

Preliminary draft - not to be quoted or cited

**STRENGTHENING DEVELOPING COUNTRIES'
CAPACITIES TO RESPOND TO
HEALTH, SANITARY AND ENVIRONMENTAL
REQUIREMENTS**

**A Scoping Paper for Eastern and Southern Africa
The Experience of Kenya, Mozambique, the United Republic
of Tanzania and Uganda**

PAPER # 4

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on the basis of papers by national experts

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Acronyms

| | |
|--------|--|
| AGOA | African Growth Opportunity Act (United States of America) |
| ARSO | African Regional Standards Organization |
| ATRIP | Africa Trade and Investment Policy (World Bank programme) |
| CAC | Codex Alimentarius Commission |
| CBTF | UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development |
| COMESA | Common Market for Eastern and Southern Africa |
| CTE | Committee on Trade and Environment (WTO) |
| EAC | East African community |
| EBA | Everything But Arms (European Union) |
| DFO | District Fisheries Officer (Uganda) |
| DFR | Department of Fisheries Resources (Uganda) |
| FAO | Food and Agriculture Organization |
| GAP | Good Agricultural Practice |
| HACCP | Hazard Analysis Critical Control Point |
| HCDA | Horticultural Crops Development Authority (Kenya) |
| INNOQ | National Institute of Standards and Quality (Mozambique) |
| IPPC | International Plant Protection Convention |
| JITAP | Joint Integrated Technical Assistance Programme (ITC, UNCTAD and WTO) |
| KARI | Kenya Agricultural Research Institute |
| KEBS | Kenya Bureau of Standards |
| KEPHIS | Kenya Plant Health Inspectorate Service |
| LDC | Least Developed Country |
| MAAIF | Ministry of Agriculture, Animal Industry & Fisheries (Uganda) |

| | |
|--------|--|
| MITTI | Ministry of Tourism Trade & Industry (Uganda) |
| MRL | Maximum Residue Level |
| MTS | Multilateral Trading System |
| NEP | National Enquiry Point |
| NTB | Non-Tariff Barrier |
| OIE | Office International des Epizooties |
| SADC | Southern African Development Society |
| SPS | Sanitary and Phytosanitary |
| SSA | Sub Saharan Africa |
| TBT | Technical Barriers to Trade |
| UNCTAD | United Nations Conference on Standards and Trade |
| UNBS | Uganda National Bureau of Standards |
| UNIDO | United Nations Industrial Development Organization |
| USAID | United States Agency for International Development |
| WHO | World Health Organization |
| WTO | World Trade Organization |

I. INTRODUCTION

1. Environment and health-related standards and regulations in international markets have the potential to create barriers to exports from developing countries. Some African countries have experienced significant export losses because of difficulties in complying with such requirements.¹ Sanitary and phytosanitary (SPS) and environment-related measures are likely to become more relevant factors in African exports in the future. First, standards in target markets are becoming more comprehensive and more stringent, in particular in the food sector. Second, when African countries seek to take advantage of trade liberalization and initiatives such as the African Growth Opportunity Act (AGOA) and Everything but Arms (EBA), they need to develop capacities to comply with a wide range of environmental requirements and/or SPS measures. This is in part because SPS measures play an increasingly important role in sectors where Eastern and Southern African countries have a comparative advantage, such as fisheries and horticulture. In fact, for many African developing countries non-compliance with SPS standards could be a major obstacle to moving towards exports of high-value agricultural and food products.

2. There is therefore a need to strengthen the capacities of African producers and exporters to respond to such requirements through appropriate policies and measures at the national and international levels. Enhancing understanding of constraints faced by developing countries in meeting standards set by developed countries is of key importance in the context of national trade policies, trade-related technical assistance and the SPS and Technical Barriers to Trade (TBT) Committees. In addition, The Doha Ministerial Declaration called upon the Committee on Trade and Environment (CTE) to give particular attention, among other things to "the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them" (paragraph 32(i)).

A. Issues

3. The possible effects of environmental standards and regulations (see box 1) as well as SPS measures have been an issue of key concern to African developing countries. The African component of this project seeks to address in particular the following issues:

- How can Governments and the private sector in African developing countries, including Least Developed Countries (LDCs), address existing constraints in responding to environmental and health requirements in external markets and implementing national policies on food safety and environmental quality?

¹ For example, this paper examines bans on imports of fisheries products from Kenya, Mozambique, the United Republic of Tanzania and Uganda. In addition, Madagascar has been affected by bans on fisheries and meat products. In February 2000 the Commission of the EU decided that "Given the seriousness of the deficiencies observed during an inspection visit to Cape Verde, imports of fishery products from this country should not be authorized" (Commission Decision 2000/170/EC of 14 February 2000 (Official Journal L 055 of 29 February 2000)).

- How can developed countries take account of the special conditions and needs of African developing countries in the development of policies concerning environment and food safety?
- How can bilateral and multilateral aid agencies assist African developing countries strengthening their capacities to respond to environmental and health requirements in international markets and to take full advantage of trade liberalization under WTO negotiations and initiatives in favour of Africa and/or LDCs?
- What are the key trade issues in the area of trade rules, in particular in the WTO post-Doha work programme (Doha Development Agenda)?

4. The African project component pays special attention to trade-related technical cooperation (TC) and capacity building (CB) needs, in particular to strengthen capacities to comply with standards and participate effectively in the work of international standardization bodies. This paper also highlights the need to support African developing countries in their effectively participation in the WTO post-Doha work programme (see Annex I).

5. This project deals with both environmental requirements and SPS measures. It draws on papers prepared by national experts from Kenya, Mozambique, the United Republic of Tanzania and Uganda. These papers focus heavily on SPS measures, in particular the European Union, the largest export market for African countries.² In several cases, such as standards on pesticide residues, these are closely linked which environmental standards. However, the papers do not deal environmental requirements per sé, among other reasons because there is relatively little empirical evidence on such measures. It is hoped that environmental requirements can be given more attention in follow-up studies.

6. In several cases it is very difficult to distinguish between environment and health and safety measures. For example standards on pesticide residues in food may address both consumer health as well as environmental concerns. Thus it could be considered as both an environmental and a health standard. In addition, consumer health concerns in the importing country may be linked with an environmental issue in the country of production and export. For example, several of the restrictions on imports of fisheries products that are analyzed in section III of this paper have been imposed for consumer health reasons, but are caused by environmental and sanitary problems. The lessons learned from the examination of potential trade barrier effects, solutions, and policies to

² The countries that are covered in this paper export largely to the European Union. Coupled with the fact that most exports from these countries enter the European Union duty free, this implies that changes in EU policies especially with respect to standards are crucial in the discussion of improved market access to exports of interest to these and other Sub-Saharan African (SSA) countries. Apart from the EU and US markets, developments in other markets such as Japan are also important for diversification of SSA countries' export market. T. Ademola Ovejide, E. Olawale Ogunkola and S. Abiodun Bankole, University of Ibadan, *Quantifying the Trade Impact of Sanitary and Phytosanitary Standards: What is Known and Issues of Importance to Sub-Saharan Africa?*, paper prepared for the workshop on "Quantifying the Trade Effects of Standards and Regulatory Measures: Is it Possible?", Washington, 27 April, 2000.

address SPS measures may also be useful for further analysis of environmental standards. Exporters face similar issues concerning environment and SPS Standard in evolving a strategy for compliance with quality standards.

Box 1: Environmental measures with potential trade effects on countries in Eastern and Southern African

| | |
|------------------------|---|
| Pesticide residues | Standards for maximum residue levels for pesticide may have both consumer health and environmental |
| Packaging requirements | African exporters have been concerned about the effects of packaging requirements on their exports. |
| Eco-labelling | Eco-labelling may have effects on exports of some product categories. For example, eco-labelling may become more important in the cut flowers and fisheries sectors |
| Timber | Timber exports may be affected by consumer boycotts and/or timber certification. On the other hand, several African countries (e.g. Mozambique) see timber certification as a means to promote exports as well as the sustainable use of forests. |
| CITES | Certain trade measures under the Convention on International Trade in Endangered Species are of key relevance to African countries. A well-known example is ivory trade |
| Montreal Protocol | Freeze in consumption and phase out of methyl bromide, used in agriculture and crops, such as cut flowers ³ |

³ Methyl bromide is a highly toxic fumigant used in agriculture for crops such as tomatoes, strawberries and cut flowers. Its use also includes pest control in structures and stored commodities and for quarantine and pre-shipment treatment. Unfortunately, methyl bromide is also harmful to humans and a potent ozone-depleting chemical with a potential for destroying 60 times more ozone than each atom of chlorine from CFCs. Completing a methyl bromide phase-out is one of the remaining challenges toward ozone layer protection and for improving the health of farmers. In 1997, the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer agreed to a global methyl bromide phase-out schedule, requiring industrialized countries to phase out methyl bromide by 2005 and developing countries to freeze production and consumption by 2002 with a complete phase out by 2015. Farmers who are dependent on methyl bromide will need to shift towards more environmentally sustainable agricultural practices. Such changes must come through sustained awareness-raising, training and capacity-building activities to provide farmers with the education and tools needed to successfully adopt alternatives. Fortunately, effective alternatives for most methyl bromide uses have been identified and many are already in use around the world. Sponsored by the Montreal Protocol's Multilateral Fund, the United Nations Industrial Development Organization (UNIDO) and UNEP have been assisting methyl bromide phase-out through demonstration projects in developing countries, including Kenya (Alternatives to the use of methyl bromide for soil fumigation in cut-flowers at Kenya Agricultural Research Institute (KARI)) and Uganda Phase out of methyl bromide in cut flowers. <http://www.unep.org/ozonaction/unido-harvest/>

7. In several cases, exporters perceive that SPS and similar measures applied in developed country markets are unjustified. For example, it has been noted that environment-related trade measures are only applied only to selected sectors, while ignoring others, for example gold, whose market access has not been subject to environmental requirements despite negative environmental effects on mining;⁴

8. Case studies carried out under this project also mention a number of examples. For example, when the European Union implemented a ban on imports of fisheries products following the outbreak of cholera, the World Health Organization (WHO) and the UN Food and Agriculture Organization (FAO) issued statements arguing that there was no documented evidence of risk of human illness in non-cholera regions resulting from exposure to food products imported from areas where cholera is at endemic or epidemic levels is low.

9. Notwithstanding, these doubts about the validity of the claims made about certain SPS measures, non-compliance with SPS or TBT standard is not a reasonable option, but rather capacity building is required for assisting in complying with these standards.

B. Papers

10. All four countries covered in this paper have faced problems in exporting fishery products, in particular to the European Union, their traditional export market. In addition, new standards for maximum allowable levels of pesticide residues have generated concern created among exporters of horticultural products, in particular in Kenya and Uganda. The studies focus on these cases.

11. Mr. Nimrod Waniala has acted as lead researcher. This paper has been prepared on the basis of reports submitted to a regional workshop in Kampala held on 13 September 2001 as well as interventions and ensuing discussions at the workshop. The paper also draws considerably on other studies carried out under the project, in particular a study by Cerina Mussa, entitled *Trade and Environment in Mozambique: Sanitary and Phytosanitary Measures*.

12. The Kampala workshop brought together consultants and other experts from Mozambique, Kenya, the United Republic of Tanzania and Uganda. In addition, representatives from academic institutions, FAO, UNDP, the World Bank and several ministries, the Plant Quarantine Agency, the Bureau of Standards and NGOs in Uganda participated in workshop. The following seven papers were presented and discussed:⁵

⁴ Jabavu Clifford Nkomo, Benson Mutongi Zwizwai and Davison Gumbo, *Trade and Environment in Zimbabwe*, case study under the UNCTAD/UNDP project on Reconciling Trade and Environment Policies (1995). In Veena Jha, Anil Markandya and René Vossenaar, *Reconciling Trade and the Environment, Lessons from Case Studies in Developing Countries*. Edward Elgar Publishing, 1999.

⁵ In addition, UNCTAD made several background papers available, including factual information on EU regulations in the area of fisheries and an overview paper on production and trading opportunities for organic agriculture in Mozambique, the United Republic of Tanzania and Uganda.

- *SPS in Kenya*
by Ms Rachel Ntoyai
- *SPS measures and their impact on Kenya: horticulture and fisheries*
by Ms Halima Noor
- *Impact of SPS measures on Uganda's fish exports*
by Mr. Nimrod Waniala
- *Impact of SPS on fish and horticultural products from East African countries*
by Ms Margaret Ndaba
- *Hazard Analysis Critical Control Point (HACCP) Experience in Mozambique*
by Mr. Augusto Manualla
- *The impact of timber on the environment (a summary of UNEP study)*
by Mr. Mchallo
- *Production, trading opportunities and constraints for organic agriculture in Uganda* by Mr. Nimrod Waniala

13. The experts from the four African countries examined national experiences in dealing with these market requirements, focusing on the fisheries and horticultural sectors. Their studies focus on cases such as HACCP (Hazard Analysis Critical Control Points) standards in fisheries and pesticide residues in horticultural products. Other issues examined included several problems in the case of fishery products as well as the use of HACCP and its implications for small and medium-sized fishing enterprises.

14. In the country presentations and ensuing debate, particular attention was paid to compliance costs, potential trade impacts, possible protectionist intent of certain standards, the use of science and risk assessment issues. Much of the debate focused on capacity building needs of the region for compliance with emerging standards in major export markets, in particular the European Union.

15. Participants in the seminar also examined policies and measures aimed at strengthening the capacities of developing countries in dealing with SPS requirements. They considered options based on appropriate action at the national level (such as development of infrastructure, training, awareness raising), international co-operation (bilateral, regional or multilateral) or in the area of trade rules.

II. STANDARDS AND TRADE: AN AFRICAN PERSPECTIVE

A. General concerns

16. The export performance of Sub-Saharan Africa, including Eastern and Southern Africa, has been below that of other developing regions, despite significant trade liberalization and economic policy reform. Market access remains an issue of key concern. Among market access factors, SPS measures create the most important difficulties for African exports of agricultural and food products. SPS measures are likely

to become more comprehensive and stringent in the future. This has great implications for efforts of Eastern and Southern Africa to increase exports of high-value commodities, such as fisheries and horticultural products.

17. The operation of SPS measures, for example in the fisheries sector, is also becoming more complex as large part of the responsibilities to enforce such measures is shifted to the exporting country. Most African developing countries, however, have poor technical capacity to efficiently manage SPS and food safety matters.⁶ Typically, essential facilities like laboratories are not adequately staffed, the scientific equipment is outdated for the requisite tests, and there is no systematic collection and storage of records. This situation is unlikely to improve in the short term, given the declining levels of public expenditure. There is a clear need for intervention to revamp most public testing facilities and also to incorporate the private sector in the national testing and regulatory systems.

18. In many African developing countries there is a lack of awareness of SPS and food safety measures. There are also serious institutional constraints (see box 2).

Box 2: Institutional Constraints for SPS compliance in the SADC region⁷

It is generally accepted that appropriate and efficient institutional arrangements are a necessary condition for responding to SPS and environmental requirements and accelerating agricultural trade. In most African developing countries this condition is not adequately met, due to a variety of constraints. In a recent SADC workshop, participants identified a range institutional constraints, most of which revolved around inadequate national capacity. These constraints were grouped into three broad categories:

Inadequate Controls for SPS/Food Safety Compliance. This presents a large hurdle for small-scale cross-border traders who, in fact, constitute the largest group of potential agricultural traders in the SADC region.

Sub-Standard Hardware Infrastructure. Most African countries are not endowed with the necessary "tools of the trade" for making scientific assessments of compliance. Key support services, such as laboratories, often do not have the technical or human capacity to undertake the requisite tests. In other cases, the laboratories do not have the capacity to efficiently provide nation-wide coverage. Although there are a few accredited laboratories in the region, there is limited sharing of such resources within and between countries. This is partly due to the bureaucratic hurdles involved, and a lack of awareness of the available capacity amongst the relevant actors. Strategies such as resource sharing can provide opportunities for increased networking and mutual recognition among (SADC) Member States while minimizing the costs of duplication. In general, the cadre of officers, who are competent in assessing risk, and interpreting the requirements of the SPS/TBT Agreement, is inadequate. While the agricultural trade arena is getting

⁶ With respect to the implementation of the SPS/TBT Agreements, the responsible national institutions are at different levels of evolution. In this context, as well, unclear national notification authorities render the mechanisms for notification inefficient. Similarly, the information received from relevant international institutions such as the IPPC and OIE is frequently not transmitted to the critical operational levels such as private traders and border post personnel. In some areas such as food safety, there are no specific laws or other legal provisions to cover for the standard requirements for trade. SADC Consultative Forum on SPS/Food Safety, SADC SPS and Food safety Issues: An Agenda for Action, *Proceedings of the Windhoek Workshop of SPS/Food Safety*, November 20-22, 2000.

⁷ SADC Consultative Forum on SPS/Food Safety, op. cit.

increasingly complex and highly technical, this development has not been matched with higher investment in human or other resource capacity at the national or regional levels. The lack of capacity among Member States is a result of inaction and/or muted responses from decision and policymakers responsible for agricultural trade.

Sub-Optimal Capacity for Self-Regulation. Most agricultural producers do not have adequate capacity for self-regulation. The reasons for this are varied but essentially entail inadequate incentives, especially at the trader level (except for those countries, like South Africa and Zimbabwe, with relatively large and organized commercial agricultural producers, processors and traders). There is merit in encouraging the private sector to take a leading role in designing guidelines for SPS-related policy formulation and law enforcement. There is also scope for the establishment or revamping of key non-governmental actors such as national Standards Bureaus to play a more active role in spearheading self-monitoring and regulation, and also in enhancing general awareness and knowledge amongst the different stakeholders. In short there is need to enhance the awareness of the benefits of quality in improving the attractiveness and competitiveness of agricultural produce on both regional and international markets.

19. The principal concerns expressed in the papers and the Kampala workshop in the areas of standards and trade can be summarized as follows:

- Standards are at times perceived as moving target, as they become more stringent once compliance is achieved. Thus, continued efforts are required to catch up with developments in the area of standards and to be able to export in the long run;
- Developed countries first impose stringent standards and then offer technical assistance to assist developing countries find difficulties in complying with them, among other reasons to secure adequate supply. Technical assistance, however, is often insufficient to make the investments needed to meet international requirements;
- Products often do not receive remunerative prices, among other reasons because of standards. For sub-standard products, which are sold at low prices, transport costs become a large hurdle. Similarly, additional costs for testing, packaging, etcetera are difficult to absorb in case of exports of low value-added products;
- Initiatives such as AGOA and EBA need to be accompanied by initiatives in the area of building supply capacities and meeting standards to allow African developing to derive the full benefits;
- Certain measures do not seem to be fully justified by use of sound science.

20. However, Governments and the private sector recognize that in order to improve export performance and ability to compete in the domestic market, countries have no choice but to build capacities to comply with standards in international markets.

B. The experience of Kenya⁸

Agriculture, in particular horticulture

21. Kenya produces approximately 3 million tons of vegetables, fruits and cut flowers annually, of which approximately 100,000 tons are exported, with the European Union accounting for 90 per cent of Kenya's horticultural exports.

22. Since agriculture is the mainstay of the Kenyan economy, standards and regulations concerning the quality of the agricultural inputs (seeds, fertilizers and agrochemicals) and produce are essential. Such standards and regulations are also essential for compliance with consumer health and environmental requirements in international markets. The Kenyan government and private sector have taken several steps to strengthen capacities to respond to such requirements, but Kenyan producers and exporters still faces a range of constraints.

23. Responsibilities of administering the various regulating Acts of Parliament governing the agricultural sector were fragmented in the past. In order to consolidate regulatory acts and strengthen their enforcement mechanisms the Kenya Plant Health Inspectorate Service (KEPHIS), a state corporation, was established in 1996. Its activities were subsequently consolidated for the improvement of the quality status of agricultural inputs, health and planting breeding materials for use in agriculture. KEPHIS acts as government enforcement agency that handles matters related to quality control of agricultural inputs, produce, and plant health. In addition, it aims at eliminating the regulatory bottlenecks in a liberalized market economy.

24. As far as the horticultural industry is concerned, adherence to Maximum Residue Levels (MRLs) requirements is the main concern. Pesticides play an important role in any meaningful food production system. However, unlike other agricultural inputs such as fertilizers, manure and seeds, pesticides pose a potential risk to both human beings and the environment. To effectively control crop pest without necessarily endangering the ecosystem, Good Agricultural Practice (GAP) is a vital ingredient when using these chemicals. It is an internationally agreed practice that when a pesticide is applied to any intended commodity, its residues on any consumable portion must not exceed the MRLs. It is also necessary to monitor the environment for presence of these harmful chemical residues, which may ultimately find their way into the food chain.

25. Kenyan fresh produce exporters are concerned about by new European Union regulations on pesticide application that should have come into force in July 2000, but were postponed by one year. These regulations fix MRL levels at "analytical" zero value, requiring that there be no trace of pesticide residue in fruits, vegetables and cut flowers intended for the European markets. Exporters must also provide information on the type of pesticides used.

⁸ Harima Noor, op. cit.

26. Kenya's tropical climate demands the use of frequent applications of pesticides that have over the years proved to be effective. Halima Noor argues that the EU regulation force Kenyan producers to discontinue such applications. Kenyan producers fear that because of lack of experience and other factors, this will result in wrong pesticide application by farmers and low quality crops. Changing from one type of pesticide, already in use, to another type that may prove less effective or require more frequent application, may be expensive. New pesticides may also turn out to be equally toxic to the consumer, operator or the environment. However, unless Kenyan horticultural producers and exporters adapt rapidly to the new measures they will lose the share of the market built up over the years.

27. The study argues that the impact of stringent consumer health requirements on large corporations and small-scale farmers will be quite different. Large corporations have much better conditions than small-scale farmers to quickly adapt to new measures, such as the zero pesticide residue regulations in the European Union.⁹ In fact, European markets have favored larger producers and exporters, who are able to have some control over their production practices, particularly with regard to the interval between pesticide sprays and picking. Larger producers are also benefiting from the more value-added pre-packs, where French beans in particular are packaged ready for supermarket shelves and immediate cooking.

Problems of small-scale farmers

28. The study on Kenya highlights that lack of rural infrastructure, high transportation cost and insufficient support services constitute major problems for smallholders in the agricultural sector. Small holders also suffer from limited access to credit and technical information, which is often tied to contracts with particular exporters or embodied in costly, often expatriate consultants. The contributions of research and extension systems, to leveling the information playing field between large- and small-scale producers, has been less than exemplary, leaving the majority of producers to a process of trial and error to obtain technical information from neighbors. Credit through exporter or farmer organized groups has failed largely due to difficulties in trying to enforce contracts.

Awareness about SPS measures

29. Knowledge of SPS issues, both within the relevant government departments as well as the horticultural supply chain, is, with few exceptions, limited. Education and training will have to be undertaken to familiarize relevant ministries and producers, 60000 of whom are small scale farmers in areas with high potential areas, with the SPS requirements of importing countries.

⁹ By fixing the Maximum Residue Levels at "analytical" zero, the new regulations provide that there be no trace of pesticide residue in fruits, vegetables and cut flowers intended for the European markets. This is examined in more detail in section IV of this scoping paper.

30. While Kenya supports the overall objective of SPS measures, and recognizes the long-term benefits, there is concern about compliance costs. Exporters are expected to incur costs associated with new measures which will lead to increased costs in form of;

- Training/sensitization of exporters and officials on SPS requirements;
- Capital costs associated with changing from one type of pesticide to the recommended types;
- Pest risk assessment and management;
- Delays in shipping because of rigorous inspections and increased handling costs;
- Bureaucratic complications in the importing countries;
- Community fees paid by farmers for plant health checks.

Agricultural policies and institutions

31. The Kenyan government wants to introduce a Bill in Parliament to regulate the sector. One of the key aims is to give legal muscle to the semi-government Horticultural Crops Development Authority (HCDA), to enable it to discipline the sector. The Bill also proposes a levy of one per cent of the turnover to finance the new bureaucracy, which the industry feels it is punitive. However, the industry has strongly opposed such a plan. They believe that attempts by the government to have a bigger say would strangle private enterprise. According to them horticulture is the last bastion of growth in an economy which has shrunk by negative 0.4 percent last year. The lobby maintains that they have adhered to the MRL rules of the EU and further continuous training of growers and enforcement of the Code of Practice. They further believe that the Government has achieved growth through the hands-off policy and the government's belated attempts at involvement can only breed market inefficiency and lethargy as has been witnessed in the Coffee and tea sectors.

Fisheries

32. With regard to fisheries, the Ministry of Health is the competent authority. However it has delegated the responsibility of inspection to the Department of Fisheries and the auditing role to the Kenya Bureau of Standards.

33. From an annual production of 180,000 tons of marine and freshwater fish and fish products, 120,000 tons goes to fish processing establishments which in turn export 18,000 tons of fish and fish products earning the country nearly US\$ 55 million. Lake Victoria contributes 92 per cent to Kenya's total fish production of which Nile perch contributes approximately 50 per cent.

34. Traditionally Kenya relies on the European Union market for her fish exports. Until 1996, when Spain and Italy imposed import restrictions on Kenyan fisheries products, the European Union, absorbed 70 per cent of Kenyan exports, with Spain importing the bulk of the commodity.

C. The experience of Mozambique¹⁰

Standards and competitiveness

35. Mozambique's traditional exports (maize, cashew, cotton, wood, prawns and fish) are vulnerable to international pressures (in terms of price, politics and quality), high cost of imported inputs and high transportation costs to global markets. Mozambique still faces numerous socio-economic problems. Among them are: an unstable growth rate; the unstable condition of two digit inflation; decline and stagnation of agricultural and industrial output and a poor commercial network; an unsatisfactory to moderate export performance; and high foreign debt.

36. Under these circumstances, Mozambique, like many other developing countries, faces serious problems in complying with stringent SPS measures and environmental requirements in international markets. Thus, there is concern that such requirements may cause significant adverse economic consequences in terms of financial costs, unemployment and human suffering.

37. Yet Mozambique, as a country interested in international trade, should follow international market trends. Mozambique has become more exposed to international competition in recent years. The conclusion of the Uruguay Round of Multilateral Trade Negotiations in 1994 and the subsequent creation of the WTO as well as the gradual re-integration of South Africa in the world economy after the 1994 election have contributed to this development. The return of South Africa as the dominant southern African exporter increases the importance of cost and quality factors for all other potential African exporters, including Mozambique. South Africa's relatively well-developed transport, communication and agro-processing infrastructure provides South African exporters with a competitive edge over other regional exporters. Building capacities to improve grades and standards will be a critical element of Mozambique's export strategies

38. The African Growth Opportunity Act (AGOA) should open new opportunities for 39 targeted African countries to export textile and agricultural products to the United States market. In order to take advantage of new trading opportunities, existing production and export constraints (see below) have to be overcome. Many of these constraints are already clear at the current time. Other constraints are likely to emerge or to become visible when Mozambique begins to take advantage of trade concessions being offered by the United States (AGOA) and the European Union (see table).

39. The government of Mozambique has put in place a number of macro-economic policies designed to improve its export position. Mozambique continues to strongly depend on its agricultural exports to SADC and other international trading partners. The increased stringency of SPS/food safety requirements, by developed countries in

¹⁰ Cerina Mussa, op. cit.

particular, compels Mozambique to increase its capacity to deal with matters of SPS and food safety.

Grades and standards in Mozambique

40. This is an enormous task. The study on Mozambique elaborates on a series of structural weaknesses in the areas of grades and standards. First, the current system of grades and standards in the domestic market in Mozambique is weak. A low cost/low quality culture permeates in all sectors due to very low-income levels and the overall poor economic climate. The weak system of grades and standards in Mozambique encourages imports of poor quality products and products beyond expiry dates, creates export discouragement, and increases transaction costs. The problem of quality is circular in that exports and processing capacity are low because quality is low and quality cannot be improved without income earned from exports and processing.

41. Second, there are practically no government standards for agricultural inputs currently in place, which causes several problems. It is difficult to obtain good quality seed for many commodities. The lack of seed certification programs leaves farmers with no guarantee that what they are buying is actually what they think it is and that the seeds will actually germinate. In addition, there is no pesticide registry in Mozambique, which means there is no control over what is allowed into the country or regulations on pesticide labeling and usage. Pesticides, such as DDT, are banned in most countries but can be found in Mozambique. The lack of government regulation on the pesticides has led non-governmental organizations to press for conformity with international standards.

42. While the regional markets are less demanding with respect to standards than global markets, standards are still an important element in trading relationships. The same categories of standards exist for the regional market as for the global market. Standards across countries are in the process of harmonization in accordance with regional trade agreements, which will facilitate trade.

Export Constraints

43. Mozambique faces a variety of constraints in effectively and efficiently dealing with trade in agricultural and food products. These may be summarized as follows:

- *The low level of technical education of the staff involved as well as the technology used for inspection processes.* This contributes to the low level of implementation of international standards, guidelines or recommendations;
- *Lack of pertinent, trade-related information for importers and exporters.* This often results in traders attempting to move goods without the required documentation, at great economic cost;
- *Lack of consultation among national SPS/food safety authorities.* The flow of information from national enquiry contact points is poor; as a result authorities "down-stream" from the enquiry/contact points are not provided with the data they need to effectively fulfil their operational mandates;

- *Lack of technical resources.* Mozambique's capacity to apply international standards and regional requirements of conformity assessment, risk assessment, data provision, etc. are limited at the moment due to the lack of technical and adequately qualified human resources;
- *Inadequate exchange of animal and plant disease information among SADC member states.* The poor flow of relevant information among SADC member countries severely impedes regional trade, and renders difficult national efforts to contain plant and animal diseases;
- *Lack of adequate conformity infrastructure.* Like laboratory facilities for the analysis of pesticide residues.

Table 1. Mozambique: Factors Adversely Affecting the Ability to Comply with SPS Measures and Environmental Requirements in External Markets

| Ranking | Factor | At the present time | Likely to be important in future |
|---------|---|---------------------|----------------------------------|
| 1 | Insufficient access to technology | xx | X |
| 2 | High cost of imported imports | xx | X |
| 3 | Lack of awareness or access to information on the part of the exporter | xx | X |
| 4 | Insufficient domestic infrastructure (lack of testing facilities) | xx | Xx |
| 5 | High compliance cost | xx | Xx |
| 6 | Legal factor (lack of enforcement) | x | Xxx |
| 7 | Stringency of the measure (which may be perceived as unreasonable) | n/a. | Xx |
| 8 | Firm size | n/a | X |
| 9 | Insufficient supply of environment-friendly inputs, prescribed chemicals | n/a | Xx |
| 10 | Lack of transparency in the design and implementation of the measure in the importing country | n/a | X |

Trade liberalization

44. The structural weaknesses mentioned above imply that Mozambique has to strengthen its capacities to compete in international and domestic markets in order to be able to reap the benefits of trade liberalization. In the short run, import liberalization may put heavy pressure on domestic industry. Therefore, the study on Mozambique recommends that:

- Companies and agricultural producers likely to be most negatively affected by trade liberalization should receive special attention, and preferential financial and technical assistance from donors, to assist them in becoming as competitive as possible before new trade regulations come into full effect.

Insufficient attention has been paid to implementing measures to reduce the predicted negative consequences (economic and political) expected in some sectors due to accelerated trade liberalization; and

- Trade rules should allow for periodic review and adjustments of rate of liberalization and other key trade issues through specific legal mechanisms, which will enable poorer nations like Mozambique to become less risk averse in trying new initiatives.

D. The experience of the United Republic of Tanzania¹¹

45. Since the mid 1980s, the Tanzanian economy has undergone a gradual but fundamental transformation that has re-defined the roles of the government and the private sector. These changes have paved the way for withdrawal of the government involvement in direct production, processing and marketing activities, which could be better performed by the private sector. The government liberalized the marketing of agriculture products and inputs; price controls and subsidies have been removed; monopolies of co-operatives and marketing boards have been eliminated; and private traders now participate in crop procurement and input supply. Some institutions have been streamlined to cater for the new emerging roles. The Government has now retained the core functions of policy formulation and maintenance of law and order. These reforms have necessitated major changes in the Agriculture and Livestock Policies of 1983. The National Agricultural and Livestock Policy of 1997 has been drawn up taking full account of broader economic and social objectives of the country and the need to have policies which are clear in their objectives and feasible to implement.

46. The study on the United Republic of Tanzania SPS Agreement is crucial in providing market access, while allowing the government to protect its people, plant and animal health and general environment. The United Republic of Tanzania has initiated measures which aim at ensuring that agricultural production, processing and export is undertaken under strict SPS conditions. The new 1997 Act is based on the standard developed under the International Plant Protection Convention (IPPC). The IPPC has now been modified to suit the WTO agreement. However, Tanzania still needs assistance to develop sanitary policy and legislation, along with the WTO also to be able to implement this legislation.

47. The agricultural sector faces the following challenges:

- *Low investments in the agricultural sector.* The agricultural sector has consistently received 3 per cent or less of the total public budget. These allocations have been declining in real terms over time. Similarly the private sector investments have been low due to high risks attached to the sector;
- *Poor rural infrastructure.* Poor rural infrastructure, including roads, limits farmers' access to markets for inputs and produce, increases the cost of transportation and often result in deterioration of produce resulting into poor

¹¹ Margaret Ndaba, op. cit.

quality products. Similarly, inadequate and poor storage facilities cause substantial post harvest losses. Post harvest losses are estimated to be between 30 and 40 per cent of the produce. The absence of communication in rural areas is a serious constraint to the dissemination of knowledge and market information, both of which are vital to the survival of farmers in a free market economy;

- *Limited capital and access to financial services.* Smallholder farmers, most of whom produce food for subsistence, dominate the Tanzanian agriculture, which is characterized by food insecurity and low cash income;
- *Inadequate supporting services.* Supporting services, which are vital to agricultural growth, are insufficient. They consist of agricultural research and extension services, veterinary services, agricultural information services, and plant protection services;
- *Agricultural research.* Research has also suffered from inadequate funding. Weak research-extension farmer linkages have limited the diffusion of research results and restricted researchers' ability to diagnose and respond to farmers' real problems;
- *Agricultural data and information services.* Agricultural data and information Services are essential for making the liberalized market transparent to both traders and farmers and for effective management of a sector. The market information currently produced and disseminated by Ministry of Agriculture and Food Security is not comprehensive in terms of its coverage of products, inputs and areas; and
- *Weak and inappropriate legal framework and taxation policy.* The current legal framework, land tenure and taxation policy do not enable Tanzanians to fully exploit the production and marketing opportunities created by the emerging free market environment.

III. CASE STUDY: FISHERIES

A. EU Requirements

48. The European Union and its member States have enacted specific legislation concerning fishery products, which are also applied to imports. These include¹²:

- Health conditions for the production and placing on the market of fishery products;
- Freshness of fishery products;
- Restrictions on veterinary medicines concerning aquaculture animals and products
- The obligation to introduce a system based on the principles of Hazard Analysis Critical Control Point (HACCP) in fish processing companies.

¹² Source: CBI News Bulletin, No 256, June 1998.

49. Directive 91/493/EEC lays down the health conditions for the production and placing on the market of fishery products in general. The key feature of this Directive is that all fishery products (whether fresh, chilled, frozen, canned, salted, smoked or dried) imported from third countries into the European Union must come from a preparation, processing, packaging or storage facility which is approved by the competent body in the country concerned. The list of approved companies will eventually be endorsed by the European Commission and published in the Official Journal of the European Union.

50. The Directive is based on the HACCP quality assurance approach. The system is based on the recognition that microbiological hazards exist at various points in the handling and processing of fishery products but that, through a rational approach and by applying the necessary measures, it is possible to control them. Its main purpose is to avoid systematic detention, heavy sampling and laboratory checks at the point of entry in the EU. This means that a shift from traditional end-product inspection and certification to this preventive assurance approach is required. The actual control will thus take place in the third countries instead of at the point of entry in the European Union. This has various implications for developing countries. For example, regulations will have to be updated, inspection services need to be organized, handling and processing will probably need to be improved.

51. Directive 91/492/EEC lays down the health conditions for the production and placing on the market of live bivalve molluscs. It imposes strict recommendations on the building, construction, equipment, purification tanks and storage of products. Purification centres must also have the services of a laboratory that can carry out necessary microbiological tests. A record of each incoming batch of product has to be carefully kept, and there should be a health mark on each package listing the species name, origin, dispatch centre and packing date.

52. As a consequence of the implementation of these two Directives companies must allow certain investigations to be carried out during the production phase of various products and must record the data for a supervisory authority.¹³ Countries exporting fishery products must also submit complete legislation to the European Commission concerning the export of live bivalve molluscs and fishery products, as well as a complete report on the functioning of its controlling authority and the infrastructure within which it operates. This documentation will be carefully studied by the European Commission and, if found satisfactory, a delegation will be sent to the exporting country. This delegation visits companies at random and, depending on their findings in the third country, the European Commission may issue either a permanent approval, or a provisional one for a limited time.

53. The Commission recognizes an official controlling body in a third country, if the control procedures are up to a certain standard. This official counterpart is held responsible for monitoring and checking that operators within the country are correctly implementing the procedures of internal control. This body must also select and submit to the European Commission a list of all the establishments that comply, or are

¹³ See scoping paper #3 for a description of similar requirements in the United States.

implementing compliance with the EU Directives. Only then will these establishments be issued with an official number that authorizes them to export to the European Union.

1. Specific legislation

54. Specific legislation has been enacted (both at the level of the European Union as well as individual member States) concerning, for example:

- Pesticide residues (maximum pesticide residue levels, MRLs);
- Heavy metals;
- Polychlorinated biphenyls (PCBs);
- Food additives;
- Radiological contamination of foods radiation of food; and
- Packaging

2. Countries authorized to export fishery products to the EU.

55. In April 1997, the European Commission decided that as of 1 July 1998, fish and fishery products could be imported only from a list of countries (decision 97/296/EC, dated 22 April 1997). This list, which has been revised several times, contains two of groups of countries, as follows¹⁴:

Part I: consists of which are approved to export fish and fishery products to the European Union ("EC-harmonized countries"). This list currently contains around 57 countries and territories, including, for example, the United Republic of Tanzania and Uganda.¹⁵

Part II: consists of countries that are not yet covered by a specific decision but qualify under Article 2(2) of Decision 95/408/EC as a "provisionally-approved" country. Imports may be allowed over an "interim period" (this period currently expires in December 2003). While imports from Part II countries are authorized, each EU member state can still impose its own specific import conditions and can handle its own list of approved establishments.¹⁶ Commission Decision 95/328/EEC establishes that health certification is required for fishery products from third countries on Part II of the list. Currently there are around 45 countries and territories on Part II, including, for example, Kenya and Mozambique.

¹⁴ In 1996, countries in Part I represented around 73 per cent of extra-EU imports in value terms, while countries in Part II accounted for an additional 17 per cent. The remaining 10 per cent of extra-EU imports originated in countries which are not on the list. These imports will no longer be allowed after 1 July 1998. However, a number of countries, including Mozambique, submitted applications Source: CBI News Bulletin, No 256, June 1998.

¹⁵ A list of approved establishments in each of these (and other third) countries can be found on <http://forum.europa.eu.int/irc/sanco/vets/info/data/listes/ffp.html>

¹⁶ For example, France and Italy apply national regulations which deviate from those stipulated by the European Commission. The consequence for exporters from third countries is that fishery products destined for those countries may be rejected by the national authorities, despite complying with the EU conditions. CBI, op. cit.

B. Constraints in African countries

56. The EU requirements described in section A above, and similar requirements in other markets, pose several problems to African developing countries. The study by Cerina Mussa, for example emphasizes that for African developing countries the establishment of a system for sanitary and quality assurance of fish products that is compatible with and equivalent to the systems of the developed countries is very difficult. Such a system gives the industry the responsibility to implement quality control system, according to company-based self-control, whereby industry has to provide proof that their procedures and products are reliable and comply with the regulations, while the inspection services must carry out check-up programmes.

57. Kenya, for example, has experienced a number of problems gaining approval from the European Commission to export fish to the EU and did not obtain “Part 2” status until January 1999. Since 1997, the Commission has undertaken a series of inspection visits to Kenya. Subsequently it questioned the procedures by which plants were approved for export to the EU and export health certificates were issued for individual product consignments, as well as for overall standards of hygiene in the supply chain. An area of particular concern was hygiene standards on boats and on landing sites, many of which lack jetties, portable running water, cooling facilities, fencing, etc.¹⁷

58. Mozambique is faced with numerous problems when it comes to complying with SPS and TBT requirements of developed countries. Specifically, it lacks:¹⁸

- Both human and institutional capacity needed to address SPS issues;
- Specialized equipment needed for analysis;
- Technical information on SPS/TBT and mechanisms to disseminate the same to stakeholders;
- A mechanism for consultations among national SPS/food safety authorities and other stakeholders;
- Overall conformity infrastructure – such as laboratory facilities for the analysis of pesticide residues.

59. In the United Republic of Tanzania, industrial fishery is mostly practiced by trawlers operating the shrimp fishery. Currently there are approximately 16 commercial vessels operating in the country. Despite its potential of fish allowable biomass of 710,000 metric tones the average fish catch is estimated at 350,000 tones annually. Lake Victoria's potential is estimated at 200,000 metric tones. Compared to other East African Community (EAC) Member States, the United Republic of Tanzania stands better

¹⁷ Spencer Henson, Ann-Marie Brouder and Winnie Mitullah, *Food Safety Requirements and Food Exports from Developing Countries: The Case of Fish Exports from Kenya to the European Union*. in American Journal of Agricultural Economics 82(5) (Number 5, 2000): 1159-1169

¹⁸ Cerina Mussa, op. cit.

chances of increasing the present fish production without exceeding the allowable biomass potential.

60. The Tanzanian fisheries sector is constrained in the following areas:

- Inadequate fishing gear and craft
- Inadequate extension services to fishermen, leading to poor handling, and management of fish products
- Unreliable/Inadequate data on fishing
- Inadequate infrastructure facilities including processing and storage facilities.

61. The case study on Uganda lists the following problems:¹⁹

- There was a problem with the structure of the Competent Authority (CA) – namely; because the two quality assurance bodies of fish belonged to different parent Ministries; Uganda National Bureau of Standards (UNBS) belonging to Ministry of Tourism Trade and Industry (MTTI) and Department of Fisheries Resources (DFR) to Ministry of Agriculture, Animal Industry & Fisheries (MAAIF) there was unclear lines of command which in turn led to conflicts;
- The inspectors of DFR were not able to perform their duties due to lack of guidelines and standard operating practices at landing sites;
- Non availability of suitable laboratories for pesticide residue analysis was of major concern. The Government Chemist performance and capacity were considered totally inadequate by the EU inspection team in spite of the fact that Government had invested close to US\$160,000 in improving its facilities;
- The Fish and Crocodile Act had not been upgraded to meet the present challenges of the fast growing fisheries industry;
- With decentralization policy, District Fisheries Officers (DFO) were not answerable to DFR and therefore did not follow instructions regarding hygiene and handling of fish;
- Most fish landing sites had not been upgraded and their facilities did not meet EU requirements.

C. EU import restrictions on African Countries, 1997-1999²⁰

62. Since 1997, Eastern African and Mozambican exports of fishery products have been affected by several specific problems, in particular (a) the presence of salmonellae in Nile perch from Lake Victoria; (b) the outbreak of cholera; and (c) fish poisoning on Lake Victoria as a result of pesticide residues. In each of these cases, the European Union imposed import restrictions (testing and/or bans).

¹⁹ Nimrod Waniala, *op. cit.*

²⁰ In November 1996 Spain and Italy imposed a ban on Kenyan fish claiming the presence of Salmonellae in Kenyan fish. No other European Union member state was affected by the ban and continued importing fish from Kenya. The ban caused a reduction in foreign exchange earnings by 13.1 per cent, with total exports to Spain decreasing by 86 per cent.

| Issue | Countries affected | Measure taken | Source |
|--|--|---|--|
| Presence of salmonellae in Nile perch from Lake Victoria | Kenya United Republic of Tanzania Uganda | Each consignment of Nile perch fillets tested for the presence of salmonellae | Commission Decisions 97/272/EC (Kenya), 97/273/EC (Uganda) and the United Republic of Tanzania (97/274/EC) of 4 April 1997 (Official Journal L 108 of 25 April 1997) |
| Outbreak of cholera | Kenya Mozambique United Republic of Tanzania Uganda | Each consignment of frozen or processed fishery products subject to checks capable of detecting, in particular, the presence of salmonellae and vibrios (<i>vibrio cholerae</i> and <i>vibrio parahaemolyticus</i>); Prohibition of imports of fresh fishery products (because of time required to carry out microbiological analyses) | Commission Decision 98/84/EC of 16 January 1998 (Official Journal L 015 of 21 January 1998) |
| Fish poisoning caused by the presence of pesticides in the water of Lake Victoria and by fishery malpractice | Kenya United Republic of Tanzania Uganda | Suspension by Uganda of exports to the European Union of fishery products caught in Lake Victoria (precautionary measures by Uganda itself) Suspension by the European Union of fishery products caught in Lake Victoria from Kenya and the United Republic of Tanzania | Commission Decision 1999/253/EC of 12 April 1999 (Official Journal L 098 of 13 April 1999): restrictions on imports from Kenya and Tanzania |

63. The papers highlight several concerns. First, the fact that exports of fishery products from Kenya, the United Republic of Tanzania and Uganda have been subject to successive rounds of restrictions illustrates the complexity of the problems and may have contributed to the perception that SPS measures act as “signposts” (see above).

64. Second, there have been doubts about the scientific justification of the measures imposed. With regard to the cholera case, the papers on Kenya and Mozambique argue that there was insufficient scientific evidence to justify the ban. The World Health

Organization (WHO), for example, had issued a *note verbale* explaining that despite the fact that at least 50 countries had been affected by epidemic or endemic cholera since 1961, there had been no documented evidence of any case of cholera resulting from commercially imported food.²¹ The *note verbale* clarified that *vibrio cholerae 01*, the bacterium that causes cholera, can be transmitted to humans via food.²² Cases of cholera had occasionally occurred as result of eating food, usually seafood, transported across international borders by individual travelers, but WHO had not documented cases of cholera resulting from commercially imported food.

65. Similarly, the Food and Agriculture Organization (FAO) noted that the cholera bacteria does not survive proper cooking or drying, and cooked, dried or canned products are considered safe from cholera transmission. Furthermore, the FAO report held that “Epidemiological data suggest that the risk of transmission of cholera from contaminated imported fish is negligible. Only rare and sporadic cases of cholera have occurred in developed countries as a result of eating fish transported across international borders by individuals”.

66. In Mozambique, the government and fisheries sector were convinced that there was insufficient scientific evidence to justify the ban. The authorities, however, tried to resolve the underlying problems and to obtain the removal of the ban through consultations with the European Union. Consultations, both on a bilateral basis as well as at the level of ACP countries (early 1998) took place.

67. Third, the papers express the view that insufficient attention was paid to ongoing efforts of African countries. Both the papers on Kenya and Mozambique argue that in the cholera case the ban was unfortunate since curative and preventive measures had been put in place. With regard to the case of fish poisoning caused by the presence of pesticides in the water of Lake Victoria and by fishery malpractice, the Government of Kenya had imposed a two-week ban on fishing in the lake to stamp the illegal practice. When the ban expired, the Government was satisfied that fish from caught in Lake Victoria was safe for consumption. In European Commission, however, argued that “Kenya and Tanzania have taken precautionary measures but not suspended the exports of fishery products to the

²¹ <http://www.who.int/inf-pr-1998/en/pr98-24.html>

²² Commission Decision 98/116/EC of 4 February 1998 also adopted special measures for the import of fruit and vegetables from Uganda, Kenya, Tanzania, and Mozambique (Official Journal L 031 of 6 February 1998). The Commission argued that the infectious agent *Vibrio cholerae* survives on foodstuffs imported from these countries. As a preliminary precaution, the EU ruled that samples (covering at least ten per cent of consignments) of these foodstuffs should be subject to microbiological controls. However, since the World Health Organization (WHO) advised that where the transport of fruits and vegetables from areas where cholera is present is in excess of ten days, the risk to health from these products is low, the measures applied mainly to products transported into the European Community by air. These measures were repealed by Commission Decision 98/719/EC of 8 December 1998 (Official Journal L 342 of 17 December 1998) *inter alia* because the Scientific Committee for Food expressed an opinion that the risk of human illness in non-cholera regions from exposure to *Vibrio cholerae* from imported fruit and vegetables from areas where cholera is at endemic or epidemic levels is low. In addition, sampling at the point of importation into the Community of 10 per cent of consignments of fruit and vegetables from Uganda, Kenya, the United Republic of Tanzania, and Mozambique had revealed very low incidence of contamination with *vibrio cholerae*.

Community. These precautionary measures are not enough to assure, in the current situation, the safety of the fishery products²³

68. In August 1999, three inspectors from the European Union visited Kenya to assess the capacities and resources of the Competent Authority in relation to pesticide residues in fish and to assess the reliability of the system of certification for freedom from pesticide residues. The professionalism with which the analyses were carried out in the KEPHIS laboratories impressed the inspectors, but despite the results of monthly sampling and analysis procedures that have not detected pesticide residues in fish caught in Lake Victoria, the ban continued for 20 months before it was lifted.

D. Impacts of import restrictions on fisheries products

1. Kenya

69. The 1998 ban (cholera outbreak) resulted in a significant drop in the production and export of fish which in turn negatively impacted on the fishing communities, in particular through loss of employment. Nile Perch exports were particularly affected dropping by 66 per cent and a 24 per cent drop in total fish exports and corresponding 32 per cent drop in value. The third ban, on account of suspicions that fishermen were using chemicals to catch fish saw further loss of incomes, jobs and foreign earnings. Factories operated at below capacity while many closed down affecting approximately 40,000 artisan fishermen.

70. Kenya will need large sums of money to upgrade its fish export infrastructure if it is to be put on Part I. It will have to invest in manpower development, capacity building of fishermen and handlers and in upgrading its landing sites and factories and putting in place appropriate monitoring systems. In particular, Kenya will need; a scientific and technical establishment with experience to defend or challenge any adverse decisions under the SPS measures; capacity building of small-scale fishermen, dissemination of information to artisan fishermen and fish handlers on any amendments on measures already in place, adequate inspection, communication and documentation facilities; trained operators, processing and cleaning personnel; effective monitoring, scientific data and properly equipped laboratories to support regular routine and monitoring programmes.

71. One study²⁴ estimates that the cost of upgrading a single landing site on Lake Victoria to provide potable running water, cooling facilities, etc. is around \$1.2 million

²³ Commission Decision 1999/253/EC.

²⁴ Spencer Henson, Ann-Marie Brouder and Winnie Mitullah, *Food Safety Requirements and Food Exports from Developing Countries: The Case of Fish Exports from Kenya to the European Union*. in *American Journal of Agricultural Economics* 82(5) (Number 5, 2000): 1159-1169. The assessment of the impact of the EU restrictions on the Kenyan fish supply chain was undertaken over the period June 1999 to May 2000. It had three main elements: (1) collection and analysis of secondary data, for example, volume and value of exports, mainly from publish Government sources; (2) interviews with

(Lake Victoria Management Project). Given that there are five main beaches that supply fish for export (Ministry of Health), the total cost is estimated to be \$5.8 million. The cost of upgrading laboratory facilities for chemical and microbiological analysis is estimated to be \$1.1 million (Lake Victoria Management Project). The Kenyan Government has been in discussions with the European Commission regarding technical assistance to fund, at least in part, these improvements.

Box 3: Impacts of EU restrictions on fish exports from Kenya²⁵

Fish Exports from Kenya

The European Union is a very important market for Kenyan exports of fish, accounting for 59 per cent of exports by volume during the period immediately prior to the introduction of the restrictions. It is not surprising, therefore, that the EU measures have had a significant impact on Kenyan fish exports, particularly during the two periods in which exports of particular types of fish were prohibited.

During 1998, when exports of fresh fish were prohibited for a period of six months, the volume of exports was 29 per cent lower than in 1996, while exports to the EU were 69 per cent lower. Similarly, in 1999 total fish exports were 21 per cent lower than in 1996, while exports to the EU were 64 per cent lower. This indicates a significant trade diversion effect, whereby Kenyan exporters were able to partially off-set the impact of the EU restrictions by pursuing alternative markets, in particular Israel, Singapore, Japan, and the United Arab Emirates. Despite this, however, (in nominal terms) the total value of fish exports was significantly lower in 1998 (37 per cent) and in 1999 (24 per cent) than in 1996.

The EU restrictions have had a particularly significant impact on exports of fresh fillets, for which the EU typically accounts for over 95 per cent of exports and for which few alternative markets exist. In 1998 and 1999, exports of fresh fillets were around 86 per cent lower than in 1996. Conversely, in the case of frozen fillets, for which the EU accounted for 60 per cent of exports in 1996, the decline in exports to the European Union has been progressively offset by increased exports to other markets. Thus, in 1998, exports were 30 per cent lower than in 1996, of which the EU accounted for 19 per cent. In 1999, exports were 13 per cent lower than in 1996, of which the European Union accounted for 27 per cent.

Impact on the Fish Processing Sector

The EU restrictions have had a significant impact on fish processors, both in terms of the economic performance of individual companies and the manner in which the sector as a whole is organized. First, the performance of fish processing companies has typically declined as a direct result of the loss of exports to the EU. Given that there are few alternative markets for fresh fillets, processors have had little alternative but to switch to production of frozen fillets, although market prices are typically 60 per cent lower and have been further reduced by intensified competition among exporters. Many processors claim that during the periods that restrictions were applied, the returns from exports of Nile Perch were barely sufficient to cover costs. Indeed, most have been operating at lower levels of capacity and have shed labor in an effort to minimize operating costs. Furthermore, four processing plants have subsequently suspended operations and two companies have gone into receivership. These companies typically had the lowest hygiene standards and/or lacked the necessary processing facilities to switch from production of fresh to frozen fillets.

Government personnel, nongovernmental organization and other key informants; and (3) interviews with fish processors, fisherfolk, and other members of fishing communities on Lake Victoria.

²⁵ Spencer Henson, et al, op. cit.

Second, many processors have had to invest significant sums (at interest rates of over 20 per cent) to upgrade their processing facilities and to improve their procedures so as to meet the EU hygiene requirements. According to the Kenyan Government, only two plants that processed Nile Perch were in compliance with the EU hygiene requirements in November 1998 (Ministry of Health). The improvements required to obtain approval for export to the European Union, as identified by European Commission inspection visits and the competent authority, include upgrading of buildings and/or equipment, improvements to laboratory facilities, implementing HACCP plans, training of staff etc. The necessary investment undoubtedly contributed to the poor financial performance of many processing companies.

Third, the fish processing sector has also been forced to improve the manner in which it manages the supply chain for fresh fish. Traditionally, processors have been supplied through traders and, although some have provided finance and/or fishing equipment to fishing boats on the lake in an attempt to foster dependency among fisherfolk and to guarantee supplies, their role in the management of the supply chain has been limited. However, as a result of the EU's criticisms of hygiene conditions at landing sites, processors were forced to improve hygiene conditions not only in their own plants, but throughout the supply chain. A number of processors, for example, invested in cold storage facilities on the landing beaches and routinely provide ice for use by traders and for the transportation of fish to their factories. While this undoubtedly increased their power to dictate supply terms with fisherfolk, through the traders, it necessitated further investment at a time when competition is particularly intense.

Fourth, as a result of the EU's restrictions and demands for improvements in hygiene conditions throughout the fish supply chain in Kenya, the processing sector recognized the need to share information and to cooperate in relations with the Kenyan Government and the European Commission. Consequently, in 1998 the Kenya Association of Fish Exporters and Processors was formed, involving all of the main fish processing companies. Members of the association were prominent in negotiations with the European Commission, and indeed accompanied Kenyan Government officials to meetings in Brussels. It is conceded by many processors that the sector benefited as a result of this heightened level of cooperation, not only in dealing with the EU restrictions, but in the longer term management of the sector. It is believed that this would have been unlikely if normal market conditions had prevailed.

Finally, the closure and/or reduction in output of industrial fish processing plants has, in turn, led to a decline in the supply of skeletons and other waste products. This has had significant consequences for those individuals, mainly women, who have built up a livelihood around the processing of these products. In Obunga, one of the largest communities dependent on the processing of waste products from fish processing plants, a women's group responded to this threat to their livelihood by collectively assuming the impact. The group, which organizes the processing activities of 800 women, rations the supply of skeletons available to each of its members. This meant that during 1999, each woman was typically allocated less than 50 per cent of the skeletons that she processed previous to the introduction of the restrictions.

Conclusions

In the case of fish exports from Kenya, a supply chain that is highly reliant on the EU market for fresh fillets, the economic impact of prolonged prohibitions on exports has been significant. At the macroeconomic level, fish exports declined, with consequent reductions in foreign exchange earnings. At the microeconomic level, industrial fish processing companies closed and/or reduced capacity and employment in the sector declined. Furthermore, the livelihoods of fisherfolk and others in local fishing communities, who have limited access to alternative economic activities, in part as a result of the progressive export-orientation of the sector, have suffered as market prices for fish have declined.

2. Mozambique

72. The ban on fresh fisheries products reportedly resulted in a loss of about \$60,000 a month in hard currency earnings. Mozambique's main fisheries exports, deep-frozen prawns, were not banned, but subject to testing. The trade impact is not known. The study by Cerina Mussa mentions that for Mozambique, the ban was unfortunate since it had already put in place curative and preventive measures well before the imposition of the ban.

3. Uganda

73. Following successive bans of fish exports to the EU, volumes and earnings were severely curtailed, and negative multiplier effects to the fishing communities and overall economy ensued. In particular:

- An estimated loss of \$36.9 million was posted over the period of the ban and loss to the fishermen community in terms of reduced prices and less activity of fishing, estimated at \$1.0 million per month;
- Out of 11 factories which were operational at that time 3 were closed and the remaining were operating at about 20 per cent capacity. As a consequence, 60-70 per cent of the directly employed people were laid off;
- People involved in the various fishing activities became jobless and those that had some work to do earned less than a third of their normal earnings – this directly affected families and dependants of people involved in fishing and supplementary activities;
- Other related industries like of; packaging, transport and the overall economy were directly affected;
- The restrictions concerning trade in Nile Perch, which had been considered a proper substitute for cod in low season in Europe before the ban, had negative impact on its popularity. An expensive marketing campaign is required to restore the former acceptance levels.

74. As a result of the ban government and fish exporters were compelled to spend huge sums of money to upgrade fish handling facilities; right from the lake – fishing gear and transporting boats containers; landing sites and factory floors/facilities. Specifically, UNBS Microbiology laboratory had to be fully equipped; \$180,000 was invested in a monitoring programme on Lake Victoria and 10 inspectors recruited to supervise fish production at factories. In order to create capacity to analyze pesticide residues, a privately run laboratory - Chemiphar (U) Ltd. - was set up, at a considerable cost, with support from UNIDO. Two pilot boats to conduct trials for assessment of socioeconomic impact on boat building and design were constructed.

E. Building capacities, current situation

1. Kenya

75. The Kenyan Government has undertaken a number of initiatives to have the restrictions suspended and ultimately to get full (List 1) approval for the export of fish to the EU. This involved both legislative change and reform of procedures for the approval of plants for export to the EU and the issuing of health certificates (see box 4). For example, the Kenya Bureau of Standards (KEBS) published a code of hygiene practice for the handling, processing, and storage of fish, which applies to all fish for both export and the domestic market. This standard essentially harmonizes Kenyan hygiene requirements for fish with those of the EU.

76. Despite the hardship caused by import bans there have been some positive developments in the industry,

- A code of practice established and private sector operators involved in the maintenance of SPS services;
- Quality assurance programmes for sustainable exports developed;
- Health conditions at landing sites have been improved;
- Capacity to analyse fish/fish product samples has improved;
- Industry quality managers and fish inspectors trained; and
- Collaborative approach in fish management sought.

Box 4: Measures taken by the Kenyan Government to comply with EU regulations²⁶

The Kenyan government has undertaken a number of initiatives to meet the demands of the European Commission. It introduced legislative changes and reformed procedures for the approval for exports of fish to the EU and the issuing of health certificates. Regulations were introduced to ensure hygienic fish handling and processing, in order to assure safety of Kenyan fishery products to consumers. After the publication of the Fisheries (Fish Quality Assurance) Act, the Ministry of Agriculture and Rural Development whose mandate is to ensure food safety, quality and security, became the Competent Authority (CA) for fish and fishery products, effective 11 August 2000.

The Kenya Bureau of Standards (KEBS) published a code of hygiene practice for the handling, processing, and storage of fish, which applies to all fish for both export and the domestic market. This standard essentially harmonizes Kenyan hygiene requirements for fish with those of the EU.

In addition, the Fisheries department planned and implemented a number of activities, including:

- *Landing beaches.* Landing beaches improvement is being implemented through community/stakeholder participation. Ten strategic landing sites have been earmarked, with the first phase aimed at: fencing; paving Reception area; improvement of drainage system; provision of insulated fish boxes; improvement of the sorting sheds. The second phase of beach improvement will include the following developments: provision of electricity and

²⁶ Halima Noor, op. Cit.

water; construction of landing jetties; Modernization of fish reception; and improvement of access roads.

- *Analytical Laboratories.* Building capacity for both chemical and microbiological analysis of fish and environment (water and sediments) is essential to help develop databases that would be used to assure consumers of the safety and quality of Kenya's fish. To this end, construction and renovation laboratories will be used for routine analysis of the necessary parameters, which will provide the database that would be the reference point for fish safety and quality assurance.
- *Training.* The training and refresher courses for fish inspectors and the industry quality managers is an on-going programme aimed at upgrading fish quality in the country. The Department is also planning to conduct training of trainers on fish quality control to build training capacity. This is expected to assist in upgrading fish quality through training of frontline fish inspectors, fish handlers, and quality managers. The trained trainers on quality will therefore, be instrumental to enhancement of fish product marketability.
- *Collaborative Approach* The need to collaborate with local and international fisheries researchers is being emphasized and several memoranda of understanding have been prepared and signed to this effect. Demand driven research, and survey is being promoted to improve information flow and database for better management of fishery resources. The same approach is being developed for all the stakeholders in the fishing industry, with fisheries taking a lead role.

77. By Commission Decision 1999/136/EC of 28 January 1999, Kenya was placed on Part II (Official Journal L.044 of 18, February 1999).

2. Mozambique

78. The Government of Mozambique has (see also box 3):

- Legalized fish inspection, and provides inspection services/technical to factories and vessels; providing training to fish inspectors at all levels;
- Enhanced and defined the role of laboratories;
- Adapted the HACCP System an elaborate system which approves of sanitary conditions and plans fishing vessels among other things;
- Established the department of fish inspection as the competent authority within the Ministry of Fisheries;
- Put in place a fisheries law which guarantees the safety of fish export trade

Box 5: Mozambique: legislation and Inspection concerning Fisheries²⁷

In Mozambique, the Ministry of Fishery is responsible for inspection and approval of licences for export and imports, in accordance with sanitary requirements. The Fisheries (Law 3/90 of 26 September) has updated regulations and made them compatible with the SPS Agreement. At the same time the Ministry

²⁷ Cerina Mussa, op. Cit.

ensures compliance with the European Union Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (which includes water used in the food industry unless it can be established that the use of such water does not affect the wholesomeness of the finished product)

The Fisheries law also has provisions for:

- Analysis and approval of projects to set up establishments for processing of fish Products;
- Approval hygiene/sanitary conditions, hygiene and quality control programs of factories/vessels;
- Certification of Fishery products aimed for exports;
- Laboratory control for the fish Inspection Programs;
- Organization of trading/extension programs for the technical personnel of the fish Inspection Services and Industry;
- Promotion of research programs

In addition, the proposed “Regulation of Inspection and Quality Control of Fish Products” aims to:

- Guide the development of the processing industry;
- Update and modernise the national legislation in order to comply with the requirements of international markets;
- Serve as the legal landmark for the responsibilities of the fish inspection service and as well for the processing industry;
- Serve, together with the "Fisheries Master Plan" as an instrument for Fisheries management and administration and as a landmark for the performance of the fish industry;
- Be a sector instrument, but with implication from other sectors, such as health, customs, trade.

79. By Commission decision 1999/136/EC of 28, January 1999, Mozambique was included on Part II (official journal L 044 of 18 February 1999).

3. Uganda

80. By commission decision 98/419/EC of 30 June 1998 190 of 4/7/98, Uganda was initially placed on Part II of the countries authorized to export fisheries products to the EU. Subsequently as a result of substantial investments in upgrading facilities at all levels of the fish production/marketing chain, Uganda was promoted to Part I in May 2001.

81. As a result of these positive developments vis – resumption of fish exports to EU, foreign exchange earnings increased which in turn contributed to foreign exchange rate stability. Factories are now operating at full capacity, implying increased direct employment in supporting services as well.

82. Although Uganda suffered from loss of foreign exchange and reduced economic activities from the bans, some positive development can be drawn from this experience namely;

- The experience of the ban made authorities focus on problems of the fish-sub sector; including sourcing of funds from donors – UNIDO;

- The fish inspection services have been streamlined and the capacity of the Competent Authority (DFR) strengthened;
- A fisheries policy has been formulated; inspectors trained; equipment provided and fish inspection manuals developed;
- Uganda's fish got access to the US market which demanded for approved Hazard Analysis Critical Control Points (HACCP) Systems from the fish factories – as opposed to establishments demanded by the EU;
- Internationally recognized laboratory services have been established locally – which will greatly facilitate export of other products and reduce costs;
- Ugandan consumers have benefited from the investment in better sanitary system for fish harvesting and processing.

IV. CASE STUDY: HORTICULTURE

A. Background

83. The horticultural sector is of key interest to several East African countries. In Kenya, for example, the area under horticulture in 1999 was estimated at 322,000 ha of which 1600 ha were under flowers 189,000 ha under vegetables and 131,000 ha under fruits. The sector generated \$US 730 million locally and about \$US 200 million in foreign exchange earnings. Horticulture is currently the fastest growing industry in Kenya, contributing 26 per cent of GDP and it is the third foreign exchange earner.

84. The Kenya paper expresses concern about new European Union SPS measures for fruit, vegetables and other products, in particular Commission Directive 2001/35/EC of 11 May 2001, which came in force in July 2001.²⁸ The directive fixes the Maximum Residue Levels (MRLs) at “analytical” zero, requiring that there be no trace of pesticide residue in fruits and vegetables and cut flowers intended for the EU Market.

B. Structural Problems

85. Problems facing the horticulture sector are common in the three East African countries. Specifically, the sector has; low investment; poor infrastructure; limited capital and financial resources; inadequate supporting services; lack of data information services weak and inappropriate legal framework and experiences high transport costs especially air freighting. The sector is dominated by small-scale farmers. However, horticultural production plays an important role in the Kenya, the Republic of Tanzania and Uganda, in terms of foreign exchange earnings, employment and overall economic growth.

²⁸ Commission Directive 2001/35/EC amending the Annexes to Council Directive 90/642/EEC on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables, which came in force in July 2001 (Official Journal L 136 , 18/05/2001 P. 0042 – 0048). See also Commission Directive 2002/5/EC of 30 January 2002.

86. As mentioned earlier, Kenyan producers are concerned that because of lack of experience and difficulties they are likely to adapt to the new requirements, they may end up using wrong pesticides which may result in production of low quality products.

87. The study on the United Republic of Tanzania notes that, although a market for horticultural products exist, they are enormous constraints which include:

- Inadequate post harvest facilities;
- Poor quality of the packing materials manufactured locally;
- Inadequate access to financial instructions; and
- High costs of energy

C. Impacts

88. The papers prepared for the Kampala workshop organized under this project note that it is too early to assess the impacts of the new EU requirement on exports of horticultural products. Yet concern is expressed in both the Kenyan and Ugandan papers that growth prospects of the industry are likely to be undermined due to the new directive.

89. The paper on Kenya notes that Kenyan Government faces considerable resource constraints that limits its ability to respond to the EU requirements, particularly where modernization of basic infrastructure and facilities is required.

90. The paper on Mozambique notes that while producers and exporters in other African countries have expressed great concern over meeting maximum residue levels (MRLs) for pesticides, none in Mozambique interviewed in preparing the study had expressed concern about new MRL requirements in the European Union. The author attributes this to the low level of market knowledge.

91. Similarly, the paper on Uganda notes that, unlike Kenya, Uganda has not yet made sufficient adjustment to comply with the directive and is likely to suffer more. Although it is too early to assess the impact of the directive to Ugandan horticultural exports, small-scale producers and exporters are likely to close down due to increased compliance costs on all aspects as enumerated under the Kenya experience. Uganda, like Kenya, will need both technical and financial resources to support its horticultural industry if it is to continue exporting to the EU market. Training and sensitization of producers, government officials upgrading of equipment and change over costs have to be undertaken at a tremendous expense to the exporter.

V. CAPACITY BUILDING EFFORTS

92. All papers point to the need for trade-related capacity building and include recommendations in this area. The Kenya paper, however, expresses concern that

technical assistance often fails to address the fundamental day-to-day problems faced by developing countries many of which relate to the overall level of their economic development. It argues that much of the technical assistance is reactionary in that it is provided once problems of compliance to SPS requirements in developing countries have been identified, rather than part of a strategy aimed at general capacity building.

93. Capacity building programmes cover the following areas:

- Assistance to developing countries to implement their obligations under the SPS and TBT Agreements;
- Assistance to participate in the work of international standards organizations;
- Assistance to comply with national SPS measures and/or standards in major markets;
- Assistance to comply with international standards
- Strengthening capacities to increase quality and compete in international markets

94. The SPS and TBT Agreements contain provisions on technical assistance, in particular the first three areas. So far, technical cooperation and capacity building has focused largely on assisting developing countries in implementing their obligations under the SPS and TBT Agreements. However, the need to support to the effective participation of developing countries has emerged as a key “implementation issue” and has been emphasized in the Doha Ministerial Declaration. This is also emphasized in several country papers.

95. The papers also illustrate the need for technical assistance to comply with national SPS measures and/or standards in major markets, for example in the fisheries sector. Such assistance can be provided on multilateral or bilateral basis. UNIDO, for example, has assisted Uganda in resolving problems in this sector and gaining “Part I” status in the context of European Union regulations concerning imports of fisheries products. UNIDO announced further assistance to LDCs in the third UN Conference for the LDCs (Brussels, May 2001).

96. Bilateral assistance also plays a key role. In February 2002, the Commission of the European Union announced a new programme of more than €42 million to help African, Caribbean and Pacific Countries (ACP) countries to overcome difficulties encountered in complying with consumer health standards in the fisheries sector.²⁹ The programme was launched in the framework of the ACP-EU partnership Agreement and forms part of the European Union's overall strategy of trade-related technical assistance for developing countries.

97. The Commission recognized that “Many ACP countries depend on the export of fisheries products to provide both foreign exchange and employment in coastal regions.

²⁹ Commission welcomes boost for trade-related technical assistance. Press release, Brussels, 13 March 2002

For over 60 ACP countries the EU the major export market (the EU represented 76 per cent of total fisheries exports of these 60 countries). Maintaining access to the EU market is therefore of strategic importance but this access has been limited by the lack of ACP capacity to respond to sanitary requirements”. The programme will focus initially on the countries with the most acute needs and will cover key areas such as institutional capacity building, training and technical advice to the industry and the public sector, improvement of infrastructure, support for laboratories and training institutes and advice on export policy issues.

98. Institutions such as the ITC (WTO/UNCTAD) and bilateral donors assist developing countries in strengthening capacities to increase quality and compete in international markets.

99. The Joint Integrated Technical Assistance Programme (JITAP), through its cluster 15, Quality Management in the MTS, includes the following activities to promote “export readiness” of beneficiary countries:³⁰

- Capacity of the national standards bodies, strengthened in MTS-related quality management and export packaging matters;
- Advisory missions in export quality management and packaging in MTS; context, with particular reference to TBT and SPS agreements;
- Orientation tour for trainers in export quality management;
- Operating the Enquiry points on NBT and SPS measures;
- Database on international quality requirements in target markets for exportable products; and
- Database on national quality requirements (standards and regulations) in the countries covered

100. Work under this cluster has focused on the preparation of the national standards and technical regulations. This is expected to help the National Enquiry Points in responding to enquiries.³¹ TBS in Tanzania and UNBS in Uganda have prepared their national databases and will receive comments from ITC and ARSO. Seven JITAP countries are receiving DIN GLOBAL regularly and are also receiving assistance for the preparation of the augmented database from ARSO. In the context of JITAP, needs were expressed to organize sensitization seminars on TBT/SPS, and on conformity assessment for exporters and importers in the JITAP countries. There is also a need to intensify the building of capacity in TBT/SPS and standardization in line with the JITAP approach which requires WTO to explain the rules, UNCTAD to discuss the policy and development aspects, and ITC to address the business aspects. The National Enquiry Points (NEPs) in all JITAP countries are preparing lists of critical technical documents needed by them. The United Republic of Tanzania and Kenya have already submitted such lists. The standards boards in Kenya, Uganda and the United Republic of Tanzania

³⁰ <http://www.jitap.org/clust15.htm>

³¹ JITAP Progress Report Nr. 2001/2

have requested a follow up workshop on TBT/SPS along the lines of the one held under JITAP in Arusha in 1999.

101. A series of initiatives exist to deepen understanding and strengthen research capacities in the areas of standards, identify specific needs of African countries and promote action plans to address issues in the area standards and trade.

102. The World Bank (Development Economics Research Group and the World Bank Institute) has developed the Africa Trade and Investment Policy (ATRIP) Programme). The programme is supported by the United States Agency for International Development (USAID). The programme recognizes that a concrete and deeper understanding of specific relationships between standards, technical regulations, and trade performance in Sub-Saharan Africa is critical to the successful integration of these countries into the multilateral trade system. Moreover, innovative programs to expand access in Sub-Saharan Africa to international standards in support of economically efficient market-based systems and related regulatory institutions are fundamental to economic development prospects in the region. The programme has the following objectives:

- Development of five country-specific action plans to expand access to and use of international standards in Sub-Saharan Africa. This will be accomplished through assessments of the specific impacts of standards and technical regulations on trade in the region;
- Identification of specific infrastructure and capacity needs in Sub-Saharan Africa, including public and private sector capabilities in standards to support expansion of export opportunities and successful participation in the WTO; and
- Design of a pilot network in the region, based on the five action plans, to expand access to international standards and the region's ability to implement WTO obligations in the TBT and SPS Agreements.

103. The International Trade Centre (WTO/UNCTAD) and the Commonwealth secretariat have also been promoting case studies on SPS measures and trade.³²

104. The secretariat of the Organization for Economic Cooperation and Development (OECD) has been implementing a project on the "Development Dimension on Trade and Environment", which focuses on identifying ways in which developed and developing countries can cooperate to strengthen the capacities of the latter to comply with environmental requirements of the former.³³

³² See: WTO document G/SPS/GEN/288.

³³ The OECD project is envisaged in three sequential phases:

- An analysis of the effects of environmental measures and regulations on developing country exports;
- An outreach activity involving key stakeholders sharing experiences.
- Development of best-practice guidelines to address developing countries' difficulties in this area including the goals of transparency and information sharing and dissemination.

105. UNCTAD and the Foundation for International Environmental Law and Development (FIELD) are initiating a new project on Building Capacity for Improved Policy Making and Negotiation on Key Trade and Environment Issues. This project *among other things* will help beneficiary developing countries strengthen their capacities to respond to SPS and environmental measures and to participate in international standard-setting processes. UNCTAD and UNEP are co-operating in the context of the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF).

106. Work on standards is also relevant in the context of the UNCTAD programme on *"Technical assistance and capacity building for developing countries, especially LDCs, and economies in transition in support of their participation in the WTO Post-Doha work programme"* (UNCTAD/RMS/TCS/1). The programme contains a specific "window" on environment, including on environmental/SPS requirements and market access.

VI. CONCLUSIONS

107. The papers highlights that economic and social effects on Eastern and Southern African countries of restrictions on exports, which may relate to genuine food safety concerns, can be considerable and are manifest at both the macro- and macroeconomic levels. Case studies on fisheries indicate that these effects are most pronounced in export-oriented sectors that are highly dependent on particular developed country markets and for which the potential for trade diversion is limited. Governments and the private sector often perceive that SPS and environmental measures are often unjustified and that stringent threshold levels lack a sound scientific basis. In many African developing countries there is a lack of awareness of SPS and food safety measures. However, Governments and the private sector recognize that in order to improve export performance and ability to compete in the domestic market, the only viable option is to build capacities to comply with standards in international markets. Technical cooperation and capacity building, to build such capacities and support the effective participation of African countries in WTO negotiations and the work of international standard setting bodies is of key importance.

108. Key concerns expressed in the papers by African experts include the following:

- Exports can be subject to successive restrictions, as was the case of fisheries products;
- Compliance with SPS measures and environmental requirements may be a "moving target" because standards often become more stringent once producers achieve compliance. This coupled with the fact that compliance often does not result in price premiums imply a financial risk;
- Import restrictions may lack scientific justification (for example the import ban on fisheries in the case of cholera);

- SPS measures in developed countries can be incompatible with prevailing systems of production and marketing in developing countries with insufficient account taken of local and/or regional needs and constraints;
- Insufficient use of standards result in lower prices in the international market;
- In most cases, technical assistance is provided only once problems of compliance with SPS requirements of the importing country have been identified, rather than being part of a strategy aimed at general trade-related capacity building;

VII. RECOMMENDATIONS

A. Approaches

109. Despite the constraints faced by African developing countries in meeting standards in developed countries and the perception that certain stringent SPS measures and environmental requirements may not be justified, the case studies point to pro-active approaches to strengthening capacities to comply with food safety and environmental standards through actions at the national and regional³⁴ levels. It is clear, however, that substantive technical assistance and capacity building support is needed.

110. The study on Mozambique carried out under this project notes that Government and the business sector can adopt several policies and measures aimed at promoting standards and quality with a view to enhancing competitiveness. These include establishing and/or improving supporting infrastructure (e.g. appropriate testing, certification and accreditation facilities), dissemination of information, promoting cooperation between the Government and the business community, promoting cooperation between retailers/importers and producers/exporters, as well as special measures in favor of SMEs. International organizations as well as bilateral and multilateral aid agencies can play important roles in establishing and upgrading national capacities in promoting quality, testing and certification.

³⁴ In a recent SADC workshop, the establishment of a regional institution to address WTO and SPS/TBT issues was discussed. The overall consensus was that, while this would be ideal in the medium to long-term, priority has to remain on strengthening capacity at the national and sub-national levels if member countries are to maximize on the potential returns to increased agricultural trade. The existing institutions within SADC could, however, be better utilized. It was suggested that these institutions could focus their activities on (1) more effective representation in key multilateral bodies, (2) better coordination between enquiry and contact points, and (3) improved information dissemination. Furthermore, these institutions could engage in highlighting emerging technical issues whose impact on trade could be better served by Member States adopting a regional position.

111. The study further notes that considerable emphasis needs to be given to increasing bilateral and/or multilateral co-operation to ensure the rapid transfer of technology and the provision of sufficient technical assistance so that potential export products can become competitive, in the medium term, in regional and world markets. This implies promoting a process of innovation and enterprise development, which in turn depends on improving credit facilities. The implementation of international standards domestically should be focused on those areas and crops destined for competition in the export market. Technical assistance can assist in determining the costs of implementing various standards. There is also a need to lobby for the removal of any importing country standards that are “unnecessary” or unduly burdensome.

112. The paper by Margaret J.Z.Ndaba (United Republic of Tanzania) notes that as African countries aim to strengthen trade in the region and beyond, it is necessary to re-examine SPS and other measures so to ensure that they do not continue to impose unnecessary trade barriers. In addition, measures should be taken by the East African Community (EAC) and the international community to strongly enhance capacity of Partner States to deal with the issues of SPS. Increasing awareness of the various standards in the export markets, as well as strengthening the development of infrastructure and capacity building will eventually also result in health-related standards in the EAC.

B. At the national and regional levels

113. The different papers produced under the project make several recommendations at the national and regional levels.

1. Kenya

114. The study on Kenya makes the following recommendations:

- Increase human and institutional capacities to deal with SPS and food safety matters;
- Sensitize private sector on SPS requirement;
- Improve on information gathering and sharing;
- Establish an information system that allows timely generation and dissemination of trade-related information to all stakeholders;
- Strengthen national and regional capacities to conduct risk assessment and analysis;
- Encourage joint ventures between foreign and local firms.
- Provide technical and financial assistance to sectors that are sensitive to liberalization process in order to enhance their competitiveness;
- Improve communication channels between national SPS management systems;
- Harmonize standards and regulations within SADC region;

- Devise a regional approach to plant and animal disease control and a co-ordinated system of surveillance, monitoring and risk assessment;

2. Mozambique

115. The study on Mozambique recommends the following actions:

- Formulation of a national framework that can more effectively integrate national directives on SPS and food safety issues with technical assistance and capacity building efforts;
- Improvements in information gathering and sharing. Among one of the first, practical steps in this regard is the collection of information on existing national SPS measures, and the difference in food safety standards across regional and international trading partners;
- In the long run, it is suggested that an information system be established that allows for the timely generation and dissemination of trade-relevant information to all involved stakeholders;
- Increased scientific and technical capacity. Currently, Mozambique lacks the capacity to deal with specialized scientific processes, and the technical equipment required for testing and verification processes;
- Strengthening of national and regional capacity to conduct risk analysis, especially the Department of Plant Sanitation to conduct phytosanitary inspections and issue certificates, through investment in staff recruitment, staff training, laboratory facilities, and communication technology;
- Devise a regional approach to plant and animal disease control, and a coordinated system of surveillance, monitoring and risk assessment;
- Improve communication channels between national SPS management system;
- Sensitize the private sector on relevant SPS requirements;
- Assistance to the citrus sector (oranges, grapefruits and tangerines), whose lack of use of standards has, according to the Mozambique Institute for Export Promotion, resulted in lower prices in the international market;
- Strengthening the capacity of the National Institute of Standards and Quality (INNOQ). Mozambique should have the capacity to certify its export products and not depend only on quality certifications by the South African Bureau of Standards.

3. United Republic of Tanzania

116. The study on the United Republic of Tanzania notes that as East African community Partners aim to strengthen trade in the region and beyond, it is necessary to ensure that issues such as SPS need to be re-examined so that SPS measures do not continue to impose unnecessary trade barriers. The study recommends increasing awareness of the various standards in the export markets, strengthening the development of infrastructure and capacity building to strengthen capacities to comply with health and environmental standards in international markets, including regional trade.

4. Uganda

117. The study on Uganda recommend that the experience in the fisheries sector be used to draw lessons for other sectors that have export potential but are sensitive to health and sanitary concerns. The study notes that directive 96/23/EC of March, which requires exporters to have a certified Residue Monitoring Plan in order to gain access to the EU market, could act as a trade barrier for products such as honey, fruits and vegetables. This study makes the following recommendations:

- Enquiry points for, TBT and SPS at regional levels (COMESA, EAC, SADC) and development of region wide standards should be pursued;
- At the national level, there is need to enhance trade promotion activities through dissemination of information on market opportunities and requirements, product development, import and export techniques, as well as the development of trade support services. Human resource development is also essential through strengthening of national institutional capacities for foreign trade training;
- There is an urgent need to amend and up-grade the Fish and Crocodile Act to meet the present challenges of the fish industry.

C. Developed countries and multilateral level

118. The studies, explicitly and/or implicitly, make several recommendations to authorities and other stakeholders in developed countries. These include the following:

- Use sound science in the development of standards;
- Promote technical assistance and assist developing countries in their participation in international standard-setting bodies in accordance with WTO obligations and commitments under the Doha Development Agenda;
- Technical assistance and capacity building should not be limited to assisting developing countries in complying with standards imposed by donor countries, but be an integral part of trade-related capacity building to support the participation of African developing countries in world trade;
- Promote donor consistency. In many cases efforts by donors to promote export-oriented industries are undermined by obstacles to trade in the markets of developed countries. This may be the case in fisheries products, horticulture and flowers. The scoping paper on organic agricultural products (scoping paper #5) points to similar problems in the case of organic coffee.

119. The study on Mozambique recommends the following actions at the multilateral level:

- Harmonization of standards and regulations within the SADC region, based on international formulations. Due to the non-uniformity of standards, re-testing and re-certifying of products is common within the region. This results in

large financial and economic losses to traders and national economies, including Mozambique.

- Conformity of SPS standards to international standards, based on scientific principles. SPS measures must be based on scientific principles, in order to ensure that they do not become technical barriers to trade that retard trade;

D. WTO

120. The country papers make several recommendations on WTO issues. Some of these issues have been considered in WTO decisions on Implementation Issues and the Doha Ministerial Decision (see Annex I).

121. The Kenyan paper, for example, welcomes a review of the SPS Agreement so that it can meaningfully respond to the needs of developing countries. In particular, Article 10 of the Agreement, which provides for developed countries to take in account the special needs of developing countries in the preparation of application of SPS measures, should be reviewed in light of difficulties faced by developing countries. It is suggested that;

- Notification procedures should be simplified to assist developing countries to monitor and notify SPS measures promptly;
- Vague language in the agreement such as reference to “reasonable time” should be clarified;
- The quality of TA to developing countries should be improved and delivered at the time it is needed; and
- Developing countries standards experts should be supported to effectively participate in standard setting work.

122. The SPS Agreement has provisions on Special and Differential (S&D) treatment³⁵ which provide among other things, for developed countries to take into account the special needs of developing countries in the preparation and application of SPS measures; to encourage and facilitate the active participation of developing countries in the relevant international standard setting organizations; to assist a developing country to fulfill the SPS requirement of an importing country. Therefore, there is need for:

- Technical assistance to implement the SPS and TBT agreements with a view to responding to special problems faced by African developing countries. Such TA could include *inter-alia*; building up capacities in fields of accreditation, standards, metrology and certification;

³⁵ The paper on the United Republic of Tanzania argues that the adoption of the WTO decisions and implementation of the Agreement on Agricultural has yet to contribute to an improvement in the agricultural commodity trade of the United Republic of Tanzania. The basic commodities face constant price fluctuations or declines in their international market with damaging consequence, on export earnings and terms of trade of United Republic of Tanzania. Therefore, S&D is essential.

- The effective participation of African developing countries in international and regional standard setting bodies through provision of adequate financial resources.

E. Areas for future work

123. Further UNCTAD work, in cooperation with other institutions, in particular in Africa, and initiatives (including those outlined in this paper) on standards and trade in the African context could focus on:

- Promoting further studies, focusing on environmental requirements, such as issues included in box 1;
- Assistance to African developing countries in strengthening research capacities on standards issues and promoting policy dialogues aimed at identifying national and regional strategies to strengthen capacities to respond to SPS and environmental measures and take advantage of new trading opportunities for environmentally preferable products. This could be done in the context of the UNCTAD-FIELD project and CBTF;
- Activities in the context of the UNCTAD programme on "*Technical assistance and capacity building for developing countries, especially LDCs, and economies in transition in support of their participation in the WTO Post-Doha work programme*" (UNCTAD/RMS/TCS/1). The programme contains a specific "window" on environment, including on environmental/SPS requirements and market access.

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ANNEX: Environmental measures, SPS and TBT in the post-Doha WTO work programme

A. Environment

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| Market access | <p>The Doha decision instructs the CTE to give special attention, among other things to "the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them" (paragraph 32(i), first part).</p> <p>Deadline: 1 January 2005</p> <p>Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations.</p> |
| Labelling for environmental purposes | <p>The Doha decision instructs the CTE to give special attention, among other things to "labelling requirements for environmental purposes" (paragraph 32(iii)).</p> <p>Deadline: 1 January 2005</p> <p>Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations.</p> |
| Trade measures under multilateral environmental agreements (MEAs) | <p>The Doha decision contains an agreement to negotiations, "without prejudging their outcome, on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question</p> <p>Deadline: 1 January 2005</p> |

B. SPS³⁶

Longer time-frame for developing countries to comply with other countries' new SPS measures:

Where a phased introduction is possible, the longer period for developing countries to comply is now understood to mean, normally, at least six months. Where phased introduction is not envisaged, but a member government has problems complying, the two sides should consult, "while continuing to achieve the importing Member's appropriate level of protection."

Implementation:

Equivalence

Where possible, governments are supposed to accept that different measures used by other governments, which provide the same level of health protection for food, animals and plants, can be equivalent to their own. The SPS Agreement (Art.4) requires this, but does not say how it is to be achieved.

In the lead-up to Doha, the SPS Committee settled this implementation issue by deciding on an outline of steps designed to make it easier for all WTO members to make use of the SPS Agreement's equivalence provisions. (decision of 24 October 2001).

In the Doha decision, ministers instruct the SPS Committee to develop expeditiously the specific programme to further the implementation of these equivalence provisions.

Implementation: immediately

Developing countries' participation in setting international SPS standards

The Doha decision notes the actions taken by the WTO director-general to help developing-country members participate more effectively, including efforts to coordinate with the relevant organizations and to identify needs for technical assistance in the field. The ministers go on to urge the director-general to continue with this, and to give priority to least-developed countries.

Implementation: immediately

Review of the SPS Agreement

The Doha decision instructs the SPS Committee to review the operation of the agreements at least once every four years

Implementation: every 4 years or sooner

Financial and technical assistance:

The Doha decision calls for members to provide assistance to least-developed countries so that they can respond adequately to new SPS measures that could obstruct their trade. It also calls for assistance to help them implement the agreement as a whole.

Implementation: immediately

³⁶ See WTO: http://www.wto.org/english/tratop_e/dda_e/implem_explained_e.htm#sps