

SPS Standards and Developing Countries – The Skeleton in the Closet for the Doha Round

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Food safety issues have become more prominent in Western Europe over the last decade following a host of food scares and increasing consumer influence over production standards. This led the European Union (EU) governments and food marketers to pay increased attention to the setting of standards to protect human health, animal or plant life or health, which resulted in increasing pressure on food producers to meet these Sanitary and Phytosanitary (SPS) Standards.

Introduction

There has been a long history of consumer pressure for food safety across Western Europe. However, this pressure has reached new levels in recent years following a number of high profile food safety scares, which have heightened fears amongst consumers that farmers and the food industry are not doing enough to protect consumer health.

This pressure has led to significant changes to the way food safety is governed, with a substantial shift of responsibilities from ministries of agriculture and industry to ministries of health and consumer affairs within EU member states. This reform process has also taken place at the European Commission (EC) level with food safety matters being handed over to the Health and Consumer Protection Directorate General (DG SANCO) and supported by the establishment of a European Food Safety Authority in 2002.

Together with these institutional reforms, a wide range of legislative reforms has also been introduced to create a more secure system of accountability in relation to food safety. In UK, this was facilitated by the passing of the Food Safety Act in 1990, which made any supplier of a branded product liable for its safety to consumers and put the responsibility for the safety of the entire food chain on the shoulders of the retailers. This, in turn, has led to an explosion of standards for producers to meet, in order to make sure that food safety is maintained at all levels of the supply chain. The standards that are set for producers in order to protect human, animal or plant life or health are referred to as SPS standards.

The standard-setting process

The governmental SPS standards in the EU are formulated and implemented by a variety of bodies and at both national and international levels. Individual EU countries set their own SPS standards through their ministries of health and consumer affairs and are also involved in the standard-setting procedures that take place at the international level. International standards are set through the operation of bodies such as CODEX, International Plant Protection Convention (IPPC) and Office International des Epizooties (OIE) that bring

together governments from across the world, including developing countries, to develop common standards.

Inter-governmental Standard Setting Bodies

- CODEX Alimentarius Commission – established in 1963 by Food and Agriculture Organisation (FAO) and World Health Organisation (WHO) (sets standards related to food).
- The Secretariat of the IPPC – established in 1951 by FAO (sets standards related to pests and disease affecting plants).
- OIE – established under auspices of the League of Nations in 1924 (sets standards related to animal health).

This wide range of governmental standard-setting bodies has facilitated the explosion of standards that are having an increasing impact on every stage of the foodstuffs production process. An illustration of this is the Hazard and Critical Control Point (HACCP) system, which has been adopted by the EU, and which requires non-primary food producers to trace the supply chain for their products all the way from the farm to the table.

Every year, there are hundreds of meetings of the various committees of these international standard-setting organisations, which take place all over the world, but to actively engage with them or represent them requires tremendous expertise and resources. However, developing countries often lack the expertise and resources to be able to play an effective role in these bodies, and as a result their interests are all-too frequently sidelined in the standard-setting process. The challenges that this situation poses for developing countries are illustrated by a number of high profile cases in recent times of standards that have provided only minimal protection to health whilst having a major impact on the exports of developing countries.¹

A recent study investigating the existing technical capacity of a number of countries in Eastern and Southern Africa in relation to SPS policy found that key stakeholders from government and business lacked knowledge of vital standards and the expertise to analyse their impacts and to play a part in the standard setting process. In addition, the study found that the countries lacked the resources to send qualified staff to attend the

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myriad of meetings that characterise the SPS policy-making process.²

This lack of capacity amongst many developing countries to play a part in the standard-setting process also provides the potential for developed countries to exploit SPS standards as another mechanism to protect their markets from exports of developing countries. One such sector where this is of particular concern is the EU fruit and vegetable market. The EU fruit and vegetable producers face competition from producers in Asia and Africa who are increasingly moving into production of these items to diversify their economies. However, these countries currently face significant barriers in the form of SPS standards in exporting fruit and vegetables (an important sector virtually for all member states) to the EU. With fruit and vegetable production contributing around 15 percent to the total value of EU agricultural production, the EU has much to gain from protecting these sectors using strict SPS policies that EU producers have greater capacity to meet.³

A case, which clearly illustrates this issue, is that of South Africa's citrus sector and its problems of dealing with the citrus black spot (CBS) infection. CBS is harmless to consumers and merely affects the appearance of the fruit. In addition, it has been established that there is no basis to fears that CBS could be transferred to orchards in Europe, due to climatic factors. Nevertheless, in 2002 the EU, motivated by lobbying from Spanish citrus farmers, banned the import of citrus fruit infected with CBS. The EU has also set very severe standards in dealing with those who break these rules, with multiple breaches leading to the banning of imports from offending pack-houses.⁴

There is, therefore, a serious need for least developed countries (LDCs) and other poor countries to develop their capacity to take part in the standard-setting process so that the legitimate concerns they have over the livelihoods of the poor people in their countries dependent on the agricultural economy are taken into account in the formulation of SPS policies.

The impact of private SPS standards

In addition to governmental SPS standards additional challenges are faced by developing countries in the form of increasing volume of private SPS standards. In response to the increasing liability facing food marketers in relation to food safety, these standards are used by marketers to ensure product quality and to standardise the products they receive from suppliers.

One of the most influential private standard setting bodies is the Euro-Retailer Producer Group's Good Agricultural Practice (EUREGAP) through which its members, which include the major retailers of agricultural products in the EU, set a wide variety of SPS and technical standards for producers to meet. These standards are not mandatory for entry into the EU market, and if producers want to sell their products to these retailers, then they need to meet the standards they demand. Many of its SPS standards are stricter than those set by bodies such as CODEX and the ones set by individual member states and impose very high costs on producers. For example, meeting EUREGAP production standards are estimated to have increased farm gate production costs by eight percent in Morocco⁵ and four percent in Kenya.⁶

The challenges faced by producers in meeting EUREGAP standards are most pronounced in relation to developing countries, where producers frequently lack the resources to implement the types of reforms that are required to achieve certification. This is illustrated by the fact that as of the end of 2003, excluding South Africa and Ghana, (where 926 and 84 farms respectively had achieved EUREPGAP certification) only 21 farms had achieved certification in the rest of sub-Saharan Africa (19 in Zimbabwe, 1 in Gambia and 1 in Senegal). In addition, the farms that have achieved certification in sub-Saharan Africa are increasingly managing their own growing activities on large farms to the exclusion of small farmers who previously supplied them with produce through out-growing arrangements. The EUREPGAP standards, therefore, currently exclude large numbers of small and vulnerable producers from supplying produce for export markets.⁷

One of the main problems that private SPS standards pose is that they don't give stakeholders outside of the membership group a formal avenue to feed in their concerns to the standard-setting process. This is of serious concern when the private standard setters have marketing control over the sector they are setting the standards for as they can use their market power to pass on the costs and risks of production to producers using strict quality standards.

One market where the issue of standards collusion is of significant concern is the UK fruit and vegetable market. In UK, the top five supermarket chains (Tesco, Asda, J Sainsbury, Safeway and Morrisons) control over 75 percent of the supermarket sector where the majority of fruit and vegetables are marketed. At the same time, through their membership of EUREPGAP, these five supermarket chains play an influential role in setting the standards that fruit and vegetable producers have to meet to gain access to a major part of the UK's fruit and vegetable supply chain. These supermarket chains are under considerable scrutiny from competition bodies in relation to their pricing policies but so far little, if no, attention has been paid to their activities in relation to the setting of SPS standards.

The way forward for developing countries

The WTO SPS Agreement

One of the ways in which developing countries can open up the SPS standard setting procedure to greater scrutiny and apply pressure for protectionist abuses to be disciplined is by making use of the provisions of the WTO Agreement on the Application of SPS measures. This came into operation in 1995 following the establishment of the WTO and aims to regulate and minimise the use of SPS standards for protectionist purposes. In order to ensure that the protection of health remains at the core of SPS policy-making processes it states that an SPS measure can be implemented as long as it is based on sound scientific evidence of a threat and as long as it is applied only to the extent that is required to protect human, animal or plant life or health.⁸ However, it should be noted that through the Precautionary Principle it does allow countries to apply an SPS measure as long as there is reasonable evidence of threat and whilst further research is done to establish a more secure scientific basis for it.

...no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade.

Preamble to WTO's SPS Agreement

Although a number of developing countries have played an active role in the SPS committee and have used it to highlight their concerns, there are still a significant number of developing countries that struggle to engage with it effectively due to the resource constraints. This is illustrated by a recent WTO report which states that of the 256 measures raised for discussions in the SPS committee of the WTO over the last 10 years only 2 were raised by LDCs.⁹ There is, therefore, an urgent need for LDCs and other struggling developing countries to be given the technical and logistical support to play an active role in the SPS committee so that they could utilise its provisions in defense of their interests

The WTO's SPS Agreement is also one possible avenue through which greater regulatory control could be maintained over the private standard-setting procedure by WTO Members. Article 13 of the Agreement states, "*Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement*". On this basis it could be claimed that WTO Members are obligated to ensure that private standard-setters operating within their borders are upholding the fundamental principles of the SPS Agreement.

A number of Caribbean and South American countries recently challenged EUREGAP standards in relation to the banana sector quoting the provisions of Article 13 of the SPS Agreement. In response, the EU stated that it was not in a position to intervene because the private sector organisations say that their standards reflect consumer demand and therefore justified under the SPS Agreement.¹⁰ However, it is not so clear that private standards are purely demand driven and this poses the question as to the degree to which private standards are consistent with the principles of the SPS Agreement. There currently seems to be little willingness from the EU (and other developed countries) to scrutinise more closely the private standard-setting procedure and to question the motives of the marketers who dominate sectors such as fruit and vegetables.

Standards compliance

Despite all these concerns the majority of SPS standards that are set have a reasonable public health impact and can therefore be justified under the SPS agreement, which allows for quite a flexible definition of risk that countries are allowed to use as basis for implementing standards.¹¹ This leaves developing countries with the challenge of meeting these standards so that they can export their products around the world.

However, many developing countries currently lack the institutions and expertise required to meet these standards

and face a wide range of capacity constraints in doing so. These include: the capacity to play an active role in the standard-setting process; the establishment of sustainable institutions that can monitor and disseminate information about standards and monitor their implementation; training programmes for key stakeholders; and of course the financial resources to invest in the infrastructure required to meet the standards.¹²

The developing world governments have an important role to play in mobilising the resources to build capacity through encouraging private sector investment in standards compliant infrastructure and developing the institutions required to coordinate standards compliance. However, the donor community also needs to respond in a coordinated and generous way to support the huge investment needs that developing countries face in relation to SPS standards compliance.

So far, the response from donors has been disappointing. The World Bank (WB) estimates that in 2002 the total funds spent by donors on SPS standards compliance support was US\$53mn, dwarfed by the estimated US\$1.75bn of exports from developing countries disrupted by SPS standards in the same year. This figure is also dwarfed by the estimated •140mn-700mn (US\$167mn-835mn) of annual investment that the African, Caribbean and the Pacific (ACP) countries require to meet the current level of SPS regulations.¹³

In addition, the WB's analysis shows that there has been poor coordination amongst donors, who mainly sponsor *ad hoc* SPS projects designed to meet specific demand driven crises as opposed to providing a holistic response to the needs of developing countries in taking advantage of the opportunities that global markets provide. This donor support has, therefore, done little to help developing countries play a more pro-active role in meeting standards and dealing with the challenges they pose in a more strategic manner.¹⁴

Developing countries have attempted to mobilise greater donor support by appealing to the SPS committee to operationalise the clauses in the SPS agreement, which relate to technical assistance to support the compliance of developing countries to SPS measures. In the lead up to June 2005 SPS committee meeting, developing countries put forward a number of proposals, which included demands to introduce binding language that would allow developing countries to be temporarily exempt from SPS measures; make mandatory the provision of technical assistance to developing countries; require developed

SPS Capacity Needs Assessment – Mozambique	
	value in thousand US\$
Improve producer awareness	550
Strengthen standards legislation	400
Institutional development	1650
National accreditation focal point	600
Staff training	850
Standard setting participation	200
Formation of working group on SPS standards	100
	4350
<i>Standards and Global Trade: A voice for Africa, World Bank, 2003</i>	

countries to undertake consultations with developing countries on SPS measures should the latter request them; and make it a duty for developed countries to encourage and facilitate the active participation of developing country members in international standard-setting organisations such as CODEX Alimentarius. However, developed country members have so far rejected these proposals stating that they make onerous demands on all WTO Members, not just developing countries and that they do not take the issue of standards seriously enough in calling for exemptions from certain standards. No agreement has, therefore, been reached on how to operationalise these clauses within the SPS Agreement.¹⁵

The disappointing response from donors to support the capacity building efforts of developing countries in relation to SPS compliance highlights the urgency for developing countries to engage more effectively and widely with international institutions to mobilise and coordinate the investment they need.

In order to do this, developing countries need to carry out effective assessments of their SPS compliance capacity and to draw up detailed proposals for capacity building support that relate to all aspects of the compliance process. This will enable them to make their case to donors in a more effective and coordinated fashion. For LDCs, the Integrated Framework (IF) could provide an important mechanism through which they can present these capacity needs to donors and mobilise support. It is also important that the ACP countries utilise their ongoing trade negotiations with the EU to enlist further support for their SPS capacity building efforts.

There, therefore, remains an urgent need for developed countries to provide LDCs and other struggling developing countries with coordinated and sustained technical support to help them meet the challenges they face in dealing with the constantly evolving SPS policy-making environment. This lack of action by the donor

community only results in further reducing the confidence of developing countries in the multilateral trading system (MTS) and makes further movements in the Doha Round a greater challenge.

Recommendations

Due to the multilayered SPS policy-making environment, the solutions to making developing countries better equipped to meet the standards required to access global markets will require the coordinated efforts of a wide range of stakeholders. Following recommendations better suit the purpose for the different stakeholders:

Developing countries:

- Government, private sector and civil society to work together to respond in a coordinated manner to the challenges that SPS compliance poses.
- Countries that require technical assistance to detail and quantify their needs so that they can more successfully lobby for support.

Developed countries:

- Developed countries are to show greater will to operationalise the special and differential treatment (S&DT) measures within the SPS Agreement and to provide the resources to support developing country reforms.
- Developed country governments are to provide greater oversight to the setting of governmental and private SPS standards so as to make sure that they uphold the principles of the SPS Agreement.

Northern civil society:

- Northern civil society groups to work in partnership with Southern stakeholders to bring SPS issues into the public realm and provide a coordinated challenge to protectionist abuses of SPS policies.

Endnotes

- 1 See “Food safety issues, trade and WTO rules: A developing country perspective”, P Athukorala and S Jayasuriya, *The World Economy*, 26/9, 2003
- 2 “Standards for sustainable trade: Assessing technical assistance needs under the WTO’s TBT Agreement”, IISD, Dec 2003
- 3 “The horticulture sector in the EU”, DG Agriculture, 2003
- 4 “Standards and global trade: A voice for Africa”, pp269-270, World Bank, 2003
- 5 “The costs of compliance with SPS standards for Moroccan exports: A case study”, World Bank, 2005
- 6 “From challenge to opportunity: Transforming Kenya’s fresh vegetable trade in the context of emerging food safety and other standards in Europe”, World Bank, 2003
- 7 EUREPGAP – Introduction amongst small-scale producers of fresh fruit and vegetables in developing countries”, Plantconsult research for Dutch government, Dec 2003
- 8 “Understanding the WTO Agreement on Sanitary and Phytosanitary Measures”, WTO Secretariat
- 9 “Review of the operation and implementation of the agreement on the application of sanitary and phytosanitary measures”, WTO secretariat, June 2005
- 10 SPS Committee Report, June 29-30, www.wto.org
- 11 “Appropriate Level of Protection: A European Perspective”, S Henson in “*The Economics of Quarantine and the SPS Agreement*”.
- 12 “Standards and global trade: A voice for Africa”, World Bank 2003
- 13 “Study of the consequences of the application of sanitary and phytosanitary (SPS) measures on ACP countries”, CTA, May 2003
- 14 “Food safety and agricultural health standards – Challenges and opportunities for developing country exports”, World Bank, 2005
- 15 Bridges Weekly Trade News Digest, 9:24, July 6, 2005