

**IMPLEMENTATION OF INTERNATIONAL STANDARDS
THROUGH PUBLIC-PRIVATE PARTNERSHIPS**

**CONCEPT NOTE ON POSSIBLE FUTURE STDF WORK
FOR DISCUSSION BY THE STDF WORKING GROUP, MARCH 2018**

1 INTRODUCTION

1. In October 2016, the STDF Working Group discussed a concept note¹ on possible future STDF work on the implementation of international standards in a public-private partnership (PPP) context, with particular attention to private assurance schemes. During this discussion, Members highlighted how new work on PPPs would build on previous STDF work and support the development of SPS-related PPPs. Despite substantial past work on PPPs, members recognized that PPPs remain very topical and that more needs to be done to move from talk to action. There was agreement that additional dialogue on how to strengthen collaboration between regulatory authorities and the private sector, facilitated by the STDF, would be useful notwithstanding certain sensitivities.² While several members at the October 2016 meeting expressed support for additional work by the STDF on PPPs, the Working Group requested the Secretariat to prepare a revised concept note on the use of Good Regulatory Practices, incorporating relevant aspects related to PPPs (including public-private collaboration and the role of private assurance schemes) for discussion in March 2017.

2. During the Working Group meeting in October 2017, members agreed again on the relevance of considering additional STDF thematic work on PPPs (in addition to possible work on the business case for investments in SPS capacity development and good practice in implementation of the Trade Facilitation Agreement (TFA), including single windows). Members recognized that "PPPs are a common element of many STDF projects, as well as thematic work on different topics from trade facilitation to risk-based inspection, the use of co-regulatory approaches, and GRP" (Working Group Summary Report, October 2017). The Secretariat was requested to revise its previous concept note (dated 6 October 2016) on new work on PPPs for discussion in March 2018.

3. This updated concept note is presented in this context. It provides a brief overview of the topic and outlines the purpose, scope and expected outputs of possible future STDF work on PPPs. Subject to discussion and feedback, additional work on PPPs may be considered in 2018 and/or included in the STDF work plan for 2019-20.

2 STDF WORK ON PUBLIC-PRIVATE PARTNERSHIPS, 2010-17

4. In 2010, the STDF initiated work on SPS-related PPPs, in collaboration with STDF partners, donors and other organizations. This work highlighted the contribution and value of PPPs in the SPS area, and pointed to interest among many SPS stakeholders, including in developing countries, to explore opportunities to further develop and implement PPP approaches.

5. Since 2010, STDF thematic work on PPPs has included the following key outputs and activities:

- Seminar on "Public-Private Partnerships (PPPs) in Support of SPS Capacity", in collaboration with the Ministry of Agriculture, Nature and Food Quality (now the Ministry of Economic Affairs, Agriculture and Innovation) of the Netherlands, and the World Bank Institute in 2010.³
- STDF Briefing Note No. 6. (Nov. 2010): Facilitating partnerships to enhance SPS capacity. November 2010.⁴

¹ STDF/Coord/587/Concept Note, 6 October 2016.

² Summary Report of STDF Working Group meeting, 20-21 October 2016.

³ See: www.standardsfacility.org/sites/default/files/Programme_SPS_PPP_Workshop_Website.pdf

⁴ See: www.standardsfacility.org/sites/default/files/STDF_Briefing_No6_EN_web.pdf

- Joint STDF/IDB publication (Apr. 2012) entitled "Public-Private Partnerships to enhance SPS capacity: What can we learn from this collaborative approach?"⁵ This publication analysed the emergence, operation and performance of selected PPPs to support improved SPS capacity. These included PPPs focused on SPS dialogue and coordination, infrastructure, value chain development, trade facilitation, joint public-private companies for SPS implementation, and co-regulatory approaches in food safety (i.e. increased reliance of some governments on the use of private assurance schemes to inform risk management decisions). Several of these PPPs addressed different aspects (e.g. pesticide residues, phytosanitary controls, food safety certification, laboratory testing) of SPS capacity building relevant to the implementation of international (Codex, IPPC and OIE) standards.
- STDF side event on PPPs in a value chain context, co-organized with Canada and the Netherlands, on 9 July 2013, as part of the 4th Global Review of Aid for Trade.
- STDF Briefing Note entitled "Partnering with the private sector: delivering SPS outcomes"⁶ (Feb. 2017), which provides diverse examples of collaboration with the private sector and PPPs in STDF projects.

6. In addition to the above-mentioned thematic work, several STDF projects include approaches and activities focused on PPPs, as illustrated in the STDF Briefing Note "Partnering with the private sector".

7. The STDF Secretariat continues to disseminate and share information on the above-mentioned work on an ongoing basis, including through diverse external events. For instance, during the Global Food Safety Conference in Houston in 2017, STDF's experience in building food safety capacity through PPPs in Thailand and Vietnam (STDF/PG/326) was shared in a Breakout Session, entitled "Global Markets: capacity building agenda", and through a Global Food Safety Initiative (GFSI) leaflet focused on the results and experiences of this project.⁷ GFSI subsequently distributed a blog by the STDF Secretariat on the experiences and results of this project.⁸

8. In March 2018, the STDF Secretariat shared information on STDF's work on PPPs during different sessions of the Global Food Safety Conference in Tokyo and other related meetings. These included the GFSI Board meeting, a Government to Government meeting, a Government to Business meeting to discuss food safety issues and trends (including third-party assurance), and a Breakout Session on the changing role of the food safety regulator (which also included the participation of the Codex Secretariat and Codex Chairperson). Over 40 organizations representing 25 countries and international/regional organizations, including the AUC, Codex, FAO, IICA, STDF, WTO and the World Bank, participated in the Government to Business meeting, which discussed ongoing food safety reforms including the role of third-party audits and certification in such reforms, capacity building, SMEs and the use of the Global Markets Programme, auditor competence, and ongoing Codex work to develop CCFICS Guidance on Third-Party Assurance Schemes (see below).⁹

9. Some STDF partners have made use of the above-mentioned STDF work on PPPs. For instance, OIE reported that STDF's work was useful to help develop the OIE global survey of its Member Countries in 2017 on the role of PPPs in strengthening Veterinary Services. OIE used elements from the STDF briefing note "Partnering with the private sector" to define PPPs and potential private sector partners during development of this survey. OIE further indicated that the findings of its survey, which provide an interesting typology of PPPs in the field of animal health, could enrich future work by the STDF on PPPs and their impact on SPS measures and trade opportunities. In addition, an FAO publication on agri-PPPs (2016) drew attention to STDF's work on PPPs.¹⁰ FAO's publication highlighted a "surge in interest" in PPPs pointing to the abundant development literature on the topic, the development of strategies by development partners and

⁵ See: www.standardsfacility.org/sites/default/files/STDF_PublicPrivatePartnerships_EN_1.pdf

⁶ See: www.standardsfacility.org/sites/default/files/STDF_Briefing_Note_15.pdf

⁷ See: www.mygfsi.com/files/Information_Kit/Case_Studies/GFSI_Case_Study_MSU_STDF.pdf

⁸ See: www.mygfsi.com/news-resources/news/blog/908-scalable-food-safety-solution-delivers-results-in-thailand-and-viet-nam.html

⁹ See: www.mygfsi.com/news-resources/news/press-releases/1356-global-food-safety-conference-2018-governments-and-businesses-meet-to-form-partnerships-on-advancing-international-food-safety?utm_source=TCGF+News+Release&utm_campaign=ad1b5aa0ff-GFSC_Consumer_Insights&utm_medium=email&utm_term=0_0efe68d81b-ad1b5aa0ff-67650877

¹⁰ FAO. 2016. Public-private partnerships for agribusiness development – A review of international experiences, by Rankin, M., Gálvez Nogales, E., Santacoloma, P., Mhlanga, N. & Rizzo, C. See: www.fao.org/3/a-i5699e.pdf

donors promoting the engagement of the private sector, and the design of national PPP policies and laws.

3 INCREASING RELIANCE ON PRIVATE FOOD SAFETY ASSURANCE SCHEMES

10. PPPs to foster agriculture development, improve food safety and support trade continue to attract considerable interest driven in part by resource constraints in the public sector, recognition of the private sector's knowledge and expertise, and interest in identifying innovative ways to improve the quality and efficiency of service delivery. This trend was confirmed during the most recent Global Food Safety Conference in Tokyo.

11. The WTO SPS Agreement refers to the standards of three international standard setting bodies – i.e the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE) – as the benchmarks for international trade. The Agreement encourages countries to base their SPS measures on international standards where they exist. However, members may also use measures which result in a higher level of protection if there is scientific justification. The measures must be based on an appropriate assessment of risks, applied only to the extent necessary to protect health, and not unjustifiably discriminate between countries where similar conditions prevail. Article 13 of the SPS Agreement stipulates that "Members shall ensure that they rely on the services of nongovernmental entities for implementing SPS measures only if these entities comply with the provisions of this Agreement".

12. Part of the STDF/IDB PPP publication focused on so-called "co-regulatory approaches" in food safety, highlighting the growing interest in and importance of public-private sector collaboration, as governments search for alternative and innovative solutions to improve compliance and also address resource constraints. The STDF/IDB publication drew attention to the trend in some countries to increase the reliance on private food safety assurance schemes. Examples were provided of cases where governments (in the Netherlands and the United Kingdom) have sought to incorporate industry's use of private certification schemes within their regulatory oversight frameworks, including their use as one factor to inform risk-based inspection and resource allocation decisions. For instance, the Netherlands Food and Consumer Product Safety Authority (NVWA) has developed various forms of collaboration with food businesses and the certification industry. This includes public recognition of private norms and controls systems, inclusion of public prescriptions in private food schemes and controls and agreements between the public authority and private firms or sectors of industry regulation reciprocal obligations with respect to compliance and controlling compliance.¹¹

13. Private assurance schemes are formal, documented food safety systems that are developed and implemented by the private sector. An FAO paper notes that "Certification to private sector schemes has been shown to provide a driver for improved hygienic practices by food chain operators and it has been shown to create opportunities for developing country producers to access markets that would otherwise not have been open to them. Furthermore, some developed countries are considering ways of integrating private standard certification into overall national systems of food control to strengthen public health protection. A major concern about the standards, however, is that they are disproportionately burdensome to small-scale operators and sometimes unnecessarily so."¹²

14. A wide range of private assurance schemes exist, such as the British Retail Consortium Global Standard for Food Safety, CanadaGAP and the International Food Standard (IFS). Given the number and diversity of private assurance schemes, many food manufacturers and retailers have sought to benchmark their schemes to GFSI, an industry-driven initiative providing leadership and guidance on food safety management systems necessary for safety along the supply chain.¹³ According to the GFSI website, GFSI's global partners currently audit and certify more than

¹¹ Tetty Havinga and Frans van Waarden. Enforcing compliance with food regulation: Modalities in the relationship between public enforcement agencies and private parties. Draft paper prepared for the ECPR General Conference, Science Po, Bordeaux, September 2013. See: <http://ecpr.eu/filestore/paperproposal/2269ab36-ba69-4965-b9fc-3f1f1f46de56.pdf>

¹² FAO. 2010. Private Food Safety Standards: Their Role in Food Safety Regulation and their Impact. Paper prepared by Renata Clarke for presentation and discussion at the 33rd Session of the Codex Alimentarius Commission. See: <http://www.fao.org/docrep/016/ap236e/ap236e.pdf>

¹³ GFSI is not a scheme in itself and does not carry out any accreditation or certification activities. Certification to a GFSI recognized scheme is achieved through a successful third party audit against any of the schemes listed as being recognized by GFSI.

100,000 food operations and facilities in more than 160 countries annually, with a growing number of countries in Europe, North America and elsewhere recognizing private certification.¹⁴

15. Since the STDF/IDB publication was released, the trend towards increased collaboration across regulatory authorities and the private sector has continued, particularly in developed countries. For instance, in the United States, the Food and Drug Administration's Food Safety Modernization Act (FSMA) highlights the increased focus on PPPs to ensure food safety. Two rules are particularly relevant: (i) the FSMA rule on Accredited Third-party Certification;¹⁵ and (ii) the FSMA Rule on Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals¹⁶. FDA notes that "the new import paradigm is grounded in public private collaboration. FDA sets safety standards and will provide a certain level of oversight through a continuing presence at the border and a stronger presence overseas. But much of the assurance that imported food safety standards are being met will come from the importer carrying out the Foreign Supplier Verification Program (FSVP)".¹⁷

16. In 2017, the Canadian Food Inspection Agency (CFIA) issued a new policy enabling CFIA to use the results of private certification schemes to inform its risk-based inspection activities. In this context, the CFIA recognizes that private certification schemes may play an important role in helping industry achieve food safety regulatory objectives, provided they can be assessed as being effective, credible and aligned with public policy objectives. Private certification has been identified as one of several factors that CFIA will consider in its modernized approach to risk-based oversight. This approach aims to enable improved risk-management by using private certification data to inform CFIA risk-based planning and prioritization within the regulatory framework, and as a resulting consequence, more targeted compliance verification.¹⁸

17. Some developing countries have also taken steps to pursue greater collaboration with the private sector, including increased reliance on private assurance schemes. For instance, in 2017 the Mexican government agency responsible for the safety of fresh and minimally-processed food products, the Mexican National Service of Health, Food Safety and Agro-Food Quality (SENASICA), announced a new public-private partnership with GFSI to fulfil their common goal of providing continuous improvement in food safety management systems to ensure consumer confidence.¹⁹ This partnership focuses on two main aspects: (i) enabling private schemes to act under Mexican regulation in addition to the Certification of the official scheme, which is expected to significantly increase the volume of officially certified products and subsequently ensure confidence in the delivery of safe food to consumers worldwide; and (ii) enhance the GFSI Global Markets Programme in Mexico.

18. As part of efforts to implement a risk-based inspection approach, certification to private assurance schemes may be considered as one factor to inform decision-making on inspections and the allocation of resources. For instance, the consultant's report for the STDF regional research on implementing safe trade in Southern Africa noted that: "In 2008, following consultations with industry it was agreed that Food Business Operators with a commercial certificate such as GlobalGAP, TESCO's Nature's Choice, HACCP, British Retail Consortium, ISO 22000 would be treated as low risk and therefore not subjected to official audits by the PPECB (Perishable Products Export Control Board)²⁰. PPECB now only audits facilities if there is no recognized food safety certification scheme in place."²¹ The same report further noted that "South Africa is implementing a risk-based approach to food safety inspections, and there may be scope to further enhance and expand this approach (and make more effective use of limited public resources) through increased

¹⁴ GFSI Press Release. 5 February 2016. See: <http://www.mygfsi.com/news-resources/news/news-releases/455-gfsi-applauds-new-canadian-policy-on-private-certification-of-food-facilities-2.html>

¹⁵ FDA Food Safety Modernization Act. Key Requirements: Final Rule on Accredited Third-Party Certification. November 13, 2015. See: <http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM472891.pdf>

¹⁶ FSMA Final Rule on Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals. See: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm361902.htm>

¹⁷ Ensuring Produce Safety in a Global Food System. Speech by Michael R. Taylor, Deputy Commissioner for Foods, US FDA, March 22, 2012. See: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm297839.htm>

¹⁸ See: www.inspection.gc.ca/about-the-cfia/accountability/consultations-and-engagement/regulatory-risk-based-oversight/private-certification-policy/eng/1452808755126/1452808821799?chap=0

¹⁹ See: www.mygfsi.com/news-resources/news/press-releases/657-gfsi-forms-first-time-partnership-with-mexican-government-food-safety-agency-senasica.html

²⁰ PPECB is the official quality inspection and certification agency, under the department of Agriculture, forestry and Fisheries in South Africa.

²¹ Rathebe, Jennifer. 2015. The implementation of SPS Measures to facilitate safe trade: Selected Practices and Experiences in Malawi, South Africa and Zambia. Consultant's report for the STDF.

government recognition of business operators that effectively apply good practices and/or use third-party certification schemes".

19. While some stakeholders have pointed to the potential benefits (increased efficiencies, better use of resources, reduced inspection costs, improved outcomes) of increased collaboration between SPS regulatory authorities with the private sector, including reliance on private certification schemes, others have identified a number of important concerns (e.g. conflict of interest, free-rider problem, loss of transparency, unclear accountability). Concerns have been expressed in the SPS Committee over the past ten years that private assurance schemes sometimes include standards that are more rigorous than international standards (Codex), which increases the cost of compliance and negatively affects the ability of developing countries to trade. Other concerns have been expressed that for developing countries a move towards increased use of private assurance schemes may not support efforts to strengthen the capacity of SPS regulatory authorities.

20. In July 2017, the Codex Alimentarius Commission (CAC) decided to take forward new work on developing guidance on the use of third-party assurance schemes, which should help to address some of the aforementioned concerns. The Commission agreed to: (a) start new work on developing guidelines on regulatory approaches to third-party assurance schemes in food safety and fair practices in the food trade; and (b) establish an Electronic Working Group (chaired by the UK, and co-chaired by Canada and Mexico) to prepare proposed draft guidelines for consideration by the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS). This work is based on a joint paper by Canada and the UK on opportunities for collaboration between competent authorities and third party assurance schemes to strengthen national food control systems (NFCS), presented to the meeting of the CCFICS in May 2017 (see Box).²²

Box: Views expressed by CCFICS on third party assurance schemes²³

- Competent authorities in various countries were increasingly considering and using third-party assurance schemes to better inform their risk profiling of food businesses so as to more effectively target resources within their national food control systems (NFCS).
- Using third-party assurance schemes could enhance but not replace NFCSs, and the standards used in such schemes should take into account international standards, such as those of Codex.
- Using third-party assurance schemes had the potential to enable a competent authority and industry to improve food-safety outcomes, while allowing each stakeholder to operate within its defined roles and responsibilities.
- Developing guidance on how and under which conditions a competent authority could make use of third-party assurance schemes in its national food control system was very timely, may prevent potential barriers to trade and could benefit from the experience of those countries already using such schemes.
- It was important to establish principles to: ensure the integrity, competency and voluntary nature of third-party assurance schemes; allow for the consideration of such schemes by national competent authorities but not require their use; and provide for the use by competent authorities of the regulatory elements of such schemes within their national boundaries.
- Guidance on the use of third-party assurance schemes should: cover the dual mandate of Codex, not be limited to food safety; make reference to the Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems (CAC/GL 26-1997); and be consistent with other CCFICS texts.

²² Discussion paper on regulatory approaches to third party certification in food safety (CX/FICS 17/23/8, February 2017). Prepared by Canada and the United Kingdom. See: www.fao.org/fao-who-codexalimentarius/sh-proxy/zh/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FMeetings%252FCX-733-23%252FWFD%252Ffc23_08e.pdf

²³ See REP17/FICS. Available at: www.fao.org/fao-who-codexalimentarius/committees/committee/en/?committee=CCFICS

4 OPTIONS FOR POSSIBLE ADDITIONAL STDF WORK ON PPPS TO IMPLEMENT INTERNATIONAL STANDARDS WITH ATTENTION TO PRIVATE CERTIFICATION SCHEMES

21. Further STDF work on the topic of PPPs would provide an opportunity to build on, update and complement previous work by the STDF and its partners. Building on previous STDF work, and reflecting ongoing other work on this topic, possible new work could include the following:

- i. Analysis of recent cases where the public and private sector work together to implement international standards or codes of conduct in the area of food safety, animal and plant health and trade. This work would build on and update the STDF's previous work on PPPs to support SPS capacity and complement recent work by some STDF partners. It may result in an update to the STDF/IDB PPP publication (2012), including more in-depth analysis than could be included in the STDF 2017 Briefing "Partnering with the private sector". For instance, it could include examples of PPPs focused on implementation of international standards (Codex, IPPC, OIE), such as:
 - o Experiences in an STDF project in Uganda (STDF/PG/335) where the Department of Crop Protection (NPPPO) signed a partnership agreement with the Uganda Flower Exporters Association to sustain good practices in monitoring and complying with phytosanitary standards (ISPMs 4, 6, 7, 8, 12, 13, 20 and 23).
 - o Experiences under an STDF project in Latin America (STDF/PG/345) where food safety and veterinary authorities are collaborating with the private sector to improve animal feed and food safety, and facilitate trade, including through the harmonization of SPS regulations.
 - o Experiences with PPPs related to the establishment and maintenance of pest free areas or areas of low pest prevalence for fruit flies in accordance with relevant ISPMs (ISPM 26, ISPM 30).
 - o Other examples shared by STDF partners and other Working Group members.
- ii. Focus and analysis on how in practice to use private assurance schemes to help achieve SPS regulatory objectives in developing countries, linked to the ongoing development of Codex guidelines on regulatory approaches to third-party assurance schemes in food safety and fair practices in the food trade. The Canadian Food Inspection Agency (CFIA) and the United Kingdom Food Standards Agency (UKFSA), which are leading the ongoing CCFICS work, have had initial discussions with some STDF partners, the STDF Secretariat and selected STDF developing country experts to explore the option to develop a proposal for STDF consideration (subject to concrete expressions of demand from developing countries) that would pilot the use of voluntary third party assurance schemes to enhance compliance with official regulatory requirements, inform risk-based management and strengthen national food control systems. A possible future pilot project of this nature could provide practical experiences and lessons on how voluntary third party assurance schemes may be used by national regulatory bodies, which have limited capacity and resources, to strengthen their oversight mechanisms and improve food safety. As such, there are potentially interesting linkages and synergies to the ongoing work to develop Codex guidance on this topic.

22. Subject to discussions in the Working Group, concrete outputs from future STDF thematic work on the topic of PPPs may comprise one or more of the following:

- i. Survey of WTO Members on their views, and use (if any), of private assurance schemes to help achieve regulatory objectives. Such a survey (included in the 2016 concept note) may provide interesting perspectives linked to the ongoing work by CCFICS mentioned above.
- ii. Session on PPPs – with specific attention to the use of voluntary third party assurance schemes, linked to the ongoing work by CCFICS – during a future STDF Working Group meeting.
- iii. STDF seminar on PPPs, possibly on the margins of a future SPS Committee meeting at the WTO.
- iv. Updated STDF publication with new case stories and examples (including from STDF projects) of the role of PPPs to support the implementation of international (Codex, IPPC, OIE) standards and help build SPS capacity.

23. All outputs from any future work on PPPs would be made available on the STDF website, and disseminated by the STDF Secretariat and through the STDF's network.

24. The budget and time-frame will depend on the scope and nature of the outputs to be delivered through this work.