



Seminar Summary

US and EU Food Import Requirements – the Case of Green Beans and Shrimp

Held at the Graduate Institute of International and Development Studies (HEI)

Geneva, June 26, 2008

Prof. Joost Pauwelyn of the Graduate Institute welcomed seminar participants, in particular SPS Committee Delegates, to HEI. He introduced the new Centre for Trade and Economic Integration, and stated how well the seminar on IPC's paper on U.S. and EU import approval procedures fit into the Centre's agenda.

Charlotte Hebebrand, IPC Chief Executive, after thanking HEI for their hospitality, referred to the conclusions of a June 9-12 seminar on Setting International Food Safety Standards – Implications for Trade, in particular with Developing Countries in The Hague organized by the Dutch government, FAO and WHO, as these nicely set the stage for IPC's paper. The Hague seminar conclusions stress that while safety should never be compromised, the economic implications of food standards should also be considered. Whereas developing countries benefit from technical assistance and increased participation in international standard-setting bodies, the greatest obstacles are presented by insufficient information about standards. Divergent standards of large trading partners are also problematic and greater efforts should be made to harmonize standards and import requirements.

Linda Horton of Hogan & Hartson and one of the two authors, presented the paper. She explained that the paper focuses on U.S. and EU import approval procedures for horticulture (green beans) and fishery products (shrimp) because standards for these commodities are not as divergent as those for meat products or genetically modified crops, but do entail divergent means of demonstrating compliance with their standards. Moreover, both the U.S. and EU represent sizeable markets and are interested in pursuing regulatory cooperation between themselves. By undertaking greater collaborative efforts in technical assistance and regulatory streamlining, she emphasized, transatlantic regulatory cooperation would expand to include a welcome development aspect. Moreover, it would facilitate EU-U.S. discussions on SPS issues without getting bogged down in longstanding bilateral SPS disputes.

She then described the similarities and differences in EU and U.S. food safety systems, and import approval procedures for green beans and shrimp. The U.S. and EU both require official pre-import approvals for meat and poultry; the EU also does for seafood and the U.S. also does for horticultural products. Whereas both the U.S. and EU share pest- and disease related concerns, the U.S. (APHIS) forbids imports until a pest risk assessment for each product from each country has been undertaken and until the rule-making process is satisfactorily completed, whereas the EU makes import contingent on phytosanitary certificates issued by the exporting country's competent authority for a subset of plants identified as presenting risks. Green beans – when imported for consumption into the EU – do not require any type of certificate. The APHIS process, which can take more than five years, has been criticized and the agency recently issued regulations intended to streamline the process.

Likewise, the EU and U.S. have similar sanitary and animal health concerns with regard to fishery products, but rely on different mechanisms to demonstrate compliance. Here, the EU system, which requires that imports can only occur from countries whose regulatory systems have been found to be equivalent to that of the EU, is considered more cumbersome. The U.S. system allows for importers to vouch for a seafood product's safety and is therefore considered more flexible. A plant with an excellent safety record, but located in a country with a poor regulatory system, will be able to export more easily to the U.S. than the EU.



Ms Horton moved from these descriptions to a set of recommendations for greater transatlantic cooperation outlined in the paper. There is considerable scope for collaborating on the provision of technical assistance and information exchange. Just as private industry is required to zero in on critical control points under HACCP, so too should regulators on both sides of the Atlantic be asked to focus on “regulatory control points,” and unnecessary and overly burdensome requirements should be eliminated.

Dr. Bruce Mukanda, SPS expert at COMESA, presented an overview of the SPS-related challenges faced by COMESA members. He outlined the need for greater national and regional coordination, an improved flow of information to producers, in particular smallholders, and greater attention by the public sector to SPS issues. He lamented that too often, trading partners, doubting the compliance of COMESA countries, go above and beyond international standards. He agreed with the paper’s recommendation for increased EU-U.S. harmonization and for technical assistance which truly focuses on equivalence, taking into account the realities and needs of COMESA countries.

Dr. Stephen Mbithi, Chief Executive of the Fresh Produce Association of Kenya, emphasized that standards are a “passport to trade,” and of particular importance for smallholders, since they ensure that sufficiently similar units are produced which then jointly make up bulk shipments. He stressed that some 80% of Kenyan green bean exports derive from smallholder production. Dr Mbithi criticized the amount of time required to gain import approval into the US and raised the question of whether protectionist forces play a role in the APHIS system. He also took the EU to task, arguing that EU regulators demand “likeness” rather than “equivalence” for seafood imports, by insisting that exporting countries put an EU-like compliance structure in place. He pointed out that technical assistance is a voluntary contribution, but raised the question of whether it should be considered mandatory when an importing country chooses standards that are higher than international standards.

Mary-Lisa Madell, Acting Director of APHIS’ Trade Support Team, welcomed a number of IPC’s recommendations, but also outlined several concerns. She emphasized the right of WTO members to chose their own level of protection and the U.S.’ concerns about significant pest risks necessitating a commodity- and country-specific pest risk analysis. She referred to APHIS import approval procedure as transparent since it allows for public comment, but conceded that it is not speedy. She questioned the IPC paper’s recommendation for regulatory streamlining but did welcome the recommendations for an increased information exchange; the U.S. and EU could usefully share risk assessments and audit reports and conduct joint visits and inspections. Here, she referred to U.S.-Canadian joint site visits for animal health inspections. While both the U.S. and the EU provide considerable technical assistance, she stressed, greater coordination of these efforts is an excellent recommendation.

Ms Madell questioned whether the Transatlantic Economic Council (TEC) is the right forum to undertake such cooperation, given the need to involve technical experts. She closed by stating that the challenge is not only a bilateral one, but rather one of helping developing countries increase their exports across the board.

Michael Scannell, EC Spokesperson in the SPS Committee, complimented the IPC on its report and stated that the EU and U.S. should increase their collaboration on promoting food safety and trade. He also voiced skepticism however about the ability of the U.S. and EU to undertake regulatory harmonization. Harmonization of standards among EU member states had worked because of the political push and the financial resources available given the shared objective of creating the internal market. Although the SPS Agreement calls on WTO members to also undertake harmonization with the same objective of promoting trade under safe conditions,



multilateral harmonization is a much more difficult process given the lack of political pressure and financial resources and the much greater heterogeneity in the international community (and the requirement for consensus decisions in the international standard-setting bodies) as compared to that within the EU.

Scannell emphasized that the EU's import measures are a reflection of its internal measures and that the EU is not prepared to change its internal measures as a result of changing its import measures. Scannell also stated that he is usually confronted with demands from consumer NGOs for stricter EU standards and predicted that EU standards will likely get increasingly strict, but in a non-discriminatory manner.

He thought that EU-U.S. cooperation on technical assistance and information exchange would go a long ways towards avoiding duplication and lead to improved regulatory cooperation. Although he understood the rationale for selecting a horticultural and a seafood product for the IPC analysis, he encouraged IPC to examine the much more significant divergences existing in the meat sector and on genetically modified crops, an area where developing countries are "truly caught in the crossfire."

Johannes Kern, "Africa-Observer" at the GLOBALGAP Sector Committee, presented an overview of private sector standards. Given the increase in private sector standards in response to consumer expectations, Kern said there is also a need for harmonization. He spoke of the attempts underway between GLOBALGAP and the U.S. Food Marketing Institute/Safe Quality Food Institute to establish a Partnership on Audit Checklist and Standards for growers and farmers. If EU-U.S. harmonization on private standards is feasible, Kern asked, why should it be so difficult with regard to government standards?

Q&A

In the Q&A session, questions were raised about whether countries have been able to reach equivalence agreements. Linda Horton, as well as the U.S. and EU representative, replied that equivalence has been a difficult concept to implement. An example is the EU-U.S. Veterinary Equivalence Agreement, which – despite having been reached – has not been properly implemented, although the EU does have better functioning equivalency agreements with a number of other countries.

Another participant inquired whether WTO members must clearly identify in writing their "chosen level of protection." The APHIS representative replied that a country's chosen level of protection can be derived from its standards.

Charlotte Hebebrand ended the meeting with two major conclusions, thanked the speakers and participants, the HEI and the German Federal Ministry for Economic Cooperation and Development and the German Marshall Fund for their financial support of this project:

1. The paper chose to examine EU and U.S. standards because these two entities are interested in pursuing regulatory cooperation. An increased development focus for EU-US regulatory cooperation in this realm could nicely accompany trade preferences and generous duty- and quota-free packages for LDCs. Despite this focus on the U.S. and EU, however, the issue at hand clearly goes beyond the U.S. and EU, namely how can the SPS Agreement, with its provisions on harmonization and equivalence be better implemented?
2. Although the SPS Agreement urges harmonization, it clearly also allows members to impose their own level of protection. It is not enough, however, to ensure that standards are not imposed in a non-discriminatory fashion. The SPS Agreement also requires that standards are scientifically justified and not more trade-distorting than necessary.