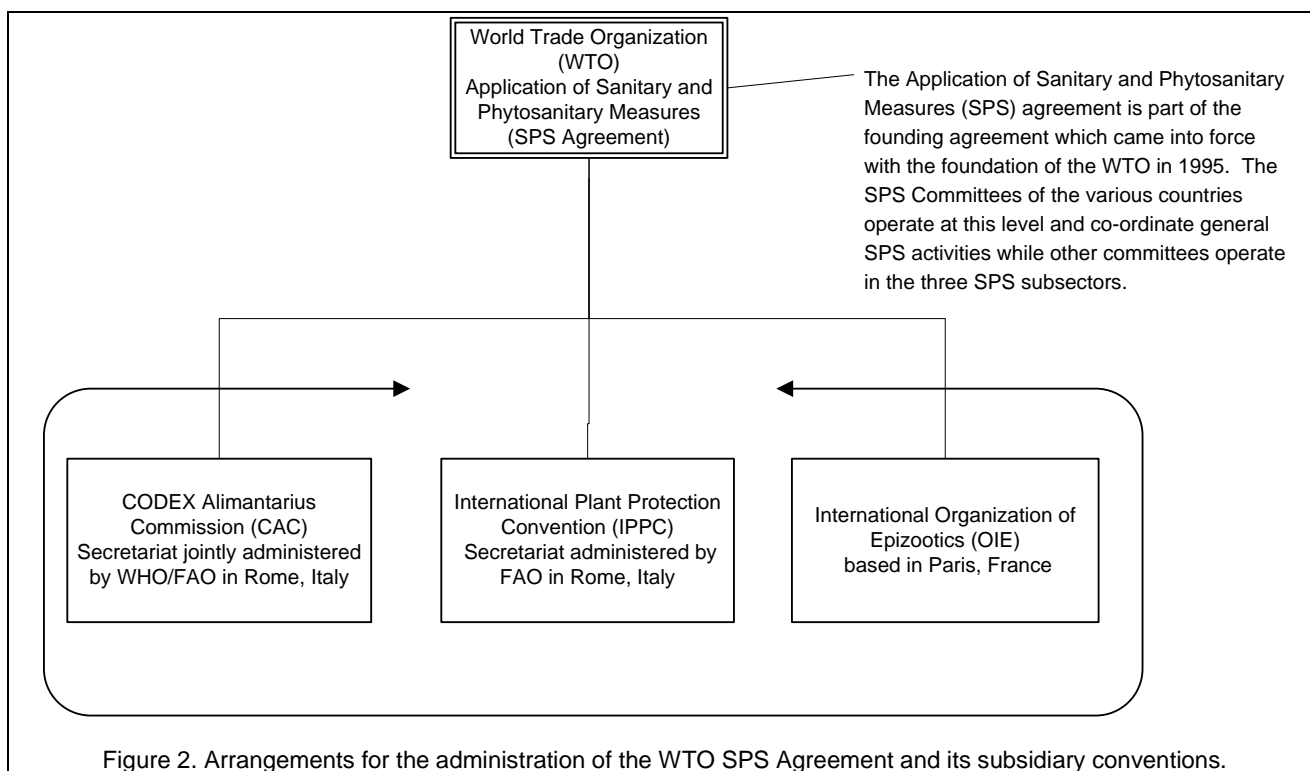
in the unintentional import of invasive plant and animal pests and diseases as well as spread of human food-borne illnesses. The inspiration for a separate SPS agreement was the desire for deeper integration of agriculture with general international trade and the decision to more closely regulate the use of quantifiable non-trade constraints. The protection of fish and wild fauna, forests and wild flora are included but protection of the environment and animal welfare are yet to be included though this can be brought in under the newer Biosecurity approach of the Food and Agriculture Organization (FAO).

Many countries felt that, with a reduction of overt support measures for domestic agricultural sectors, some importing countries might turn to technical trade constraints (notably SPS measures) as a means of continuing to provide support to their domestic agricultural sector by restricting imports on supposedly technical grounds. Consequently, the WTO SPS Agreement was intended to ensure that when SPS measures were applied, they were used only to the extent necessary to ensure food safety along with animal and plant health and not to restrict market access. The SPS agreement, in theory, gives the WTO power to regulate the use of the 'precautionary principle.' This principle allows countries to act on the side of caution if there is no scientific certainty about potential threats to human health and the environment. Under SPS rules, however, the burden of proof is on member countries to demonstrate scientifically that the regulated trade is dangerous. In practice, it is difficult to prove otherwise, as scientists agree that it is impossible to predict all forms of danger posed by insects, pathogens or pest plants.

The rationale for SPS measures and their main divergence with conventional trade constraints is that they are theoretically intended to address market failures and can therefore not be regarded as simply welfare reducing. In fact the net effect of these measures on welfare when they are properly applied should be positive. This is crucial to understanding the rationale of having SPS measures, which cannot be simply judged as obstacles when they can be used to facilitate trade. The definition does acknowledge the possibility of the use by domestic lobby groups to put in place a technical regulation of unclear welfare value to act as a trade constraint. The subversion of SPS measures in this way would have a disruptive impact on trade, generating a loss from the prevented international exchange.

WTO SPS measures are administered under three main headings: food; animal/meat; and plants. The CODEX Alimentarius Commission (CAC) hosted by FAO and jointly run by FAO and the World Health Organization (WHO) is the organization that is mandated by the WTO in terms of the application of the WTO SPS Agreement to set standards for foods and food safety. OIE is the commonly used acronym for the World Organization for Animal Health, a Paris based body that is responsible for setting trade standards in animals and to some extent in animal products.⁵ The International Plant Protection Convention (IPPC), an organization hosted by the FAO at its Rome headquarters, is responsible for international standards in trade that affect plant health. The relationship between the WTO SPS agreement and the subdivision of responsibilities distributed between the WTO, WHO, FAO and the OIE is shown in Figure 2.

⁵ Post mortem animal products are a grey area and there is some collaboration between the OIE and CODEX on standards in fresh meat products, particularly for residues in meat and some meat borne zoonoses



1.5 Regulatory variability.

Understanding reasons for regulatory variability is a necessary and preliminary step when analyzing SPS measures before any judgment as to whether they are justifiable and achievable can be made. Three main sources of this “regulatory heterogeneity” can be identified as follows:

1. Differences in risk factors. These differences come from one or other of the three components of risk assessment: hazard identification, probability of introducing the hazard, and consequences of the hazard introduction. There are few disputes associated with the identification of hazards; however the probability and consequences of introducing a hazard remain unpredictable, especially when insufficient data has been obtained. Risk assessment results are therefore very uncertain and often subject to dispute.
2. Differences in degree of uncertainty about risk factors: The degree of doubt will unavoidably cause disagreements among scientists and policy makers that will inevitably be translated into significantly divergent standards and regulations.
3. Differences in risk tolerances: Disparities in incomes, technological expertise, among other reasons, cause or contribute to variations and insufficiencies in risk tolerance and instigate demand for regulations between countries. This specific area is probably the largest issue facing SADC countries today in terms of South Africa versus the rest of SADC and SADC in its position versus Europe, the America’s and China.

1.6 Prioritization of SPS interventions

The problem with targeting precise “Strategic Areas” for involvement is that SPS interventions in agro-food trade must be utilized only in the proper economic context, and only in relation to

broader considerations in market forces. A recent World Bank study has set this position out in the following statement;

“SPS-related challenges should be addressed within the broader context of competitiveness rather than through isolated interventions. Addressing SPS-related challenges, although important, will not improve competitiveness where other major weaknesses persist. Rather than representing a unique set of circumstances, standards related challenges (and opportunities) usually accentuate underlying competitive and capacity strengths and weaknesses in an industry or country. The picture that emerges [from the study] shows that where an industry has already made substantial progress in relation to quality control, logistics management, and so on, the capacity to meet emerging SPS requirements is also normally adequate. Where other fundamental competitiveness problems persist, related weaknesses (administrative, financial, or other) typically impede the resolution of SPS constraints.” (Jaffee et al., 2005).

This statement should be borne in mind in any discussion of SPS issues. As an example it is difficult to determine the share in performance or underperformance of trade in SPS sensitive goods attributable to the performance of the governmental trade support services when other factors such as logistics and the business environment could be as or more important from the perspective of the private sector. In this respect most SADC countries are actually difficult places to engage in businesses that engage in international trade even without the added complications of SPS issues (See Appendix 1).

1.7 The development of the SPS Annex to the SADC Protocol on Trade (SADC SPS Annex)

Harmonization of SPS measures and of standards has been on the SADC agenda for some years. Such harmonization is seen as a way to promote regional integration and improve the trade of agro-products amongst Member States. Two high level consultation meetings on SPS matters were held by SADC in October and November 2000 in Harare and Windhoek respectively. The objectives of the Windhoek meeting were to promote informed discussions on the practical issues relating to aspects of SPS constraints, and how they impeded trade between Member States, as well as to propose practical steps to deal with the problems. The meeting also highlighted the institutional, regulatory and technical capacity constraints that hamper intra-regional trade in agricultural products and made recommendations on how the private and public sectors could coordinate efforts to address the issues. From 2000 to 2005, the SADC region benefited from the United States Agency for International Development (USAID) support through the Regional Activity to Promote Integration through Dialogue and Policy Implementation (RAPID) project which conducted policy analysis, assessed the SPS status of Member States and initiated the drafting of the SPS Annex to SADC Protocol on Trade (SADC SPS Annex).

Subsequently, SADC experts who met in Lusaka in November 2007 to discuss the SADC SPS Annex to the SADC Protocol on Trade, made the following recommendations:

1. The necessity for the formation of a National SPS Coordinating Committee in each Member State;
2. Formation of a Regional SADC SPS Coordinating Committee; and

3. The National SPS Coordinating Committee representatives must constitute the SADC SPS Coordinating Committee.

These recommendations were incorporated into the final version of the SADC SPS Annex to the SADC Protocol on Trade which was approved in August 2008.

2. OVERVIEW OF THE SADC SPS ANNEX TO THE SADC PROTOCOL ON TRADE

The SADC SPS Annex to the Protocol on Trade is based on the WTO SPS Agreement and draws regulatory requirements from it. The main obligations of the SADC SPS Annex, some of which are additional to the WTO SPS Annex are⁶:

1. Members to base their standards on international SPS standards.
2. Members to base their standards on scientifically based Risk Assessments (Article 8)
3. The SPS measures of SADC Member States make provision for adaptation to regional conditions, including pest or disease free areas and areas of low pest or disease prevalence (Article 4)
4. Harmonization: Members to cooperate and work towards harmonization of SPS measures or standards in SADC, and to use international standards and guidelines as a basis for harmonization (Article 6)
5. Equivalence: Members to enter into Equivalence agreements with each other.
6. Transparency: Members to notify laws and regulations, procedures and requirements to the SADC Secretariat, and publish, including general transparency on the measures themselves (Article 10, Appendix A, B)

The SPS Annex to the SADC Protocol on Trade was approved by the SADC Committee of Ministers of Trade on 12 July 2008 in Lusaka, Zambia. The main focus of the SADC SPS Annex to the SADC Protocol on Trade is the setting up of regional instruments to complement those of the WTO so as to fast track regional SPS related trade issues which was envisaged in points 3, 4, 5 and 6 above. The specific mechanisms to achieve these ends are summarized in Appendix 1. Key to implementing the SADC SPS Annex is the formation of the SADC SPS Coordinating Committee comprised of representatives of each National Committee on SPS Measures as laid out in ARTICLE 14, Administration, whereby Member States established a SADC Sanitary and Phytosanitary Coordinating Committee and set out tasks for this committee (the text of Article 14 is reproduced more or less in full in Appendix 2). The status of the meeting of these key obligations is discussed in Section 5 below.

3. OVERVIEW OF THE TRIPARTITE SPS ANNEX

In addition on 11 November 2009 a draft agreement between SADC, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) was agreed establishing the Tripartite Free Trade Area (TFTA). Article 29 of the Draft Agreement establishing the TFTA concerns SPS measures whereby:

“1. Tripartite Member States shall harmonise their sanitary and phyto-sanitary

⁶ Notably points 3, 4, 5 and 6 below.

measures, and shall initiate such programs and activities to achieve regional certification of products.

2. Tripartite Member States shall comply with the WTO Agreement on Sanitary and Phyto-Sanitary Measures in taking sanitary and phyto-sanitary measures.

3. The implementation of this Article shall be in accordance with the provisions in Annex 9 on SPS measures.”

Annex 9 of the Draft TFTA Agreement is a lengthy document which sets out many of the aims of the SPS Agreement but brings in elements of particular interest to Africa such as the SPS needs of smallholder based agriculture systems. Under Article 29(3) of the Tripartite Agreement, the Annex on SPS Measures (Annex 9) provides details on the workings of national SPS bodies in the TFTA area. In essence, this agreement, which was approved just over a year after the SADC SPS Annex spells out aspirations for trade in animals, food and plants in more detail. For example, the use of third party traceability systems and a common African stance on promoting commodity based trade in meat are explicitly spelled out in the Annex. Beyond mentioning that coordination in SPS matters shall be a function of the Tripartite Secretariat, no mechanism such as that outlined in the SADC SPS Annex is proposed.

4. STATUS OF SADC MEMBER STATES IN RESPECT OF COMPLIANCE TO THE WTO SPS AGREEMENT AND REPORTING OBLIGATIONS

Before reviewing the conformance of SADC Member States to the SADC SPS Annex it is worthwhile to provide an overview of the conformance of the same Member States to the WTO SPS Agreement. The mechanisms put in place by the WTO and allied organizations, including FAO and the OIE, have been in place for over a decade or more and are accompanied by a number of processes to help poorer countries in terms of compliance. As shown later in this report, current weaknesses with WTO SPS Agreement compliance by SADC Member States are magnified considerably when it comes to compliance with the basic and additional provisions of the SADC SPS Annex.

The WTO maintains a SPS transparency table as well as a table of compliance to some basic provisions of the SPS Agreement. In addition two international treaties (The Convention on Biological Diversity of 5 June 1992 and the Cartagena Protocol on Biosafety which is an Annex to the Convention on Biological Diversity)⁷ have some bearing on the workings of the SPS Agreement and have led to the additional requirement for a Biosafety National Focal Point to be set up in signatories to the convention. The status of SADC countries in complying with the setting up and notifying of national contact points is shown in Table 1. As can be seen most SADC Member States have not complied fully with the provisions of the WTO SPS Agreement in terms of their basic reporting authorities (focal points, contact points, authorities and ease access of information).⁸ The issue of access to information is particularly

⁷ The Convention on Biological Diversity was finalized in Nairobi in May 1992 and the Cartagena Protocol was finalized and adopted in January 2000

⁸ As an example Swaziland appears on the surface to be highly conformant in respect of WTO reporting obligations. However an exercise was carried out by USDA earlier in 2010 to gather background information in relation to the workings of the CODEX Alimentarius in the country. Much of the necessary information that one would normally expect to be easily accessible such as laws, regulations and statutory instruments had to be gathered laboriously – a process that took a period of weeks.

troublesome as it notably increases the work of the private sector in terms of their SPS compliance and their ability to develop export markets.

Table 1: Contact information and SPS notifications for SADC Member States as lodged with the WTO as of August 2010 (Source: WTO SPS Notification Database)⁹ & ¹⁰

	WTO TBT enquiry point	Biosafety national focal point	WTO SPS national notification authority	WTO SPS enquiry point	Codex contact point	NPPO contact point	Official website
Angola		Yes		Yes	Yes		
Botswana	Yes	Yes	Yes	Yes	Yes	Yes	Yes
DRC		Yes			Yes		
Lesotho	Yes	Yes			Yes		Yes
Madagascar	Yes	Yes	Yes	Yes	Yes	Yes	
Malawi	Yes	Yes	Yes	Yes		Yes	
Mauritius	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mozambique	Yes	Yes		Yes	Yes	Yes	
Namibia	Yes	Yes		Yes	Yes	Yes	Yes
Seychelles		Yes			Yes	Yes	Yes
South Africa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Swaziland	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Zambia	Yes	Yes	Yes	Yes	Yes	Yes	
Zimbabwe	Yes	Yes	Yes	Yes			

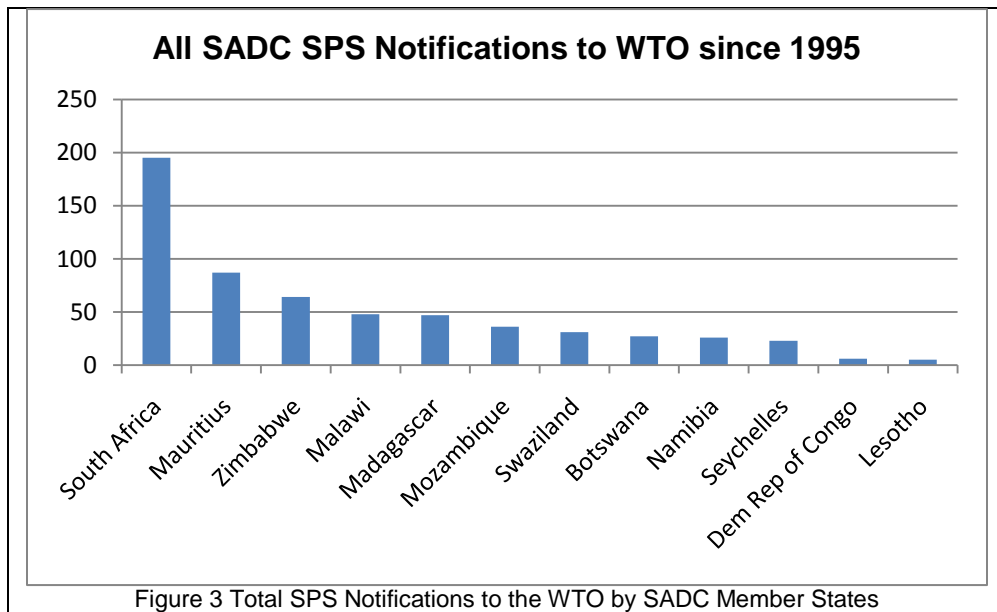
Notifications in all categories made by SADC Member States to the WTO are shown in Figure 3.¹¹ The 'Notifications' category is a very rough indication of the pro-activeness and capacity of WTO Member States in terms of scientific capacity as well as of national SPS threats. The most number of notifications from SADC countries has been made by South Africa with 52. By contrast, countries with similar ranges of climate and phytosanitary concerns such as Australia and Brazil have submitted 298 and 871 notifications each respectively.¹²

⁹ <http://spsims.wto.org/>

¹⁰ Data on the WTO SPS Agreement notification, focal and contact points for SADC member countries as held in the WTO Database in August 2010 are reproduced in Appendix 3.

¹¹ The categories of WTO SPS reporting are; Legislation, Regulation, Notifications, Communications, Trade concerns, Secretariat papers, Reports, Other contact, Standards, Maximum Residue Limit, Codex contact point, Biosafety national focal point, Official website, Scientific evaluations, WTO TBT enquiry point, NPPO contact point, WTO SPS national notification authority, WTO SPS enquiry point.

¹² Note that the number of Notifications in Figures 2 and Table 2 diverge from each other. This is due to differing Boolean search values used in defining what is a 'notification' on the WTO database and not due to conflicting data. The search values used in Figure 1 refer to every single document submitted to the WTO by reporting countries and those in Table 4 are a selection of notifications from selected HS two figure categories (see footnote 7).



There is no record on the WTO SPS or SADC websites of any SADC common submission by SADC Member States as envisaged by the SADC SPS Annex¹³. Table 2 details all the notifications by SADC Member States from 1995 to the present (August 2010) made in the general Harmonized System (HS) categories that are considered SPS sensitive. In terms of the SADC SPS Annex to the Protocol on Trade, the lack of SADC common positions at international SPS forums may primarily be due to the fact that the SADC SP Annex is still at still early stages of implementation, and the SPS Coordination Committee is yet to be properly established. SADC OIE members do notify the World Animal Health Information Database (WAHID) on animal health disease outbreaks to the organization in terms of their reporting obligations to this organization though the record is uneven in some countries (as discussed in Cassidy, 2010.¹⁴

Using HS classification searches of the WTO Notifications Database show that from 1995 to August 2010 only 20 notifications were made by SADC Member States with only Botswana, Mauritius, Malawi, South Africa and Zambia being recorded as submitting HS specific notifications.

¹³ ARTICLE 14, Administration 6, n, Participation in international and regional standards setting organizations, where possible and coordinate efforts to present common SADC positions in relevant international organizations;

¹⁴ Cassidy, Dermot (2010), Regional Trade in Livestock and Livestock Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P).

Table 2: SADC Member State Notifications as lodged with the WTO from 1995 to August 2010 (Source: WTO SPS Notification Database)¹⁵ & ¹⁶

Document Code	Date	Members	Products	Notification keywords
G/SPS/N/BWA/1	27/11/1996	Botswana	Infant formula and follow-up formula,	Food safety, Human health, Technical barriers to trade
G/SPS/N/BWA/2	26/11/1996	Botswana	Processed cereal-based foods for infants, young children and children	Food safety, Human health
G/SPS/N/BWA/3	29/10/1997	Botswana	Raw and pasteurized cow's milk	Bacteria, Food safety, Human health
G/SPS/N/MUS/1	1/9/1999	Mauritius		Dioxins, Food safety, Human health, Regionalization
G/SPS/N/MUS/7	8/11/2001	Mauritius		Animal diseases, Animal health, Food safety, Foot and mouth disease, Human health, Regionalization, Withdrawal of the measure
G/SPS/N/MUS/8	8/4/2002	Mauritius		Animal diseases, Animal health, Food safety, Foot and mouth disease, Human health, Regionalization, Withdrawal of the measure
G/SPS/N/MUS/9	8/4/2002	Mauritius		Animal diseases, Animal health, Food safety, Foot and mouth disease, Human health, Regionalization, Withdrawal of the measure
G/SPS/N/MWI/1	8/1/2001	Malawi		Food safety, Human health, Labeling, Regionalization
G/SPS/N/ZAF/13	1/7/2002	South Africa		Beverages, Food safety, Human health
G/SPS/N/ZAF/15	4/2/2003	South Africa		Food safety, Human health, Maximum residue limits (MRLs), Veterinary drugs
G/SPS/N/ZAF/2	10/2/1998	South Africa	Chilled and frozen beef (Bone-in)	Animal diseases, Animal health, Bovine Spongiform Encephalopathy(BSE), Food safety, Human health, Zoonoses
G/SPS/N/ZAF/20	21/06/2004	South Africa		Food safety, Human health, Toxins
G/SPS/N/ZAF/24	7/7/2008	South Africa	Application of HACCP for processors of groundnuts: (a) Peanut sorting/grading (b) Peanut butter manufacturers	Food safety, Human health
G/SPS/N/ZAF/26	2/3/2009	South Africa	Maximum levels of Melamine in foodstuffs	Contaminants, Food safety, Human health, Maximum residue limits (MRLs), Risk assessment
G/SPS/N/ZAF/5	7/12/1998	South Africa		Animal diseases, Animal health
G/SPS/N/ZAF/6	15/02/1999	South Africa		Bacteria, Food safety, Human health
G/SPS/N/ZAF/8	19/11/1999	South Africa		Food safety, Human health, Maximum residue limits (MRLs), Pesticides, Seeds
G/SPS/N/ZMB/1	15/01/1997	Zambia	Live animals and animal products and byproducts	Animal diseases/health, Food safety, Human health
G/SPS/N/ZMB/3	15/09/2000	Zambia		Quarantine measures
G/SPS/N/ZMB/4	15/09/2000	Zambia		Quarantine measures

¹⁵ <http://spsims.wto.org/>

¹⁶ Using the following search parameters for SADC countries; 01 Live animals, 02 Meat and edible meat offal, 03 Fish and crustaceans, molluscs and other aquatic invertebrates, 04 Dairy produce; birds eggs; natural honey, 05 Products of animal origin, not elsewhere specified, 06 Live trees and other plants, 07 Edible vegetables and certain roots and tubers, 08 Edible fruit and nuts; peel of citrus fruit or melons, 09, Coffee, tea, mate and spices, 10, Cereals, 11, Products of the milling industry; malt; starches; inulin, 12, Oil seeds and oleaginous fruits, 13, Lac; gums, resins and other vegetable saps and extracts, 14, Vegetable plaiting materials; vegetable products nes, 15, Animal or vegetable fats and oils, 16, Preparations of meat, of fish or of crustaceans, 19, Preparations of cereals, flour, starch or milk; bakers' wares, 20, Preparations of vegetables, fruit or nuts.

In terms of the depositing of national legislation with the WTO only four SADC Member States have done so to date (Table 3). In almost all cases the submitted legislation only deals with plant health. No legislation dealing with animal health or food safety has been notified/submitted.

Table 3: National SPS Legislation as notified by SADC Member States to the WTO as of ('Results for: Legislations (Art. VII.2b) (1-231 of 231)')

Country	Title	Publication Date	Last updated
Madagascar	La réglementation de l'importation des végétaux et produits végétaux a Madagascar	07/10/02	18-01-2006
Madagascar	Les mesures de quarantaine et les conditions de détention en quarantaine végétale	07/10/02	18/01/06
Madagascar	Législation Phytosanitaire de Madagascar	17/09/86	30/06/09
Mauritius	Plant Protection Act 2006	01/12/06	01/11/06
Mauritius	Application for Plant Import Permit to Import Agricultural Goods in Mauritius	01/12/06	01/11/06
Mauritius	Phytosanitary Certificate	01/11/06	01/11/06
Mauritius	The Genetically Modified Organisms Act 2004	18/07/06	19/07/06
Mozambique	Regulamento de Inspeccao Fitossanitaria e Quarentena Vegetal	01/06/09	08/12/09
South Africa	Agricultural Pests Act 36 of 1983	07/11/06	07/11/06
South Africa	No. R. 1013 of 26 May 1989: (Importation of controlled goods without an import permit)	07/11/06	07/11/06
South Africa	Amendments to Regulation 1013	07/11/06	07/11/06

The conclusion from this analysis is that most SADC member countries have some work to do in order to complete their basic contact points and provision of basic information in terms of the WTO SPS Agreement

5 CURRENT STATUS OF IMPLEMENTATION OF THE SADC SPS ANNEX AMONG SADC MEMBER STATES

The current status of the implementation of the SADC SPS Annex is reviewed in this section. In general terms the aim of the SADC SPS Annex in raising the level of Member State compliance with the WTO SPS Agreement is not explored in this section but the additional regional mechanisms and commitments are looked at in the context of regional trade promotion.

5.1 Publishing of regulations and notifications

In respect of the requirement to publish regulations and notifications, a number of SADC Member States have published their regulations under the Ministries of Agriculture, Health, Environment or any other in charge with specific areas related to SPS matters. Most SPS regulations are gazetted and published for various Member States. However, there is a significant need for easier access to allow all partners, including regional and international to easily access such regulations. In all Member States with the partial exceptions of South Africa and Mauritius it is a painstaking and tedious task to collect SPS related information from the various ministries and departments where they are theoretically available. Often the desired documents are out of print, and/or unavailable electronically, and often, unless one knows exactly what is wanted, require lengthy searching through hard copy back issues of Government Gazettes. SADC is in the process of establishing but has not yet done so in a way that is publically accessible a SPS database in Member States which aims to bring in

transparency and easy access for all trading partners. In addition, transparency is also attempted through meetings and information sharing within the various regional committees, Plant Protection, Livestock and Food Safety but again information is not easily accessible to not only to the general public but, more importantly, to businesses involved in SPS sensitive exports.

5.2 Do members base their standards on international standards?

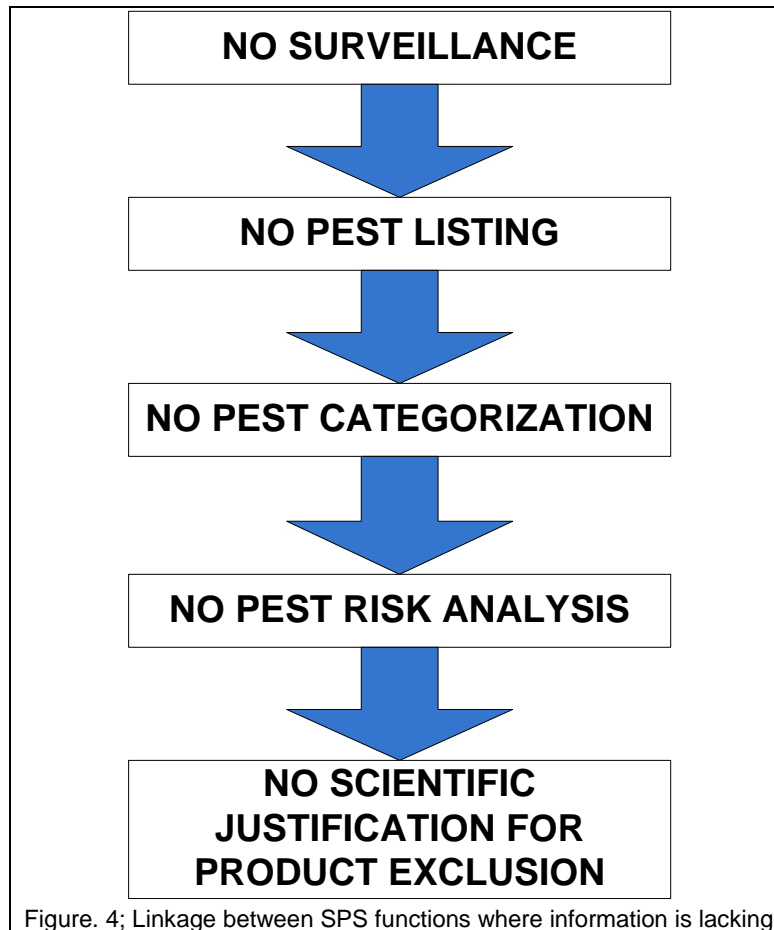
In general, SADC Member States do base their standards on existing international standards as set by the WTO SPS sister international organizations (OIE, CAC and IPPC). However due to the predominance of SADC Member States trade to the European Union (EU) also base their compliance to standards on those set by the EU. Market standards also complicate the issue as they include EU specific as well as private standards which in most instances go some way beyond SPS issues to include TBT concerns such as quality, environmental and social questions. Generally such standards apply at the business to business rather than at international level and often governments are only peripherally involved. In respect of these supplier – marketer/retailer relationships compliance to such private standards are in effect mandatory for the supplier in many instances. In the case of Botswana and Namibia, standards for beef products are modeled around compliance with EU safety and other private standards. Namibian Farm Assured Meat (FAN) Certification in Namibia is primarily intended for compliance with EU traceability, labeling requirements, humane treatment of animals and environmental considerations. Chain stores including Woolworth's and Pick and Pay, in South Africa have also their own codes of practice which often go beyond SPS obligations to include what are, in effect, TBT requirements. Original standard setting by Member States is still low, most in essence being adopted / adapted from international standards.

5.3 Do members base their SPS requirements on Risk Assessments?

There has been a high initial focus on capacity building at all levels of national SPS bodies in the process of risk assessment and generally speaking this process is both well understood and competently carried out in most SADC countries. However Pest Risk Assessments (PRAs) are in fact part of a linked process as outlined in Figure 3. Underpinning the entire process is the development of national pest and disease lists through surveillance. Often those national bodies responsible for disease surveillance simply fail to carry out this basic task. There are many examples of such gaps but to illustrate the point one can examine the slow response of many National Plant Protection Organizations (NPPOs) in Southern Africa to the multiple threats posed by invasive fruit flies as detailed in the study of horticultural trade in the region.¹⁷ As detailed in the horticultural study, responses by SADC Member States have been largely reactive and uncoordinated. Some countries had not even instituted any national fruit fly surveillance at all despite the considerable attention given to the issue of invasive fruit flies in sub-Saharan Africa since at least 2003. With the exception of South Africa, prior to the arrival of *Bactrocera invadens*, no pro-active fruit fly surveillance programs were in place anywhere in the SADC region and there is no doubt that new invasive species were introduced in many countries after 2005 without the relevant NPPO's being aware until after the fact. In summary, the entire process of risk assessment in the SADC region is

¹⁷ Cassidy, Dermot (2010), Regional Trade in Horticultural Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P)

compromised by the lack of national surveillance systems on which risk assessments can be based. Given the generally tardy response by NPPO's to the invasive fruit fly threat one can assume that general pest and disease surveillance in the region requires some significant overhaul – this could be extended to issues of human and animal health. Some deficiencies in the surveillance and reporting systems for animal and human health are discussed in the parallel report on animal health in SADC and for human health elsewhere (Cassidy, 2010)¹⁸



Surveillance underpins the process of Risk Analysis as the information from surveillance feeds into the final outcome - which ultimately is the basis for the scientific processes of the WTO SPS Agreement (and the SADC and Tripartite SPS Annexes as well). In Figure 4 for example, it is difficult to get accurate information on human and animal morbidity as well as plant pests and diseases because surveillance and data collection is relatively undeveloped. Therefore it can be difficult to determine what government priorities are when it comes to the relative importance of SPS measures. The general paucity of data in SADC can be illustrated by the relative reporting of zoonoses by Australia and SADC Member States respectively. As detailed in the parallel report Australia had 9116 zoonosis cases in 2008 whereas well under 250 were reported in the entire SADC region.¹⁹ No one would seriously argue that these

¹⁸ Cassidy, Dermot (2010), Proposed Food Law in Swaziland; Background information, Mimeo

¹⁹ Cassidy, Dermot (2010), Regional Trade in Livestock and Livestock Products in the Southern African Development Community,

figures illustrate inadequate Australian meat and food hygiene rules when compared with those of SADC Member States.

5.4 Do members make provision for adaptation to regional conditions?

In theory, the adaptation of international standards to regional conditions is being undertaken through three existing regional technical committees, Plant Protection, Livestock and Food Safety which in the interim constitute the SADC SPS Committee. While the various SADC committees may discuss international standards for recommendation and adoption by Member States and prepare the SADC position to be presented during standards setting meetings by three sister organizations, CODEX, OIE and IPPC it is in practice difficult to find evidence that this is indeed the case. For instance at the African CODEX Delegates Colloquium held from the 9th to 11th of August 2010 in Pretoria no evidence was put forward by SADC delegates of what country or regional positions were being taken in the various CODEX working groups and committees. Similarly, in another example of high importance regionally, the number of comments made by SADC countries in respect of International Phytosanitary Measure (ISPM) 26 and the Annex to ISPM 26 on fruit fly surveillance was limited with only South Africa actively participating. While there is a somewhat developed regional stance on the concept of commodity based trade in beef as discussed in Appendix 3; Commodity Based Trade (CBT) in the complementary study on meat trade in the SADC region.²⁰ The outline of the argument is that the OIE rules, which are based on geographic rules of freedom from diseases, for trade in meat could be expanded to incorporate principles used in the food industry and Codex Alimentarius where disease exclusion is based on procurement and food handling procedures using formal Hazard Analysis and Critical Control Points (HACCP). However there has yet to be a regional effort to satisfy OIE requirements for the necessary research and development so as to justify changes to the Terrestrial Animal Health Code.

5.5 Do members harmonize their standards?

The SADC Food, Agriculture and Natural Resources (FANR)²¹ website states:

“SADC Member States have so far not harmonized and enforced fully regulations on SPS measures and in particular on Maximum Residue Levels (MRLs), which constitute an important technical barrier to trade within and outside the Region. Furthermore, there is a lack of participation by SADC Member States in the activities of organizations mandated by WTO to set SPS standards, notably the OIE, IPPC and Codex Alimentarius Commission, both in terms of numbers and effectiveness.”

As described above in Section 4 in general compliance with respect to the WTO SPS Agreement requirements for reporting and notification is somewhat below that required of WTO members.²² The evidence to hand is that the level of compliance is much lower in

²⁰ Cassidy, Dermot (2010), Regional Trade in Livestock and Livestock Products in the Southern African Development Community,

²¹ <http://www.sadc.int/fanr/crops/fscbr/index.php> accessed August 2010

²² STATUS OF SADC MEMBER STATES IN RESPECT OF COMPLIANCE TO THE WTO SPS AGREEMENT AND REPORTING OBLIGATIONS

respect of the additional requirements of the SADC SPS Annex. There are now attempts at SADC Secretariat level to initiate targeted measures for harmonization of legal framework for regulations and standards, particularly in food safety, plant protection products, pest registration, seed regulation and livestock disease testing. However, most harmonization activities are still in their infancy. The Food Safety – Capacity Building on Residue Control Project (FSCBRCP) funded by the EU is the principle harmonization project underway currently and has already drafted SADC regional guidelines for the regulation of food safety and on the registration of crop protection products in SADC countries.²³ These outputs are primarily food safety oriented i.e. CODEX oriented and build on the prior output of the Regional Plant Protection Committee (RPPC) which has been the production and implementation of the Harmonised Seed Security Project (HASSP) which involved the national IPPC members in the region

While it is foreseen that the various guidelines and a regional protocol will constitute the legal framework to prepare the Member States legislations in specific areas, and contribute to transparency and equivalency this has yet to take place. The first known attempt to use the SADC guidelines on Food Safety is currently underway in Swaziland where two bills are in preparation on Public Health and Food Safety.

5.6 Do members have equivalence agreements?

While SADC Member States recognize the SPS framework provision for equivalence determination that accommodates the use of different measures that achieve the same health objectives in terms of consumers' protection, no agreements on the equivalence exist. The lack of such agreements appears to be due to weaknesses which are still observed in Member States including, legislation, inspection, and testing and safety systems. Such recognition at this stage, remain tacit as opposed to actual agreements. However the SADC Secretariat is in the process of strengthening the control systems of Member States at the policy level by preparing regional guidelines will help Member States to align future legislation as described in the previous section. Nevertheless, there is still large a difference in technology and level of implementation of core SPS activities. The WTO SPS framework's provision for equivalence determination referred to in the SADC SPS Annex to the Protocol on Trade should be an effective tool promoting harmonization and dispute resolution because it encourages collaboration and transparency. However, this is largely not the case in SADC Member States. A critical issue is budgetary limitations and human resource constraints to both level the playing field among Member States and ultimately to bring general capacity up to those of outside trading partners. The lack of accredited laboratories in most of the Member States is a great challenge towards equivalence. While there may be tacit recognition of national certifications, there is a range of perceptions about the products from different countries in the region in terms of product quality. With a potential acceleration towards deeper regional integration, issues like a regional certification system will undoubtedly be a solution to most of these constraints.

²³ Southern African Development Community, Food, Agriculture and Natural Resources, Food Safety– Capacity Building on Residue Control Project, Project No. 9 ACP SAD 13, Technical Support to SADC for the Drafting of Regional Guidelines for the Regulation of Food Safety SADC REGIONAL GUIDELINES FOR THE REGULATION OF FOOD SAFETY (undated), and REGIONAL GUIDELINES FOR THE REGISTRATION OF CROP PROTECTION PRODUCTS IN SADC COUNTRIES Southern African Development Community Food, Agriculture and Natural Resources Food Safety – Capacity Building on Residues Control Project No. 9 ACP SAD 13 November 2009

5.7 SADC Secretariat SPS Coordinating Committee

According to the SADC FANR website the following SPS activities have been completed;

1. First Stakeholder Regional Assembly
2. Training in Capacity-Building Needs Assessment
3. First SPS Regional meeting
4. Training in pre-Accreditation
5. Training in Good Production Practices along the Food Chain
6. Second Stakeholder Regional Assembly

SADC has also launched a specific livestock information system called the Livestock Information Management Systems (LIMS) which comprises a component on trade. Although the SADC FANR website states that a lot of information has been generated by these activities they are not in the public domain. The EU FSCBRC project has been designed by SADC to fill in the gap and build the capacity of Member States to set a comprehensive control system framework to address and harmonize WTO/SPS standards in order to smooth trade of agro-products within and outside the region. The FSCBRC project has led to the development of two documents relating to food safety and pesticides as described in the Section 5.5. (Do members harmonize their standards?)

As envisaged by the SADC SPS Annex the management of SPS issues in SADC is based on two main structures,²⁴

1. The National SPS Committees
2. The Regional SPS Committee

In terms of the SADC SPS Annex, the Regional SPS Committee should be formed by representatives of the National SPS Committees. The SPS Committees should group together all stakeholders along the food chain involved in SPS and Food Safety Control Management in each of the Member States. These Committees constitute the backbone for the potential establishment of a single food authority or at the least a better coordination structure for of SPS matters. The SPS coordinating structures are tasked with the implementation of activities meant to improve and strengthen the Control Management System. It is foreseen that in the long term, guidance to the national SPS structure will be provided by a regional SADC SPS Committee which comprises the Regional Technical Committees of Food Safety, Animal Health and Plant Health. However all these activities are still at an early stage of development and while some data is being generated within SADC and among its member governments there is little evidence in the public domain that these actions have led to practical outcomes for those, mostly in the private sector, engaged in the trading of SPS sensitive goods.

²⁴ (see APPENDIX 2; Selected extracts...)

6. CONCLUSIONS AND RECOMMENDATIONS

The conclusions and recommendations contained in this review of the status of implementation of the SADC SPS Annex should be read in the context of the combined set of studies in which two complementary sector studies on horticulture and livestock are an integral part of this document (see 1.1 Introduction; Background to the Study). The sector studies are illustrative in nature and while detailed recommendations can and must be made in these areas it is evident that given the lack of clear trade benefits from mid 2008 when the SADC SPS Annex was signed there must be a general rethink of existing approaches and strategies to regional trade facilitation in SPS sensitive goods.

The recommendations of this report proposes 'operationalizing' the SADC SPS Annex by focusing on three key areas for delivering tangible results and, in the process, setting up modalities for the delivery of other follow-on activities and long term working arrangements. The recommendations are such that progress on the interim deliverables should not be set by the slowest member of SADC but by those countries with most to gain with a strong national incentive to progress the issues at hand. The conclusions thus set out a proposed three step process as follows;

1. Continue work on setting up the national SPS committees and task those that exist (via a workshop at the SADC Secretariat), where appropriate, with setting up national working sub groups on the three issues in point three below (Section 6.1)
2. Each national SPS committee should ensure that for the selected working group that there is full opportunity for participation by non government stakeholders - particularly the private sector. The working group should then designate a contact point to work with other participating regional national contact points. Where necessary a technical person should be co-opted by the national SPS Committees to chair national inputs into the development of regional trading standards starting with the three proposed below (Section 6.2)
3. The sub groups should focus on developing regional trade protocols for maize, bananas and chilled de-boned beef covering the three principal SPS areas i.e. CODEX, IPPC and OIE (Section 6.3)

6.1 Effective SPS management systems are essential in SADC Member States and for the region.

Findings from the National Workshops conducted in SADC Member States in recent years as part of the Food Safety Capacity Building on Residues Control Project (FSCBRC) highlight the fact that there is effectively no regional or holistic approach followed to ensure compliance with SPS measures. This is despite the fact that Member States have very clear obligations in line with the SADC SPS Annex to harmonize their SPS/Food Safety policies and improve their SPS control systems as a whole. Moreover, resources made available for SPS related activities are scarce and scattered, coordination systems are weak at all levels; there are few risk based SPS policies which apply the principle of risk and or hazard prevention throughout the food chain. Usually, responsibilities are divided among several ministries/agencies with little coordination, resulting in lack of accountability, duplication and overlapping, waste of public funds, conflicting interest and confusion between stakeholders.

The splitting and overlapping of responsibilities continues to remain a significant constraint hampering progress in developing reliable and credible SPS systems. Establishing an appropriate national framework for SPS/Food Safety management requires that all ministries and agencies involved in SPS/Food Safety act in an integrated and coordinated manner to help ensure adequate controls throughout SPS/Food Safety system and make the best use of limited resources. The SADC Secretariat has been trying to assist SADC Member States to establish appropriate SPS management systems by promoting the establishment of the national SPS committees to deal with all SPS matters and which would give clearly defined leadership functions for the following issues:

1. Implementation of an integrated regional SPS policy
2. Setting or proposing new regulations or standards
3. Participating in relevant international SPS related activities
4. Coordinating the operation of the national SPS control program including monitoring mechanisms
5. Facilitating continuous training and improvement and
6. Securing funds and allocating resources.

The national SPS Committees are crucial in the ability of SADC to implement the provisions of Article 11 (Administration) of the ADC SPS Annex. Although some progress has been made, it has been difficult to achieve the full cooperation of all government agencies involved. Not all SADC Member States assisted (by the EU financed FSCBRC program) have established SPS Committees coordinated either under the Ministry of Health or the Ministry of Agriculture. The envisaged purpose of these committees is to pull together and coordinate activities being currently undertaken by various institutions (ministries, standardization bodies, laboratories, private control agencies, etc.) which share the responsibility for and implementation of SPS agreement. Where this has occurred the establishment of SPS Committee under the FSCBRC program has been a useful learning phase for stakeholders operating along the food chain in building mutual understanding of the relevant SPS issues and finding how their expertise and contribution can fit into the overall control system. Nevertheless, it is also clear that there is no standard model or structure for SADC Member States to follow as all have different levels of funding, manpower, agricultural and nutritional priorities. The features listed below have been found as key for establishing an operational and efficient national SPS Committee.

1. Be **science-based** with strong emphasis on risk analysis prevention and the prioritization of resources to risks deemed to have the greatest potential impact
2. Be grounded in **national laws** that are clear, rational and scientific, based on risk analysis;
3. Include **comprehensive surveillance and monitoring activities** as forming the basis for risk analysis
4. Rely on **one central or well coordinated organization (a central voice)** at national level responsible for SPS/Food Safety, which should have the authority and resources to implement science-based policy in all national SPS related activities
5. Recognize the importance of participation of **all stakeholders operating along the food chain** - the responsibilities and central role played by all partners in the SPS system, such as farmer's associations, industry, importer, exporters, distributors, universities and consumers;
6. Be adequately **funded**.

As the National SPS Coordinating Committees constitute the basis of the membership of the SADC Regional SPS Committee, they should be empowered by their national governments and given the mandate to perform specific and general SPS activities such as management of the core control system, using the manpower and means provided by participating national ministries and institutions.

Specific technical sub committees can deal with:

1. Policy, legislation and standards
2. Risk analysis
3. Inspection
4. Monitoring
5. Certification
6. Testing
7. Enforcement,
8. Information, education and communication
9. Rapid alert systems

In this way there will be a rationalization of core activities, efficient use of manpower and means available in each Member States and avoid unnecessary duplication and competition among regulatory stakeholders.

At the regional level there is a need to have a dedicated SPS program and better coordination of activities between the FANR and the Trade, Industry, Finance and Investment (TIFI) Directorates. The latter deals with policy matters and the former is the technical implementer of the policy related to SPS matters. Currently some SPS issues are being addressed by projects, within the two Directorates, including Standardization, Quality Assurance Accreditation, and Metrology (SQAM), FSCBRC, Promotion of Regional integration in the SADC Livestock Sector (PRINT), FMD²⁵ and Transboundary Animal Diseases (TAD's). Coordination among projects is difficult to implement as they each have specific objectives and aims. Coordination should be already foreseen in the design of the various programs meant to meet the RISDP goal, the Dar es Salaam declaration, and the Tripartite Agreement which seems not to be the case. The coordination should also include ministerial decision levels so as to bring transparency and visibility as well as high level synchronization of activities in line with Annex 9 (Annex on SPS Measures Under Article 29(3) of the Tripartite Agreement). There are several examples of how this could be implemented of which two are described below;

- 1 The SPS component item of the 'Doing Business' and Logistics Performance Index' is a significant potential (and real) drag on regional trade (See Appendix 1). There are worked examples in the region showing how customs clearance procedures and times can be reduced by an order of magnitude without compromising legitimate SPS fears, or for that matter, any other concerns. Direction on national approaches to improving performance in these indicators should come from those responsible for policy whilst those responsible for implementation should be set clear deliverable targets for promoting regional trade such as those described in Section 6.2 and 6.3.

²⁵ The SADC FMD project was actually ended in 2009

- 2 Member states should publish the results of any Risk Assessments and other trade related scientific studies. Confidential (or simply unavailable) Risk Assessments lead to understandable suspicions of imposed trade restrictions - whether real or imagined. While there has been some finger pointing among SADC Member States about the use of the WTO SPS Agreement to restrict trade the outcome of such lack of transparency is that the debate moves from one of a science based debate into one of politics. For example the discussions between New Zealand and Australia and their respective trading partners are largely between the national SPS agencies and are almost entirely scientific in nature.

The ideas outlined above are just indications of how thinking in terms of approaching the WTO SPS agreement / SADC SPS Annex as trade facilitating rather than trade restricting could be put in place - the examples must not be thought of as exhaustive. Member States must play their roles and ensure that they have complied with the full transparency requirements of the WTO. SADC can play a role by providing a mirror SPS transparency website, perhaps as part of their existing FANR section on the SADC website where members can post notifications.

6.2 Regionalization and involving the private sector

The cooperation of both the public and private sectors, as seen in the cases of Mozambique and South Africa, is a cornerstone in the development of mutually supportive strategies to promote trade in both countries. Pest management, including robust national surveillance systems, in strong collaboration with the private sector is one of the main drivers of successful fruit trade in the region. SADC Member States urgently need to cooperate with both their private sectors and amongst each other to develop national and regional pest management systems, with all the necessary regulations, surveillance and control mechanisms. Furthermore, as highlighted SPS management though key to horticulture production and trade will need to be complemented by the appropriate national institutional and infrastructure frameworks. This includes the use of appropriate production methods, harvesting methods, pesticide use, access to finance, marketing, and, transport and trade facilitation. Member States should therefore seek to put the appropriate mechanisms that both engage fully with the private sector and enhance agriculture trade as a whole.

An example of how such an approach could look was put forward in multi-country discussions sponsored by the World Bank in June 2010 on developing a responsive regional approach to addressing phytosanitary issues. A proposal was put forward by the South African public and private sector participants and endorsed by Mozambique from their own experiences with invasive fruit flies.²⁶ The proposal is reduced to schematic form in Figure 5 which shows the incorporation of the existing elements, that both the private and public sector in South Africa feel works well on a national level, into a regional mechanism for addressing the problem at a regional level.²⁷


²⁶ In June 2010 at a video conference organized by the World Bank NPPO's interested NGO's and the private sector from Ethiopia, Kenya, Tanzania, Mozambique and South Africa took part in an information sharing and brainstorming of approaches in dealing with invasive fruit flies. The consensus approach agreed between Mozambique and South Africa is presented here. The conference was an informal exchange of ideas and does not represent national policies.

²⁷ The national system as it exists in South Africa is described in APPENDIX 1; The South African Sanitary and Phytosanitary Management System for Plant Health in Cassidy, Dermot (2010), Regional Trade in Horticultural

The proposed structure incorporates the following features²⁸

1. Widening the issues (drivers) that are used to determine phytosanitary research and other activities to incorporate poverty alleviation and food security (orange process boxes so that the priority is widened from 'Exports' in **Box 1** to Food Security, Poverty Alleviation, Trade (exports & imports in **Box A**)
2. Using the existing regional trade communities of the region (EAC/COMESA/SADC through the Tripartite Agreement in **Box B**) together with the donor community (**Box C**) to set priorities in terms of agreed policies and through these organizations to solicit funding (a Fruit Fly Fund; **Box D**) for addressing the problem. It must be recognized in the founding agreement of the fund that the main purpose of the regional blocs is trade and that commercial considerations have led to some of the more effective research on fruit flies to date. Much of the trade related research has direct (*and very significant indirect*) impacts on poverty alleviation and food security.
3. Implementation of the policies via the regional Fruit Fly Fund (**Box D**) through a Proposal Evaluation Committee and national steering committees which *would ensure that submitted proposals and proposal implementing bodies (Box F) meet the criteria pre-agreed by regional trade blocs (Box E)*
4. Monitoring and evaluation of proposal implementing activities by the Proposal Evaluation Committee (**Box E**)
5. The role of the International Centre for Insect Physiology and Ecology (ICIPE) is considered crucial and is considered as a lead organization for being a member of the Proposal Evaluation Committee and hosting a possible secretariat for this committee. An alternative to ICIPE would be that COPE at KEPHIS could take the lead as the potential designated regional phytosanitary body. However ICIPE has specialist research facilities so that some level of cooperation between the two bodies would likely be necessary.

Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P). The description of the South African system as it currently exists corresponds to Boxes 1, 2, 3, 4, 5, and 6 in Figure 4. Boxes A, B, C, D, E, and F in the same figure are proposed structures.

²⁸ (note that the symbol  represents the transfer of executive [though not policy] control to a subsidiary body)

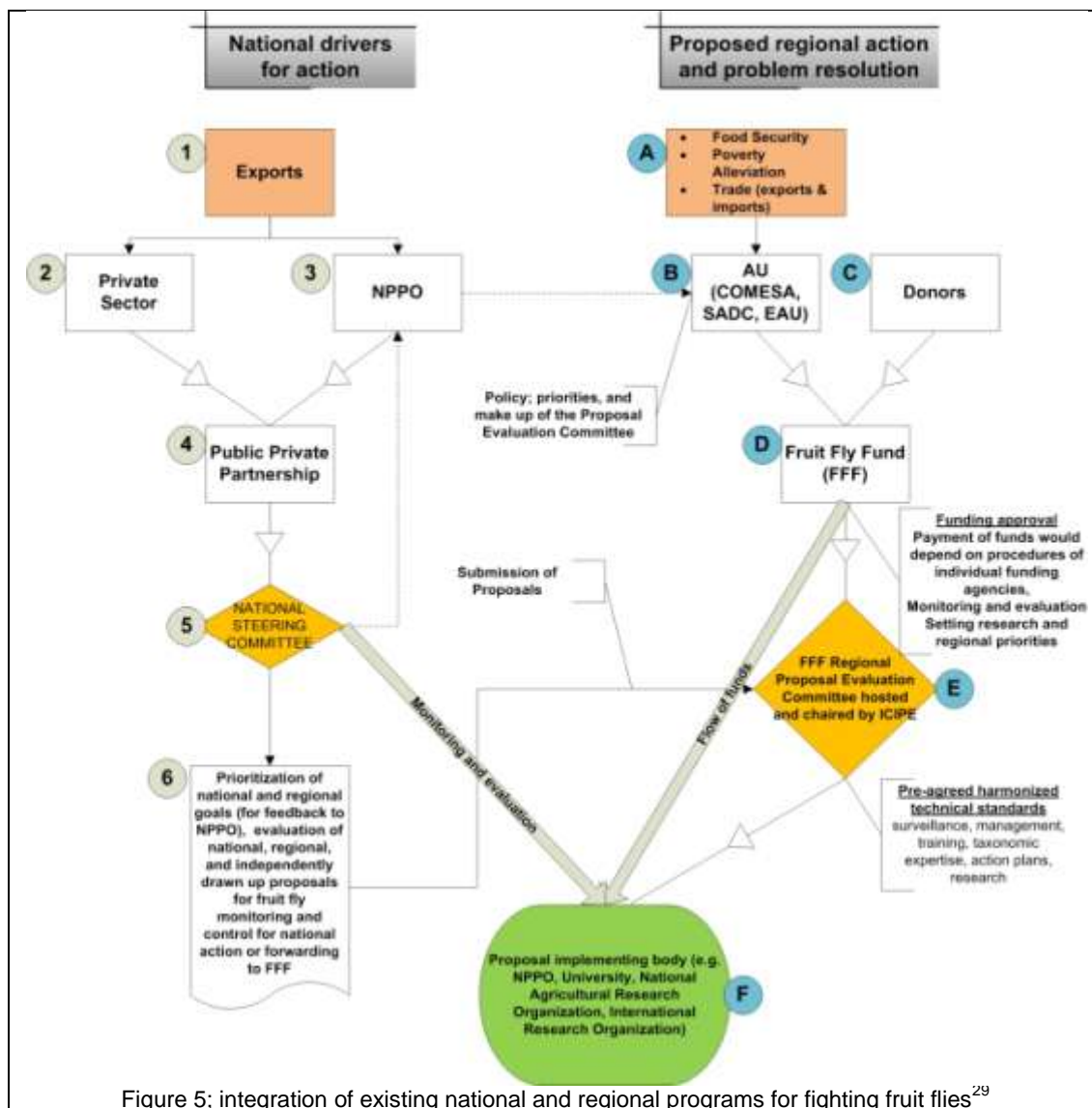


Figure 5; integration of existing national and regional programs for fighting fruit flies²⁹

The structure proposed in Figure 5 are illustrative in nature and would potentially look different for other commodity groups and in the case of phytosanitary PPP's could even look and work differently to the diagram when set up. However it is important to note that section represented by boxes 1 through 6 are taken from a working example in the case of South Africa.

6.3 'Operationalizing' and domesticating the SADC SPS Annex

A key driver for both ensuring that National SPS Committees and public private partnerships develop a strong regional focus is to develop clear activities that will promote regional trade if carried out to a successful conclusion. Three activities that are being proposed by COMESA apply equally to SADC. There are the COMESA proposals to develop 'Green Passes' for bananas, chilled de-boned beef from areas with FMD, and regional standards for trade in maize that may deviate in some measure from existing CODEX standards. In essence;

²⁹ Only a single national structure is illustrated for the sake of simplicity.

‘the “Green Pass” is a commodity based approach to trade. It is a system of certification designed to support trade in agricultural commodities by resolving outstanding SPS issues and opening the way to high value markets by guaranteeing the safety and quality of the commodity. In terms of domestication it requires the following:’

1. Understanding commodities and the SPS issues that need to be addressed
2. Understanding SPS systems of countries that are trading in the commodity but are affected by the SPS constraint
3. Understanding what needs to be addressed in order to establish a level of confidence between trade partners that indeed the issue has been appropriately dealt with in terms of legislation, post harvest management protocols, surveillance systems, laboratories systems and traceability systems that need to be implemented.
4. Understanding that whatever needs to be addressed to deal with the specific SPS issue is the actual basis for Green Pass criteria and is an integral part of the “Green Pass Certification System.”

To date there has been little action on ‘operationalizing’ the Green Passes in the COMESA region. In part this is because the entire task is a mammoth undertaking. A stepwise approach is proposed based on the three subsidiary international organizations that administer the SPS Agreement i.e. the IPPC, OIE and CODEX Alimentarius by pick on a commodity within each of the remits of each SPS sister organization and use the development of a working model for trade for each commodity as a capacity building exercise for future efforts while in the short to medium term delivering tangible trade benefits. However in choosing priority areas for work it is important to ensure that the aims of CADDP, the Tripartite Agreement, plus generally agreed national and regional development goals, trade aspirations, food security and clear SPS objectives are fully recognized so that the capacity building exercise also delivers tangible trade results . In preliminary discussions the following areas for development of short term trade goals coupled with operationalization / ‘domestication’ / capacity building are proposed;

- 1 **Maize grain and peanuts with high levels of aflatoxin residues.** The EU has set legal limits at 2 ppb whereas many African countries have set legal limits at 20 ppb; ten times higher than the EU. This inevitably becomes an SPS trade constraint for countries that cannot achieve the set limits. Managing residue levels to the prescribed limits requires an integrated approach which applies biocontrol technologies such as soil inoculation with non toxic strains of aspergillus with traditional approaches such as good agronomic practices, laboratory protocols, and traceability system, all of which would comprise criteria for regional trade.
- 2 **Fruit flies and horticulture products.** Fruit flies are a major quarantine pest for most countries. South Africa for example would not accept citrus from Kenya, Rwanda or Zambia unless there is evidence of pest free production areas. In this case a regional fruit fly surveillance program combined with post harvest protocols that demonstrate pest eradication, due diligence and product traceability in post harvest handling would be provide adequate assurance and scientific evidence that would comprise the basic criteria

for regional trade. It is felt that the development of a protocol for trade in fresh bananas may be relatively simple.

- 3 **FMD and the OIE requirement to demonstrate disease free production areas in order to trade in livestock products.** Here the “Green Pass” is a commodity-based trade (CBT) approach based on the principle that livestock commodities and products (meat, milk and their derivatives) can be rendered safe in terms of human and animal health regardless of the disease status of the area of origin.³⁰ The concept is in line with the food safety standards set by the Codex Alimentarius of FAO/WHO, which focus only on the safety to human health of the actual traded product. However the OIE need further work by AU countries before (COMESA included) before developing appropriate protocols in the Terrestrial Animal Health Code to allow for CBT. To recognize the CBT approach, The OIE has requested among other requirements further research so as to be able to distinguish between vaccinated and infected animals. Such research would provide the evidence required to establish criteria for regional trade that would also be recognized by the OIE.

In addressing the issue of green passes it is important to note that COMESA has defined 5 market ‘shades’ where sub-regional trade is relatively intense including Shade 5 consisting of the SADC member countries Zambia, Zimbabwe, Malawi and Mozambique. Also important is that COMESA has designated the establishment of regional reference laboratories for food safety, animal health and plant health in order to strengthen scientific capacity. Under the project, two of the Regional Reference Laboratories are in SADC member countries i.e. the Central Veterinary Research Laboratory in Zambia, for Animal Health and the Food Technology Laboratory in Mauritius for Food Safety. A third is the KEPHIS) for Plant Health which together with ICIPE could become the centre of fruit fly mitigation work for SADC under the Tripartite Agreement. Work is now needed to establish operations so that the designated laboratories can serve the region as envisaged.

SADC should therefore fully participate in the COMESA process through the modalities established by the Tripartite Agreement and establish a network for SPS resources and expertise that can be shared by SADC and other Tripartite Member States. Information will be shared by these experts through the SPS Discussion Forum and through the SPS Pillar of the Comprehensive Africa Agriculture Development Plan (CAADP) on SPS requirements for major tradable commodities produced in the region for trade facilitation.

Recommended actions:

1. The SPS project proposal should be re crafted to articulate interventions for domesticating SADC SPS regulation such as modalities for implementing trade in selected commodities that fall under the three major subdivisions of the SPS Agreement and meet a range of development, public health and other criteria.

³⁰ The concept is discussed in somewhat more detail in Appendix 3; Commodity Based Trade (CBT), in; Cassidy, Dermot (2010), Regional Trade in Livestock and Livestock Products in the Southern African Development Community, AECOM International Development, submitted to: USAID / Southern Africa, Gaborone, Botswana August 2010. USAID Contract No. 690-M-00-04-00309-00 (GS 10F-0277P)

2. Develop working groups for each commodity. For example a working group could be led by Mozambique and South Africa for bananas, by Namibia, Zambia and Botswana for trade in beef, and by Mozambique Malawi and Tanzania (with Mauritius) for aflatoxin standards and associated standards in maize. The working groups should however be open to all interested parties including the private sector.
3. Taking a leaf from CODEX the working groups should be primarily electronic so as to minimize costs and maximize working time though it will be necessary to hold meetings – at least at the outset and conclusion of each project.
4. The working groups should be tasked with developing a common standard and protocol that would establish a basis for trade in the commodity under study. Where research is needed this could be facilitated using a mechanism similar to that shown in Figure 3. Similarly the gazetting of any necessary standards, protocols and amendments to national legislation can be initiated by the working group. (for more detail n these proposals see Appendix 4)

In this way a strong level of focus could be brought to the issues that actually drive trade and could serve as models for a range of similar future interventions.

APPENDIX 1: LOGISTICS AND DOING BUSINESS RANKINGS IN SADC MEMBER STATES

Table 4: International Logistics Performance Index (LPI) rankings for SADC

Int. LPI Rank	Country	LPI	Customs	Infrastructure	International shipments	Logistics competence	Tracking & tracing	Timeliness
28	South Africa	3.46	3.22	3.42	3.26	3.59	3.73	3.57
82	Mauritius	2.72	2.71	2.29	3.24	2.43	2.57	2.91
85	Congo, Dem. Rep.	2.68	2.60	2.27	2.56	2.93	2.43	3.20
88	Madagascar	2.66	2.35	2.63	3.06	2.40	2.51	2.90
95	Tanzania	2.6	2.42	2.00	2.78	2.38	2.56	3.33
134	Botswana	2.32	2.09	2.09	1.91	2.29	2.59	2.99
136	Mozambique	2.29	1.95	2.04	2.77	2.20	2.28	2.40
138	Zambia	2.28	2.17	1.83	2.41	2.01	2.35	2.85
142	Angola	2.25	1.75	1.69	2.38	2.02	2.54	3.01
152	Namibia	2.02	1.68	1.71	2.20	2.04	2.04	2.38
Regions								
1	Europe & Central Asia	2.74	2.35	2.41	2.92	2.60	2.75	3.33
2	Latin America & Caribbean	2.74	2.38	2.46	2.70	2.62	2.84	3.41
3	East Asia & Pacific	2.73	2.41	2.46	2.79	2.58	2.74	3.33
4	Middle East & North Africa	2.6	2.33	2.36	2.65	2.53	2.46	3.22
5	South Asia	2.49	2.22	2.13	2.61	2.33	2.53	3.04
6	Sub-Saharan Africa	2.42	2.18	2.05	2.51	2.28	2.49	2.94
Income Groups								
1	High income: all	3.55	3.36	3.56	3.28	3.50	3.65	3.98
2	Upper middle income	2.82	2.49	2.54	2.86	2.71	2.89	3.36
3	Lower middle income	2.59	2.23	2.27	2.66	2.48	2.58	3.24
4	Low income	2.43	2.19	2.06	2.54	2.25	2.47	2.98

Table 5: International Ease of Doing Business (EDB) rankings and 'Trading Across Borders' subcategory for SADC

Economy	Ease of Doing Business Rank	Trading Across Borders
South Africa	34	148
Botswana	45	150
Namibia	66	151
Zambia	90	157
Swaziland	115	158
Lesotho	130	143
Tanzania	131	108
Malawi	132	172
Madagascar	134	111
Mozambique	135	136
Zimbabwe	159	167
Angola	169	171
Congo, Dem. Rep.	182	165

Notably absent from most theoretical and policy driven economic papers written on the subject of the WTO and the SPS agreement is the undoubted fact that national governments can and do make it difficult for their own domestic enterprises to operate in the first place. Two examples, the Logistics Performance Index (Table 4) and the Doing Business Economy Rankings (Table 5), illustrate the problem. Sub-Saharan Africa is the worst performing region in the world in both these indexes, and attains a particularly bad score³¹ for categories relating to trade support including Customs, International Shipments, and Trading Across Borders sub categories of these indexes. The subcategories are arguably good proxy indicators of actual government support for exports, as well as the position of SADC countries in the rankings/general indexes themselves, represent significant additional costs and difficulties for domestic enterprises in any developing country trying to compete on world markets. Since many of the factors which make up the indexes are under the direct control of the countries themselves they represent self imposed trade restrictions rather than constraints, such as SPS or Technical Barriers to Trade (TBT's), imposed from outside the region. The agreement above may be seen as laboring the point but it is always necessary to be holistic in ones approach as in any study the potential beneficial effects of the SADC SPS Annex could be masked by the inherent difficulties from other non SPS factors already being experienced in regional trade.

³¹ Areas in which SADC Member States are particularly poor performers in the 'Doing Business and Logistics indexes are highlighted in orange in Tables 1 and 2

APPENDIX 2: SELECTED EXTRACTS SADC APPROVED VERSION, SPS ANNEX TO THE SADC PROTOCOL ON TRADE

In broad terms the SADC SPS Annex aims to mirror the WTO SPS Agreement but adds the following features;

- 1. to provide a regional forum for addressing sanitary and phytosanitary*
- 2. matters;*
- 3. to provide a [regional] forum for resolving trade related sanitary or phytosanitary issues.*
- 4. shall make every whenever possible, if mandated, present a common SADC position in these organizations*

More specifically;

Equivalence

Member States shall enter into consultations aimed at achieving bilateral or regional agreements on the recognition of equivalence of their respective sanitary or phytosanitary measures.

Transparency

Member States shall

- 1. notify laws, regulations, procedures and requirements and any changes in their sanitary or phytosanitary measures to the SADC Secretariat.*
- 2. notify details of their Enquiry points and their National Committee to the SADC Secretariat.*
- 3. The SADC Secretariat shall circulate all notifications to the SADC Sanitary and Phytosanitary Coordinating Committee and the National Inquiry points.*

Dispute Settlement

The rules and procedures of Article 32 of the SADC Protocol on Trade shall;

- 1. apply to the settlement of [SPS] disputes between Member States.*

Administration

Member States hereby;

- 2. establish a SADC Sanitary and Phytosanitary Coordinating Committee comprising of representatives of each National Committee on Sanitary and Phytosanitary Measures.*
- 3. Member State will establish a National Committee on Sanitary and Phytosanitary Measures and appoint a representative on the SADC Sanitary and Phytosanitary Coordinating Committee.*

The SPS Annex establishes a SADC Sanitary and Phytosanitary Coordinating Committee with the following terms of reference;

- 1. The SADC Sanitary and Phytosanitary Coordinating Committee shall promote transparency in the area of sanitary and phytosanitary measures, including overseeing the implementation of the SADC notification and counter notification process, with a view of identifying and resolving sanitary or phytosanitary problems between Member States in order to prevent formal disputes.*

2. *The SADC Sanitary and Phytosanitary Coordinating Committee will act as a*
3. *consultative forum for promoting the objectives of this Annex and for strengthening cooperation between the regulatory agencies having responsibility for sanitary and phytosanitary measures.*
4. *The SADC Sanitary and Phytosanitary Coordinating Committee will report to the SADC Trade Negotiating Forum and shall have the following specific functions:*
 - a) *To act as a forum for consultations and exchange of technical information relating to sanitary or phytosanitary issues;*
 - b) *Reviewing progress and monitoring the implementation of this Annex;*
 - c) *Cooperation and collaboration in the transfer of expertise in sanitary or phytosanitary issues amongst Member State[s];*
 - d) *Overseeing the implementation of SADC regional programs related to*
 - e) *sanitary and phytosanitary measures;*
 - f) *Collaboration among interested Member States on specific sanitary or*
 - g) *phytosanitary projects;*
 - h) *Identification of technical problems which might form the subject of joint projects on sanitary or phytosanitary issues;*
 - i) *Coordination, endorsement and harmonisation of SADC regional training and development activities in sanitary and phytosanitary related areas;*
 - j) *Provision of information on regional sanitary and phytosanitary related resources and services;*
 - k) *Coordinating the region's liaison with corresponding regional and international organisations in the field of sanitary and phytosanitary protection;*
 - l) *Coordinate, liaise and participate in SADC SQAM structures as necessary to facilitate accomplishment of standardization, conformity assessment and accreditation needs in regional sanitary and phytosanitary issues;*
 - m) *Establishment of communication channels and dissemination of information on regional sanitary and phytosanitary resources and services through the national enquiry points;*
 - n) *Establishment of Expert Working Groups in specific fields related to sanitary or phytosanitary Measures;*
 - o) *Organisation, coordination and promotion of regional conferences, workshops, seminars and exhibitions on subjects relevant to any SADC regional programme related to sanitary or phytosanitary standards;*
 - p) *Participation in international and regional standards setting organizations, where possible and coordinate efforts to present common SADC positions in relevant international organizations;*
 - q) *Promotion and facilitation of greater private sector/industry participation in SADC sanitary and phytosanitary related activities;*
 - r) *Follow up international and regional developments on sanitary and phytosanitary measures that might have potential consequences on trade of SADC Member States and submit regular updates to Members through the SADC Trade Negotiating Forum.*
 - s) *Develop the guidelines and procedures for determining the equivalence of sanitary or phytosanitary measures;*
 - t) *Develop guidelines and procedures for determining the equivalence of risk assessment techniques and methodologies; and*
 - u) *Develop procedures to assist and monitor the process of harmonisation among Member States,*

APPENDIX A contains further specific provisions for SADC Member States

Transparency of Sanitary and Phytosanitary Regulations

Publications of regulations

- 1. Member States shall ensure that all sanitary and phytosanitary regulations are published promptly in such a manner as to enable interested Member States to become acquainted with them.*
- 2. Except in urgent circumstances, Member States shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force to allow time for producers in exporting Member States, to adapt their products and methods of production to the requirements of the importing Member State.*

Enquiry points

- 3. Each Member State shall ensure that an enquiry point exists which is responsible for the provision of answers to all questions from interested Member States as well as for the provision of relevant documents regarding:*
 - a) any sanitary or phytosanitary regulations adopted or proposed within its territory;*
 - b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;*
 - c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;*
 - d) the membership and participation of the Member State, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Annex, and the texts of such agreements and arrangements.*
- 4. Member States shall ensure that where copies of documents are requested by interested Member States, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals of the Member State concerned.*

Notification procedures

- 5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Member States, Member States shall:*
 - a) publish a notice at an early stage in such a manner as to enable interested Member States to become acquainted with the proposal to introduce a particular regulation;*
 - b) notify other Member States, through the SADC Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;*

- c) *provide upon request of other Member States copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;*
- d) *without discrimination, allow reasonable time for other Member States to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.*

6. However, where urgent problems of health protection arise or threaten to arise for a Member State, that Member State may omit such steps enumerated in paragraph 5 of this Appendix as it finds necessary, provided that the Member State:

- a) *immediately notifies other Member States, through the SADC Secretariat of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);*
- b) *provides, upon request, copies of the regulation to other Member States;*
- c) *allows other Member States to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.*

7. Notifications to the SADC Secretariat shall be in English, Portuguese or French.

8. The SADC Secretariat shall promptly circulate copies of the notifications to all Member States and interested international organizations.

9. Each Member State's National Committee on Sanitary and Phytosanitary Measures, in cooperation with its national enquiry point(s), shall be responsible for the implementation at the national level of the provisions concerning notification procedures according to this Appendix.

APPENDIX 3: SADC SPS CONTACT POINTS AS NOTIFIED TO THE WTO (15 AUGUST 2010)

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APPENDIX 4; Piloting 'Green Passes' for maize, bananas and beef in SADC

THE DEVELOPMENT OF 'A MAIZE FOR HUMAN CONSUMPTION' 'GREEN PASS' IN SADC

Current situation

Trade in maize is of supreme importance in Africa given the climatic and other uncertainties in much of the continent. Rapid and unhindered movement of grains, especially of staples such as maize is a necessary part of regional food security by reducing landed costs and time to delivery. The development of a SADC 'Green Pass' for maize destined for human or animal consumption is therefore seen as a priority activity. Currently a Codex Standard (153-1985 - Adopted in 1985 and revised in 1995) exists for maize. The standard applies to maize (corn) for human consumption, i.e., ready for its intended use as human food, presented in packaged form or sold loose from the package directly to the consumer. Much of Codex Standard 153-1985 is uncontroversial but a particular issue is the development of a standard that takes account of the problems peculiar to Africa in that the practical achievement of EU and other standards for aflatoxin levels. Most African countries have, in fact, no aflatoxin standards and those that do have them set at levels 7.5 (Tanzania for cereals) and 10 (Kenya for groundnuts) times the EU limits. Other than the aflatoxin issue the large scale imports of maize into the continent have created problems such as the introduction of storage pests including the Larger Grain Borer from other continents. There is a specific need to develop a common regional standard and traceability system for maize so that a standardized 'Green pass' can be developed

The way forward;

Selection of a trading region to pilot the 'Green Pass';

The selected piloting region must have a clear need in terms of the potential importance of the free movement of maize grain. Regional capacity and infrastructure must be available for the testing of consignments and identification of pests, diseases and other quality parameters. A suggested priority area in the area consisting of Northern Mozambique, Malawi, Zambia and Zimbabwe where food security is a pressing issue and where the easing in restrictions to domestically grown maize would have a significant impact on food security.

Previous work;

There is no known work on the development of a regional standard for maize. The Codex standard (153-1985) has some relevance but does not include phytosanitary concerns such as storage pests.

Needed actions;

1. Set up a working group in the selected shade and other interested parties to direct the process.
2. Draw up a unified standard whereby a unified 'Green Pass' standard can be agreed for maize – including both phytosanitary and food safety standards together with traceability requirements.
3. The finalized document will include a certificate that will perform as a combined phytosanitary / food safety / traceability permit
4. Agree on a pilot area for the operationalization of the 'Green Pass'
5. Implement

THE DEVELOPMENT OF A BANANA 'GREEN PASS' IN SADC

Current situation

Invasive fruit fly species belonging to *Bactrocera spp.* introduced into Africa the early years of the millennium from Asia are spreading rapidly in the continent threatening livelihoods, impacting on food security and threatening existing fruit exports to other continents as well as regional and internal marketing. African National Plant Protection Organizations (NPPO's) now require compliance with International Standards for Phytosanitary Measure (ISPM) 26 in respect the declaration of pest free areas. In large parts of Africa, more particularly the more tropical and poorer regions where many invasive fruit fly species are now well established, international and regional exports of fruit are at risk – if not stopped altogether.

The way forward

Given that in the short to medium term it will not be practicable to eliminate invasive fruit flies from many of the areas where they are now established the alternative is the development and use of mitigation techniques. The following steps are proposed for starting this process;

1. **Selection of suitable fruits;** the most traded fruit in Africa is the banana both in terms of exports and internal trade. It is also a significant part of the diet of many rural and urban Africans and has a significant importance in terms of continental food security
2. **Selection of a training region to pilot the 'Green Pass';** a suggested location is the proposal on the market shade (group) Mozambique and South Africa. Bananas are exported from Mozambique and there are large developments in the northern region of Mozambique that are currently excluded from exporting to South Africa due to the presence of invasive fruit flies.

Previous work; the United States through the United States Department of Agriculture – Animal and Plant Health Inspection Service (USDA-APHIS) has carried out large scale studies on the potential of bananas to spread fruit flies through trade. The research led to the development of a relatively simple protocol that ensures that such threats are eliminated. The protocols are already in place for banana exports from Hawaii to the continental USA and can be used to guide the development of similar ones in Africa should research justify this (see appendix).

Similarity to the African situation; the fruit fly species present in Hawaii are in the same genera as those commonly found in Africa. In addition, the newly introduced invasive species in Africa to (*Bactrocera spp*) have a close relative in Hawaii (*Bactrocera dorsalis*) as well as one now endemic in Africa (*B. cucurbitae*)

Needed actions;

6. Set up a working group in the selected shade to direct the process.
7. Initiate scientific research parallel to that of USDA-APHIS in Hawaii to test the conditions under which invasive and other fruit flies can be excluded from bananas.
8. Develop fruit fly exclusion protocols for bananas based on this research
9. Develop traceability protocols
10. Develop a certification procedure so that a combined traceability and phytosanitary certificate can be attached to any banana shipment – i.e. a 'Green Pass'
11. Implement

Example of a 'Green Pass' – rules for movement of Hawaiian bananas to the Continental USA

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa* spp.) of the cultivars “Williams,” “Valery,” “Grand Nain,” and standard and dwarf “Brazilian” may be moved interstate from Hawaii with a certificate issued in accordance with §§318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

- (a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during that 24-hour period, they must be stored in a facility that prevents access by fruit flies;
- (b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;
- (c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and
- (d) The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.

THE DEVELOPMENT OF A MEAT ‘GREEN PASS’ IN THE COMESA/SADC REGION

Current situation

The proposal for commodity based trade in beef argument is outlined in a series of papers by Dr. Gavin Thompson and is accepted as policy for development in regional trade in the SADC and COMESA regions. The issue of Foot and Mouth Disease (FMD) plus those animal diseases listed in Table 6 below that are both indigenous and endemic to Africa where any efforts to eradicate some of these diseases will require costs, both financial and ecological that may outweigh benefits. However a good technical case may well be made for the processing and export of de-boned beef from endemically infected zones where the risk of disease transmission can be reduced to an acceptable level so as to allow exports by meat packers. The position of the OIE requires the following work before taking this idea forward. Other diseases of interest to the OIE are listed in Table 6

Table 6: Other diseases besides FMD in beef that require research before the OIE will accept their elimination in traceability and slaughter procedures

Disease (Article)	issue
Rift Valley Fever (Article 8.11.11.)	risk associated with viraemic animals
bovine brucellosis (Article 11.3.6.)	beef as a safe commodity, trade of cattle for slaughter
Crimean-Congo Hemorrhagic fever (CCHF)	chapter development

The way forward

Given that in the short to medium term it will not be practicable to answer all the questions raised by the OIE it is proposed that a stepwise approach be adopted to resolve the outstanding issues in a logical manner. The following steps are proposed for starting this process;

1. Selection of a suitable region for a pilot study including a defined trading region with laboratories, research staff as well as donor partners to assist with the study.
2. Set up a working group in the selected shade to direct the process.
3. Initiate scientific research to research and test the conditions under which CBT in meat can be conducted. More specifically;
 - a) Develop specific guidance on mitigation measures that will provide adequate assurance that FMD infected animals, particularly those in the early stages of infection and possibly incubating the disease, are not presented for slaughter at export abattoirs
 - b) Develop specific guidance should be developed on mitigation measures required at export abattoirs in regions that are not FMD-free. The guidance should encompass both procedures to be followed and measures by which their implementation can be monitored.
 - c) Determine the behaviour and survival of FMD in bovine fat tissues.
 - d) Determine amounts of residual bone marrow, lymph node and blood clot in deboned beef.
 - e) The effective oral dose of FMD for pigs.
 - f) Research the relative contribution of “pre-slaughter” versus “at-abattoir” control measures aimed at reducing FMD contamination of deboned beef exported from FMD zones. A retrospective study from one or more countries where detailed records are available might be used to analyze the likelihood that deboned beef (DB) from infected animals were actually exported.”
4. Develop protocols for FMD exclusion based on this research
5. Develop traceability protocols

6. Develop a certification procedure so that a combined traceability and zoosanitary certificate can be attached to any DB shipment – i.e. a 'Green Pass'
7. Bring the developed protocols to the OIE and work on the appropriate revisions to the Terrestrial Animal Health Code.
8. Implement