Implementing SPS measures to facilitate safe trade in the Philippines

Country study conducted for the
Standards and Trade Development Facility (STDF)*

by

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Acronyms and abbreviations

AO	Administrative Order
BAI	Bureau of Animal Industry
BFAR	Bureau of Fisheries and Aquatic Resources
BIR	Bureau of Internal Revenue
BPI	Bureau of Plant Industry
BOC	Bureau of Customs
Codex	Codex Alimentarius Commission
DA	Department of Agriculture
DOH	Department of Health
DOT	Department of Tourism
DTI	Department of Trade and Industry
EO	Executive Order
EU	European Union
FAO	Fisheries Administrative Order
FDA	Food and Drug Administration
FMD	Foot and Mouth Disease
GAP	Good agricultural practices
GHP	Good hygiene practices
GMP	Good manufacturing practices
HACCP	Hazard Analysis and Critical Control Points
HQ	Head Quarters
ICT	Information and Communication Technology
IFM	Inward Foreign Manifest
IPPC	International Plant Protection Convention
ISO	International Organization for Standardization
ISPM	International Standards For Phytosanitary Measures
ISSB	International standard setting bodies
IT	Information Technology
LC	Letter of credit
LTO	License to Operate
MRL	Maximum residue level
MT	Metric Ton
NPPO	National Plant Protection Organization
NMIS	National Meat Inspection Service
OIE	World Organisation for Animal Health
PC	Phytosanitary certificate
PNSW	Philippine National Single Window
PRA	Pest risk assessment
SEC	Securities and Exchange Commission
SOP	Standard operating procedures
SPS	Sanitary and Phytosanitary
STDF	Standards and Trade Development Facility
TIN	Tax Identification Number
TPR	Trade Policy Review
USA	United States of America
US FDA	United States Food and Drug Administration
VQMILC	Veterinary Quarantine and Meat Inspection and Laboratory Certificate
WHO	World Health Organization
WTO	World Trade Organization

I. Introduction

This document is one of four country studies conducted in Southeast Asia (Cambodia, Lao PDR, Philippines and Thailand) as part of STDF regional research on the implementation of SPS measures to facilitate safe trade.[1] Parallel regional research was carried out in Africa by the STDF, in collaboration with TradeMark Southern Africa, and in Latin America by the Inter-American Development Bank (IDB). The preliminary findings of the regional research were presented at an STDF thematic session in Geneva on 26 March 2014.

The inspiration for the STDF research is the increased interest in developing countries and the trade and development community in trade facilitation, which is also evidenced by the adoption of a new WTO Agreement on Trade Facilitation in December 2013.[2] It is based on the common understanding that trade can be an important tool for economic growth and the reduction of poverty. The objectives of the STDF regional research are: (i) to draw attention to the synergies between the implementation of SPS measures and trade facilitation; (ii) to identify key needs, opportunities and good practices to improve the implementation of SPS measures in a way that ensures an appropriate level of health protection while minimizing trade transaction costs; and (iii) to make recommendations to enhance future work and technical cooperation focused on SPS and trade facilitation.

Members of the WTO have the sovereign right to restrict trade for the protection of human, plant and animal life or health against trade-related risks, provided that they follow the relevant principles of the WTO and, in particular, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).[3] The main principles of the WTO framework are that SPS measures should be non-discriminatory, transparent, science-based and not more trade-restrictive than required to achieve the appropriate level of protection. SPS measures that meet these principles are considered as legitimate non-tariff measures.

The SPS Agreement requires WTO Members to accept measures of other Members that are equivalent in providing the appropriate level of protection. It also strongly encourages Members to harmonize their measures by adopting international standards, guidelines and recommendations developed by three international standard setting bodies (ISSBs), notably the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC), and the World Organisation for Animal Health (OIE). However, countries are allowed to apply stricter requirements as long as these measures are based on scientific justification, which includes an assessment of risks. Countries may also apply fewer and less stringent standards, or opt not to apply international SPS standards, provided that this does not affect the rights of other countries under the multilateral trade rules.

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[1] For more information, see: http://www.standardsfacility.org/facilitating-safe-trade

[2] WT/MIN(13)/36 , WT/L/911, WTO, Ministerial Conference, Ninth Session, Bali, 3-6 December 2013. Annexes to the Agreement are being prepared, with full acceptance planned by 31 July 2015. Much work will be required on implementation of the Trade Facilitation Agreement and on alignment with the SPS Agreement. The STDF research focuses on the general broad concept of trade facilitation, and not on the new Trade Facilitation Agreement.

[3] The text of the SPS Agreement is included in the Final Act of the Uruguay Round of Multilateral Trade Negotiations, signed in Marrakesh on 15 April 1994, and is available on the WTO website http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm#fnt5

Trade facilitation refers to the simplification and harmonization of required processes, procedures and information flows for border clearance. Trade facilitation is optimal if transaction costs for legitimate trade are as low as possible.[4] If SPS measures do not disrupt trade more than necessary to achieve the appropriate level of protection, then they are in harmony with trade facilitation. If the transaction costs of SPS measures to traders are higher than necessary to achieve the appropriate level of protection, they should be considered as trade-disruptive.

The SPS Agreement focuses mainly on principles to observe in protecting human, animal or plant life or health and less on practical implementation modalities. Nevertheless, the Agreement also provides guidance in several articles, and in particular in Annex C, on control, inspection and approval procedures, and on avoiding unnecessary trade disruption and transaction costs for traders. The ISSBs referenced in the SPS Agreement (i.e. Codex, IPPC and OIE) focus on the development of international standards for health protection, some of which provide guidance for good practice on topics referred to in Annex C and related to trade facilitation. However, a comprehensive compilation of good practice guidance for the implementation of SPS measures does not exist.

Most WTO Members are still in the process of incrementally applying WTO principles correctly. As a result, in many countries, SPS measures deliver less health protection than desirable and disrupt trade more than necessary. The reasons for non-compliance variously include lack of awareness, limited capacity in SPS management, weak governance, health protection measures that are unnecessarily costly, insufficient funding of SPS operational costs, and use of SPS measures for purposes other than health protection (e.g. protection of domestic production/industry or rent-seeking). Complexities and inefficiencies in SPS control processes may also cause extra administrative and internal business costs to traders.

The research in the Philippines collected and analyzed information on how selected SPS measures are implemented in practice for specific product groups based on the provisions of the SPS Agreement and selected texts of Codex, IPPC and OIE. It explored the transaction costs of SPS measures for selected product groups, and considered how improving compliance with WTO principles can facilitate trade and contribute to better health protection. This report presents the findings of this country-level research. It is structured as follows. Section II outlines the methodology for the research in the Philippines, which reflects the approach taken in all the countries included in the research in Southeast Asia. Section III presents the key findings, followed by an analysis in Section IV. The final section offers recommendations for improved implementation of SPS measures in the Philippines.

II. Methodology

The following paragraphs discuss key terms used during this research and delineate the parameters and scope of the data collection and findings.

[4] From economic growth and poverty reduction points of view, unnecessary transaction costs on imports and exports are undesirable because they reduce purchasing power of consumers, waste public and private resources and undermine competiveness.

Definition of costs The SPS Agreement does not define transaction costs. Since it refers in principle to all costs that may affect trade, this study recognizes the following four kinds of costs incurred by traders.

1. Official fees and charges for services based on regulation and imposed by SPS measures, including the cost of application forms, service charges, inspections, sampling, testing and diagnostics, treatment and quarantine costs, issuance of certificates, etc.
2. Informal payments, not based on regulation, under many different names, including tea money, under the table payment, payment for entertainment, meals, transport, speeding up service provision, overtime fees, special presents, gratitude, services for which no formal fees apply, etc.
3. Administrative costs for enterprises, including cost and staff time for preparation of documents, submission, consultation with officers, tracking the status of decision making, reminders by phone, actions to speed up the process, and contingency planning.
4. Internal business costs, including long lead-time from planning to sale, extra storage and interest cost, spoilage of goods, missed orders, uncertainty.

Product selection SPS measures can vary widely for products because of their risks as carriers of pests, diseases and food safety hazards, their physical characteristics, origin, and intended use. For this reason, the regional research focused on four groups of products:

1) rice and other field crops
2) fruit and vegetables
3) shrimp and other fisheries products
4) chicken and other meat products

Obviously, not all of the four countries covered in the regional research have exports and imports of each of these product groups. However, in most cases there are proxy products subject to similar SPS requirements. The research did not address products with special risks such as seed and propagation materials, and live animals.

Imports and exports This study focused on exports and imports of the above mentioned product groups. It is important to note that WTO SPS disciplines apply to imports, and therefore even exports of a country are largely regulated from the perspective of the SPS requirements of importing countries. The general thrust of the WTO disciplines is that if all members comply with WTO principles, including the principle that SPS measures should be least restrictive to trade, then trade opportunities will be optimal from the WTO SPS perspective. [5] The SPS Agreement does not impose similar disciplines on exports, however, it defines obligations of exporting countries to provide information about their pest and disease situation and food safety hazards at the request of importers. The ISSBs provide guidance on export- and import-related procedures such as inspections, conformity assessment, and certification.

The SPS Agreement is not concerned directly with the possible unnecessary costs to exporting countries stemming from their own costly and unnecessary measures. By contrast, trade policy departments in most countries and the development community place significant emphasis on

[5] The SPS Agreement in a footnote to paragraph 6 of Article 5, states that a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

promoting exports through trade facilitation because of its expected impact on growth, employment and poverty reduction.

This research could not cover transit trade, since regional agreements for goods in transit are still deficient, only partly implemented and not fully clear on provisions for SPS requirements.[6]

Sources of information The Government and the private sector were both important sources of information. The research started by interviewing staff of competent authorities responsible for food safety, animal and plant health to collect information about the applicable legal framework, the mandates, procedures for application of export and import release, number of documents required, fees that apply, official waiting time, ICT application and sources of information for traders. This was followed by interviews with traders in order to collect information on how the procedures are actually implemented in practice.

Use of questionnaires Detailed questionnaires addressing many relevant items of transaction costs associated with SPS measures were designed and used as a general guide for interviews with government officials. Shorter questionnaires were used with the private sector based on the business processes for SPS clearance of goods (See Box 1). Most private enterprises did not have more than an hour to be interviewed, which put limits on the details that could be collected. Sometimes, some issues that were not very relevant for the overall picture, had to be ignored. More importantly, some important country-specific issues, such as institutional and policy issues, had to be captured by expanding information gathering beyond the questionnaire.

Box 1: Questions for interviews with private traders

For imports, questions included:

1) Describe the steps required for SPS clearance for import of [product], agencies involved, pre-requirements of foreign producers/traders, foreign product safety assurances etc., requirements of importer/buyer, warehouse/cold storage, licenses, import permits, traceability requirements, if any.
2) Document requirements at the border, fees, waiting times, standards to comply with, testing and quarantine requirements, etc.
3) Is information about SPS import requirements readily available? What are main sources of information? Websites, printed material, information from officers, legislation, trade associations, broker/trade forwarder? Is information fully available and reliable?
4) Availability of IT for submitting applications. Can applications be submitted online? Can forms be downloaded?
5) Closing questions: Describe any bottlenecks in the SPS release process from the perspective of the importer. Recommendations?

For exports questions, included:

1) Describe the steps required for SPS clearance for export of [product], agencies involved, pre-requirements of foreign producers/traders, foreign product safety assurances etc., requirements of importer/buyer, warehouse/cold storage, licenses, export permits, foreign import permit, traceability requirements, if any.
2) Document requirements at the border, fees, waiting times, standards to comply with, testing requirements, etc.
3) Is information about SPS export requirements readily available? What are main sources of information? Websites, printed material, information from officers, legislation, trade associations, broker/trade forwarder? Is information fully available and reliable?
4) Availability of IT for submitting applications. Can applications be submitted online? Can forms be

[6] Inclusion of transit trade in this study would have required significant additional data collection and travel.

downloaded?
5) Closing questions: Describe any bottlenecks in the SPS release process from the perspective of the exporter. Recommendations?

Source: the authors

Field work and confirmation workshops Field work in the Philippines was carried out from 30 September until 31 October 2013. It included interviews with five competent authorities[7], a study of the legal and institutional framework, and interviews with about 20 specialists in exporting and importing private enterprises and trader organizations. Private sector information is based on a number of confidential individual interviews and reported only if the answers were largely in agreement or could be verified in other ways.

Draft findings from the field work were presented at two confirmation workshops for stakeholders, on 18 November 2013 for private sector representatives and on 19 November 2013 for government officials. After the workshops, SPS authorities and traders provided additional information to the research team. On 30 December 2013, a first draft of this report was submitted to the Department of Agriculture (DA) and the Food and Drug Administration (FDA) for review, and comments received were addressed in the preparation of the final report.

III. Findings

Description of the Philippines's SPS system

The Philippines became a WTO Member in 1995. It has a fairly well established SPS system. It has been able to eradicate Foot and Mouth Disease (FMD) and to remain free of Highly Pathogenic Avian Influenza (HPAI). Technical and analytical capacity in the Philippines is still limited to moderate. There is a large body of SPS legislation, which is in need of some upgrading and consolidation. The Philippines has a good record in notifying new SPS legislation to the WTO. It has submitted about 350 notifications since the entry into force of the SPS Agreement in 1995.[8]

The DA and the Department of Health (DOH) share the responsibilities for SPS management. The Office of the Undersecretary for Policy and Planning of the DA, through its Policy Research Service, has a coordinating role for SPS matters and houses the SPS Enquiry Point and the National Notification Authority. Within DA, the Bureau of Plant Industry (BPI) has the mandate for plant quarantine and inspection, the Bureau of Animal Industry (BAI) for control of animal diseases, the National Meat Inspection Service (NMIS) for food safety of animal products, and the Bureau of Fisheries and Aquatic Resources (BFAR) for safety of fisheries products. The FDA within DOH leads overall food safety management and has specific responsibilities for processed food.

The main characteristics of the SPS system in the Philippines are: (i) all food products need to be registered with FDA; (ii) all exporters and importers need to be licensed with the relevant competent SPS authorities;[9] and (iii) permits[10] are needed for each import and export shipment.

[7] The Bureau of Animal Industry (BAI), the Bureau of Fisheries and Aquatic Resources (BFAR), the Bureau of Plant Industry (BPI), the Food and Drug Administration (FDA) and the National Meat Inspection Service (NIMIS).
[8] WTO SPS Information Management System (SPS IMS), spsims.wto.org
[9] Licensing can be called different names including SPS registration. In the Philippines, it is called SPS accreditation. The WTO Agreement on Import Licensing Procedures (IL)[http://www.wto.org/english/docs_e/legal_e/23-lic.pdf] defines

Importers and exporters need multiple licenses from the Bureau of Customs (BOC) and the SPS agencies.

Import and export control system

This section describes the roles assumed by the DA Trade System and competent authorities responsible for food safety, animal and plant health.

DA Trade System In order to reduce the administrative load of processing many requests for import and export permits, the DA implemented the DA Trade System, an automation project for electronic processing of the application and issuance of SPS import permits.[11] A similar project for developing automation of export permits commenced in 2013. The DA Trade System works for four agencies dealing with animal, plant and fisheries products (BAI, NMIS, BPI, BFAR). It has greatly reduced the time required for processing SPS import permits. FDA is not involved in this project and traders need to make paper applications for all permits required by FDA.

The DA Trade System is not yet linked to the Single Administrative Document (SAD) of the Philippine National Single Window (PNSW) and does not receive advance information from BOC.[12] This means that traders have to complete an online application with PNSW and print it for processing by SPS agencies. BOC has stated that it aims to open the PNSW to other agencies in 2014.[13] Practice on the border is that on arrival of a shipment, quarantine inspectors of the agencies verify documents for conditional release, the PNSW documents are printed, and after BOC release, animal and fisheries products go to bonded (cold) storage for the actual SPS inspection. This is called the "second border". Allegedly, the ICT infrastructure of BOC is not sufficient, and PNSW is not cost-efficient.

BPI The Philippine Bureau of Plant Industry (BPI) is responsible for serving and supporting the Philippine plant industry sector. Main legislation is Presidential Decree 1433 “Promulgating the Plant Quarantine Law 1978” and BPI quarantine administrative orders No1 series 1981 “Rules and Regulations to Implement Presidential Decree 1433”. The country has 13 exit/entry ports and many BPI supervised privately-owned treatment facilities. There is smuggling of plant products, mainly in the South.

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import licensing as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member. Export licensing can be defined by a similar definition. This report uses the term "licensing" and not "accreditation" because the latter is used internationally to denote a specific meaning in conformity assessment.

[10] In the Philippines, DA uses the term "import clearance” and “export clearance". This report uses "permit" since that term is also used in other countries and has a clear meaning. The term “clearance” used by DA is in fact more "pre-clearance" since all goods are subject to inspection when they arrive at the entry point.

[11] There are only three manual steps left in the SPS import permit approval process: (1) submission of the list of importable products to the relevant agencies (BPI, BFAR, or BAI); (2) agency review of application and supporting documents required; and (3) agency approval and release of SPS import permits.

[12] Several complaints were expressed about the PNSW and cooperation with BOC, which is not willing to share advance information on the Inward Foreign Manifest (IFM). Conversely, there is automated transmission of SPS data to PNSW.

[13] PNSW development (underway since 2005) is said to be very slow, and BPI and traders have allegedly no benefits. Interaction is still manual.

About 300 traders have been licensed for import. For export, traders are licensed by commodity. All exporters, importers and treatment providers have to apply annually. For export of banana, mango and pineapple, not only exporters but also growers, packing houses and exporters need licensing (referred to locally as "accreditation", see footnote 9). Packing houses need ISO/GMP and growers require GAP. This all implies that exporters need their own facilities and large areas. BPI checks residues if required by the importing country, such as for export of mango and okra to Japan. The national pesticides laboratory tests for residues.

The phytosanitary system works well but it is not linked to PNSW. Customs has created a green lane for imports; however, since they do not provide information to plant quarantine on their decisions, plant products can enter the country unchecked through the green lane. Cooperation is better at the airport. Customs informs plant quarantine inspectors when they find plant products. There is virtually no control on the safety of imported plant products and fresh plant products for the domestic market, and no controls for aflatoxins.

The Philippines has pest lists for export crops but does not have a consolidated list of quarantine and non-quarantine pests. BPI has adopted the ASEAN harmonization of import procedures for 6 crops, while 4 crops will follow in 2014. For all crops, some sort of PRA was conducted.

BAI and NMIS The Bureau of Animal Industry (BAI), created in 1930 by virtue of Act 3639, has the mandate to investigate, study and report the cause of dangerous communicable diseases and the means of prevention, and in general to promote the development of the livestock industry. The Philippines is free from Highly Pathogenic Avian Influenza (HPAI) and Foot and Mouth Disease (FMD). Surveillance to maintain freedom is costly, but necessary. There is also surveillance of MRLs on imports. BAI also follows the history of animal health in exporting countries and studies special topics. Quarantine is a line function for local government. There are 8 seaports and 8 airports for international trade, and 184 domestic seaports and 45 domestic airports; the domestic ports play a role in movement control. Illegal imports from Indonesia are a risk, especially because of Avian Influenza (AI). BAI has nearly 300 staff for animal disease control distributed over regional offices and HQ.

The National Meat Inspection Service (NMIS) is responsible for food safety of animal products, product registration for import and export, and licenses to operate. It has over 300 staff.

The most important pieces of legislation are: Administrative Order (AO) 26 2005 series (revised rules, regulations and standards governing the importation of meat and meat products to the Philippines); AO 18 series 2000 (amending AO 4 series 1998 to include live animals, plants, fish and their products and by-products and requiring an SPS import permit prior to importation); and AO 9 series of 2010 harmonizing rules and regulations on the importation of agricultural, fish and fishery/aquatic products, fertilizers, pesticides and other agricultural chemicals, veterinary drugs and biological products into the Philippines.

AO26 has been amended to include supplemental guidelines to institutionalize the licensing (accreditation) process for meat importers and provide a legal instrument to blacklist undesirable meat importers. Republic Act 9296 “The Meat Inspection Code”, amended by Republic Act 10536, covers strengthening of agencies and sanctions. Republic Act 10611, the new food safety law, promulgated in 2013, also strengthens food safety in meats.

Customs constitutes the first border for imports. BAI and NMIS get documents (Inward Foreign Manifest) later and claim that they do not have enough time for risk profiling of products and traders at the first border. Moreover, there are frequent problems with undervaluation by BOC and disguised imports. In order to deal with these constraints, the adopted practice for import of meat is that BAI releases products on the first border based on quarantine considerations and that NMIS inspects the products at the so-called second border, i.e. at a bonded warehouse of the importers.

BFAR The Bureau of Fisheries and Aquatic Resources (BFAR) is responsible for the development, improvement, management and conservation of the country's fisheries and aquatic resources. It was reconstituted as a line bureau by Republic Act No. 8550 (Philippine Fisheries Code of 1998). The most important pieces of legislation are: Republic Act 8550; Fisheries Administrative Order (FAO) 195 series of 1999 "Rules and Regulations Governing Importation of Fresh/Chilled/Frozen and Fisheries Aquatic Products"; AO 24 series of 2009 "Implementing guidelines on the national veterinary drug residues control program in foods"; AO 21 series of 2011 "Mandatory accreditation of cold storage warehouses for agricultural and fisheries products"; FAO 227 "Code Governing the Export of Fish and Aquatic Products to the European Union" of 2008; and FAO 228 "Rules Governing the Organization and Implementation of Official Controls on Fishery and Aquatic Products intended for Export to the EU Market for Human Consumption" of 2011.

FDA is responsible for domestic consumption, registration of products and enterprises, BFAR for exports and import of raw materials for processing. BFAR has its own direct line to OIE, which is not under the Chief Veterinary Officer for terrestrial animals. BFAR has 15 regional stations and 60 inspectors. There are quarantine officers at all seaports and airports with trading functions. BFAR has approved 47 established processing plants and 68 vessels. There is active surveillance of diseases.

A health certificate is a prerequisite for an import permit. Coordination with Customs is not good. BFAR needs Inward Foreign Manifests for clearance, but BOC does not want to share them. Like BAI and NMIS for animal products, BFAR claims it needs a second border for physical controls.

Imports of fresh, chilled or frozen fish are only allowed when certified as "necessary" by the DA in consultation with the National Fisheries and Aquatic Resources Management Council (NFARMC). Fish imported for canning or processing does not require a certificate but must have an import permit.

FDA FDA is responsible for food safety, including product registration, licensing of food enterprises, and issuance of import permits for imported processed food. It has no staff on the border. Sometimes Customs calls for special imports.

In 2013 a new Food Law was promulgated. The implementation is uncertain because of shortages of staff and public funding for FDA and food safety control programs. Plans to increase fees for services, such as product registration, face considerable opposition from the private sector. FDA is behind in automation and electronic online applications, but it is making innovations in this area.[14]

[14] There are recent innovations in central reception of applications for Licenses to Operate and Certificate of Product Registration wherein applicants can notify FDA of the intent to apply online through the Public Assistance Information and Receiving (PAIR). Applicants can pay either at accredited Land Bank branches or to the FDA cashier. There is no

A main challenge for FDA is to control illicit trade and to fund activities for micro, small and medium enterprises.

Every food enterprise needs a license to operate (LTO) for which their facilities need to meet requirements. The Anti-Red-Tape Act requires FDA to set a maximum number of 65 working days (three calendar months) for handling the LTO application (25 days for the Center for Food and 40 for inspection). Administrative Order 153 series of 2004 requires a GMP equivalent standard for all food processors. HACCP is only mandatory if it is required by the importing country. There are about 2,400 licensed import traders and 177 factories importing for own use.

Product registration is required for all food products.[15] *A*pplications must be handled within 90 working days. There is a priority lane for export products with a target of 45 days. FDA has over 55,000 registered food products of which 625 have been approved for export. Each month there are 1,000 to 2,000 new applications which form a heavy work load.[16]

Applications for export clearance have to be handled within 24 hours for which there is no charge. The requirements include a request form, license and Certificate of Product Registration. Previously, an analysis by FDA of samples of all shipments for exports was needed. Now there is post-market surveillance only. For voluntary tests, enterprises have to pay and they can contract a private laboratory.

FDA asks for health certificates on imports. It also requires the names of foreign suppliers for the purpose of traceability. As indicated already, product registration of imported and local products is mandatory. Foreign exporters need to show a license to operate which can be an equivalent document from the foreign competent authority. There are some issues of overlap with NMIS and BFAR on meat and fisheries products. Under a joint administrative order, NMIS issues licenses for meat processors and product registration for meat products. BFAR does not have a similar joint administrative order.

Transparency

SPS agencies have websites; however, both government officers and traders remark that websites need updates and improvement. Websites have no information on fees and application forms cannot be downloaded. Decisions on licenses and permits are not transparent because criteria are not published. In the Philippines, government agencies have the obligation to provide information about time required for provision of services. In one case, the research team received a Citizen's Charter booklet with detailed information about time required, but traders claimed they had never seen it. In general, verbal information from officers remains the main source of information about procedures, forms, requirements, waiting time and fees.

Public sector respondents state that much of the legal framework is old and needs updating to achieve better consistency with WTO principles (e.g. non-discrimination between importers and

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need to submit the hard copy documents. Applicants submit soft copies of the documents to FDA at scheduled appointments.

[15] There are two product categories: category 1 - local and imported products (food products normally found in groceries); and category 2 - foods for infants and young children, alcoholic beverages, special medical products/dietary uses and food supplements.

[16] There is a pending Administrative Order on Licensing and Registration which minimizes registration requirements, addresses concerns of micro enterprises, and proposes inspection of food establishments using a risk based approach.

domestic producers). There is also a need to better define requirements, rights and duties of traders.

Limitations in coverage

Exports of meat products, rice and field crops from the Philippines are very limited, but it was possible to obtain some information about exports of processed chicken (yakitori) to Japan, exports of rice to niche markets and exports of some field crops.

Informal border trade in the Philippines is relatively small, except perhaps in the South. Yet, it is still considered to be a risk for influx of pests and trans-boundary animal diseases, such as AI and FMD. Informal trade does not affect the reliability of the findings of this research.

Document requirements and controls

Tables 1-5 provide an overview of document requirements for applications for licenses as reported by the competent authorities. The number of documents required ranges from 7 to 17 and differs significantly in detail between the authorities. In most cases, applications have to be renewed annually. All agencies require proof of business registration, a mayor's business permit and identification of the applicant. Most require proof of tax registration. In most cases documentation is required about various characteristics of the enterprise. In several cases certified copies of original documents are required, which can be time consuming to acquire and costly.

Table 1: Document requirements for BPI import license

	request form with 8 supporting documents
1	Company Profile
2	DTI Registration/SEC Registration/CDA Certificate of Registration
3	Current Mayor's Business Permit (as importer)
4	Bureau of Customs-Certificate of Accreditation
5	Certificate/Contract of Lease of Facility/Certificate of Ownership (Cold Storage/Warehouse)
6	Location Map of the Facility
7	Special Power of Attorney of the Representative/s
8	Two 2X2 ID Pictures of the Owner and the Representative/s

Source: Competent authority and interviews

Table 2: Document requirements for BAI import license

	request form with 7 supporting documents
1	Mayor's Business permit (certified true copy)
2	DTI or SEC registration (certified true copy)
3	Bureau Internal Revenue Tax
4	Identification Number (certified true copy)
5	Letter of authority
6	Proof of lease or ownership of warehouse/cold storage facility
additional requirements for:	
7a	Traders: List of prospective buyers
7b	Meat processors: NMIS license (accreditation) certificate
7c	Institutional Users: BFAD or Sanitary Permit

Source: Competent authority and interviews

Table 3: Document requirements for NMIS import license

	request form with 14 supporting documents
1	Letter of intent
2	Notarized application form
3	Mayor's Business permit, Sanitary permit, Barangay clearance (certified true copy)
4	BOC Interim Customs Accreditation Registration Unit (iCARE)
5	DTI or SEC registration documents (certified true copy)
6	TIN
7	Audited annual financial statement previous years (certified true copy)
8	Proof of lease or ownership of warehouse/cold storage facility
9	Accreditation of all cold storage warehouses
10	Notarized affidavit of undertaking
11	Schedule of fees
12	Certificate of attendance (NMIS information meetings)
13	For renewal only: summary report of utilization
additional requirements for:	
1	Traders: List of present and prospective buyers
2	Meat processors: NMIS license (accreditation) certificate(s) and rated capacity
3	Institutional Users: DOT accreditation/classification (certified copy)

Source: Competent authority and interviews

Table 4: Document requirements for BFAR import license

	request form with 17 supporting documents	
1	SEC/DTI registration	
2	SEC GIS or SEC certificate of good standing	latest
3	Mayor's or Business permit	current year
4	BIR registration (to include CODE 1513 (trade in fish/fishery products)	
5	Annual income tax return BIR form 1702	previous year
6	Customs accreditation ICARE	current
7	Customs Registration	current
8	BFAD license to operate	current
9	List of company officers with photocopies of valid IDs with pictures and signatures	current
10	Notarized affidavit of undertaking (importer abides with regulations)	
11	Special power of attorney to designated representative and/or broker	valid until revoked
12	Contract of lease for cold storage	
13	Certificate of accreditation of cold storage facility	
14	Lit of clients with contact details	
16	List of suppliers	
17	Toll processing contracts / Supply agreement contracts	when applicable

Source: Competent authority and interviews

Table 5: Document requirements for FDA import/export license

	request form with ID picture of petitioner and 9 supporting documents
general*	
1	Proof of enterprise registration
2	Proof of occupancy of office
3	Proof of occupancy of warehouse / stock room

4	Vicinity map
5	Floor plan / lay out with dimension of office and or warehouse
6	List of products/category/activity
for importers	
1	Foreign agency agreement/certificate of distributorship/appointment letter from each supplier
2	Proforma invoice from each supplier
3	Certificate of registration of foreign manufacturer with GMP /HACCP status
for exporters	
1	Valid license to operate
2	Valid notarized distributorship or letter of appointment with FDA licensed supplier / manufacturer
3	List of food products with registration numbers and validities

* requirements for product registration not included in this table

Source: Competent authority and interviews

After obtaining the proper license, applications can be made for import or export of particular products. Tables 6 and 7 provide information on the requirements of NMIS and BFAR. The applications to SPS authorities under DA can be made electronically, those for FDA (not displayed here) can only be made in hard copy.

Table 6: Document requirements for NMIS import permit

	request form with 7 supporting documents
1	Designated ware house
2	Summary report of importation/utilization and duties and taxes paid based on the Veterinary Quarantine and Meat Inspection and Laboratory Certificate (VQMILC)
3	Import Entry and Internal Revenue Declaration (IEIRD) during the past year with attached
4	- copy of the VQMILC
5	- copy of SPS Import Clearance
6	- copy of IEIRD
7	Minimum Access Volume permit of import

Source: Competent authority and interviews

Table 7: Document requirements for BFAR import permit

	request form with 5 supporting documents
1	Proforma invoice (indicating scientific name, country of origin and ETD)
2	Disposition report (indicating status of previous importations)
3	Laboratory analysis (shrimps)
4	EU catch certificate (re-export) Special Power of Attorney (SPA) for authorized representative from importer
5	Radionuclide test results (for imports from Japan)

Source: Competent authority and interviews

Waiting time and cost

Licenses Obtaining a license requires waiting between 7 days for BPI to 69 days for FDA (Table 8). BAI and BFAR require about a month. Fees of 4,000 Philippines Peso (P) are charged by NMIS and FDA. In the other cases there is no formal fee but some expenses can be involved in inspection. In most cases the reported waiting time by traders, and targeted or maximum waiting time by the agencies, is about the same. However, in some cases traders report higher waiting times which may be the result of mistakes in applications, rejections, or authorities not meeting

their deadlines. Product registration involves long waiting times; costs are modest except for food supplements.

Table 8: Reported waiting time and cost by SPS authorities for selected licenses and registration

Agency	License	Waiting time (working days)	Cost
BPI	Annual license	7 days	No fee reported but cost to pick-up inspectors
BAI	Annual license	1 month	No fee reported
NMIS	Annual import license (1 year valid)	>15 days;	4,000P
NMIS	Renewal	max.10 days	4,000P
FDA	Annual license to operate	40 days inspection +29 days processing	4,000P-8,000P
FDA	Renewal license to operate	2 weeks	renewal 8,000P for 2 years
FDA	Product registration domestic	60-90 days	400P; 500P; 2000P (cat 1,2, food supplements)
FDA	Product registration export	45 days	400P; 500P; 2000P (cat 1,2, food supplements)
BFAR	HACCP certification	26 days	No fee reported
BFAR	Registration of shrimp farms	21 days	No fee reported

Source: Competent authorities and interviews

Permits Waiting times for most SPS import and export permits and inspections are 1-2 days (Table 9). Relatively long are waiting times for issuance of DOH health certificates and BFAR import and export permits. Time required for fumigation and testing depends on technical processes that can require up to 7 days for microbiology testing. In this respect, waiting times for testing seafood by DOH are long. It should be noted that most of these SPS waiting times are before or after border release processes conducted by Customs. The SPS waiting times reported here do not indicate total border release time, since that would involve waiting times for sequential services by different border agencies, including BOC. Estimates of total border release times for goods subject to SPS clearances would require special time release studies (TRS), which would not include much of the waiting time for SPS services recorded in this study.

Formal fees and charges differ significantly; while some services are free of charge, some are low cost and others have substantial fees. For several years, fees for export related services were waived by Presidential Executive Order (EO) 554 aimed at boosting exports. This EO has reportedly been superseded recently and some agencies have started charging for export related services. However, it seems that there were some charges despite the waiver and some exporters were not even aware of EO 554 and were charged for services. A number of traders reported that sometimes they do not receive receipts for fees, or only for part of the payments, which makes them in fact informal payments.

Table 9: Reported waiting times and payments for selected SPS services

Agency	Service provided	Waiting time	Formal fees and charges
BPI	Phytosanitary certificate issuance	1-2 days	no fee
BPI	Fumigation certificate	3 days	3,000P (for fumigation company)
BPI	Import permit (SPS clearance)	1-2 days	30P

BPI	Inspection	1 hour-1 day	10-30P/MT
DH	Health certificate	3-4 days	
DH	Testing seafood	2-4 weeks	
NMIS	Testing residues in meat	5 days	
BFAR	Export permit / release	2-10 days	1650P
BFAR	Import permit / release	2-3 days	
BFAR	Sanitary certificate	2 days	
BAI	Veterinary certificate for export	1 day	
NMIS	Import release inspection		$200/container;11c/kg
BAI	Import release meat inspection	1 hour-1 day	20c/MT
BAI	Import release feed inspection	1 hour-1 day	60c/MT
BAI	Import release additives inspection	1 hour-1day	25c/kg
FDA	Application export clearance	1 day	no fee
all	Authorized copy of document		100-150P/page
on-line	Requesting import permit	1-3 days	255P

Source: Competent authorities and interviews

Informal fees and charges Most respondents report informal payments (tea money) in the form of gratitude, snacks, drinks, lunches, transport, or payment for services for which no fees apply. Bigger companies state that they have no-payment policies with border agencies, but they report to maintain good relations at senior management level, which can also involve informal payments. In general, informal payments for imports tend to be lower than formal fees. Reported occasional charges for exports for which no formal fee exists, and payments that are non-compliant with EO 554, may in fact be informal payments.

Given the commercial costs of possible delays (missing shipment dates, extra storage cost, not being able to serve customers in time) and dependence on agencies, maintaining good contacts and making some informal payment may be the best option for individual traders. But, for the business community as a whole, such payments are undesirable.

Administrative and internal business costs SPS requirements cause many other costs to traders other than fees and charges. They include administrative costs and staff time for preparation of documents, submission, consulting with officers, tracking the status of decision making, reminders by phone, actions to speed up the process, and necessary contingency planning. There are also internal business costs because of long lead-time from planning to sale, extra storage and interest cost, spoilage of goods, missed orders, and uncertainty. Administrative and internal business costs to traders are not just a given; their magnitudes depend significantly on complexities and inefficiencies in SPS control processes.

General impressions on costs Formal and informal payments are generally low for exports and moderate for imports. Administrative and business costs form much more of a burden to traders than formal and informal payments. This is directly related to demanding applications for licenses and long waiting times. In addition the use of permits, even when automated, adds significantly to administrative and business costs.

Concerns by Philippine traders Traders voiced many concerns about the implementation of SPS measures, including the following:

- HACCP required by BFAR for exports of shrimp to the EU are considered inflexible, too detailed, prescriptive, not fully transparent, open to different interpretations by inspectors, and more difficult than in other countries in the region and the EU.
- Public requirements for traceability of imported animal and fisheries products oblige traders to specify their sources and customers much ahead of time to the actual transactions. This causes inability to adjust to changing market conditions and disrupts freedom to trade.
- Some traders believe that quotas applied in licenses and permits aim at control of markets, not protection of health.
- Time of validity of import permits is considered too short for conducting efficient business transactions.
- NMIS has controls at the so-called second border because there is no facility at the first border (ports) where inspection can be conducted. However, traders argue that most shipments are from safe sources where they were controlled already and they challenge the need for duplication of inspections by NMIS for most shipments.
- NMIS states that any changes in the license system for import of animal products, including the documentary requirements, are subjected to public consultation. Changes are being implemented to improve the system and give protection to the whole industry. However, traders claim that changes in the license system are carried out without consideration of the cost for traders.
- Documentary requirements for import licenses are considered needlessly difficult, complex, rigid, overdone, arbitrary, illogical, and sometimes irrelevant (outdated).
- There are not enough inspectors and the training/qualifications of some inspectors is insufficient. Some inspectors are not sufficiently independent.

Respondents appreciate that the SPS control system gives big companies protection against "traders-by-night"[17] in import and export, but it does little to address challenges related to the large informal sector and to control illegal practices.

IV. Analysis

The interpretation and analysis of the findings focuses on four aspects.

1. The general performance of the SPS system.
2. What is the effectiveness of the controls in terms of health protection and trade promotion?
3. How efficient is the SPS system?
4. Points of weak compliance with the SPS Agreement.

General observations

The SPS system has made major achievements in controlling the spread of pests and diseases. Control of corruption in implementation of SPS measures remains a challenge, however, it is relatively less of a problem than in many other countries in the region. There are also remaining issues of compliance, efficiency and effectiveness.

The Philippine SPS system is very prescriptive with strong public dominance. It is significantly focused on how SPS requirements should be met (prescription) and gives little room to the private

[17] Such as traders without a good reputation who have short-term profit objectives.

sector to meet SPS outcomes in ways that are most cost-effective. The prescriptive nature affects competitiveness and trade more than necessary.

In general, there is a sentiment among traders that SPS measures in the Philippines and abroad are used for trade protection, and there is skepticism about the legitimacy of some SPS measures. There are questions about whether the SPS system in the Philippines applies quotas for import and export of fisheries, plant and animal products. Some of the Government agencies state that quotas are only applied for controlling Minimum Access Volume. However, there is some evidence that the licensing and permit system is sometimes also used for controlling volume. This is not good SPS practice and possibly even non-compliant with WTO principles.

Risk-based management is now a recognized policy direction in the Philippines, particularly in the DA, but much reform is still needed to apply it. For example, little consideration is being given to differences in risks and safety assurances from source of imported animal products and as a result there is much duplication of controls. All products need to be registered and all imports and exports require licenses and permits, regardless of the risk profile of the goods.

A significant share of staff time of SPS agencies is used for administration of applications and there is not enough staff to conduct technical work.

Transparency of written and online information for traders about SPS requirements, procedures to be followed, criteria for obtaining licenses, standard waiting times, and fees that apply, remains a challenge. The very detailed nature of requirements of applications for licenses and permits, and weaknesses in the legal system, add to difficulties related to transparency.

Costs of SPS measures form relatively high burdens for formal traders and erode competitiveness. High costs of SPS measures for formal food businesses form incentives for enterprises to operate in the informal market and, as a result, both food safety and tax income are jeopardized.

Effectiveness of controls

Border release processes in the Philippines are in essence based on documentary controls and to a limited extent backed-up by substantive controls and surveillance.

Market access Safeguards (GAP, GMP, HACCP, etc.) and issuance of phytosanitary certificates for plant products and health certificates for animal and fisheries products are necessary for access to formal markets. Most other controls are not.

Health protection In general, import licenses, permits and product registration do not seem to contribute much to the protection of health. No risk assessments have been carried out that justify their use. Major parts of the domestic market are informal and largely uncontrolled.

Substantive controls Laboratory capacity and inspection and surveillance programs are still limited. Food safety controls on imported plant products remain very weak.

General status The SPS system functions too much as a tool for market control, and still insufficiently as a system to control health risks and promote market access.

Efficiency of controls

Costs caused by SPS controls for traders are high. Efforts are being made to reduce SPS transaction costs for requesting permits through the adoption of ICT. However, transaction costs remain high because of the use of licenses and permits and procedural inefficiency. Registration of

food products is expensive for government and the private sector and for most products does not contribute much to protection of health.

Efficiency of SPS measures in terms of health impact related to transaction costs of SPS measures seems to be low. The Philippines pays high transaction costs for moderate health outcomes, especially in food safety.

Efficiency of SPS measures in terms of market access is mixed. Many controls are too costly for the private sector and some do not add to market access and, hence, erode the competitiveness of exporters.

Points of weak compliance with the SPS Agreement

The following observations are made:

Registration of all food products is expensive, generally not very effective from a health perspective and clearly forms an obstacle to trade. Therefore, it is difficult to justify.

The requirement of licensing traders for export and import, and in particular the way it is implemented, is costly to traders and needs to be justified as necessary for achieving the appropriate level of protection.

The requirement of import and export permits is also costly and trade disruptive and needs justification as necessary for achieving the appropriate level of protection. Publication of sanitary requirements for imports is a less costly alternative for traders to requiring import permits, and it can provide the same level of protection for most products.

The (alleged) use of quota or *de facto* volume controls in SPS measures does not contribute to protection of health and is therefore not justified under the principles of the SPS Agreement.

Each of the SPS authorities require a lot of documentation for licenses and permits that is also requested by the other SPS authorities and the BOC. Multiple controls of documents by SPS agencies and customs do not contribute to the protection of health and, therefore, form an unjustifiable cost of SPS measures.

For imports, little consideration is given to the safety of the source and the reputation of traders. Under the SPS Agreement's equivalence principle, the Philippines should accept safety assurances from reputable foreign sources, especially because control capacity in these countries is generally better than in Philippines. Also unilateral recognition of controls abroad can be good practice. With the application of risk-based management there should be differentiation in inspection.

Waiting times are relatively high for several services compared to other countries. Since waiting times are costly to traders, they should be reduced as much as possible to avoid unnecessary costs.

Informal payment requirements violate several principles of the SPS Agreement.

V. Points for consideration

Based on the findings of this research, in order to improve the implementation of SPS measures and facilitate trade, the Government is recommended to consider the following: (i) SPS institutional

improvements; (ii) improvements to increase effectiveness of SPS measures; (iii) improvements to increase efficiency of SPS measures by reducing costs; and (iv) building capacities to strengthen the performance of the SPS system.

Institutional issues

Improve transparency

- modernize the SPS legislative framework to improve legal quality, compliance with WTO, transparency and governance;
- further develop the contents of websites by adding detailed information on SPS requirements, descriptions of steps to be followed for applications, forms to be used, fees and charges that apply, and time targets to be followed by officers;
- require the issuance of receipts for payments related to inspections and border release procedures; and
- monitor the performance of regulators.

Alignment of institutional responsibilities A joint Administrative Order for FDA and BFAR, similar to the one between FDA and NMIS, could reduce overlap and improve efficiency in controlling safety in the fisheries sector.

Improve effectiveness of SPS measures

A key challenge for all SPS agencies is to focus human and budgetary resources more on health protection and facilitating exports, and less on administration. In particular, FDA has a major imbalance between resources required for administration and technical work. This means that SPS requirements with limited effectiveness should be reconsidered to free-up resources. An obvious way is to improve compliance with the WTO SPS principle of adopting risk-based controls. The aim should be to reduce controls on low-risk products and focus more on health risks. Although there are already aspects of risk-based control, such as licensing foreign meat establishments that export to the Philippines and requiring GMP and HACCP certifications, much more can be done. Use could be made of safety assurances (GMP, HACCP, veterinary /sanitary certificates) from countries with good systems for import of processed foods, fisheries and animal products by applying the equivalence principle, mutual recognition agreements and reducing duplicative inspections at entry.

Public SPS capacity is limited and efforts should be made to enable the development and use of capable private service providers. This means that Government should allow and recognize services of private providers, such as for HACCP certification and tests provided by other ISO 17025 accredited laboratories.

Reduce costs

A general good practice principle in export promotion is to avoid controls that are not required by importing countries. This reduces costs without reducing market access. It implies that the use of export licenses and permits should be eliminated unless bilaterally agreed with importing countries.

Given their high cost to the private sector, serious consideration could be given to eliminate import licenses and permits for most products and most origins. Risk analysis should be applied for justification of permits for special categories of products with intrinsic risks. For similar reasons, eliminating product registration for most food products is recommended.

Reducing redundant and illogical documentary requirements would contribute to cost reduction. Many of the documents required by SPS agencies are also required by BOC and other Government agencies, and often there is no reason from a health protection perspective to maintain the present extensive documentary requirements and duplications. With the integration of SPS controls in the PNSW, removal of duplication will become necessary.

Priorities for SPS capacity building in the context of trade facilitation

The Philippines needs to further develop its SPS capacities and this is duly recognized by DA and FDA. Three recommended priorities for capacity building are:

1. Adoption of risk-based controls. This will have major implications for the present system of SPS controls which makes extensive use of licenses and permits and is, in essence, not risk-based. Human and financial resources need to be reallocated to better address risks and to reduce costs for traders.
2. Strengthening the testing infrastructure. There is a need for more substantive controls and testing by regulators and enterprises for which the present infrastructure is too constrained.
3. Further pursue automation. Automation can contribute to reducing waiting time and duplicative documentation requirements. A short-term priority is building capacity for issuance of phytosanitary and health certificates for exports. A priority for the medium term is full integration in the PNSW.

The above priorities are being and/or will be addressed by at least two major interventions currently in place: (i) the DA-IFC/WB Group Cooperation Agreement on Improving the SPS System and Import/Export Procedures; and (ii) implementation of the newly enacted Republic Act 10611 (Food Safety Act of 2013).