

SOUTHERN AFRICA TRADE HUB



Technical Report: Developing the SADC Approach to SPS Issues

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Acronyms

ACCSQ	ASEAN Consultative Committee on Standards and Quality
AEM	ASEAN Economic Ministers Meeting
AHMM	ASEAN Health Ministers Meeting
AMAF	ASEAN Meeting on Agriculture and Forestry
ASARECA	Association for Strengthening Agricultural Research in Eastern and Central Africa
ASEAN	Association of Southeast Asian Nations
ASWGC	ASEAN Sectoral Working Group on Crops
CC	SADC SPS Coordinating Committee
Codex	Codex Alimentarius
COMESA	Common Market for Eastern and Southern Africa
COMPETE	Competitiveness and Trade Expansion Program
DFID	UK Department for International Development
EAC	East African Community
EADRAC	East African Dairy Regulatory Authorities Council
EASC	East African Standards Committee
EU	European Union
FANR	SADC Directorate of Food, Agriculture and Natural Resources
FAO	Food and Agriculture Organization of the United Nations
FMD	Foot and Mouth Disease
FSCBRC	Food Safety – Capacity Building on Residue Control project
HACCP	Hazard Analysis and Critical Control Points
IPPC	International Plant Protection Convention
MERCOSUR	Southern Common Market
MRA	Mutual Recognition Agreements
MRL	Maximum Residue Level
NAFTA	North American Free Trade Agreement
NORAD	Norwegian Agency for Development Cooperation
NTB	Non-Tariff Barrier
OIE	World Organization for Animal Health
RIA	Regulatory Impact Assessment
SADC	Southern African Development Community
SATH	USAID Southern Africa Trade Hub

SHD&SP	SADC Directorate of Social and Human Development and Special Programs
SPS	Sanitary and Phytosanitary
SPS Agreement	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
SPS Committee	Committee on Sanitary and Phytosanitary Measures under the SPS Agreement
SQAM	Standardization, Quality Assurance, Accreditation and Metrology
SQMT	Standardization, Quality Assurance, Metrology and Testing
STDF	Standards and Trade Development Facility
TBT	Technical Barriers to Trade
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TIFI	SADC Directorate of Trade, Industry, Finance and Investment
UN	United Nations
UNIDO	United Nations Industrial Development Organization
USAID	United States Agency for International Development
WHO	World Health Organization
WTO	World Trade Organization

Executive summary

SPS measures proliferate amongst SADC Member States and in the main external markets for SADC exports. This trend puts pressure on SADC to advance its work on trade-related SPS issues and SADC has responded by the adoption of the SPS Annex to the Trade Protocol in 2008, and, most recently, by the formation of the SADC SPS Coordinating Committee (CC hereafter) established to oversee the implementation and administration of the SPS Annex. The CC held its inaugural meeting in Gaborone, Botswana during 21-22 July 2011.

SADC is uniquely placed to lead SPS policy targeting three inter-linked objectives: to promote regional trade through lowering SPS-related trade barriers while maintaining appropriate SPS protection levels, to advance extra-regional exports by supporting compliance with international markets' SPS requirements, and to lead technical cooperation on SPS issues of regional importance.

The most imminent challenge to SADC is to make the CC an effective trade body with a mandate on SPS policy while developing the work of SADC technical units like the Livestock Sector Unit and the Crop Development Unit. The division of labor established at the multilateral level, with the SPS Committee under the SPS Agreement focusing on trade concerns and a range of primarily UN organizations taking care of more technical issues, should be copied at the SADC level to allow the CC to focus on trade and avoid costly duplication of labor. The CC is first and foremost a forum for regional SPS diplomacy while more technical issues of SPS management resides with the SADC technical units.

On longer term issues, SADC may extract useful lessons on how to work with the interface between SPS issues and trade from other regional associations. ASEAN and the EAC started work on regional SPS issues some time before SADC and despite the differences between the memberships of the respective associations many similarities in policy objectives exist. Both associations use a variety of different approaches to regional SPS policy including: (i) Work on individual SPS issues, like food safety standards harmonization, joint food safety policy, and mutual recognition agreements; (ii) work on trade issues with SPS implications, notably the elimination of Non-Tariff Barriers (NTBs); and (iii) work and resource sharing through the establishment of joint infrastructure, the exploitation of specialization, joint needs identification and collaboration with donors on projects of regional interest.

While many lessons may be identified from the experiences of ASEAN and the EAC, three areas are particularly interesting. Firstly, the harmonization of Member State standards have proven to be a difficult area due to wildly differing demands for standards and variations in the regulatory capacities between the Member States of a given regional association. Harmonization around inappropriate standards may establish new NTBs rather than improve human, animal and plant health. Secondly, regulatory processes could be improved by using Regulatory Impact Assessment (RIA) to assess the likely economic and social effects of new standards and regulations. The use of RIA would ensure a more inclusive regulatory process. And finally, thirdly, SADC could learn from the efforts of ASEAN and the EAC to exploit regional economies of scale in SPS management. The pooling of regional resources would improve SPS management through the establishment of

regional SPS infrastructure, improved regulatory processes and the targeting of transboundary SPS issues.

This technical report makes three sets of policy recommendations. First, the CC faces two major imminent challenges to establish itself as an important trade policy forum: the CC needs to develop an implementation plan and to design a model of organization that allows the CC to focus on its core functions and avoids duplication of work with other regional actors in SPS policy. Second, SADC SPS work would benefit from the development of instruments to support the CC mandate. These instruments should include guidelines on the choice between appropriate trade facilitation instruments: harmonization, equivalence and mutual recognition and guidelines for evaluating the implications of SPS measures based on RIA techniques. Third, SADC should promote trade through the trade work of SADC technical units. SADC could promote the development of a regional market for SPS services and develop existing work on integrated border management further to include reform of SPS-related border agencies and procedures.

1. Introduction

The tightening and proliferation of sanitary and phytosanitary (SPS) measures are amongst the most striking developments in international food trade during the latest quarter century. Yet, current regional trade policy in the Southern African Development Community (SADC) addresses SPS issues only sporadically. SPS-related trade disputes between SADC Member States are either solved informally at the bilateral level or remain unsolved as SADC currently offers no procedures to deal with such disputes. SADC, however, plans to upgrade its SPS work soon. In 2008, SADC adopted the SPS Annex to the SADC Protocol on Trade which will regulate the interface between trade and SPS issues. The SPS Annex entered into force in late 2010 after the ratification by the sufficient number of Member States and implementation efforts are about to commence.

In the future, the SADC Member States expect SADC to expand the reach of regional trade policy to include SPS issues. SADC has established the SADC SPS Coordinating Committee (hereafter the CC) that held its first meeting in Gaborone, Botswana during July 21-22, 2011. The SPS Annex assigns the CC with the administration of the Annex and the inaugural meeting of the CC may mark the beginning of a period of stronger involvement of SADC in trade-relevant SPS policy. Before SADC successfully develops a regional SPS approach, many questions need to be answered. Resources are short and the challenges many.

This report studies how to advance SADC work on trade-related SPS issues and suggests ways for policy makers to prioritize future SPS activities and avoid overlaps between the many regional players. The report is the result of a research stay in Gaborone, Botswana by the author during July 19-29, 2011 which included participation in the inaugural CC meeting and work with personnel in the SADC Secretariat and in the Southern Africa Trade Hub (SATH) project funded by the United States Agency for International Development (USAID). The report primarily focuses on shorter-term objectives like focusing and organizing the work of the CC and developing an SPS Annex implementation plan, leaving most longer term objectives like building SPS management capacity in Southern African supply chains to later efforts due to resource and time constraints.

The structure of the report is as follows. In Section 2, I begin by presenting necessary background knowledge for the understanding of regional trade-relevant SPS issues in Southern Africa. Section 3 presents the experiences of two different regional organizations, the Association of South East Asian Nations (ASEAN) and the East African Community (EAC). Section 4 analyzes the challenges that SADC faces regarding the implementation of the SPS Annex and the organization of future trade-relevant SPS work. Finally, I offer conclusions and discuss policy recommendations in Section 5.

2. Background

SADC and the donors that support it expect SADC to become more engaged in regional SPS policy. The first meeting of the CC in July 2011 may be interpreted as an attempt to accelerate the implementation of the SPS Annex. While the SPS Annex was adopted in 2008, implementation has been lacking. Most Member States have formally created the institutions foreseen in the Annex, the Enquiry Points and the National Committees on SPS measures, however these institutions have few activities so far.

Despite the non-implementation of the SPS Annex, SADC already has a number of bodies working on various SPS policy issues.

- The Livestock Sector Unit and the Crop Development Unit, under the Directorate of Food, Agriculture and Natural Resources (FANR), have both done work in the SPS area. The Livestock Sector Unit has led a project on trans-boundary animal diseases and worked with the World Organization for Animal Health (OIE) to design standards for the trade of animal products from areas affected by mad cow disease.
- The Crop Development Unit has worked on seed certification and has administered a European Union (EU) SPS project entitled the 'Food Safety – Capacity Building on Residue Control' (FSCBRC) project. Despite its name, the project focuses broadly on SPS issues. It includes activities on food safety and animal health in addition to plant health.
- SADC also has a program of Standardization, Quality Assurance, Accreditation and Metrology (SQAM) under the Directorate of Trade, Industry, Finance and Investment (TIFI). The SQAM program works on technical standards including SPS standards.
- Finally, SADC has two additional bodies with a mandate including SPS issues. The Program of Customs Cooperation and Modernization (under TIFI), works on cross-border management. While no specific activities currently exist on the role of SPS authorities in border management, trade facilitation may necessitate the inclusion of SPS issues in border management. Currently, the SATH is developing an Integrated Border Management (IBM) program which includes addressing the overlapping mandates of SPS related agencies at the border.
- The last SADC body of interest to the SPS agenda is the Directorate of Social and Human Development and Special Programs (SHD&SP) that has a Program of Health and Pharmaceuticals. Food safety policy naturally belongs here, although no activity in this area currently takes place at the SADC level.

The SADC regional approach to SPS issues developed in this report necessitates some background knowledge. In this section, I introduce the reader to key SPS policy issues. I begin by outlining a rationale for a regional SPS approach. I continue by discussing the nature of SPS policy. SPS policy is multifaceted and affects a high number of SPS activities, the understanding of which will create an effective division of labor between the CC, other SADC bodies and individual

Member States. Finally, I address an issue that often causes confusion amongst stakeholders in SPS policy: Harmonization. The harmonization of domestic standards with their international equivalents is a cornerstone in some SPS capacity building efforts in the SADC region as well as elsewhere. However, the harmonization of SPS measures is an issue of controversy with which the reader should be familiar with. I explain how harmonization is best viewed as one of several alternative trade facilitation instruments and clarify the role of harmonization in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) of the World Trade Organization (WTO). Thereby, I reduce existing confusion about the legal status of the harmonization instrument in current SPS programs and open up possibilities of reducing trade barriers by the use of the most efficient trade facilitation instrument which may or may not be harmonization.

2.1 The rationale for a regional approach

SADC is uniquely placed to lead SPS policy targeting three inter-linked objectives:

- To promote regional trade through lowering SPS-related trade barriers while maintaining appropriate SPS protection levels;
- To advance extra-regional exports by supporting compliance with international markets' SPS requirements;
- To lead technical cooperation on SPS issues of regional importance. Regional SADC policy complements and supports national, regional (e.g. African-wide level or Tripartite level) and multilateral efforts.

Regional policy also works in unison with private sector efforts to address SPS issues.

The establishment and implementation of commonly accepted rules for using regional SPS measures is an example of the promotion of regional trade. SADC Member States may discuss the application of the common rules in the CC and remove trade barriers as problematic measures are identified and replaced by alternatives protecting against SPS hazards while allowing trade to flow freely.

Extra-regional exports may be advanced by the creation of common SADC-wide SPS infrastructure. Upgrading SPS infrastructure necessitates human, technical and financial resources often unavailable in individual Member States. Simultaneously, effective infrastructure, like testing laboratories, depends on a minimum number of clients in need of testing. While the demand for testing in an individual country often is too low to warrant laboratory investment, SADC may help create viable infrastructure by pooling the demand of all Member States.

Foot and Mouth Disease (FMD) typifies a SPS problem of regional importance calling for technical cooperation. FMD affects several beef producing SADC Member States and the eradication and control efforts in one Member State is greatly enhanced when neighboring countries act in unison.

The discussion of SPS policy and standards at the global level is another example of a common SADC issue calling for SADC-level technical cooperation.

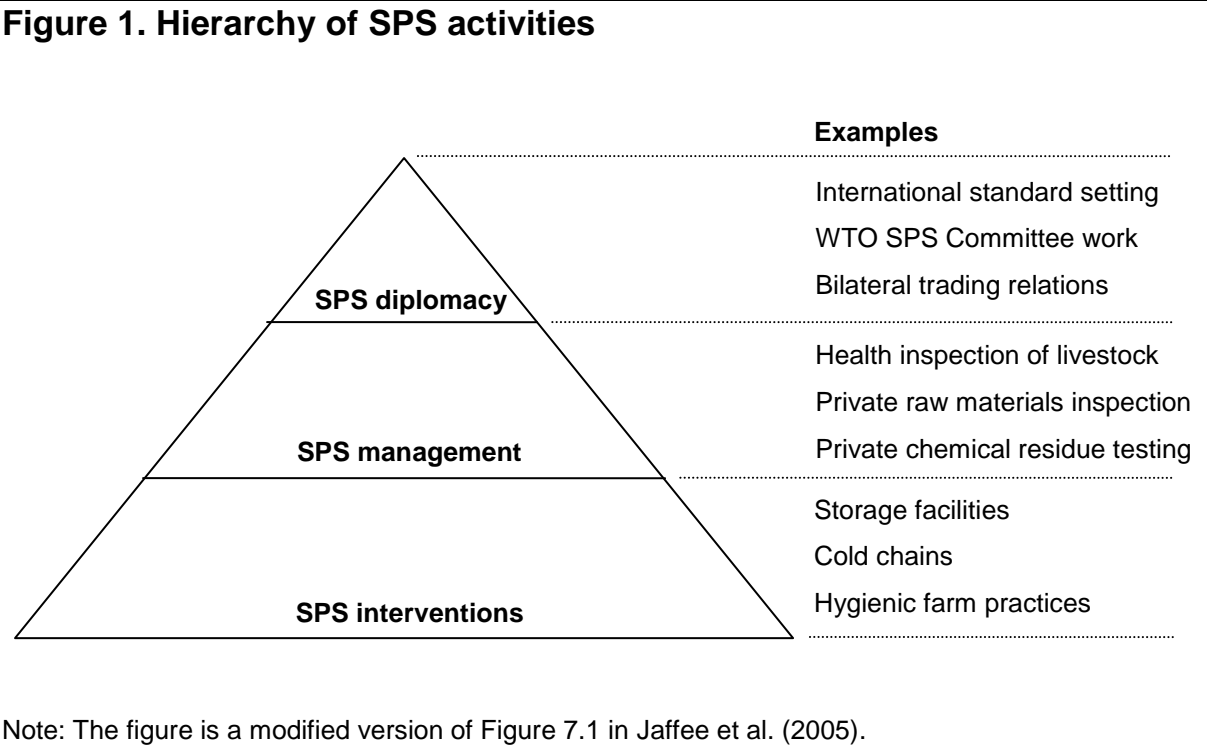
International SPS policy-making is marked by strong economies of scale. Effective representation in international organizations requires a high degree of expertise. An argument faces the best chance of success if advanced by coalitions rather than individual countries. SADC may position itself as a regional pool of expertise and a forum of national policy coordination.

2.2 The nature of SPS policy

While parts of the SADC Secretariat, like the SADC Livestock Sector Unit, has been active in SPS policy for years, the CC is a new actor in SPS policy in Southern Africa. The CC will need to complement rather than compete with ongoing SPS activities. In this sub-section, I study the nature of SPS issues and the division of work established at the multilateral level to provide lessons for how a similar division of work could be created in Southern Africa.

SPS activities are multifaceted and may be split into three broad groupings, as illustrated in Figure 1: SPS interventions, SPS management and SPS diplomacy. Firstly, SPS interventions are supply chain interventions used to control SPS issues throughout the supply chain. For example, hygienic practices at the farming stage greatly influence microbial contamination levels. In other words, the basic quality of the product is the result of supply chain interventions. As these interventions are undertaken by the actors in the supply chain, they are overwhelmingly of a private nature.

Secondly, SPS management of both a private and a governmental nature greatly influences SPS issues. Quality control throughout the supply chain typifies private SPS management. Government SPS management is exemplified by the establishment and enforcement of disease-free zones to contain FMD. Hence, SPS



management is primarily about public and private activities to enact, enforce and check compliance with SPS measures.

Thirdly, SPS diplomacy describes the ongoing discussions between nations on SPS regulation. Examples include regional and multilateral discussions of international SPS rules, like the SPS Agreement or the SADC SPS Annex, and the international setting of regional and national SPS measures.

The shape of the figure illustrates the relative importance of the three types of activities. SPS interventions are the base without which the two other layers would be meaningless. Safe food, for instance, is produced by farmers and traders and the additional layers of management and diplomacy are only relevant if the basic quality exists to begin with. This is illustrated when contemplating countries with poor hygienic conditions; they cannot increase international competitiveness by installing quality infrastructure, which is a key component of SPS management, but must correct the flaws at the source. Only after safe food is produced by farmers and kept safe by traders may quality infrastructure add value by assuring international buyers of the intrinsic qualities of the food.

Consequently, the layer of SPS diplomacy is strongly depending on effective layers of SPS management and SPS interventions undertaken by well functioning public and private sectors. SPS policy tends to be organized to ensure that each actor may play its role most effectively. Good organization is illustrated by the organization of SPS policy at the multilateral level. The SPS Agreement has created the Committee on Sanitary and Phytosanitary Measures (SPS Committee) to administer the agreement and to serve as the main multilateral trade body working in the SPS field. The SPS Committee limits its work to trade issues while a range of United Nations (UN) and other institutions deal with technical matters. The SPS Committee is a forum for discussion and consultation, primarily focused on bilateral trade concerns and key trade-related SPS issues. Furthermore, the Committee monitors issues of special concern, notably equivalence, technical assistance and harmonization. Hence, the SPS Committee, being a trade body, limits its activities to SPS diplomacy.

International standard setting, a part of SPS diplomacy not dealt with by the SPS Committee, is the responsibility of technical agencies, notably the Codex Alimentarius (Codex), the OIE and the International Plant Protection Convention (IPPC). Many multilateral organizations work on SPS management and are frequently involved in the design of SPS interventions in supply chain in developing countries in the form of technical assistance projects. These organizations UN technical agencies, notably the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), and the United Nations Industrial Development Organization (UNIDO) as well as the World Bank and the OIE. In addition, the Standards and Trade Development Facility (STDF) were created in 2001 by the FAO, OIE, WHO, WTO and the World Bank with the aim of improving technical assistance in SPS areas. The STDF works on project development, the mobilization of funds, and exchange of experience of SPS-related assistance. Limited grant financing is available to developing countries.

2.3 Choosing the right instrument for trade facilitation

The SPS Agreement has become the starting point of regional SPS policy since it entered into force in 1995, and rightly so. The SPS Agreement reaffirms and elaborates the rights of WTO Members to adopt and enforce measures to safeguard human, animal and plant health and life while establishing procedures for the use of SPS measures that minimizes any undesired negative impacts on trade. The SPS Agreement is a trade facilitation agreement which offers alternative instruments to Members including: harmonization, equivalence agreements and mutual recognition agreements.

Harmonization

The SPS Agreement offers alternative instruments that Members may apply to pursue trade facilitation. One of these instruments, harmonization, has become the subject of controversy mainly due to misunderstandings about the legal status of harmonization in the SPS Agreement. Indeed, many capacity building projects in the SPS area have assumed that the harmonization of domestic SPS measures with international standards is compulsory in the SPS Agreement. In many cases, this misunderstanding has led both governments and the donors that support them to view harmonization as a goal in itself rather than a means to an end. Yet, the end goal of the SPS Agreement is trade facilitation and harmonization is one of several alternative means that may be used to pursue this goal.

In the SPS Agreement, harmonization is an encouragement to “base standards on international ones”, not a mandatory requirement. The basic rule is that standards must be science-based which may be proved in one of two ways: (a) by applying international standards; (b) by a risk assessment. The emphasis put on harmonization in WTO law arises from the potential role it plays in the legal defense against trading partners challenging SPS measures. A WTO Member may avoid the burdensome requirement of having to provide a risk assessment by harmonizing with international standards. However, as will be discussed in the following paragraphs, the use of harmonization may be costly. Harmonization may not be the most efficient instrument or indeed be a feasible instrument.

The use of harmonization to pursue trade facilitation in developing countries is controversial because international standards are primarily developed for use in developed countries. Developing countries have different SPS problems and varying capacities to tackle these problems. For instance, international dairy standards focus on pasteurization, a technology which is very difficult to apply in smallholder dairying which is common in developing countries. Another example of the difficulty of applying international standards in developing countries arises when considering that many international standards assume the existence of a conformity assessment infrastructure, which may not exist in a developing country and may be established at high costs only.

Harmonization of developing country standards with their international equivalents is a poorly understood process which is different than harmonizing developed country standards with international ones. In developed countries, capacities are high and the domestic standards are often close to, if not exceeding, international ones. Harmonization is merely a question of making minor adjustments to make the

domestic standards equal to the international ones. In developing countries, international standards frequently represent revolutionary new approaches to SPS policy. Making domestic standards equal to the international ones is not enough. Considerable upgrading is necessary to make the new standards work in a developing country environment. In developing countries, harmonization with international standards therefore is a two-part process involving both the equalization of domestic standards with their international equivalents and the necessary upgrading allowing the standards to become the same. Many developing countries are not capable of implementing harmonized standards by backing them up with domestic enforcement. These countries lack the human, technical and financial resources to properly implement international standards. The recognition of upgrading as an integrated part of the harmonization process leads to both a legal and an economic discussion.

WTO law establishes that developing countries may only harmonize if they possess the resources necessary to undertake the upgrading part of harmonization. In Annex A (2), the SPS Agreement defines harmonization as “[t]he establishment, recognition and application of common sanitary and phytosanitary measures by different Members”. Without application, harmonization has not occurred. Therefore developing countries lacking implementation capacity are technically incapable of using the harmonization instrument to pursue trade facilitation.

The legal discussion clarifies that harmonization requires resources. The economics of the use of these resources must be worked out to allow decision-makers to choose whether or not harmonization is the best trade facilitation instrument available. The costs of upgrading conformity assessment infrastructure include both the direct use of human, technological and financial resources and the indirect effects of raising the costs of the products for which SPS measures are tightened to the level of international standards. Poor consumers, for instance, may not be able to afford food produced according to food safety standards created for developed countries.

Today, the consequences of ignoring the legal and economic discussions about using harmonization for trade facilitation can be observed in some developing countries: Poorly conceived capacity building programs have led to harmonization without implementation. Due to resource shortages, countries have ended up with a stringent system implemented in a piece meal fashion at a few selected border posts on a few selected products. Most trade takes place with no reference to the newly harmonized SPS measures which furthermore does not regulate the domestic market.

Paradoxically, the goal of capacity building programs set up to create harmonization is often to support compliance with the SPS Agreement while the poorly implemented SPS measures resulting from the programs may violate WTO law. The lack of domestic enforcement of standards that are being imposed on imported products is a violation of the National Treatment principle. On its face, the law will be non-discriminatory. In its application, however, and mainly for the reasons of lack of capacity indicated above, discrimination will occur. Possibly, stringent systems implemented in a piece meal fashion may even violate the Most Favored Nation principle inasmuch as products from different origins may be subject to discriminatory treatments depending on the port of entry chosen and/or on the

authority assessing the conformity of the imported products with the applicable SPS measures.

In conclusion, harmonization is a rather complex tool for trade facilitation for both legal and economic reasons. The 'one-size-fits-all' approach of harmonization cannot always address the differences between countries. The rationale behind harmonization is that if WTO Members adopt their SPS measures on the basis of standards that are shared, the possibility of applying measures which arbitrarily restrict trade or discriminate between countries or producers is greatly reduced. However, the benefits of achieving trade facilitation through harmonization must be weighed against the costs of operating with identical SPS measures across different countries, including the costs of upgrading often incurred in developing countries. The difficulties of harmonization were recognized by the creators of the SPS Agreement by stopping short of making harmonization mandatory and instead merely encouraging it while offering alternative trade facilitation instruments.

The difficulty of applying international standards has also been recognized by several regional trade agreements. ASEAN stipulates that Member States apply international standards as the first and preferred option, yet allow the modification of international standards for 'legitimate purposes'. This right is conditional on modified standards not being designed for protectionist purposes. The Southern Common Market (MERCOSUR) explicitly allows Member States to choose between harmonization with international or homemade regional standards. The North American Free Trade Agreement (NAFTA) does not explicitly mandate the harmonization of SPS measures but encourage the use of equivalence for the purpose of trade facilitation.

Equivalence

The SPS Agreement offers equivalence and mutual recognition as alternative instruments of trade facilitation. Equivalence is an agreement among trading partners to recognize that their respective standards, despite being different, achieve comparable results in terms of protection levels. Trade is thereby ongoing under the agreed assumption that standards despite being different have similar effects. The exporting country has the burden of objectively demonstrating that its measure achieves the importing Member's appropriate level of protection. The SPS Annex, despite using slightly different language, gives the same rights to SADC Member States.

Equivalence can be achieved in a variety of ways, which include formal agreements recognizing the equivalence of SPS measures, agreements on equivalence for specific products, or acceptance, on an *ad hoc* basis, of the equivalence of specific technical aspects of certain SPS measures. The numerous dimensions of equivalence have been recognized by the SPS Committee which in the Equivalence Decision established that equivalency may be declared and accepted for a specific measure or measures related to certain products or categories of products, or on a system-wide basis. Naturally, system-wide equivalence is significantly more complex to negotiate and achieve, while product-specific equivalence is less burdensome and would be the preferred avenue for many developing countries. Formal equivalence agreements covering countries' entire health and safety systems are rare even among developed countries, due to the highly technical

issues involved that render the negotiation of such agreements difficult and time-consuming.

Ad hoc acceptance of the equivalence of specific products or of certain aspects of SPS measures is becoming a practical alternative to formal agreements and often occurs at a technical level and is not necessarily reflected in any formal bilateral agreement. *Ad hoc* equivalence arrangements on specific technical matters play an important role in building confidence between laboratories and certifying authorities in different countries and usually represent a necessary step toward the conclusion of broader arrangements. They may also represent crucial learning experiences, since they imply an intensive exchange of information and close contact between relevant authorities.

Mutual Recognition

Mutual recognition is an agreement between two countries to accept certain aspects of each other's SPS measures. These aspects need not be the same (i.e. be harmonized) or equivalent (i.e. result in identical protection levels), yet both parties accept goods traded while regulated by these aspects. Often, such acceptance is used in situations where differences in national regulatory measures and objectives are considered to be less important than trade objectives. Historical trade is often built on such recognition, though it is normally not reflected in formal agreements. In

Box 1. Mutual recognition: The Case of Vietnamese Seafood

The case of Vietnam's fisheries and their exports to the EU is a success story. In this case, trade facilitation was pursued by means of a technical negotiation between these two WTO Members aimed at mutual recognition. The distinguishing factor here is the compliance of Vietnam's fishery exports with the applicable EU requirements and the recognition by the EU authorities of the reliability of Vietnam's authorities to certify such compliance for products coming from approved processing plants. Vietnam's ability to export quality products that meet EU standards (i.e., stricter standards than Vietnam's domestic standards) has been obtained not through harmonization of Vietnam's standards to the internationally recognized ones, but by meeting EU standards and negotiating mutual recognition.

Domestic fishery production, to a large degree, is still based on domestic lower standards. This is evident in domestic supermarkets where occasionally EU quality ('export quality') fishery products are being sold, at a premium over domestic produce, which is still safe for consumption, but considered sub-standard. This situation is deemed to best match Vietnam's developmental needs. The Vietnamese solution takes into account Vietnam's difficulties of enforcing strict standards domestically while allowing the beneficial effect of a progressive (export-driven) increase of domestic quality through the upgrading of processing techniques, the application of stricter standards and the appreciation and affordability of better quality by local consumers to occur. In this case, trade facilitation through mutual recognition appears to have been more successful than harmonization in fulfilling the key objectives of standardization: consumer safety, better marketability, higher quality, sustainable development and greater trading opportunities.

Source: Jensen and Vergano (2009).

such cases trade continues until a problem occurs. Consequently, mutual recognition is an alternative to equivalence and considered less demanding to negotiate and, therefore, often a more effective instrument of trade facilitation. The layman’s view on harmonization, equivalence and mutual recognition is that harmonization implies that measures are the same, equivalence means that the outcome of the measures are the same and mutual recognition necessitates that existing differences between measures in formulation and outcome are regarded as unimportant. Typically, under Mutual Recognition Agreements (MRAs), governments agree to recognize the results of each other’s testing, inspection, SPS certification and other aspects of conformity assessment. Box 1 illustrates a case of a mutual recognition agreement.

The feasibility of establishing mutual recognition will be greatest between countries which have broadly similar attitudes to the appropriate level of protection against health risks, and between countries which have broadly similar capabilities in relation to the monitoring and enforcement of requirements. Mutual recognition is also more likely to be established between countries that are in some kind of political or legal association with each other. Often such countries will be neighbors with a long tradition of trading food and other SPS-regulated products.

3. ASEAN and EAC approaches to SPS policy

3.1 Introduction

This section discusses what SADC may learn from the efforts of other regional associations to develop regional SPS policy. The section elaborates on how ASEAN and the EAC have managed regional SPS issues and discusses the lessons for the development of regional approaches to SPS issues in SADC.

3.2 The Association of South East Asian Nations

Although dating from the 1960s, ASEAN reached its present form in 2007 with the adoption of the ASEAN Charter by its ten Member States, namely Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. The Member States have a total population of 570 million inhabitants and, as can be seen from Table 1, include a diverse group of low, middle and high income countries of highly uneven sizes.

ASEAN uses a variety of different approaches to regional SPS policy including:

- Work on individual SPS issues, like food safety standards

Table 1. ASEAN Member Countries

Member country	Population (mio.)	GNI p.c. (USD)
Brunei Darussalam	0,4	26,325
Cambodia	15	650
Indonesia	230	2,230
Laos PDR	6	880
Malaysia	27	7,230
Myanmar	50	< 995*
Philippines	92	1,790
Singapore	5	37,220
Thailand	68	3,760
Vietnam	87	1,010

Note: * The GNI p.c. for Myanmar is unknown but estimated to be below USD 995.
Source: World Bank (2010a) and (2010b).

harmonization, joint food safety policy, and MRAs;

- Work on trade issues with SPS implications, notably the elimination of Non-Tariff Barriers (NTBs);
- Work and resource sharing through the establishment of joint infrastructure, the exploitation of specialization, joint needs identification and collaboration with donors on projects of regional interest.

While important initiatives exist on animal and plant health, for reasons of brevity, I focus on ASEAN activities on food safety. The complexity of ASEAN food safety work is illustrated by the many diverse institutions involved. At the highest level, cooperation in food safety is undertaken by the ASEAN Meeting on Agriculture and Forestry (AMAF), the ASEAN Economic Ministers Meeting (AEM), and the ASEAN Health Ministers Meeting (AHMM). The cooperation focuses on coordinating and implementing food safety in the region and balancing the concerns of food safety with other social objectives like food security and market access. Box 2 gives an overview of ASEAN cooperation in food safety.

ASEAN uses the harmonization of food safety standards as a tool both to upgrade food safety levels and to facilitate regional trade. It has established several tracks through which harmonization is pursued. One of these is the ASEAN Food Safety Standards Harmonization Working Group established in 2001. The Working Group meets annually. During the annual meetings workshops are held to discuss topics of interests to the harmonization process. For example, the Working Group has

Box 2. ASEAN cooperation in food safety

ASEAN Cooperation in Food and Agriculture (under AMAF)

Food handling: ASEAN General Guidelines on the Preparation and Handling of Halal Food.

Crops: Harmonization of quarantine procedures & Maximum Residue Limits (MRLs) for Pesticides Residues.

Bio-technology: Guidelines on the Risk Assessment of Agriculture related Genetically Modified Organisms and ASEAN Genetically Modified Food Testing Network.

Livestock: Production of manuals and guidance documents for animal vaccination.

Fisheries: Harmonizing of testing and quarantine procedures.

Codex Alimentarius: Formulate common positions in Codex and harmonize regulatory standards in ASEAN using Codex standards as appropriate.

Information Sharing: ASEAN Rapid Alert System for Food and Feed; ASEAN Food Safety Network Website.

ASEAN Cooperation in Standards, Conformance and Trade (under AEM)

MRA: Implementation of the ASEAN Framework Agreement on Mutual Recognition Arrangements.

Standards: Harmonization of standards; enhancement of standards and conformity assessment infrastructure in Member States; and transparency of standards, technical regulations and conformity assessment regimes in the region.

ASEAN Cooperation in Health (under AHMM)

ASEAN Food Safety Improvement Plan: Address the activities necessary to improve food safety within the ASEAN region by cooperation efforts including legislation, laboratories, monitoring and surveillance, implementation of food safety systems, food inspection and certification, education and training, information sharing, research and development, international participation, and consumer participation in food safety.

discussed the facilitation of the information exchange among regulators, the sharing of mechanisms to improve food safety standards, and the harmonization with Codex and regional standards. Policy action often emerges from the annual meetings. Harmonized standards for food additives typify this policy work. During the first three workshops the Working Group agreed upon the use of the Codex General Standards for Food Additives as the basis for harmonization. To facilitate harmonization, an online database comparing ASEAN national standards with Codex standards was created.

Another track towards harmonization was used by the Philippines. The country submitted a project proposal to the ASEAN Sectoral Working Group on Crops (ASWGC) for the establishment of the Task Force on ASEAN Standards for Horticultural Produce and Other Food Crops. The ASWGC, seeing enough support on the creation of the Task Force, recommended the establishment of the Task Force to AMAF which makes the final decision. The Task Force has twin objectives: Firstly, to assure quality and enhance the competitiveness of ASEAN horticultural produce, and, secondly, to formulate standards for horticultural produce and to ensure regional standards are harmonized with Codex standards, if available. The initiative covers food safety standards, product standards, labeling requirements and guidelines on horticultural and post-production practices. As the lead country, the Philippines report to the meeting of the ASWGC. All ASEAN Member States participate in the Task Force that meets once a year. The process of harmonization is initiated by the elaboration of a proposal by an ASEAN Member State to be discussed in the Task Force. The Task Force elaborates a draft that is submitted to the ASWGC. In turn, the ASWGC decides whether to endorse the draft and submit it to the AMAF for adoption. The Task Force applies five criteria for prioritizing harmonization work including consumer protection from health hazards and fraudulent practices, volume of production and consumption, volume and pattern in international trade, amenability of the commodity to standardization, and work already undertaken by international organizations. By March 2011, product standards have been adopted for mango, pineapple, durian, papaya, pummel, rambutan, guava, lansium, mandarin, mangosteen, watermelon, banana, garlic, shallot, young coconut, cucumber, jackfruit, melon, and salacca fruit.

The Task Force on Development of Mutual Recognition Agreement jointly chaired by Malaysia and Thailand promotes mutual recognition of conformity assessment procedures. The issue is still under discussion in ASEAN working groups such as the Prepared Foodstuff Product Working Group. The ultimate goal of the standards harmonization process and the work on mutual recognition is to ensure a product produced and tested according to a standard in one Member State is accepted throughout ASEAN.

The ASEAN Expert Group on Food Safety under AHMM develops a regional food safety policy. The regional policy should strengthen the food control system from farm to table, increase the level of credibility and competency of regulatory authorities and enhance industry and consumer awareness about and participation in food safety. The regional food safety policy aims to harmonize more aspects of Member State food policy than the standards currently waiting to be harmonized. Other aspects include risk assessment procedures and food control practices.

Furthermore, the regional policy promotes resource and work sharing. The Expert Group creates a database of capacity building needs, identify priorities and select lead countries to coordinate future projects.

In response to the complex nature of food safety in ASEAN and the resulting multiplication of regional and national bodies working on food safety aspects, ASEAN has recently created the ASEAN Coordinating Committee on Food Safety. The role of the Coordinating Committee is to formulate and review the ASEAN food safety policy to ensure compatibility with WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the SPS Agreement; to facilitate and monitor the implementation of the ASEAN food safety policy effectively at the national and regional levels; to coordinate the work and responsibilities of the various ASEAN bodies related to food safety to avoid duplication of efforts; to facilitate the process of economic integration in the food sector through the implementation of mutual recognition among national food control systems; to facilitate compliance with international food safety requirements of ASEAN exports; and to promote cooperation on food safety matters with other international and regional organizations.

ASEAN sharing of resources and the promotion of common SPS infrastructure is typified by the establishment of the ASEAN Reference Laboratories Network. The network covers microbiology (Vietnam), pesticide residues (Thailand), mycotoxins (Singapore), heavy metals and trace elements (Thailand), veterinary drug residues (Thailand), and genetically modified organisms (Malaysia).

While all the above discussed issues are primarily SPS issues for which agricultural and health ministries are responsible, the following two issues are trade issues with implications for SPS management. The administrative responsibilities for such issues tend to belong to ministries of trade and economics. The elimination of NTBs is a trade issue that has implications for SPS management as SPS measures may be misused to hinder trade. The ASEAN Framework Agreement for the Integration of Priority Sectors works to eliminate NTBs by developing integration protocols for 11 priority sectors including agro-based products. The protocol on the integration of agro-based products directs the ASEAN Consultative Committee on Standards and Quality (ACCSQ) to undertake the following tasks:

- Accelerate the implementation/ development of sectoral MRAs, as appropriate;
- Encourage domestic regulators to recognize test reports issued by testing laboratories which are already accredited by internationally recognized National Accreditation Bodies in ASEAN;
- Set clear targets and schedules for harmonization of standards, whenever required; where international standards are not available, and when requested by industry, align national standards among Member States;
- Harmonize and/or develop, wherever appropriate, technical regulations for national application;
- Ensure compliance with the requirements, rights and obligations of the WTO TBT and SPS Agreements;

- Explore development of ASEAN policy on standards and conformity assessment to further advance the creation of the ASEAN Economic Community.

An additional trade policy objective is targeted by the Agreement to Establish and Implement the ASEAN Single Window. The Single Window primarily simplifies customs procedures, yet the importance of SPS border procedures is highlighted by a recent report. The report points out the potential to speed up border procedures by involving other government agencies than Customs in the electronic processing of cargo clearance documentation primarily for processing agriculture- and health-related requirements (USAID & US-ASEAN Business Council 2010).

3.3 The East African Community

The EAC, consisting of Burundi, Kenya, Rwanda, Tanzania and Uganda, is a much smaller entity than ASEAN. The EAC consists of only five low income countries with an aggregate population of 135 million as shown in table 2. The aggregate ASEAN economy is about 20 times larger than the EAC one, due to ASEAN having four times the population and five times the income per capita. The EAC has established a Customs Union and aims for the creation of a Single Market. Regional SPS management is crucial to achieve three objectives: (i) the efficient management of this predominantly rural region's large food and agricultural resources and the modernization of its agricultural practices; (ii) the protection of consumer health; and (iii) the operation of an efficient regional trade regime allowing for legitimate SPS measures while preventing SPS measures being used as protectionist tools.

Table 2. EAC Member Countries

Member country	Population (mio.)	GNI p.c. (USD)
Burundi	8	150
Kenya	40	770
Rwanda	10	460
Tanzania	44	500*
Uganda	33	460

Note: * Data refer to mainland Tanzania only.
Source: World Bank (2010a).

Regional trade of food and agricultural products is radically lower in the EAC than in ASEAN. Differences of opinion exist about why intra-EAC trade is very low. Some observers argue that low regional trade is a sign of regional trade barriers, predominantly NTBs after the establishment of the Customs Union. Other observers explain low intra-EAC trade by identical demand patterns and production capacities across Member States. Identical rainfall patterns, for example, prevent producers from exploiting seasonal surpluses and deficits in agricultural production.

As ASEAN, the EAC uses a variety of different approaches to regional SPS management. In contrast to ASEAN, the activities in the EAC are fewer and often less intensive, presumably due to the smaller size of the EAC economy and the more recent creation of the regional association. The approaches include:

- Work on individual SPS issues, for example the harmonization of food safety standards and the management of transboundary animal diseases;
- Work on trade issues with SPS implications, notably the elimination of NTBs;

- Resource sharing including joint needs identification and collaboration with donors on projects of regional interest.

Contrary to ASEAN, the EAC focuses less on developing the Community as a platform for the establishment of joint regional infrastructures.

The harmonization of standards is a major work area in the EAC regional SPS management. Article 81 of the Treaty of the Establishment of the East African Community deals with standardization, quality assurance, metrology and testing. The article is implemented by the Protocol on Standardization, Quality Assurance, Metrology and Testing from 2001 and the East African Community Standardization, Quality Assurance, Metrology and Testing (SQMT) Act from 2006. The SQMT Act established the East African Standards Committee (EASC), which is a sectoral committee consisting of, among others, the heads of the Member States' national bureaus of standards. The EASC is responsible for harmonizing regional SQMT activities and building a client oriented infrastructure complying with international standards. Technical sub-committees are established for, respectively, standards, metrology, quality assurance and accreditation, and testing.

Regional East African standards are prepared by the EASC. The EASC works to bring together the Member States' national bureaus of standards together with national metrology institutes, the legal metrology organizations, representatives of the private sector testing laboratories, certification organizations and representatives of national manufacturing and trading associations and consumer organizations. However, difficulties have often arisen in bringing together all stakeholders in particular private sector representatives. More than 1000 EAC standards have been developed. Only some of these standards are relevant for SPS issues. While the number of EAC standards may appear large, only a fraction of the region's demand for standards may currently be met by EAC standards. In comparison, Kenya is reported to have around 5,000 national standards, while the equivalent figures for, respectively, Tanzania, Uganda, Rwanda and Burundi are 2000, 1000, 500 and 100 (East African Business Council 2011). Furthermore, whether the standards chosen for regional harmonization are actually in use by either the private sector or regulatory authorities is difficult to tell.

The identification of areas ripe for harmonization is a difficult issue. Donors and international organizations appear to have played a dominant role in the identification process in the EAC. Examples of donor supported projects include the USAID "Competitiveness and Trade Expansion Program" (COMPETE) (supporting harmonization for cereals and pulses); the "EAC Capacity Building Project in Agro-Industry" (supporting harmonization in the area of fruits and vegetables, meat and meat products, poultry and poultry products, and fish and fisheries products) financed by the Norwegian Agency for Development Cooperation (NORAD) and implemented by UNIDO; and a project by the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA) (providing assistance in facilitating national and regional consultations during the development of EAC standards on cassava and potato products).

Successful harmonization depends on the degree to which the new harmonized standards meet the demands of the users of quality services. Harmonization may never become an end in itself but must always be a means to an end. The users of

harmonization may be either private sector or, when issues like health and safety are in play, government agencies acting on behalf of the general public. Two cases of harmonization efforts in the EAC illustrate the power and the pitfalls of harmonization.

In 1999, suspected fish poisoning led the EU to ban imports of fish from Lake Victoria. The three riparian countries, in particular Tanzania and Uganda, suffered large losses of around 50 percent of the value of Lake Victoria fish exports. The ban was eventually lifted and further market access to the US achieved after upgrading the fish safety system and harmonizing regulatory frameworks with the EU system. Harmonization and other regulatory improvements were complimented by improvements of the Lake Victoria fish supply chain undertaking in collaboration with donors such as UNIDO, the WHO, FAO and the UK Department for International Development (DFID). Fish inspection services were improved and a new quality management system known as the Hazard Analysis and Critical Control Points (HACCP) approach introduced at the factory level. Success was achieved because harmonization responded to a clear market demand from the private sector and regulatory demands from the EU. Furthermore, harmonization did not stand alone. It was coupled with quality upgrading supported by intensive interventions throughout the supply chain.

Recently adopted harmonized EAC dairy standards were less successful (Jensen and Keyser 2010). The rationale of harmonized dairy standards is to safeguard the consumer against health hazards and to avoid that differing national standards are used as NTBs. The new EAC dairy standards are based on the Codex Alimentarius. However, this choice of the basis of harmonization is problematic. Codex standards are developed for Western countries. Applying Codex standards in East Africa assumes that consumer incomes and production infrastructures are equivalent to Western levels. Obviously, EAC incomes are much lower than Western ones and the production and trading infrastructures weaker. Furthermore, consumers have found an alternative to reducing health hazards not recognized in the new harmonized EAC standards. EAC consumers almost exclusively consume raw milk after boiling. Boiling reduces the otherwise high bacteria levels found in East African milk to safe levels. The East African consumption habit removes the rationale for establishing harmonized EAC dairy standards for raw milk, a point not recognized during the harmonization process because the Codex standards were developed for Western countries that consume fresh raw milk. The harmonized EAC dairy standards set too high targets for dairy quality and remain unimplemented to date. The failure of harmonized EAC dairy standards is caused by the lack of a clear demand from dairy stakeholders and the reliance of models for quality management that proved inappropriate in the local context.

As in ASEAN, the EAC has established a process for identifying and removing NTBs. The removal of NTBs is a clear trade policy objective of the EAC. In the EAC Protocol, Article 12(1) stipulates that Member States must agree to eliminate remaining NTBs and not to impose new ones. Moreover, Article 13(2) requires that each Member State designs a mechanism to identify and eliminate NTBs. National Monitoring Committees have been established in all Member States except Burundi. Yet, the implementation of the commitments to identify and remove NTBs has proven difficult. The EAC and the National Monitoring Committees have received

substantial donor support to identify potential NTBs. The identification efforts were based on surveys and industry studies done by donor-funded consultants. The EAC and the donors supporting it have used the recent volume of analysis in an attempt to kick start the NTB removal process. However, the efforts have been short-lived and a more permanent NTB identification and monitoring process still needs to be established. A permanent process would have to include the views of the private sector to be effective. Furthermore, such a process would depend on strong analytical capacities in the relevant EAC and national bodies charged with NTB removal¹.

An additional trade policy instrument is the mutual recognition of national quality marks. National quality marks are used to ensure products comply with national regulations. Dairy processors, for example, are required to register with their national bureau of standards for the purpose of obtaining the national quality mark. EAC agreements stipulate that each country's quality mark should be accepted by all other Member States as sufficient proof that the dairy plant and dairy product conform to regional health and safety standards. A computer system has been developed that allows border inspectors to check whether individual EAC products have been awarded the quality mark or not.

In practice, however, the principle of mutual recognition of national quality marks is not always applied to dairy and additional laboratory analysis is routinely carried out as a condition for regional trade. Until recently, the Ugandan Dairy Development Authority required dairy importers to send samples of every export batch to the Ugandan National Bureau of Standards. Regional cooperation at the industry level eventually helped ease the problem. In December 2009, the Ugandan Dairy Development Authority issued a letter saying that it would no longer require every foreign consignment to be analyzed in Uganda. The essence of the letter was that dairy exporters would have the option of carrying out the laboratory analysis in the country of origin or in Uganda. This change was a result of a recent meeting of the newly created East African Dairy Regulatory Authorities Council (EADRAC). EADRAC is a forum for cooperation between the dairy authorities of the region. While the new policy is a clear step in the right direction towards mutual recognition, the new policy still fall short of the agreed EAC principle whereby each country's national quality mark should be accepted as proof of conformity with regional standards.

3.4 Lessons for developing regional SPS approaches

Despite their differences, ASEAN and the EAC have met a number of common challenges in their development of regional SPS approaches. SADC would benefit from studying the ASEAN and EAC experiences. However, SADC Member States have different food safety, animal and plant health systems and different traditions of regulation. ASEAN and EAC experiences should inspire SADC approaches, yet SADC approaches must be tailor-made to suit the contexts of its Member States. In this section, I identify three crucial issues in regional SPS management and discuss

¹ An online monitoring system for the area of the Tripartite Agreement between the EAC, SADC and the Common Market for Eastern and Southern Africa (COMESA) already exists, see www.tradebarriers.org.

how they may be addressed.

Harmonization has proven to be a difficult instrument to use for trade facilitation. Yet, both ASEAN and the EAC have focused on using the harmonization instrument. Where problems have been met, they have been caused by the unexpected difficulties of upgrading local standards to international ones as illustrated by the East Africa dairy case story.

Decision-makers should carefully consider whether the demand for standards warrants both equalization and upgrading standards. The demand for standards comes from the region's consumers and its private sector. The evaluation of the nature and extend of the demand for standards could reveal that while a demand for common standards exist, the local context is unsuited for international standards. In such cases, regional standards could be developed that are different than the international ones or an alternative trade facilitation instrument like equivalence or mutual recognition could be more effective.

The case of EAC dairy standards illustrated the risks of premature upgrading. The new harmonized EAC dairy standards do not improve food safety as they are not used by the region's consumers and its private sector but the new standards may be used to block trade as few EAC dairy products are in compliance.

The understanding of the wider social and economic implications of new SPS measures is sometimes lacking. Regulatory processes often suffer from a lack of consultation and insufficient evidence of the wider impacts of new measures. SPS policy in regional associations tends to be developed in closed fora. Often the initiative for regulatory changes comes from within a small number of regulators and donors working within the SPS field. Too often, too little consultation takes place with end users, such as consumers and the private sector, and with other parts of the bureaucracy, like Ministries of Trade. The end result is that the wider economic and social impacts are not known prior to the implementation of a new regulation.

In developed countries and in some middle income countries, Regulatory Impact Analysis (RIA) is used to assess the likely economic and social impact of a proposed regulation. RIA is not a single technique, but a family of diverse instruments that can be developed to suit local contexts and problems. Donors could potentially provide technical assistance to develop capacity to undertake RIAs. Similarly, a regional association could establish networks for the exchange of experiences between the Member States. In regional associations with a diverse membership, some Member States have often developed approaches that could be developed and transferred to less experienced Member States.

Regional associations constitute an opportunity to exploit economies of scale in SPS policy. Regional associations struggle with huge demands and few resources. Simultaneously, the existing SPS regulatory systems are often basic and only sparsely implemented and food safety, animal and plant health problems are common. Three types of economies of scale exist.

- Firstly, the establishment of quality infrastructure like laboratories and accreditation services is costly and successful only if met by a critical mass of demand. Many developing countries are too small to justify the establishment of

specialized services but the pooling of demand by the Member States may soften this constraint. ASEAN is successfully exploiting regional economies of scale in SPS management, for instance in the establishment of regional reference laboratories.

- Secondly, the development of regulatory structures, processes and methodologies are characterized by economies of scale. The development of RIA appropriate for local contexts exemplifies how the pooling of regional resources may improve regulation in individual Member States.
- Thirdly, many SPS issues are truly transboundary in nature. Regional approaches to animal and plant health management reduce the costs and increase the effectiveness of invasive diseases and pests.

4. Pressing issues for the CC

The SPS Annex to the SADC Protocol on Trade was adopted in 2008 and the formation of the CC is the first step towards implementing the SPS Annex. The CC began its work at the inaugural meeting during 21-22 July, 2011. The CC is the caretaker of the SPS Annex and its formation marks the beginning of trade-oriented SPS work in SADC.

The CC faces two major short-term challenges, which I will discuss in turn in this section. Firstly, the Member States must identify what needs to be done to implement the SPS Annex. Secondly, the CC must organize its work to allow it to focus on its core functions and to avoid the duplication of work with other SADC bodies already undertaking work in the SPS area and with Member State SPS efforts. Both challenges need to be solved rapidly for the CC to operate effectively.

An additional challenge to the effectiveness of the work of the CC is constituted by the formation of SPS work within the framework of the Tripartite Agreement between the EAC, SADC and the Common Market for Eastern and Southern Africa (COMESA). The Tripartite SPS work is still in the design stages, however, this work will likely include overlapping mandates in key areas such as harmonization. This section will focus on the implementation needs of the SPS Annex and the risk of duplicating work within SADC, however the CC needs to watch the rapidly developing Tripartite Agreement to avoid costly overlaps between SADC structures and the Tripartite Agreement.

4.1 Implementation needs

The implementation commitments of the SPS Annex may be either hard or soft. Mandatory commitments are termed hard. These are few. A Member State may comply with the SPS Annex primarily by observing the rules on transparency. However, a larger number of commitments exist where the legal formulation makes Member State compliance optional. Such commitments are termed soft. While soft, these commitments remain important. The ability of a Member State to derive benefits from the SPS Annex increases with its ability to implement the soft commitments. For example, the SPS Annex bases equivalence discussions and other SPS policy discussions on risk assessment methodologies requiring a high degree of technical capacity present in limited supply in most Member States. The

SPS Annex does not stipulate a minimum level of investment in risk assessment techniques, yet the ability to derive benefits in equivalence discussions hinges on risk assessment capacity. As the SPS Annex merely provides incentives to invest in risk assessment and leaves Member States to make their own choices of the optimal investment level, the commitment to develop risk assessment is soft. Table 3 focuses on the implementation needs arising from the SPS Annex distinguishing between hard and soft commitments.

Hard commitments establish the transparency rules of the SPS Annex. Member State compliance is relatively easy although well functioning transparency institutions may require considerable training and good communications between government authorities and the private sector. Intra-government communication is a necessity to make the National Committee aware of changes in SPS measures which originates from many different branches of the government. Naturally, the private sector is the beneficiary of incoming notifications from other Member States. The major trade facilitating effect of the transparency clauses is to make the private actors aware of changes in market access and allow them to respond, either by adjusting their quality management or through SPS diplomacy if new measures are deemed to be unjustifiable. For this system to work, the National Committee must have good understanding of private sector concerns and maintain good communications with the business community.

The strict implementation of the notification procedures would pose a significant burden on the SADC Secretariat receiving and circulating the notifications. The Secretariat would have to establish an information management system to handle the numerous notifications. However, the lessons from the SPS Agreement indicate that transparency rules take many years to implement. Currently, most Member States do not notify SPS measures to the WTO system. The work burden of Member States and the SADC Secretariat alike would be lessened considerable if joint procedures were established for notification to the WTO and SADC.

The SPS Annex contains many soft obligations termed as encouragements or otherwise worded to avoid legally binding language. Soft commitments provide flexibility to Member States by placing priority-making at the national level. The implementation of soft commitments may be costly. For example, participation in equivalence (Article 7(1)) is meaningless if a country does not possess the human, technical and financial resources necessary to discuss SPS measures in a scientific way and to undertake analysis to support arguments. Similarly, participation in international organizations and in the CC itself requires human, technical and financial resources. The advantage of the voluntary soft commitments is that each Member State may decide which level of use of the SPS Annex is suited to its resources and SPS concerns. The implementation needs for soft commitments are discussed further in Table 3.

A recent WTO report raises criticism of the SPS Annex claiming that several clauses of the Annex are incompatible with WTO law. The SPS Agreement of the WTO is the global framework for regulating trade aspects of SPS policy. The likely existence of incompatibilities with the SPS Agreement poses the question of whether revising the SPS Annex should be part of the implementation process. Naturally, the answer depends on the costs of revision, the severity of

incompatibilities and the availability of alternatives to revising the SPS Annex. Box 3 presents this critique.

Table 3. SADC SPS Annex implementation needs

Art.	Commitment	Discussion
Hard commitments		
10(1-2) App. A	Member States must notify SPS measures and establish Enquiry Points	Notification of SPS measure require good overview of national SPS legislation and awareness of deviations from international standards, guidelines or recommendations currently unavailable in many Member States
10(3) App. A	SADC Secretariat must receive and circulate notifications	Requires a dedicated SPS desk at the SADC Secretariat or the sharing of personnel with other SADC bodies
14(2)	Member States shall establish National Committees on SPS measures	Requires personnel dedicated to the task
Soft commitments		
6(1)	Member States are encouraged to work towards harmonization of mandatory requirements	The efficient use of harmonization requires considerable technical and policy-making capacity
6(2)	Member States are encouraged to participate in relevant international organizations	Effective participation requires considerable human, technical and financial capacity
7(1)	Member States are encouraged to conduct talks on equivalence Member States “shall to the extent practicable” (Art. 7(1)), yet “an importing Member State shall accept a sanitary or phytosanitary measures adopted or maintained by an exporting Member State as equivalent...” (Art. 7 (2a)) Furthermore, consider the implementation need to adopt guidelines on equivalence (potentially simply by adopting WTO SPS Committee guidelines)	Equivalence discussions require human and technical capacity
7(2ab) 8(1-2) 9(7)	Member States need the ability to use risk assessment techniques and scientific knowledge in equivalence discussions, in SPS policy in general, and in the evaluation of pest and disease free areas	Risk assessment techniques requires considerable human, technical, and financial resources
9(4)	Member States need the ability to determine pest and disease free areas	The determination of pest and disease free areas requires considerable human, technical, and financial resources
11(3-4)	Member States are encouraged to adopt guidelines set out in the SADC Seed import/export procedures manual	May require technical assistance
11(5)	Member States shall cooperate on a product trace back system for non-complying import consignments	May require technical assistance
14(1)	Member States are represented in the SADC SPS CC	Effective representation requires a certain level of well functioning national SPS policy and coordination

Box 3. Discrepancies between the SPS Agreement and the SPS Annex

Preamble, para.5: This paragraph reflects the words of the SADC Protocol on Trade which addresses exclusively the issue of international standards - "Member States shall base their SPS measures on international standards" - and the issue of recognition of equivalence of SPS measures - "...in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures". This formulation in the SADC Protocol on Trade seems to have been interpreted in a restrictive manner in the drafting of the SPS Annex. A careful reading of the Annex shows that key notions of the SPS Agreement, such as non-discrimination, nonarbitrariness, disguised restrictions on trade, to mention a few, are not at all addressed.

The first paragraph of Article 5 of the SPS Annex (Basic Rights and Obligations) reads as follows: "Member States affirm their existing rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures". However:

- Article 1, para.8: This paragraph deals with relevant international standards, guidelines and recommendations and simply cuts and pastes from the SPS Agreement, with one exception. Whereas, as mentioned above, the SPS Agreement leaves the identification of other (standard setting) relevant organizations to the discretion of the WTO SPS Committee, the SPS Annex replaces the SPS Committee of the WTO by the CC of SADC. This change carries the potential to limit WTO Members rights and obligations under the SPS Agreement.
- Article 4, para.2: This paragraph is difficult to understand, especially in light of article 3 of the SPS Annex, which states that "[T]his annex applies to *all* sanitary and phytosanitary measures of a Member State that may, directly or indirectly, affect trade between the Member States" (emphasis added). Which are these measures "... not within the scope of this Annex" mentioned in Article 4, para.2, if article 3 refers to *all* SPS measures?
- Article 7, para.1: This paragraph makes reference to "...guidelines to be developed by the SADC SPS Coordinating Committee...". It is worth noting that the SPS Committee has developed guidelines on equivalence (WTO document G/SPS/19/Rev.2).
- Article 8, para.3: The last sentence of paragraph 3 of this article is a re-writing of Article 5.7 of the SPS Agreement. Article 5.7 of the SPS Agreement is, as noted above, a very carefully negotiated and crafted text and states that - when adopting provisional SPS measures when scientific evidence is insufficient "... Members shall *seek to obtain the additional information* necessary for a more objective assessment of risk...". The SPS Annex seems to invert the burden of proof when replacing these words by "...The Member State shall (...) after information sufficient to complete the assessment *is presented to it*, complete its assessment...". This wording suggests that the Member imposing the measure can simply leave it in place and do nothing to gather new information, i.e. the opposite of Article 5.7 in the SPS Agreement.
- Article 10 and Appendix A: SPS Annex requirements on transparency appear to be confusing and unnecessarily duplicate the SPS Agreement requirements. These may eventually lead to the multiplication of unnecessary administrative layers and bodies.
- Article 13: This Article refers to dispute settlement. However, there is no reference to the WTO Dispute Settlement Procedures, which are binding on all WTO Members. The right of SADC Member States who are also WTO Members to revert to the WTO procedures to resolve their trade problems should be fully preserved, and not weakened.

Source: Magalhães, J. (2010).

The costs of even minor revisions are high because amending the SPS Annex requires Ministerial approval. The high costs of revising the SPS Annex and the already heavily loaded agenda of SADC Ministerial meetings caution against suggesting amendments unless the original text cause severe problems. Most of the examples given in Box 3 discuss the lack of clarity of the legal language used and possibly minor infringements of WTO Members' rights under the SPS Agreement. However, at least one major problem may exist. The SPS Annex, Article 8(3) creates more leeway for the introduction of temporary SPS measures than what is stipulated by the SPS Agreement. In the SPS Agreement the party

introducing a temporary measure must in due time develop the necessary scientific evidence on which to base the measure or remove it. The SPS Annex shifts the burden of evidence to the complaining Member State, allowing the Member State introducing a temporary measure to keep it as long as the complainant has not provided scientific evidence to prove the measure is unfounded. This formulation severely diminishes the rights of WTO Member States. The SPS Agreement is clearly the main source of inspiration for the SPS Annex. The formulation of the rule on temporary measures in the SPS Annex may result from a careless rewriting of the SPS Agreement or it may result from a deliberate attempt to widen the scope for using SPS measures as protectionist instruments.

To date no complaints have been launched formally or informally by WTO Members against provisions in the SPS Annex. Furthermore, neither the SADC Secretariat nor individual SADC Members appear to be concerned about the current formulation of the SPS Annex. Revising the SPS Annex therefore appears premature given the high costs of the revision process. As an alternative to revising the SPS Annex, the CC could consider issuing interpretations (to the extent allowed under SADC rules) of the SPS Annex that addresses potential incompatibilities. This procedure would be a less resource-intensive way of addressing the issue of WTO compatibility than making changes in the SPS Annex.

4.2 Organization of work

The trade work on SPS issues in SADC lacks focus and appears less organized than in other regional and multilateral settings. The CC plays a role in the administration of the SPS Annex similar to the role played by the SPS Committee in the administration of the SPS Agreement. However, when compared with the elaborate division of labor established at the multilateral level, SADC SPS work is much less organized. The functions of the CC are numerous and extend well beyond trade-related SPS issues, while simultaneously a number of SADC technical units do work that overlaps with the non-trade functions assigned to the CC by the SPS Annex.

The organization of SPS work at the multilateral level could inspire the CC to focus its work and reduce the duplication of SPS work already undertaken by other SADC bodies. As discussed in section 2, the SPS Committee is a trade body leaving more technical SPS issues to a number of technical agencies operating at the multilateral level. Box 4 lists the agenda of regular SPS Committee meetings. Most of the time is spent on discussing specific trade concerns, typically in the form of one Member asking another to justify specific SPS measures, and monitoring the use of specific trade facilitation instruments like equivalence and harmonization with international standards. The mandate of the SPS Committee under the SPS Agreement is considerably narrower and more focused on trade issues than the mandate of the CC under the SPS Annex

Article 14(4)-(6) of the SPS Annex describes the functions of the CC. I discuss these functions in Table 4 and identify functions in risk of duplication work in other bodies. To this end, I divide the functions into three groups using a 'traffic light' system. Green functions are SPS issues which are clearly trade-related and where the CC is best placed to undertake work. These functions are roughly similar to the SPS issues covered by the SPS Committee. Yellow functions are SPS issues which

may not be trade-related and for which a moderate risk of duplication of work with other institutions exists. One way of avoiding overlaps with the work of institutions could be that the CC adopts interpretations of the SPS Annex clarifying its work agenda. Lastly, red functions are SPS issues with a strong risk of duplication of work.

Box 4. WTO SPS Committee meetings

The SPS Committee holds both regular meetings and ad hoc meetings on topics of importance to the SPS agenda, like transparency or harmonization.

At the end of each regular meeting, the SPS Committee adopts a tentative agenda for the next meeting. Members may request inclusion of specific items on the agenda until ten calendar days before the next meeting. A typical agenda for a regular meeting of the SPS Committee looks like this:

1. Adoption of the agenda
2. Implementation of the Agreement
 - a. Information from Members
 - b. Specific trade concerns
 - c. Consideration of specific notifications received
 - d. Any other matters related to the operation of transparency provisions
3. The SPS Agreement and developing countries
4. Equivalence — Article 4
5. Technical assistance and cooperation
6. Monitoring the use of international standards
7. Matters of interest arising from the work of observer organizations
8. Requests for observer status
9. Other business

See

http://www.wto.org/english/tratop_e/spis_e/spis_agreement_cbt_e/c4s4p1_e.htm for an elaboration of the agenda items.

The green functions on the agenda of the CC are parallel to the major functions of the SPS Committee. The CC is responsible for discussing regional trade concerns (Article 14(4-5)), for reviewing and monitoring the implementation of the SPS Annex (Article 14(6b)), for following international developments in the SPS area (Article 14(6p)) and for assisting harmonization efforts by the Member States (Article 14(6r)). No other SADC body is better placed to undertake these functions.

The yellow functions are many and cover SPS issues where other institutions are active too. A major reason for the many overlaps observed in Table 4 is that the SPS Annex does not clearly specify that the CC should concentrate on trade-related issues only. The inclusion of many non-trade issues diverts the attention of the CC and leads to duplication of work with other SADC bodies. The effectiveness of the CC would benefit from a more narrow work agenda focusing on trade-related SPS issues. Articles 14(6d-e) both concern SADC SPS projects. These articles are examples of potential overlaps with other SADC bodies. The livestock development unit, for instance, already run a program on transboundary animal diseases. In the

future, with the existing wording of the SPS Annex, it is unclear where such a program would be located within the SADC structure.

Table 4. Discussion of the functions of the CC as described in Article 14(4)-(6)

#*	Text	Discussion
Green functions: Trade-related SPS issues where the CC is best placed to undertake work		
4	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 and phytosanitary problems between Member States in order to prevent formal trade disputes	Clearly a trade-related SPS issue on which the CC is well placed to work
5	The SADC Sanitary and Phytosanitary Coordinating Committee will act as a consultative forum for promoting the objectives of this Annex and for strengthening cooperation between the regulatory agencies having responsibility for sanitary and phytosanitary measures	Clearly a trade-related SPS issue on which the CC is well placed to work. It should be noted that the objectives of the SPS Annex states that the Annex should provide a forum for resolving trade-related SPS issues which gives the CC a similar function to the SPS Committee
6b	Reviewing progress and monitoring the implementation of this Annex	Clearly a trade-related SPS issue on which the CC is well placed to work
6p	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	Useful potential role of the CC. Requires capacity at Member State and SADC Secretariat level to identify and analyze areas of concern
6r	Develop procedures to assist and monitor the process of harmonization among Member States	CC should be aware of the issues involved in harmonization. Furthermore, the meaning of harmonization is unclear. In the SPS Agreements harmonization is included as harmonization with international standards. This may or may not be implied by the SPS Annex
Yellow functions: SPS issues with a moderate risk of duplication of work with other institutions		
6d	Overseeing the implementation of SADC regional programs related to sanitary and phytosanitary measures	Programs with trade implications should be distinguished from those without. Programs without trade implications are already located in the SADC technical committees. Noteworthy, the WTO SPS Agreement is only involved in technical assistance at a fairly general level leaving implementation to the technical agencies
6e	Collaboration among interested Member States on specific sanitary or phytosanitary projects	Similar considerations to (d)
6f	Identification of technical problems which might form the subject of joint projects on sanitary or phytosanitary issues	CC is in a good position to identify trade-related technical assistance needs while leaving project design and implementation to technical bodies
6g	Coordination, endorsement and harmonization of SADC regional training and development activities in sanitary and phytosanitary related areas	A distinction between trade-related and non-trade-related SPS work could help focus CC work and avoid duplication of work with technical bodies
6h	Provision of information on regional sanitary and phytosanitary related resources and services	Similar considerations to (g)
6i	Coordinating the region's liaison with corresponding regional and international organizations in the field of sanitary and	Need for interpretation to avoid duplication of work with technical bodies and national authorities

	phytosanitary protection	
6j	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	As for (i) need for interpretation to restrict CC work to trade-related SPS issues
6k	Establishment of communication channels and dissemination of information on regional sanitary and phytosanitary resources and services through the national enquiry points	Need for interpretation to restrict work of CC to trade concerns to avoid duplication of work
6l	Establishment of Expert Working Groups in specific fields related to sanitary or phytosanitary Measures	Need for interpretation to restrict work of CC to trade concerns to avoid duplication of work
6m	Organization, coordination and promotion of regional conferences, workshops, seminars and exhibitions on subjects relevant to any SADC regional program related to sanitary or phytosanitary standards	“Any SADC regional program” could be replaced by a recognition of similar work of technical bodies to avoid duplication of efforts
6n	Participation in international and regional standards setting organizations, where possible and coordinate efforts to present common SADC positions in relevant international organizations	It is unclear how the CC may participate in organizations. Rather the role of the CC is in the second sentence; to coordinate Member State positions
6o	Promotion and facilitation of greater private sector/industry participation in SADC sanitary and phytosanitary related activities	Unclear what the comparative advantage of the CC is in this activity
6p	Develop the guidelines and procedures for determining the equivalence of sanitary or phytosanitary measures	CC should be aware of the existence of similar guidelines issued by the WTO SPS Committee
6q	Develop guidelines and procedures for determining the equivalence of risk assessment techniques and methodologies	CC should be aware of the existence of work on risk assessment procedures by international standard setting institutions
Red functions: SPS issues with a strong risk of duplication of work with other institutions		
6a	To act as a forum for consultations and exchange of technical information relating to sanitary or phytosanitary issues	SADC technical committees undertake similar functions and may be best equipped to do so due to their technical expertise and specialization
6c	Cooperation and collaboration in the transfer of expertise in sanitary or phytosanitary issues amongst Member State	SADC technical committees undertake similar functions and may be best equipped to do so due to their technical expertise and specialization

Note: the repetition of paragraph p is due to an error in the original SPS Annex where two Art. 14(6p) exist.

One way of addressing such overlaps is for the CC to adopt an interpretation of the articles. One option is to distinguish between trade-related projects in which the CC has expertise and more technically oriented projects for which SADC technical bodies are better placed. Another option is to limit the role of the CC to the identification of technical assistance needs and project opportunities and leave actual design and implementation to the SADC technical bodies. This division of labor would be aligned with the procedures followed at the multilateral level, where the SPS Committee monitors and discusses technical assistance leaving design and implementation to the STDF and the UN and other technical institutions which possess the relevant technical expertise. Articles 14 (6p-q) are examples of overlaps with the work of other international organizations. The articles address guidelines for equivalence of SPS measures and risk assessment techniques and methodologies. The SPS Committee has already adopted such guidelines and the

standard setting institutions have undertaken a large volume of work on risk assessment. In the case of the equivalence of SPS measures, the CC could choose to adopt a decision whereby it aligns itself with the adopted SPS Committee guidelines.

The red functions include two paragraphs that clearly pose a strong risk of duplication of work. Article 14(6a) establishes the CC as a forum for technical knowledge exchange and Article 14(6c) tasks the CC with the transfer of technical expertise. SADC technical bodies already undertake work of a technical nature, while the comparative advantage of the CC is to work on trade-related issues from a policy perspective while cooperating closely with the technical experts in the SADC technical bodies whenever technical knowledge is needed.

5. Conclusions and policy recommendations

5.1 Conclusion

SPS measures proliferate amongst SADC Member States and in the main external markets for SADC exports. This trend puts pressure on SADC to advance its work on trade-related SPS issues and SADC has responded by the adoption of the SPS Annex to the Trade Protocol in 2008, and, most recently, by the formation of the SADC SPS Coordinating Committee established to oversee the implementation and administration of the SPS Annex. The CC held its inaugural meeting in Gaborone, Botswana during 21-22 July 2011.

SADC is uniquely placed to lead SPS policy targeting three inter-linked objectives: to promote regional trade through lowering SPS-related trade barriers while maintaining appropriate SPS protection levels, to advance extra-regional exports by supporting compliance with international markets' SPS requirements, and to lead technical cooperation on SPS issues of regional importance. However, SADC should watch carefully the development of SPS work within the Tripartite Agreement. In the future, the natural center for regional SPS work might shift from SADC towards the Tripartite Agreement as this agreement develops, and SADC SPS work must be carefully designed to avoid costly overlaps between SADC structures and the Tripartite Agreement.

The most imminent challenge to SADC is to make the CC an effective trade body with a mandate on SPS policy while developing the work of SADC technical units like the Livestock Sector Unit and the Crop Development Unit. The division of labor established at the multilateral level, with the SPS Committee under the SPS Agreement focusing on trade concerns and a range of primarily UN organizations taking care of more technical issues, should be copied at the SADC level to allow the CC to focus on trade and avoid costly duplication of labor. The CC is first and foremost a forum for regional SPS diplomacy while more technical issues of SPS management resides with the SADC technical units.

On longer term issues, SADC may extract useful lessons on how to work with the interface between SPS issues and trade from other regional associations. ASEAN and the EAC began work on regional SPS issues some time before SADC. Despite the differences between the memberships of the respective associations many similarities in policy objectives exist. Both associations use a variety of different approaches to regional SPS policy including: (i) Work on individual SPS issues, like

food safety standards harmonization, joint food safety policy, and mutual recognition agreements; (ii) work on trade issues with SPS implications, notably the elimination of NTBs; and (iii) work and resource sharing through the establishment of joint infrastructure, the exploitation of specialization, joint needs identification and collaboration with donors on projects of regional interest.

ASEAN and the EAC have met considerable problems when introducing advanced SPS measures. Firstly, the harmonization of Member State standards have proven to be a difficult area due to wildly differing demands for standards and variations in the regulatory capacities between the Member States of a given regional association. Harmonization around inappropriate standards may establish new NTBs rather than improve human, animal and plant health. Secondly, regulatory processes could be improved by assessing the likely economic and social effects of new standards and regulations. RIA methodologies could be developed to assess the implications of new SPS measures.

5.2 Recommendation 1: Make the CC a Trade Policy Forum

Developing an implementation plan

Implementation needs are many but varied and leave significant flexibilities to individual Member States as discussed in section 4.1. The flexibilities exist because many of the commitments arising from the SPS Annex are soft, while only a few are hard (mandatory). Flexibilities allow Member States to prioritize their SPS investment. Simultaneously, flexibilities allow implementation to be a Member-driven process.

The implementation plan should distinguish between hard and soft commitments. The plan could be staged to focus on hard commitments in a first stage and soft commitments in later stages. Hard commitments are essentially transparency obligations, while soft commitments comprise a range of highly complex issues such as harmonization, international standard-setting, equivalence, risk assessment and pest and disease free areas.

The first stage would focus on establishing National Committees on SPS measures in Member States where these committees do not exist and on establishing intra-government procedures allowing National Committees on SPS measures to fulfill their role under the SPS Annex. As their role includes notification, the Committees must possess a good overview of national legislation and awareness of deviations from international practice.

The SADC Secretariat is obliged to receive and circulate notifications under the SPS Annex. This role appears to overlap with the transparency mechanism established under the SPS Agreement. Due care should be taken to avoid creating costly dual systems and the WTO should be approached to develop a system that exploits the information already available in the WTO SPS transparency system.

The second stage could consist of on-going discussions at CC meetings of the complex issues covered by soft commitments. The discussion might necessitate inputs in the form of expert analysis from the SADC Secretariat and the external partners with which the Secretariat works. On-going discussion could prompt Member States to analyze their needs for action in these areas and make the implementation a Member-driven process.

Designing a model of organization

The SPS Annex assigns a very broad mandate to the CC sprawling across numerous SPS issues including many issues beyond its core mandate on trade-related SPS issues as explained in section 4.2. The success of the CC depends on its ability to define a role focusing on its core mandate and avoiding duplication of work with other SADC bodies. The legal language of the SPS Annex leaves room for interpretation and the CC should use this room to issue interpretations of its mandate that limits the newly established committee to a useful and realistic agenda.

While the inaugural CC meeting was used primarily for organizational issues, the next meetings must establish a model of work organization. Prior to the second CC meeting, the SADC Secretariat should prepare an analysis of the mandate of the CC. The analysis would identify individual elements of the mandate, and include a description of how this element of the mandate is currently undertaken.

Subsequently, SADC should suggest how each element should be covered in the future focusing on whether the CC has a comparative advantage in work in this particular area. For example, the SPS Annex, Article 6(e) assigns the CC with the collaboration among interested Member States on specific SPS projects. The SADC Livestock Sector Unit already oversees technical collaboration on animal health issues and appears better placed than the CC to undertake this task due to the Unit's historical experience and technical expertise. The CC could consider issuing an interpretation indicating that the CC monitors the work of the Livestock Sector Unit rather than attempting to duplicate its work.

Furthermore, the SADC Secretariat should develop a draft standardized agenda for future CC meetings clearly identifying the issues that the CC will be responsible for. The agenda of the parallel institution at the multilateral level, the SPS Committee, could serve as a point of inspiration. The agenda of the SPS Committee includes a small number of permanent meeting items focused on trade issues. The monitoring and development of means to resolve trade concerns plays a prominent role. The CC could be a useful forum for addressing trade concerns at an informal level thereby avoiding concerns developing into fully fledged trade conflicts. Donors could provide technical assistance to identify trade concerns. Furthermore, the CC could monitor specific trade-related SPS issues. To draw a parallel with work in the WTO, harmonization is a standing item on the agenda of the meetings of the WTO SPS Committee. Another potential standing agenda item is coordination with the Tripartite Agreement SPS work. CC meetings could devote time at the regular meetings to information exchange about the status and imminent plans for Tripartite SPS work and ways to ensure the avoidance of duplication of work.

Finally, the SADC Secretariat should consider developing electronic means (web, e-mail) as an alternative to meetings.

5.3 Recommendation 2: Support the CC mandate

Experiences from national and regional SPS work demonstrate the need to develop instruments to support trade-related SPS work. Two issues are particularly important and will be discussed here. First, the choice of the appropriate trade facilitation instrument (e.g. harmonization, equivalence or mutual recognition) frequently causes confusion. Second, authorities often need a better understanding

of the multiple effects of SPS measures. Imported SPS measures risk being inappropriate for local contexts and having unexpected economic and social consequences. Therefore, authorities need tools for evaluating the need for SPS measures and to better understand their implications.

Guidelines on the choice of the appropriate trade facilitation instrument would support discussions in the CC and trade policy and capacity building at the regional as well as Member State levels. The guidelines could be developed for discussion at a CC meeting and subsequently be used to conduct a limited number of pilot studies. The elaboration of the guidelines would require both legal expertise to interpret the SPS Agreement, SPS Annex and other relevant legal texts and economic expertise and experience with SPS policy to understand the social and economic demands and consequences of using alternative trade facilitation instruments in Africa.

Guidelines for evaluating the implications of SPS measures based on RIA techniques could be developed. RIA is commonly used in many countries, in particular high income and some middle income countries to assess economic and social impacts of regulation. RIA is a flexible method that may be adjusted to local environments. The diverse membership of SADC should be exploited to benefit from existing experiences with the use of RIA. South Africa, for instance, have applied RIA on quality policy. Parallel to the guidelines recommended for the choice of trade facilitation instruments, the RIA guidelines could be discussed at a CC meeting and be the issue of pilot studies at a later stage.

5.4 Recommendation 3: Advance SADC technical trade work

While the CC should concentrate on regional SPS diplomacy, expanding trade depends on many other issues. The SADC technical units undertake activities in the area of SPS management which may be crucial to effective regional and extra-regional trade.

SADC could support the development of a regional market for SPS services. The Southern African region benefits from the existence of a number of private and public providers of quality services that address issues of SPS compliance. However, most often these providers do not operate at the regional level. Simultaneously, access to quality services is key to export market access, yet most Member State responses develop national systems. The creation of an efficient regionally based quality services infrastructures with public and private participation would greatly enhance regional access to SPS quality services. A regional SPS infrastructure should exploit all options: imports of services, domestically produced services, private services and public services.

SADC could develop the Southern African market for quality services by studying the legal impediments for quality service providers to operate at the regional scale and by establishing partnerships with quality service providers.

Integrated border management is another issue. The application of SPS measures at the border is a frequent source of trade barriers. Ideally, border management should be done as an integrated undertaking with all border agencies working together. However SPS authorities often operate independently from other authorities, such as customs. Currently, the SATH is developing an Integrated Border Management (IBM) program. The elements in this program addressing the

overlapping mandates of SPS related agencies at the border could be strengthened to ensure that the ever more complex SPS measures likely to be introduced when SADC upgrades its SPS work do not hinder trade unnecessarily in the years to come.

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