



Farmers in Bhutan grade potatoes by size and quality for export markets.



4

WTO's SPS Agreement: sanitary and phytosanitary measures

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The WTO SPS Agreement sets out the basic rules for food safety and animal and plant health standards. It aims to strike a balance between WTO members' rights to protect human, animal or plant life or health, and their obligation not to restrict trade more than necessary. Given the technical and costly nature of some of these measures, certain sanitary and phytosanitary (SPS) requirements imposed by importing members could be difficult to meet for LLDCs, for whom agricultural products might represent an important part of their exports.

The SPS Agreement requires members to take measures only to the extent necessary for health protection, with scientific evidence required to demonstrate this "necessity" (except for emergency situations, in which temporary actions may be taken). Under Article 3 of the SPS Agreement, the preferred way of meeting the scientific justification requirement is by using internationally developed food safety, animal and

plant health protection standards, guidelines or recommendations, such as those adopted by the Codex Alimentarius Commission (CAC), the International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE).

Alternatively, governments can justify other levels of protection if these are based on a risk assessment appropriate to the circumstances, but the measures imposed must be no more trade restrictive than required to achieve the desired level of health protection. Given the technical nature of SPS measures, LLDCs often encounter difficulties in undertaking their own risk assessments to determine an appropriate level of protection. Similarly, SPS measures are often costly to implement, and it is difficult for LLDCs to fulfil the requirements established by importing countries. These problems may be exacerbated if import requirements are not the same for different markets, including in transit countries.

↓ **Four of 30 female employees at a shea butter producer, Burkina Faso. All products are exported to Europe.**



Compliance with SPS measures and the procedures to check compliance, normally applied to domestically produced as well as imported products, can cause trade bottlenecks and inevitably result in higher costs. Especially in LLDCs, smaller producers and exporters find these costs prohibitive, limiting their ability to benefit from trade opportunities and increasing trade bottlenecks. The challenge is thus to ensure that effective SPS measures and controls are in place to protect human, animal or plant life or health, while minimizing unnecessary costs and restrictions on trade.

Acknowledging the technical complexities of the SPS Agreement and the costs associated to the implementation of SPS measures, the Agreement contains specific technical assistance and special and differential treatment provisions. Article 10 recognizes the importance of considering the special needs of developing countries, in particular LDCs. For instance, where the appropriate level of SPS protection allows scope for the phased introduction of new SPS measures, a longer time-frame for compliance should be accorded on products of interest to LLDCs, and time-limited exceptions from obligations established in the Agreement could be granted by the SPS Committee.

In 2009, the SPS Committee adopted a procedure to enhance transparency of special and differential treatment in favour of developing country members (WTO document G/SPS/33). It was agreed that when special and differential treatment was provided in response to a specific request, the importing member should inform the WTO in writing through an addendum to the original notification. No requests

have so far been made under this procedure to the SPS Committee.

Article 9 of the SPS Agreement covers the provision of technical assistance to other members, especially developing country members, to contribute to the compliance with SPS measures necessary to achieve the appropriate level of protection in their export markets. This technical assistance can take the form of technologies and infrastructure, economic support or technical expertise and equipment, among others. LLDCs facing difficulties to maintain and expand market access opportunities could request applying for technical assistance from importing members, who consider the request.

This assistance can be facilitated bilaterally or through the appropriate international organizations. The WTO Secretariat can also provide dedicated training on the SPS Agreement to LLDCs upon request. Since 1995, ten LLDCs have requested and received training at a national level on SPS issues. In addition, government officials from those countries have often participated in trainings at a regional level and in more general trainings organized by the WTO.

The Standards and Trade Development Facility (STDF) was created at the Doha Ministerial Conference, in 2001, with the purpose of improving capacity of developing countries to implement international SPS standards, guidelines and recommendations and hence, their ability to gain and maintain market access. Several LLDCs have benefited from this supported on in the SPS Committee.

“The SPS Agreement requires no unjustified costs in control, inspection and approval procedures to ensure that these do not function as barriers to trade and bottlenecks to LLDCs.

Case study: Standards and Trade Development Facility



STANDARDS *and* TRADE
DEVELOPMENT FACILITY

The WTO provides support to LLDCs through the STDF, which helps them to meet international SPS requirements. Since 2004, the STDF has supported 28 LLDCs to develop or implement SPS-related projects through its grant mechanism.

The STDF grew out of joint communiqué issued by the Food and Agriculture Organization of the United Nations (FAO), the OIE, the World Bank Group, the World Health Organization (WHO) and the WTO at the Doha Ministerial Conference in November 2001. Its aim is to increase and reinforce coordination of technical assistance provided by its five partner organizations in the area of SPS. A trust fund was set up with three years of start-up financing from the World Bank and the WTO.

Under the STDF, grant financing is available for private and public organizations in developing countries seeking to comply with international SPS standards and hence gain or maintain market access. WTO members may apply for such funding, and projects are typically between US\$ 250,000 and US\$ 1 million, with beneficiaries required to meet part of the cost. Decisions on project funding are made by the five coordinating organizations, and projects may be implemented by either them or by external organizations.

Zambia

For importers and exporters in Zambia, trade bottlenecks can arise from border processing of consignments of plants and plant products, which can be time consuming and are not conducive to the trade of perishable commodities. Access to the phytosanitary requirements of trading partners, especially members of the SADC, for plant health inspectors and traders needs to be improved. An ongoing STDF project aims to strengthen Zambia's institutional and operational phytosanitary capacity, and thus facilitate trade in plants and plant products. Project activities have contributed to market access negotiations with China and South Africa for products such as stevia, a sugar substitute, blueberries and avocado. In early 2021, Zambia began exporting blueberries to China, which will result in the creation of employment opportunities for around 2,000 people in this sector.

 <https://www.standardsfacility.org/PG-481>

Ethiopia

Ethiopia has a very high level of livestock, with the largest livestock concentration in Africa. However, importing countries have raised concerns about veterinary drug residues in meat and meat products coming from Ethiopia. The STDF project supported the revision and finalization of Ethiopia's legislation on animal health and welfare and veterinary public health. This legislation will enable official veterinary services to meet relevant international standards in order to maintain existing markets and to enter new ones. Promulgation of this legislation is expected to occur in late 2021. The project also supports the revision of standard operating procedures and guidelines for producers, processors, traders and transporters in order to participate in export trade.

 <https://www.standardsfacility.org/PG-477>



↑ A farmer in Zambia attending to the crop.



↑ Cattle at the Ghibe River, Ethiopia.

Azerbaijan

Government agencies in Azerbaijan faced numerous challenges to detect and diagnose plant quarantine pests and to promote plant health security of both imports and exports. An STDF project that ended in 2018 helped to simplify procedures for phytosanitary inspections at border points, with customs officials trained alongside plant health inspectors in how to carry out controls effectively. In parallel, the project strengthened pest diagnostic services and improved pre-border inspection and export certification. The project created the technical expertise needed for phytosanitary import and export controls and helped to build stronger inter-agency dialogue and cooperation. It also rolled out a computerized system for import permits to regulate the entry of plants and plant products, supporting the move towards electronic certificates.



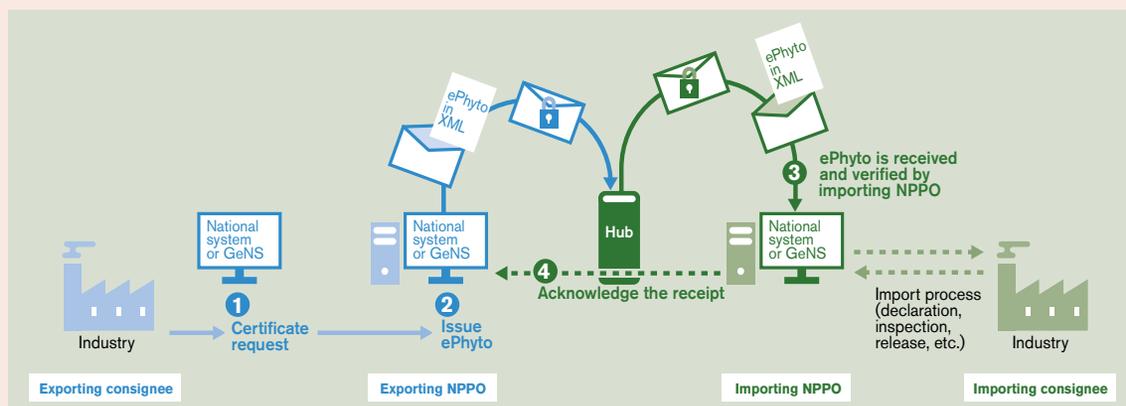
↑ A scientist conducts insect pest diagnostics.

<https://www.standardsfacility.org/PG-316>

Global Project – ePhyto Solution

Since the late 1970s, exporting countries have relied on paper phytosanitary certificates to provide assurances that the plant or plant product being exported meets the phytosanitary requirements of the importing country. An STDF project that ended in 2020 helped develop a central server (referred to as the “Hub”, see below) to facilitate the exchange of electronic phytosanitary certificates (ePhytos) between countries. The project also developed the Generic ePhyto National System (GeNS), which is a simple web application for the production, submission and receipt of ePhytos. GeNS provides a cost-effective system for countries with limited capacities. Around 60 countries currently exchange ePhytos through the hub, including LLDCs such as Nepal, Paraguay, Uganda and Uzbekistan. Uganda is also one of the 12 countries currently using the GeNS system. Early research shows how moving towards digital procedures can help to increase exports of agri-food products and ease trade bottlenecks.

<https://www.standardsfacility.org/PG-504>



Source: FAO (2019). Reproduced with permission.

SPS measures and goods in transit

One SPS related issue that is particular to trade of the LLDCs is the application of SPS measures to goods in transit. Although it is not explicitly mentioned in the SPS Agreement, it follows that SPS measures could be applied to goods in transit to the extent that measures are necessary to protect health and life. Clarity is found in Article 11.8 of the TFA which states: “Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.” However, no mention in this respect is given for SPS measures.

In light of this, the OIE and the IPPC have developed standards and guidelines on handling goods in transit. They provide guidance on SPS measures that may be applied on goods in transit, which could present animal or plant health risks to the country of transit. These measures should be technically justified and necessary to prevent the introduction of animal diseases or plant pests. Based on these standards, veterinary authorities and plant protection organizations of the country of transit may decide which movements require intervention and are subject to the application of SPS measures, and if so, the type of SPS measure to be applied.

For example, according to the OIE standards (OIE, 2021):

“1. Any transit country may require railway wagons and road vehicles used for the transit of animals through its territory to be so constructed as to prevent the escape and dispersion of excrement.

2. The unloading of animals in transit shall be permitted in the territory of the transit country only for purposes of watering and feeding or for welfare or other essential reasons. This must be under the effective control of an Official Veterinarian of the transit country, who should ensure that the animals have no contact with any other animals.”

According to the IPPC standards (IPCC, 2016):

“Consignments in transit may pass through the country of transit remaining enclosed and sealed if necessary, without being split up or combined with other consignments, and without having their packaging changed. Under such conditions, the movement of consignments will, in many cases, not present a pest risk and will not require phytosanitary measures, especially if the consignments are transported in sealed containers However, even under such conditions, contingency plans may be required to address unexpected situations, such as an accident during transit.

“Consignments and their conveyances passing through a country may, however, also be transported or handled in such a manner that they do present a pest risk to that country. This may, for example, be the case when consignments are transported open rather than enclosed, or when they do not pass directly through the country but are held for a period of storage, or are split up, combined or repackaged, or if the means of transport changes (e.g. from ship to railway). In such cases, phytosanitary measures may be applied in the country of transit to prevent the introduction of pests into, and/or their spread within, that country.”

“It is essential for LLDCs to be informed of requirements established by transit and importing countries that may significantly affect international trade.”



LLDC notifications of SPS measures

In order to avoid disruptions and ease trade bottlenecks, it is essential for LLDCs to be informed of requirements established by transit and importing countries that may significantly affect international trade. Transparency obligations of SPS requirements are contained in Article 7 and Annex B of the SPS Agreement. WTO members are required to provide an advance notice of intention to introduce new or modified SPS measures, or to notify immediately when emergency measures are imposed. WTO members must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the scientific evidence underpinning measures) and ensure that all measures are published promptly (WTO document G/SPS/7/Rev.4). As of 30 June 2021, WTO members had submitted nearly 29,000 SPS notifications, of which 541 had been submitted by 22 LLDCs.

Of the 541 notifications submitted by LLDCs, 51 per cent indicate a relevant international standard, compared to 27 per cent for notifications submitted by all WTO members. When focusing on emergency notifications, this difference is even more striking: 81 per cent of emergency notifications submitted by LLDCs refer to a relevant international standard, compared to 61 per cent of emergency notifications submitted by all WTO Members. In the case of LLDCs, 90 per cent of all notifications indicating a relevant international standard conform to it, and this is even higher (94 per cent) for emergency standards; these percentages represent 71 per cent and 88 per cent of the notifications, respectively for all WTO members. This may be because they have less extensive SPS regulatory systems and, consequently, they are more likely to have to introduce new regulations or change existing ones when facing emergency challenges.

↑ Processing and export of dried pineapple and pineapple juice in Benin for European markets.

Most of the measures that have been notified do not specifically apply only to products being exported by an LLDC. Therefore, in order to have a clearer picture of which measures have a greater incidence on trade of the LLDCs, it is pertinent to look at the notified measures that cover the five agricultural products of major interest to LLDCs: soja, tobacco, coffee, wheat and oilseed. For these five products, more than 3,000 notifications have been submitted since 1995, with more than 90 per cent of which relate to food safety (excluding tobacco). While most of these notifications affect all trading partners and are not specific regions or countries, LLDCs may encounter additional difficulties to comply with the requirements as they may need to not only fulfil those that have been set out by the importing but also the transit countries, which may differ.

Easing trade bottlenecks by reducing costs and streamlining LLDC exports is critical to increase harmonization of the importing market requirements. Since 2007, WTO notifications include the possibility for members to indicate whether there is a relevant international standard by the CAC, the IPPC and the OIE, and whether their notified SPS measure conforms to it. A closer look at all types of notification submitted by WTO members reveals that of the five products of major interest for LLDCs, an average of 25 per cent of them indicate a relevant international standard, guideline or regulation by the CAC, the IPPC and the OIE (mostly by the CAC on food safety). Up to 48 per cent of that total indicate that the notified measure conforms to the relevant international standard.

Using IT to ease trade bottlenecks: two WTO tools to track notifications

SPS & TBT notification system

 <https://www.epingalert.org>



A joint initiative of the WTO, the International Trade Centre and the United Nations, ePing is a global online tool that enables private and public stakeholders to access and discuss SPS notifications covering products and markets of interest in a timely manner.

SPS Information Management System

 <http://spsims.wto.org>

The comprehensive database allows users to search all notified SPS measures and specific trade concerns (STCs) raised in the SPS Committee.

COVID-19 and SPS measures

In reaction to the COVID-19 pandemic, members must act quickly to ensure health safety. As of 30 June 2021, 29 members had submitted a total of 101 COVID-related SPS notifications and communications, including measures implemented,

subsequent modifications introduced and statements delivered in the SPS Committee. However, the measures introduced may have had a limited negative impact on export opportunities of LLDCs. Initially, COVID-19 SPS measures mainly related to restrictions on animal imports and/or transit from affected areas and increased

certification requirements. None of these measures specifically targeted LLDCs, and most restrictions have since been lifted. Only one LLDC submitted a COVID-19 SPS emergency notification restricting import and transit, which has already been lifted.

From April 2020, most notifications and communications from members were aimed at facilitating trade by temporarily easing product certification requirements while ensuring product safety (e.g. accepting veterinary and phytosanitary e-certificates, and scanned copies instead of original documents). Similarly, these measures affected all trading partners and, as such, LLDCs also benefited from the easing of requirements that did not compromise safety.

Agricultural producers, particularly the smallest, and MSMEs in LLDCs are significantly more impacted by the implementation of certain SPS measures that create additional restrictions or burdens on international trade in animals, plants or plant products (or new SPS measures and more restrictive requirements for exports). The LLDCs Mali, Niger and Paraguay have submitted, together with 37 other WTO members (including 11 transit countries), a request for the suspension of the processes of entry into force of reductions of maximum residue limits (MRLs) for plant protection products in light of the COVID-19 pandemic (WTO document G/SPS/GEN/1778/Rev.5).

↓ A bustling market on the banks of a lake in Rwanda.



Participation in the SPS Committee

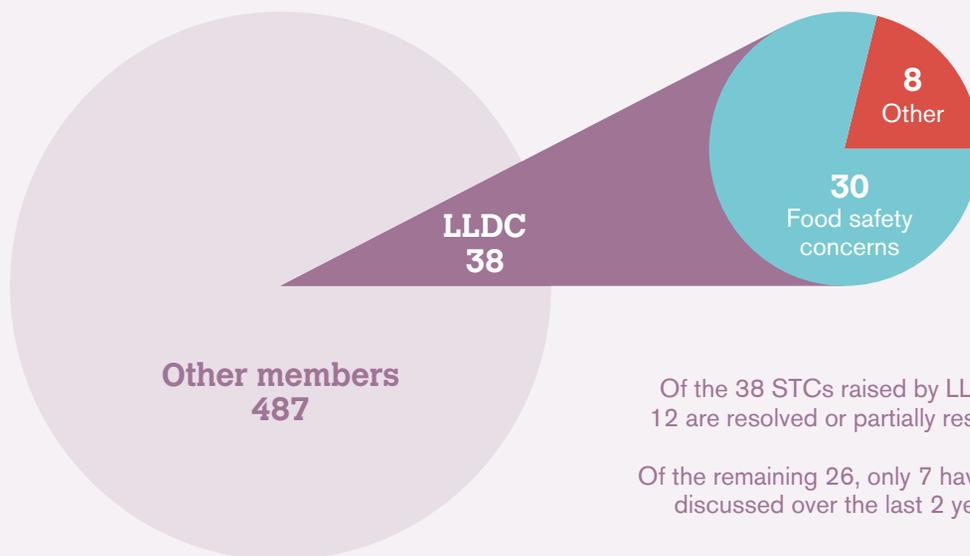
In the SPS Committee, all WTO members can raise their concerns about other members' regulations. At SPS Committee meetings, which usually take place three times per year, LLDCs have the opportunity to raise STCs on measures maintained by trading partners. Members can also support STCs raised by other members to indicate their interest in the topic or a similar concern.

In recent years, developing country members have increasingly participated in the SPS Committee – both to share information with other members and also to discuss concerns on measures implemented by their trading partners. Overall, LLDCs are not particularly active in

the SPS Committee, although some of them frequently take advantage of this mechanism to voice their concerns.

Of the 525 STCs discussed in the SPS Committee up to 30 June 2021, 38 were raised or supported by an LLDC (see Figure 13). Paraguay has participated as a raising or supporting member in 26 of them – in some together with other LLDCs. Of these 38, the vast majority (80 per cent) relate to food safety concerns; the remaining relate to plant or animal health matters and other types of concern (i.e. control, inspection and approval procedures). Twelve out of the 38 STCs are considered to be resolved or partially resolved. Of the remaining 26, only 7 have been discussed over the last 2 years.

Figure 13: STCs discussed at the SPS Committee



Of the 38 STCs raised by LLDCs: 12 are resolved or partially resolved.
Of the remaining 26, only 7 have been discussed over the last 2 years.

Source: WTO Secretariat.

Among the five agricultural products of interest to the LLDCs cited above, twelve STCs on measures affecting soya, all mostly related to food safety, have been discussed in the SPS Committee. Six of these STCs refer to MRLs of certain pesticides in a number of agricultural products. Some LLDCs, such as Paraguay, the Plurinational State of Bolivia, Burkina Faso, Burundi and Zambia, have raised or supported these STCs.

LLDCs and transit countries have also joined other members in raising STCs relating to measures covering

endocrine disruptors (pesticides), cadmium in chocolate and veterinary medicinal products (antimicrobial resistance). Yet another area of frequent concern for developing countries and LLDCs relates to control, inspection and approval procedures, including sampling, testing and certification. STCs in this area make up approximately 20 per cent of all STCs raised in the SPS Committee, and frequently attest to undue delays or unjustified documentation requirements when undertaking and completing control, inspection and approval procedures.

Maximum residue limits of pesticides

The issue of pesticide MRLs in food is frequently discussed in the SPS Committee. Over 20 members, including LLDCs and transit countries, have taken the floor to either raise or support concerns. These concerns mostly relate to pesticide regulation measures and their impact on exports of bananas, grapes, mangoes, oilseeds and rice.

In particular, many STCs are raised in relation to the different MRLs that apply in various export markets, something that presents a particular problem for LLDCs, as they may have to comply with different MRLs for both the import and transit country.



← Stock receiving attendant moves crates of tomatoes out of the storage facilities for transportation, Eswatini.

SPS-related private standards

In addition to SPS measures adopted by governments, LLDCs, like all WTO members, face the increased use of 'private standards', which cover a wide range of quality, ethical, social, environmental and food safety issues. This section concerns only the latter. SPS-related private standards are a response to various factors, including food safety concerns, legal requirements to demonstrate 'due diligence' in the prevention of food safety risks and the increased consolidation in food retailing.

Where a small number of food retailers account for a high proportion of food sales, the options for suppliers who do not participate in either an individual or collective retailer standard scheme can be considerably reduced. Furthermore, the retailer scheme may be de facto applied as the industry norm by all actors in the supply chain. Thus, the choice of whether or not to comply with a voluntary standard becomes a choice between compliance or exit from the market. In this way, the distinction between private voluntary standards and mandatory 'official' or 'public' requirements can blur. This situation particularly affects exporters in LLDCs, as they are very small and have very little leverage with the private retailers in shaping their private standards. Moreover, small producers in LLDCs severely lack the capacity to comply with these private standards, which thus become an important bottleneck for LLDC trade.

Private standards impact on trade at all levels, including at the international level. In particular, LLDCs have raised concerns that

private standards act as a barrier to trade. This is reflected in discussions in the SPS Committee, as well as in a number of other multilateral bodies, including the Organisation for Economic Co-operation and Development (OECD), UNCTAD and the World Bank, which have led research on their impact.

Under the SPS Agreement, the preferred way of meeting the scientific justification requirement is by using international standards. The SPS Agreement also requires that there be no unjustified costs in control, inspection and approval procedures to ensure that these do not function as barriers to trade and bottlenecks to LLDCs.

Increased use of international standards relating to the treatment of agricultural goods, including in transit, could reduce the trade transaction costs and facilitate trade. LLDCs should participate actively in the standard-setting processes under the CAC, the IPPC and the OIE to ensure that the standards developed meet their needs, and that they are applied to goods in transit only in cases where the transiting goods present a risk for the transit country. They should also consider opportunities to make more use of specific standards of relevance to trade facilitation.

Importantly, the SPS Agreement contains provisions to ensure the transparency of SPS requirements. While the majority of SPS measures notified to WTO affect all trading partners, LLDCs may face increased challenges, in view of the infrastructure, expertise and resources required for their implementation. The fulfilment of the obligations established in the SPS Agreement, as well as the technical



↑ **Banana consignment from Uganda crosses into the Democratic Republic of the Congo.**

assistance available and the support offered by the STDF can contribute to increasing capacity in those countries to comply with importing members' requirements and, as a result, to gain and maintain market access for the agricultural products of major interest to them.

Finally, the SPS Committee provides a forum where members can discuss the implementation of the SPS Agreement and raise their concerns relative to other members' regulations. LLDCs could use

the STC mechanism of the SPS committee to question and clarify the necessity of applying certain SPS measures to products in transiting which will not be consumed or commercialized in the transit country. In this way, the SPS Committee plays a vital role in addressing some of the bottlenecks in LLDC trade.

“Small producers in LLDCs severely lack the capacity to comply with these private standards, which thus become an important bottleneck for LLDC trade.

↓ A trader's market in Nepal opens for business.

