

Please cite this paper as:

von Lampe, M. and H. Jeong (2013-06-28), "Design and Implementation of Food-Import Related Regulations: Experiences from Some Regional Trade Agreements", *OECD Food, Agriculture and Fisheries Papers*, No. 62, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/5k44s9v9m86f-en>



OECD Food, Agriculture and Fisheries  
Papers No. 62

# Design and Implementation of Food-Import Related Regulations

EXPERIENCES FROM SOME REGIONAL TRADE  
AGREEMENTS

Martin von Lampe

Hyunchul Jeong

## OECD FOOD, AGRICULTURE AND FISHERIES PAPERS

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## Abstract

### **Design and Implementation of Food-Import Related Regulations: Experiences from Some Regional Trade Agreements**

This report looks at procedures and processes related to non-tariff measures in agricultural trade. Based on the prior that countries are likely to make efforts to reduce the trade hindering effects of domestic food regulation within regional trade agreements, we focus on three different RTAs, including the North Atlantic Free Trade Agreement, the EU-Switzerland Free Trade Agreement (and more precisely, the EU-Switzerland Agreement on Trade in Agricultural Products), and the EU-Chile Free Trade Association. The paper first compares the texts of these RTAs with the provisions made in the WTO SPS and TBT Agreement and assesses their revealed ambition with respect to avoiding NTM-related frictions in agricultural trade between party countries. Based on a survey covering the countries party to these RTAs, the paper then analyses the way processes in the design and implementation of regulations differ across these countries. It identifies several areas where processes within RTA member countries could potentially inform process developments in other RTAs or at a multilateral level and calls for further research to better understand the empirical implications of such processes.

This report was prepared by Martin von Lampe and Hyunchul Jeong (OECD Secretariat). Contributions by a consultant, Anne Célia Disdier, on the evaluation of the survey are gratefully acknowledged. The report was declassified by the OECD Joint Working Party on Agriculture and Trade in November 2012.

*JEL Classification:* F13, F15, Q17, Q18

*Key words:* Non-tariff measures, SPS measures, regulatory impact assessment, transparency, dispute settlement mechanism, RTA, WTO

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## EXECUTIVE SUMMARY

Non-tariff measures, more specifically domestic regulations with implications for cross-border trade in agricultural products, are coming more to the foreground of the policy debate. Rather than analysing the implications of regulatory measures themselves, this report looks at different processes in their design and implementation. The report aims to identify good regulatory practices which potentially reduce trade costs in the context of non-tariff measures. With the focus on trade facilitation, it closely analyses the legislative texts as well as the actual processes and experiences from three regional trade agreements (RTAs, used here with a general meaning to include trade agreements between two or more partners not necessarily belonging to the same geographical region). These RTAs, bringing together Canada, the United States and Mexico (NAFTA), the European Union and Switzerland (EU-Switzerland Agreement on Trade in Agricultural Products as part of the EU-Switzerland FTA), and the European Union and Chile (EU-Chile Association Agreement), respectively, were selected based on these countries' willingness to share their administrative experience, and hence should not be seen as representative of RTAs generally.

Regulatory processes in the design and implementation of non-tariff measures, or NTM-related processes for short, include stakeholder involvement, regulatory impact assessments, transparency, technical assistance, and control, inspection and approval procedures. They can have implications for trade and other economic indicators through various channels. Put simply, good regulatory practice can reduce trade costs related to regulations in the importing country. These costs can derive from poorly designed and inefficient regulations, difficulties in finding relevant information, due to sudden or unexpected adjustments to regulations, the risk of non-compliance and hence non-entry to the import market, and uncertainty concerning the actual application of regulations. Higher costs related to the importing country's NTM-related processes potentially imply lower exports by foreign firms (for variable costs) or entry barriers for new firms interested in exporting (for fixed costs), and hence welfare losses for consumers in the importing country.

The relevant multilateral agreements, including the Agreement on Sanitary and Phytosanitary Measures (*SPS Agreement*) and the Agreement on Technical Barriers to Trade (*TBT Agreement*) both include provisions for transparency, as well as for other dimensions. This report finds that for a number of these areas, the RTAs' legislative texts go beyond WTO requirements, e.g. by requiring longer periods of advance notification of regulatory changes; by a "positive list" approach stipulating equivalence of regulations and reduced or abolished conformity controls at the border for certain sectors; or by stressing a 'dispute avoidance' strategy through cooperation and consultation.

In addition to the analysis of the texts of the agreement, this study builds on a survey among the countries party to any of the three RTAs. This questionnaire, annexed to the report, allowed regulating administrations to share their processes and experiences along the design and implementation chain of food-import related regulations. According to these experiences, three areas are identified in which processes within the RTA Member countries could potentially inform process developments in other RTAs or at a multilateral level:

- The scope, timing and means by which stakeholders, both domestically and abroad, are informed about planned regulations or changes to existing regulations;
- The assessment of possible economic and trade effects of planned regulations, and tools used in this respect; and
- The mechanisms to avoid or, if existing, settle disputes relative to non-tariff measures.

Further research will be required to provide more details on these three areas. The report does not suggest that any of these areas would have greater trade facilitating effects than others. Instead, it proposes to use them as starting points for a broader empirical investigation, involving a larger number of regulating countries and drawing on the experience of other stakeholders. In particular, this should involve the export oriented industries potentially benefitting from improved processes in the design and implementation of food-import related regulations.

### Objective of the study

This report aims to identify regulatory practices of countries party to one of selected regional trade agreements that potentially facilitate trade in the context of NTMs in food and agriculture, and that might be applicable on a wider basis either in other RTAs or at a multilateral level. It does so in two ways: first, an assessment of the agreement texts allows the identification of areas where the RTAs' ambition for trade facilitation in the context of regulatory measures in agro-food markets goes beyond that of the respective WTO Agreements. While the analysis also looks at technical barriers to trade (TBT), the main focus is on sanitary and phytosanitary (SPS) measures. Second, an analysis of experiences shared by those selected countries points to processes which *de facto* go beyond multilateral practice, and which deserve further analysis in order to clarify their actual trade facilitating effects and applicability for other agreements.

### Introduction

With tariffs and similar measures of border protection in agricultural markets becoming increasingly limited by unilateral policy reforms and multilateral agreements, domestic regulations potentially having implications for cross-border trade in agricultural products are coming more to the foreground of the policy debate. Regulatory measures to combat various market failures and imperfections are of increased relevance if domestic markets are supplied by both domestic and imported produce. Various types of market failures and imperfections can be distinguished – as has been done for instance in OECD (2009) – ranging from externalities affecting domestic consumers, producers, global commons or imperfections in monitoring and other government failures.

Concerns about these market failures and imperfections can be responded to with various measures, including, but not limited to, trade restrictions and domestic regulations. OECD (2010) shows examples of how such policy responses as well as potential alternatives can be evaluated based on a consistent cost-benefit framework that includes trade effects. Such an assessment of alternative policy responses is an important step towards improving regulations, and the framework thus provides a useful tool for the regulator.

The choice of the best-suited regulation clearly is an important step to reduce unnecessary trade barriers. Focussing on specific regulations and products and assessing their economic effects is one approach. Another approach is to look at the ways in which regulations are designed and applied, and to ascertain whether differences in such

processes lead to different regulatory outcomes. This report aims to look at experiences in those processes, ranging from stakeholder involvement to transparency and the settlement of disagreements among trading partners. A starting point is the hypothesis that regional trade agreements (RTAs) have a particularly explicit interest in reducing trade barriers between party countries. If this assumption holds, processes in the design and implementation of regulations potentially affecting the trade in agricultural products should take trade concerns by trading partners in particular consideration. Such practices might therefore offer useful insights for trade relationships at a multilateral level as well. Note that in the context of this report, we use the term “Regional Trade Agreement” with a general meaning to cover “reciprocal trade agreements between two or more partners” but “not necessarily belonging to the same geographical region” (WTO, no date).

This report complements other work done on NTMs in agriculture as well as work on the treatment of agriculture in RTAs and on transparency provisions in RTAs. In addition, the Regulatory Policy Committee is intensively looking at regulatory governance<sup>1</sup> and is currently preparing a list of OECD Recommendations on Regulatory Policy and Governance, both of which are related to this work.<sup>2</sup>

This report is structured as follows: The following section provides a reasoning for its focus on NTM-related processes. The main part of the report then begins by delineating the scope of the analysis. Its context is provided by brief discussions of the main provisions of the WTO SPS and TBT agreements, and a general overview on SPS and transparency provisions in RTAs. The report then offers insights from the analysis of the texts of the selected RTA agreements. Subsequently, it presents and discusses information provided by the selected RTAs’ Member countries in the context of a questionnaire-based survey, and identifies several areas where NTM-related practices could potentially inform process developments in other RTAs or at a multilateral level. While this report remains largely descriptive and, due to the method chosen and the limited number of RTAs and Party Countries surveyed, does not intend to produce empirical evidence on the trade effects of best practices, a final section concludes by highlighting elements in the design and implementation of food-trade related regulations that deserve further and deeper analysis.

### Why are NTM processes important?

Several elements in the process of designing and implementing NTMs can be distinguished:

- Stakeholder involvement in the design of new, or review of existing, regulations impacting on food trade: this can involve the publication of draft regulations; well-defined channels for comments by and exchange of arguments with interested parties, both domestic and foreign; and the publication of submitted comments.
- Regulatory impact assessment systems that allow for the evaluation of proposed and alternative regulations, or changes to regulations. This includes the assessment of the risks to be addressed by the regulation, of the availability of applicable international

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1. A number of country reviews on regulatory reform published during the past 12 years, each including a chapter on regulatory governance, as well as related background reports, can be found at the OECD website at [www.oecd.org/regreform/backgroundreports](http://www.oecd.org/regreform/backgroundreports).
  2. Importantly, this work also complements work done by other institutions. Without trying to be exhaustive here, for some overview reports see e.g. Orden et al. (2012) for key findings of the NTM-IMPACT Project, and the latest World Trade Report by the WTO with a focus on non-tariff measures (WTO, 2012). The World Bank’s toolkit for policy makers in Cadot et al. (2012) provides advice on reviewing and reforming NTMs.

standards, and of various economic variables potentially affected by the regulation, such as trade, domestic and global welfare measures.

- Transparency in governments' decisions on new or changed regulations impacting on food trade (i.e., openness to arguments for and against available options; reasons for the adoption of the chosen option and their publication).
- Transparency in final regulations: publication of regulations and guidelines for their application; language, time period between publication and execution of regulations, contact details of relevant authorities, related administrative procedures.
- Application of regulations: possibility for stakeholders to inquire about the application of the regulation, and appropriate and timely responses by authorities including the publication thereof if relevant for other parties; mechanisms to resolve disputes; procedures to review regulations.
- Technical assistance: efforts of the importing country to help exporters comply with its regulations. In particular, this includes outreach activities to inform exporting countries about the relevant regulations, Education, promotion of mutual understanding.<sup>3</sup>
- Control, inspection and approval procedures: costs related to verifying and certifying that consignments are in line with the importing country's regulations can be significant in terms of paper work, physical controls and possible quality losses during quarantine. Importing countries can reduce these costs by applying efficient control, inspection and approval procedures, where possible based on international standards, and reducing physical controls and quarantine requirements.

Stakeholders can include various groups potentially affected by public regulations. In addition to the governments of both the regulating country(plus, in the case of the European Union, those of its Member States) and of exporting trade partners, this may cover producers and processors of the products concerned, traders and consumers, but may also include the scientific community or the civil society – mainly in the form of relevant non-governmental organizations (NGOs). Their involvement in the design of regulations, and a high degree of transparency throughout the relevant process, can serve several purposes, including:

- Add information to the identification of problems and policy objectives as well as to the policy design process, thus reducing the risk of the final regulation imposing unnecessary obstacles to trade or other negative side effects.
- Increase stakeholder buy-in to, and understanding of, the new regulation, thus potentially enhancing compliance with the regulation once applied and reducing eventual information costs.
- Improve accountability of the government for complying with transparency rules.

Transparency in final regulations reduces informational costs to producers in general and, given the generally easier access to information for domestic producers, to foreign producers in particular. Higher information costs can create an entry barrier to foreign producers willing to supply to the market in question, and can result in lower profits for those foreign producers exporting to that market. Domestic producers and consumers are

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3. Technical assistance might also involve efforts by developed exporters focusing on developing countries' regulations, with the aim to harmonise those with the exporter's regulations in order to secure export markets in third countries.



affected only if information costs are high enough to increase the equilibrium price through reduced foreign supplies, resulting in lower consumers' welfare, higher domestic producers' profits, and lower domestic welfare as a whole [TAD/TC/WP(2009)33]. In addition, transparency results in reduced uncertainty for producers which can also be seen as reduced (expected, risk-adjusted) costs.

The possibility for stakeholders to inquire about the application of the regulation and to receive adequate and timely responses by the authorities also helps to reduce informational costs, thus having the same general implications. Transparent and efficient dispute settlement mechanisms help to reduce costs related to uncertainty. At the same time, they help to improve governments' accountability.

At the end, all these elements can be understood as different facets of transparency in the design and implementation of regulations. According to OECD (2001),<sup>4</sup> transparency can be defined as *the capacity of regulated entities to identify, understand and express views on their obligations under the rule of law* (p. 86). While for the conceptual framework for the quantification of economic effects we maintain this aggregate definition of transparency, we will identify and discuss the individual elements in the descriptive part of the discussion.

A conceptual framework for the measurement of transparency as reducing the cost of market entry is provided in [TAD/TC/WP(2009)33]. It allows to determine the reduction of profits for exporting firms resulting from non-transparent regulations and procedures, as well as the point where these costs become an entry barrier to the import market. Using this framework it is shown that an increase in transparency in regulations results in improved economic welfare for the importing country, stemming from benefits to consumers who enjoy enlarged supply and lower prices for the products complying with domestic regulations.

## NTM-related processes in selected regional agreements

### *Scope of the analysis*

This report tries to identify positive experiences in processes related to NTMs in agriculture and food, and to analyse their transferability to other trade relations and/or to the multilateral level. This section first identifies requirements on NTM related transparency and other procedures as stated in the relevant WTO agreements, i.e. the SPS Agreement and the TBT Agreement, and provides a brief overview on SPS and transparency provisions in RTAs in general. Second, a set of regional trade agreements (RTAs) is analysed by means of the corresponding agreement texts, to see whether and to what extent ambitions with respect to NTMs in agriculture exceed those set by the WTO agreements. The evaluation of questionnaires filled by Ministries and other agencies involved in the design and implementation of NTMs in agriculture then permits the identification of areas of procedures and transparency that *de facto* go beyond WTO rules and procedures. As a result of the questionnaire approach, the key criteria for selecting the RTAs for this analysis was the availability of the countries party to them and their volunteering to completing the questionnaire – a task far from being trivial. In consequence, findings on the specific RTAs cannot be viewed as representative for other ones. The three RTAs selected for this study include the North Atlantic Free Trade Agreement (NAFTA), the EU-Chile Association Agreement, and the EU-Switzerland

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4. “Flagship Report on Regulatory Quality“, [PUMA/REG\(2001\)1](#). The original definition used in that report is “the capacity of regulated entities to express views on, identify, and understand their obligations under the rule of law”.

Agreement on Trade in Agricultural Products forming part of the EU-Switzerland Free Trade Agreement.<sup>5</sup>

The North American Free Trade Agreement (NAFTA), which entered into force in 1994, states as a core objective to “eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties”.<sup>6</sup> In the context of agriculture and food products, the agreement calls for the signatory parties to avoid unnecessary obstacles through SPS measures adopted, maintained or applied (Article 712.5) and in particular to not adopt, maintain or apply any SPS measure “with a view to, or with the effect of, creating a disguised restriction on trade between the Parties” (Article 712.6). NAFTA brings together the markets of Canada, the United States of America, and the United States of Mexico.

The bilateral relation between the EU and Switzerland in fact consists of a series of agreements, started in 1972 with the EU-Switzerland FTA and followed by a number of more specific ones. The agreement most relevant for this work is the Bilateral Agreement on Trade in Agricultural Products dating from 1999.<sup>7</sup> This agreement has a strong focus on technical barriers to trade but also covers sanitary and phytosanitary measures, namely concerning the facilitation of trade in areas such as wine, organic production, plant health and veterinary issues.

The EU-Chile Association Agreement was signed in October 2002 and entered into force four months later. The agreement explicitly calls for the liberalization of both tariff and non-tariff barriers to trade, covering most fisheries and agricultural products.<sup>8</sup> NTMs feature in a dedicated chapter of the agreement, supplemented by a specific Annex on SPS measures.

### ***WTO Agreements on the Application of Sanitary and Phytosanitary Measures and on Technical Barriers to Trade***

While the SPS Agreement stipulates the basic right to take SPS measures necessary for the protection of human, animal or plant life or health, such measures need to be based on scientific principles and evidence where such scientific evidence exists. SPS measures must not “arbitrarily or unjustifiably discriminate between Members” with similar conditions, or

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5. This study could be expanded to other trade agreements with the aim of possibly making conclusions more rigorous. At this stage, the scope of the analysis is limited to the three cases mentioned, and experience suggests that broadening the analysis would represent a significant challenge both to the Secretariat and the participating administrations. The Secretariat is looking into alternative ways to expand the analysis to also include one or more non-OECD countries, possibly in Asia.
  6. The full text of the NAFTA is available online at <http://www.nafta-sec-alena.org/en/view.aspx?x=343>.
  7. Texts of the agricultural and other bilateral agreements between the EU and Switzerland are available from <http://www.europa.admin.ch/themen/00500/index.html?lang=en>. A consolidated version of the Agreement on Trade in Agricultural Products from 1 January 2010 can be found at <http://www.blw.admin.ch/themen/00009/00191/index.html?lang=de>.
  8. The full text of the association agreement and its Annexes is available online at [http://www.sice.oas.org/trade/chieu\\_e/ChEUin\\_e.asp](http://www.sice.oas.org/trade/chieu_e/ChEUin_e.asp).
  9. Here we present the main elements of the WTO Agreements in a summarising form, and consequently risk to simplify their original wording, meaning or intent. In consequence, this summary cannot be taken as a legally relevant description of the agreements.

“constitute a disguised restriction on international trade”. The Agreement identifies four principles, which we will briefly discuss in turn.

*Harmonisation* (Art. 3): Members commit to harmonise SPS measures to the degree possible, by basing measures on international standards, guidelines or recommendations where these exist and unless scientific evidence justifies a higher level of SPS protection, or if higher levels of SPS protection are determined to be appropriate following an assessment of risk (see below).

*Equivalence* (Art. 4): Where SPS measures differ, Members commit to accept and recognise other Members’ measures as equivalent if the exporting Member “objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level” of SPS protection. Upon request, Members shall “enter into consultations” with the aim of achieving mutual agreements on recognition of the equivalence of specified SPS measures.

*Assessment of Risk, Determination of the Appropriate Level of SPS Protection* (Art. 5): Members commit to base their SPS measures on an assessment of the risks, taking into account risk assessment techniques developed by the relevant international organisations. Various scientific and economic factors (e.g. “the potential damage [...] in the event of the entry, establishment or spread of a pest or disease”) are to be taken into account, as are relevant processes and production methods, inspection, sampling and testing methods. Also, Members should account for the “objective of minimizing negative trade effects”. However, a Member may “provisionally” adopt SPS measures “on the basis of available pertinent information, including that from the relevant international organisations” and from SPS measures applied by other Members, if “relevant scientific evidence is insufficient”. In such cases, Members “shall seek to obtain” additional information for a more objective assessment of risk “within a reasonable period of time” and review the SPS measure accordingly.

*Regionalisation* (Art. 6): In designing and applying SPS measures, Members commit to take SPS characteristics of specific areas, i.e. a country, part of a country, groups of countries, or parts of country groups, from which the relevant product originated and to which the product is destined. In particular, Members commit to recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence, with the relevant variables accounted for in determination of such areas.

In addition to these principles, the SPS Agreement covers a range of technical or administrative aspects, as follows.

*Transparency* (Art. 7 and Annex B): Members shall notify changes in and provide information on their SPS measures in accordance with agreed provisions. Members shall publish all adopted SPS regulations<sup>10</sup> promptly and allow a “reasonable interval” between the publication and its entry into force. Each Member shall ensure that one enquiry point exists to answer the questions from Members as well as for the provision of relevant documents. On notifying other Members, Members shall notify, through the Secretariat, the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Notification should take place at an early stage when amendments could still be introduced and comments taken into account. In urgent cases, Members may omit some of the steps but have to notify the same kinds of information immediately together with the nature of the urgent problem. Members shall designate a single central government authority as responsible for the implementation of the provisions concerning notification procedures.

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10. Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

*Control, Inspection and Approval Procedures* (Art. 8 and Annex C): Procedures to check and ensure the compliance with relevant regulations shall not result in undue delays or costs, or discriminate between imported and like domestic products. Among other provisions, the agreement states that fees imposed for the procedures on imported products shall be equitable to those charged to like domestic products or to like products from any other WTO Member country, and shall not exceed the actual cost of the service.

*Technical Assistance* (Art. 9): Members agree to facilitate technical assistance to other Members, especially developing countries, either bilaterally or through the international organizations.

*Consultations and Dispute Settlement* (Art. 11): The provisions of Articles XXII and XXIII of GATT 1994 shall apply to consultations and the settlement of disputes, except as otherwise specifically provided in this agreement. On scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. The panel may establish an advisory technical experts group, or consult international organizations. Members maintain the rights under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations.

*Administration* (Art. 12): A Committee is established to provide a regular forum for consultations and its decisions must be on a consensus basis. The Committee encourages and facilitates *ad hoc* consultations or negotiations among Members on specific issues. It maintains close contact with the international organizations to secure the best available scientific and technical advice for the administration and develops a procedure to monitor the process of harmonization and the use of international standards, guidelines or recommendations. The Committee shall review the operation and implementation of this Agreement and, where appropriate, it may submit to the Council for Trade in Goods proposals to amend the text of this Agreement.

The TBT Agreement includes requirements similar to the SPS Agreement relative to *harmonisation* (Art. 2.6), *equivalence* (Art. 2.7), notification of planned technical regulations or planned changes to regulations (Art. 2.9 and 2.10), *transparency* (Art. 2.11 and 2.12). A ‘Code of Good Practice’ (Annex 3) provides details on publishing requirements for the standardising bodies’ work and specifies a minimum period of 60 days for allowing comments on a draft standard by interested parties, except if urgent problems of safety, health or environment disallow such a delay – no such minimum period is specified in the SPS Agreement. Transparency provisions are also found in GATT Article X, which includes an obligation to publish all regulations and subordinate measures, including judicial decisions, administrative guidelines and rulings of *general application* that *affect trade* in a *prompt* manner so as to enable relevant parties to become *acquainted* with them.

### ***SPS and transparency provisions in RTAs***

Most trade agreements appear to include separate chapters on SPS measures, but in many cases these short chapters simply refer to the WTO SPS Agreement and thus do not go beyond provisions agreed to at the multilateral level. OECD (2011b) examines more than 50 RTAs and identifies those where legislative texts go beyond WTO provisions. Within the agreements that have “WTO plus” provisions, additional commitments on transparency represent the most common step beyond multilateral commitments. These may particularly include “specific timeframes for notifications of regulatory changes” (OECD 2011b: 33) or “the creation of joint SPS Committees tasked with concluding relevant bilateral arrangements and furthering the implementation of the generic SPS provisions” (OECD 2011b: 29).

Specific provisions going beyond the SPS Agreement on other principles are less frequently found. A number of agreements make explicit commitments on regionalisation. Still less often, explicit provisions in the areas of equivalence, harmonisation and assessment of risk are part of the agreements. Finally, that same paper notes that agreements between two Latin American countries are more likely to go beyond the SPS Agreement than those involving only one Latin American country, suggesting that SPS negotiations may be easier among Latin American countries. The paper also lists several potential reasons for this, including mutual interests, similar initial conditions, or similar negotiating capacities. Similarly, the paper by Andrew Stoler (2009) makes the point that some of the best efforts to eliminate SPS and TBT constraints to trade in RTAs are amongst developing countries in ASEAN and Mercosur.

Work on transparency in RTAs is ongoing under the auspices of the Working Party of the Trade Committee (WPTC), within the series on ‘Multilateralising regionalism’. A report recently discussed in the WPTC [TAD/TC/WP(2011)28/REV1] finds that, in a total of 124 recent RTAs scrutinised, approaches to promoting transparency vary markedly. 75 of them include the promotion of transparency as one of the key objectives, indicating that transparency is often viewed “as an end in its own right” (p. 4) rather than just a means to an end. 78 of the RTAs explicitly refer to transparency either within other sections or include a specific transparency chapter (Annex A). These and other results suggest that significant importance is attached to ensuring and advancing transparency in the context of regional agreements.<sup>11</sup>

### *Analysis of selected Regional Trade Agreement texts*

#### *NAFTA*

The North American Free Trade Agreement (NAFTA) was signed in 1992 and became effective on January 1, 1994. It superseded the Canada-United States Free Trade Agreement. NAFTA has two agreements (the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation) as supplements. The stated goals of NAFTA include eliminating barriers to trade in goods and services, promoting fair competition, increasing investment opportunities, providing protection and enforcement of intellectual property rights, creating effective procedures for the implementation and resolution of disputes.<sup>12</sup> NAFTA also seeks to eliminate non-tariff trade barriers.

Part Two of the agreement deals with provisions related to Trade in Goods. Two sections in Chapter Seven deal with *Tariff elimination of Agricultural products* (Section A) and *Sanitary and Phytosanitary Measures* (Section B). Part Three has the title of Technical Barriers to Trade, but it has only one chapter on *Standard-Related Measures* to cover technical issues (Chapter 9). Chapter Nine makes clear reference to the WTO Agreement

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11. The data provided in the Annex of the document also suggests that the share of RTAs putting an emphasis on transparency issues, e.g. by stressing its importance in the preambles or by including transparency chapters, tends to increase both over time and with the involvement of OECD countries in the RTA (although statistically these effects are not significant). Particularly the latter finding is of interest in the context of the present study which looks at three OECD-only RTAs in greater detail.
  12. When it was implemented, most US-Canada trade was already duty free. The implementation brought the immediate elimination of tariffs on more than one half of US imports from Mexico and more than one third of U.S. exports to Mexico. Within ten years, almost all US-Mexico tariffs would be eliminated except for some U.S. agricultural exports to Mexico that were to be phased out within 15 years.

on Technical Barriers to Trade, but Chapter Seven does not refer to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures though it has very similar structure and language as the WTO agreement.<sup>13</sup>

Though the Parties state they “shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods” (Article 703), the text indicates the Parties’ interest in maintaining sufficient national sovereignty in the SPS matters. In Section B of Chapter Seven, they agree that each Party may adopt, maintain or apply any SPS measure necessary, including a measure “more stringent” than an international standard, guideline or recommendation. Even though the measure should be in accordance with the Section and the basis of measures in this Section is almost equal to that in the WTO agreement on SPS measures, this paragraph emphasises more strongly that the Parties have the right to apply measures that provide a higher SPS protection than relevant international standards, guidelines or recommendations.

On harmonization, Article 713(1) says that each Party shall use relevant international standards, guidelines or recommendations with the objective of making its SPS measures equivalent or identical to those of the other Parties. Compared to the SPS Agreement, this is a stronger expression of the Parties’ ambition to harmonize measures. The same article qualifies, however, that nothing in Paragraph 1 “shall be construed to prevent a Party from adopting, maintaining or applying [...] a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation” (Article 713(3)). A clear and unambiguous ambition beyond the SPS Agreement is, therefore, not visible in this context.

On equivalence, NAFTA includes some clauses going beyond what is written into the WTO Agreements. Article 714(4) declares that each Party “should [...] consider” relevant actual or proposed SPS measures of the other Parties, a best endeavour approach to make regulations more comparable across NAFTA Members. Moreover, Article 714(2) notes that the importing Party shall provide to the exporting Party, on request, its reasons in writing for the exporting Party’s measure not achieving the importing Party’s appropriate level of protection.

On conducting an assessment of risk and establishing an appropriate level of protection, a Party may allow for a “phased application” or grant specified exceptions for limited periods from a SPS measure, taking into account the requesting Party’s export interests. This phased application is applicable where the importing Party is still able to achieve its appropriate level of protection. While such a phased application of SPS measures may help to reduce resulting trade frictions, no such provision is made for by the WTO agreement on SPS measures.

The agreement extensively deals with the matter of regionalization. In Article 716(3), the Parties agree that an importing Party “shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence”. This goes beyond the formulation in the WTO agreement which states that Members “shall recognize *the concept* of pest- or disease-free areas or areas of low pest or disease prevalence” (emphasis added). In addition to this, in Article 716(5), the Parties seek agreements between each of importing Parties and exporting Parties to facilitate trade of goods produced in an area of low pest or disease prevalence in the territory of exporting Parties.

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13. It should be noted that NAFTA actually predates these WTO agreements.

On transparency, Articles 718 and 719 make a number of provisions. Each Party proposing to adopt or modify a SPS measure of general application at the federal level shall publish a notice and “notify in writing” the other Parties of the proposed measure and provide to the other Parties and publish “the full text” of the proposed measure “at least 60 days prior to the adoption or modification”. While the same minimum advance notification period is specified in the ‘Code of Good Practice’ of the TBT Agreement, no similar time period is given in the WTO SPS Agreement. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a SPS measure, the importing Party shall provide a written explanation that identifies the applicable measure and the reasons that the good is not in compliance (Article 718). Each Party shall ensure one inquiry point to be able to answer all reasonable inquiries from other Parties and interested persons.

The SPS Committee shall be established in the purpose of the enhancement of food safety and improvement of SPS conditions in the Parties. Its goals include facilitating harmonization and equivalence, technical cooperation between the Parties and consultations on specific matters relating to SPS measures. The SPS Committee must report annually to the Commission on the implementation of the Section.

#### *EU-Switzerland FTA*

The EU-Switzerland Free Trade Agreement was signed in 1972 and became effective on 1 January 1973. This FTA focuses on the abolition of customs duties and quantitative trade restrictions but largely excludes agricultural products, although specific arrangements for a number of processed agricultural products are considered. Nonetheless, Article 15 of the FTA indicates the ambition to improve the conditions for bilateral trade in agricultural products, including a commitment to apply SPS measures in agricultural, veterinary, and plant health matters in a non-discriminatory fashion and to seek solutions for any difficulties in agricultural trade, thus preparing the ground for a specific agreement to that sector.<sup>14</sup>

The EU-Switzerland Agreement on Trade in Agricultural Products, signed in 1999 and in force since 1 June 2002, builds on Article 15 of the EU-Switzerland 1972 FTA and covers those agricultural products explicitly excluded from the FTA. It aims to further strengthen the free-trade relations between the two parties “by improving the access of each to the market in agricultural products of the other” (Article 1). Apart from tariff concessions (Articles 2 and 3, and Annexes 1 through 3) and rules of origin (Article 4, referring to Protocol 3 of the FTA), particular attention is given to the reduction of technical barriers to trade (Article 5) with focus on issues related to plant health, animal feed, seeds, wine-sector products, spirit and aromatised wine-based drinks, organically produced agricultural products and foodstuffs, fruits and vegetables, and animal health and zootechnical measures (Annexes 4 through 11, respectively; specific provisions on plant health, animal feed, seeds, organic products, and animal health and zootechnical measures will be summarised in subsequent paragraphs). Moreover, a new Annex 12 on the protection of designations of origin and geographical indications for agricultural products and foodstuffs has entered into force on 1st December 2011. A Joint Committee on Agriculture is set up in Article 6 with the responsibility for the administration of the

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14. The close relation between Switzerland and the EU is helped by geographical proximity, cultural and historical links. While the Swiss declined to become part of the European Economic Area and hence the single market, and to open membership negotiations with the EU in 1992 and 2001, respectively, the two parties have signed a number of bilateral agreements complementing the FTA between 1989 and 2010, covering a large range of economic, cultural and other areas.

agreement. In particular, matters under dispute can be brought to the Committee for settling (Article 7). While both Parties engage to “exchange all relevant information regarding the implementation and application” of the Agreement (Article 8), no mention is given to the WTO SPS and TBT Agreements, with the exception of brief references to the SPS agreement in Annex 11, Title II on Trade in Animal Products (maintenance of rights and obligations of the Parties under existing WTO Agreements, in particular the SPS Agreement – Article 8 – and the reference to specific terms as defined in the SPS Agreement – Article 10).

On the issue of plant health (Annex 4), the Parties express broad acceptance of equivalence and thus recognise each other’s plant passports for a range of plant products (Article 2). The list of plants and plant products concerned is provided in an appendix to this annex which is updated regularly. Furthermore, plant products not subject to plant-health measures in either Party may be traded between them without further checks relative to plant-health measures (Article 3). Sampling checks on imports of plant products listed in the above-mentioned list are carried out in agreed percentages of consignments (Article 5). The Parties agreed to further reduce border controls in the near future.

On animal feed (Annex 5), the Parties agree “to approximate their legislation with a view of facilitating trade between them in such products” (Article 1) and to exchange relevant information (Article 3). The exporting Party shall ensure that products are checked as carefully as those to be put on the market within its own territory (Article 4) and that these products comply with the provisions applicable in the country of origin (Article 5). Non-discriminatory sampling checks can be carried out in the country of destination (Article 6). A Working Group on Animal Feed is established to consider any matter arising in connection with the Annex on Animal Feed and its implementation.

Furthermore, broad acceptance of equivalence is accepted in the area of seeds (Annex 6). Article 2 lays down the recognition of the conformity of legislation listed in section 1 of Appendix 1: seeds of the species defined therein shall be traded and freely marketed between the two Parties.<sup>15</sup> Article 3 lays down the recognition of certificates as regards seeds of the species covered by the legislation listed in section 2 of Appendix 1. For other species, Parties agree to approximate their legislation on seeds, including planting material. As in other areas, a Working Group on Seeds is established to consider any matter arising in connection with the Annex on Seeds.

For organically produced agricultural products and foodstuffs (Annex 9), too, the relevant regulations of the two Parties, listed in Appendix 1, are recognised as equivalent (Article 3), and organic products complying with these regulations can be traded between the two Parties freely (Article 4). Moreover, the Parties shall do their utmost to ensure the equivalence of the import arrangements (Article 6). Parties agree to use the same compulsory terms in declarations on the labelling of products meeting equivalent conditions (Article 5). As for other products, Parties agree to exchange relevant information, and establish a Working Group on Organic Products.

On live animals and their semen, ova and embryos (Annex 11 Title I) the agreement notes the similarities in the legislation of the two Parties with regard to measures for the control and the notification of animal diseases (Article 2), for which the regulations listed in Appendix 1 apply. Rules and procedures applying to trade in those products are listed in Appendix 3 (Article 3). With regard to imports from third countries (Article 4), the Parties further recognize that they have similar legislation leading to identical results, as listed in

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15. The permission of the marketing of varieties in each other’s territory does not apply to genetically modified organisms (Article 5.3).



Appendix 3. Provisions to carry out checks on import of those products from third Parties are listed in Appendix 5 (Article 6). A range of special rules and procedures ensures that regulations remain equivalent and are applied in a way that ensures the required level of controls and early warnings in case of disease outbreaks.

Equivalence is also the main focus of the part on trade in animal products (Annex 11 Title II). A list of sectors or sub-sectors with animal-health and food hygiene measures recognised as equivalent is provided in the Appendices, to be updated as appropriate. Trade in these products between the two Parties follows the same rules as trade between EU Member Countries. Trade in products not included in the above list is subject to the regulations applicable in each of the Parties. Precise procedures are laid out in the Annex to determine whether a given animal health measure applied by an exporting Party meets the importing Party's appropriate level of animal health protection (Article 13). As a consequence of the equivalence in animal health and food hygiene of animal products, veterinary controls in the trade between the two Parties have been abolished in 2009.

In summary, the Agreement on Trade in Agricultural Products between the EU and Switzerland, in its current form, puts a strong emphasis on the recognition of the Parties' trade-related regulations as equivalent and hence to reduce the requirement for consignments to be checked other than for the necessary documentation. Parties also engage to extend the list of sectors with equivalent regulations, with clear procedures to be followed. For some areas, specific commitments for the exchange of information are made, including explicit delays.<sup>16</sup>

#### *EU-Chile FTA*

The Agreement establishing an Association between the European Community and the Republic of Chile was signed in 2002 and entered into force on 1 March 2005.<sup>17</sup> It aims, as laid out in Article 2 of the Agreement, at deepening the relationship between the two Parties in a large number of areas, including “political, commercial, economic and financial, scientific, technological, social, cultural and cooperation fields” (Article 2.3). Closer cooperation in “Trade and Trade-Related Matters” represents, thus, one of several aspects of the association and forms Part IV of the agreement.

In addition to the “Elimination of Customs Duties” (Chapter I), Part IV, Title II of the agreement (“Free Movement of Goods”) has a separate Chapter II on Non Tariff Measures, covering *i.a.* “Customs and related matters” (Section 3), “Standards, technical regulations and conformity assessment procedures” (Section 4) and “Sanitary and Phytosanitary Measures” (Section 5). We will take a closer look at the latter two sections in the following paragraphs.

Both of these sections make clear references to the WTO Agreements on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures, respectively. Section 4 includes the commitment to intensify “bilateral cooperation in the field of standards, technical regulations and conformity assessment” (Article 87.1) and to work towards “developing common views on good regulatory practices” (Article 87.4(a)), covering a range of issues. It remains unclear, however, to what degree this commitment exceeds the “Code of Good Practice for the Preparation, Adoption and Application of Standards” annexed to the TBT Agreement.

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16. The European Community and the Swiss Confederation have also concluded, in 2002, an agreement on mutual recognition in relation to conformity assessment. However, this agreement does not cover agricultural products and is therefore not discussed here.
  17. On an interim basis, the trade provisions of the agreement (Part IV), which contains the main elements relevant for the present analysis, entered into force on 1 February 2003.

Section 5, and particularly Annex IV to the agreement, aim at facilitating “trade in animals and animal products, plants, plant products and other goods between the Parties, whilst safeguarding public, animal and plant health” (Annex IV Article 1.1) and at “reaching a common understanding between the Parties concerning animal welfare standards” (Annex IV Article 1.2). An important element is equivalence, and clear procedures and timelines for its determination upon request of the exporting Party are agreed to in Article 7.

On transparency issues, Article 8 of the Annex includes a number of relevant commitments, including the notification of amendments of the SPS conditions for trade sufficiently in advance of their entry into force accounting for the transport time between the Parties. With respect to notification requirements, Article 8.2(a) makes explicit reference to the SPS Agreement, but additionally notes the relevance of accounting for the transport times between the Parties. Failing to comply with these requirements, however, certificates or attestations guaranteeing the previously applicable conditions are to be accepted until 30 days after entering into force of the amended import conditions (Article 8.2(b)). Parties also have the right to carry out verification of the other Party’s control programme, and to publish the results of such verification (Article 10). Guidelines for such verifications are detailed in Appendix VII to the Annex.

The agreement also includes details on the frequencies of physical import checks. The corresponding Appendix is modified if and when a Party amends these frequencies e.g. as a result of recognised equivalence of SPS measures. In addition to the exchange of SPS-related information, Parties also agree to inform each other about any progress on developing animal welfare standards.

The Association Committee established by the Agreement shall regularly be composed of representatives of both Parties with responsibility for SPS matters to monitor the implementation of the Agreement on SPS matters, to review the corresponding Appendices and to make recommendations for modifications to the Agreement where appropriate.

The Agreement’s Title VIII on Dispute Settlement has an explicit focus on dispute avoidance (Chapter II), with a commitment to endeavour to agree on interpretation and application of the trade part of the Agreement, and to avoid disputes through cooperation and consultations. Where agreement cannot be reached, the settlement of disputes follows procedures as laid out in the Agreement, based on a panel of arbitrators. Unless Parties otherwise agree, however, a dispute related to an obligation under the Trade part of the Agreement which is equivalent in substance to an obligation under the WTO shall be settled under the relevant rules and procedures of the WTO Agreement.

Table 1. Treatment of SPS issues in WTO and selected RTAs

|                           | WTO SPS-Agreement  | NAFTA  | EU-Switzerland   | EU-Chile   |
|---------------------------|--|--|--|--|
| <b>Harmonisation</b>      | Objective to harmonise SPS measures<br>Base SPS measures on international standards, guidelines or recommendations, where existing and unless higher SPS protection is required  | Objective to make SPS measures equivalent or, where appropriate, identical<br>Base SPS measures on scientific principles<br>SPS measures could be <i>more stringent</i> than the relevant international standard, guideline or recommendation where in accordance with the agreement   | No explicit reference  | No explicit reference  |
| <b>Equivalence</b>        | Accept SPS measures of other Members as equivalent even if different, if they achieve the importing Member's appropriate level of SPS protection<br>Provide relevant documents and reasonable access for relevant procedures                                 | Accept SPS measures of other Party as equivalent where that Party demonstrates measures achieve importing Party's appropriate level of protection<br>Provides scientific evidence or other information in accordance with risk assessment methodologies<br>When importing Party determines that exporting Party's measures do not achieve appropriate level of protection, it shall provide, upon request, its reasons in writing. | Broad acceptance of equivalence in plant health (plant passports), seeds of a range of species, live animals and their semen, ova and embryos, and animal products. Acceptance of equivalence of the respective regulations on organic products. Acceptance of equivalence in hygiene rules for animal feed. | Equivalence may be recognised for individual measures and/or groups of measures and/or systems applicable to a sector or sub-sector<br>Detailed process of determination of equivalence described in Appendix VI to Annex IV |
| <b>Assessment of risk</b> | SPS measures to be based on an assessment of risk<br>Account for relevant scientific and economic factors<br>Account for the objective of minimising negative trade effects<br>Provisional measures possible if relevant scientific evidence is insufficient | SPS measures to be based on an assessment of risk<br>Account for relevant scientific and economic factors<br>Account for the objective of minimising negative trade effects<br>Phased application or grant specified exceptions for limited periods from a SPS measure may allowed, taking into account the requesting Party's export interests  | No explicit reference  | Recognition of status for animal diseases, infections in animals or pests  |

|                            | WTO SPS-Agreement  | NAFTA  | EU-Switzerland   | EU-Chile  |
|----------------------------|--|--|--|---|
| <b>Regionalisation</b>     | Recognise the concepts of pest- or disease-free areas and areas of low pest or diseases prevalence   | Importing Party shall recognize the exporting Party's pest- or disease-free areas or areas of low pest or disease prevalence if sufficiently demonstrated.   | No explicit reference <sup>1</sup>   | Recognise and apply the concept of regionalisation  |
| <b>Co-operation</b>        | Agree to facilitate provision of technical assistance, especially to developing country Members  | Agree to facilitate the provision of technical advice, information and assistance to enhance SPS measures and related activities   | No explicit reference  | Facilitate trade in agricultural products, whilst safeguarding public, animal and plant health, by improving communication and cooperation between Parties on SPS measures; agree to cooperation on standards, technical regulations, conformity assessment procedures and technical assistance.  |
| <b>Committee structure</b> | SPS Committee to provide a regular forum for consultations   | SPS committee to enhance food safety and improvement of SPS conditions in the Parties<br><br>Committee must report on the implementation annually to the Commission                                    | Joint Committee on Agriculture responsible for the administration of the Agricultural Agreement<br><br>Joint Veterinary Committee responsible for the administration of the veterinary annex | Association Council to supervise implementation of Agreement<br>Association Committee responsible for general implementation. Also dealing with SPS matters<br>Special Committees to assist<br>Association Parliamentary Committee as forum for members of European and Chilean Parliaments<br>Joint Consultative Committee to promote dialogue and cooperation |
| <b>Dispute settlement</b>  | GATT Art. XXII and XXIII shall apply<br><br>For scientific or technical issues, a panel should seek advice from experts or an advisory technical experts group | In principle, GATT may apply<br><br>For SPS matters, where the responding Party requests in writing, the complaining Party have recourse to dispute settlement procedures solely under this Agreement. | Seek solutions for any difficulties in agricultural and veterinary trade by bringing them to the Joint Committee on Agriculture or Veterinary Committee                                      | "Dispute avoidance": endeavour to agree, make every attempt through cooperation and consultations<br><br>Arbitration panel with detailed deadlines<br><br>Where relevant to both, alternative recourse to WTO procedures possible and preferred   |

|              | WTO SPS-Agreement  | NAFTA   | EU-Switzerland   | EU-Chile  |
|--------------|--|---|--|---|
| Transparency | Publish “promptly”<br>“Reasonable interval” between publication and entry into force, except in urgent cases<br>Enquiry points<br>No document surcharge<br>Languages: English, French or Spanish | Publish a notice and notify in writing the proposed measure<br>Provide the full text, at least 60 days prior to the adoption or modification except in urgent cases<br>One inquiry point to be able to answer all reasonable inquiries<br>No document surcharge | Exchange all relevant information, inform each other of any changes intended to make to laws, regulations and administrative provision and notify each other as soon as possible | Publish “promptly”<br>Contact points<br>Information considered provided when notified to WTO or made available on official, freely accessible website |

1. One might argue that the concept of regionalisation is not relevant for EU-Swiss trade. Indeed, Switzerland is a small and relatively homogeneous country, making regionalisation less important than for other countries. In contrast, the EU is a very heterogeneous aggregate, and even some of the Member States are large and heterogeneous in their agricultural production conditions.

*Summarising evaluation*

Predating the WTO, the North American Free Trade Agreement does not, in the context of non-tariff measures in agri-food trade, make explicit reference to the relevant WTO agreements. In several instances, however, the NAFTA text uses a language similar to the one later used in the SPS Agreement. When compared to the SPS Agreement, NAFTA stresses the sovereign right for national measures more clearly, particularly with respect to measures more stringent than relevant international standards, guidelines or recommendations. It should also be noted that North American standards, guidelines or recommendations, as issued e.g. by the North American Plant Protection Organization, may differ from those issued by the organisations referred to in the SPS Agreement.<sup>18</sup>

In the context of the equivalence principle, NAFTA goes beyond the SPS agreement by changing the burden of providing reasons: where the importing Party determines that the exporting country's measures do not achieve an appropriate level of protection, the importing Party shall provide its reasons in writing. Furthermore, the agreement provides for the option of phased application of, or specific exceptions from an SPS measure to account for another Party's export interests.

Particularly in the context of regionalisation, NAFTA's ambition goes beyond that of the SPS Agreement, as the recognition of pest- or disease-free areas or low-prevalence areas, as opposed to the recognition of just the concept of regionalisation, is directly stipulated in the Agreement text. Another area of higher ambition is that of transparency, particularly by specifying a minimum advance period for publishing the text of new or amended regulations prior to the enforcement date – similar to the TBT Agreement but going beyond the SPS Agreement under the WTO.

Though the EU-Switzerland Agricultural Agreement largely excludes agricultural products from tariff elimination, the Parties seem to successfully commit themselves to apply SPS measures in a non-discriminatory fashion and make meaningful "positive" lists of "equally recognised" sectors of SPS measures and some lists of "equally treated" products that could be traded between them without further border checks. These lists are provided in appendices of the Agreement and updated regularly. For this purpose, Parties exchange information through well-developed procedures.

This level of mutual recognition of the Parties' SPS measures goes beyond the WTO SPS Agreement. The Parties focus on substantial elements to harmonize their SPS measures much more than on procedures or administrative elements. Both the regional closeness and the long history of collaboration in developing similar science systems relative to SPS measures helps to build trust among the two parties.

In the EU-Chile FTA, the Parties express their ambition to facilitate agricultural trade including prescribing a separate related chapter covering SPS measures. They show this ambition particularly in the context of the procedural approach. The Parties agree on clear procedures and timelines for an importing Party to determine whether the exporting Party's measures are considered equivalent. They agree on detailed guidelines for the verification of

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18. The North American Plant Protection Organization (NAPPO) is one of the nine Regional Plant Protection Organizations recognized by the IPPC to collaborate with the IPPC Secretary in achieving the objectives of the Convention. Achievement of the NAPPO Mission and Strategic Goals is accomplished in large measure through the development of Regional Standards for Phytosanitary Measures (RSPMs) that apply specifically to trade among NAPPO countries and also to trade from countries outside of the North American region into a NAPPO country. Over the years, NAPPO standards have frequently been used as the basis for the development of IPPC standards. Occasionally, RSPMs are superseded by IPPC standards.

each other's control and certification systems and on details of physical import checks. Transparency is strengthened notably by the acceptance of certificates or attestations related to previously applicable conditions if the importing country fails to comply with the prior notification requirements. The differentiated committee structure – giving the various areas of the agreement their proper discussion forums – together with the SPS committee as a specific form of the Association Committee, stress the two parties' ambition for transparency and mutual exchange. The clearly described dispute settlement procedure, focusing on dispute avoidance where possible and giving detailed deadlines for the settlement process, also goes beyond the WTO agreements.

In contrast, while the agreement makes clear reference to the WTO agreements, it does not go much beyond it in substantial terms. No explicit reference is made to the concept of harmonisation, implying that the SPS principle is applied. Some elements going beyond the provisions in the WTO agreement include the recognition of the status for animal diseases, infections in animals or pests. The detailed description of bilateral dispute settlement procedures is contrasted by a clear reference to the WTO dispute settlement procedures and a priority given to those over bilateral panels in cases where the disagreement relates to an obligation of the bilateral agreement which is equivalent in substance to an obligation under the WTO.

The following table summarises the ambitions of the three RTAs relative to the WTO Agreement on SPS Measures.

**Table 2. Summary comparison of selected RTAs' SPS treatment relative to the WTO Agreement**

|                    | NAFTA | EU-Switzerland | EU-Chile |
|--------------------|-------|----------------|----------|
| Harmonisation      | √     | √              | *        |
| Equivalence        | √+    | √+             | √+       |
| Assessment of risk | √+    | *              | √+       |
| Regionalisation    | √+    | *              | √        |
| Co-operation       | √     | *              | √        |
| Transparency       | √+    | √+             | √+       |

Notes: \* no specific reference made in the context of SPS, implying WTO SPS principles are applied.

√ reference similar to WTO SPS principles.

√+ reference going beyond WTO SPS principles (see text above for details).

### ***Methodology to evaluate the processes and experiences in regulating administrations***

A questionnaire has been completed by six OECD Member countries (the EU counting as one), covering three different regional trade agreements (RTAs). These RTAs include the North American Free Trade Agreement (NAFTA), the EU-Chile Association, and the EU-Switzerland Agreement on Trade in Agricultural Products. 16 questions cover six different headings, including the process settings, processes in the regulatory assessment, transparency, technical assistance, conformity assessment mechanisms, mechanisms for resolving disputes, and mechanisms for evaluating regulatory practices. The full questionnaire can be found in an annex to this report.

The completion of the survey itself has already provided administrations with both opportunities and challenges. Indeed, several countries have indicated the usefulness of

compiling the information, which generally is spread across various ministries and agencies. This has allowed for a more complete picture of procedures and may help to improve internal consistency of their application in the design and implementation of food trade related regulations.

On the other hand, it should be noted that the completion of the questionnaire also involved a number of agencies which in some cases has required to establish closer links between them. In addition, the resources required for the completion of the survey were often greater than anticipated.

Finally, it should be noted that a separation between the legal system (including rules on administrative procedures) and actual processes and experiences within the agencies can be difficult, and in several cases questions on the processes could only be answered referring to procedures. Processes and experiences notably with partner countries within RTAs often depend on a limited number of officials working through various channels and describing them in the context of a survey can be a particular challenge.

Following the structure of the questionnaire, the evaluation looks at each of the six elements in the design and implementation of food-trade related regulations. For each of them we will briefly describe the requirements following the relevant WTO agreements, before summarising the information provided by the RTA party countries. In particular, the focus will be on actual processes differing in a positive way from WTO requirements. We will subsequently discuss how such processes could be trade facilitating, as well as options for them to be applied either in other RTAs or at a multilateral level.

The objective of this analysis is not to rank individual countries' responses in any way, but to highlight specific experiences noted by the answering administrations that could usefully inform other countries in their development of NTM-related procedures in agro-food trade, or further discussions among those countries. Criteria for the applicability in other RTAs or at a multilateral level include

- Geographical distance – to what extent are procedures accessible only to stakeholders relatively close to the regulating country?
- Language constraints – to what degree are procedures accessible only to stakeholders with specific foreign language knowledge?
- RTA-specificity – to what degree are procedures legally accessible only to stakeholders within the RTA?
- Cost discrimination – to what extent are procedures accessible only to stakeholders ready to pay costs determined by the regulating country?

### ***Processes and experiences in regulating administrations of selected OECD Member countries***

#### *Process settings*

Process settings comprise the involvement of various stakeholders in the design of rules and regulations, the mode and timing of their notification of planned (changes to) regulations, the way administrations interact with stakeholders and the involvement of international expert bodies. In general, an early and effective involvement of stakeholders aims at improving the final regulations through accounting for potential costs and benefits not obvious to the regulating administration.

WTO rules invite WTO countries to base their regulations on international standards, and to become active members of the international standards-setting bodies. More stringent national regulations are authorized, but should be based on scientific evidence. Countries



intending to pass or change regulations not based on international standards are held to inform other WTO members, through the WTO Secretariat, at an early stage, including a short description of the objective and rationale of the proposed regulation and the list of affected products. Drafts of the regulation should be provided to other WTO countries upon request and their comments should be taken into account in the final decision.

In practice, there exist substantial differences in involvement of stakeholders. On the one hand, domestic stakeholders, including public and private sectors and relevant NGOs, are involved on a regular basis, as are foreign governments in compliance with the WTO rules. Other foreign stakeholders, such as private firms and NGOs, are consulted only to a much lesser extent. While this is true for most of the surveyed countries, few differences appear to exist between partner countries within the RTA surveyed and third countries. The dialogue between European and Chilean stakeholders through the Joint Consultative Committee, bringing together various economic and social organisations of civil society in the EU and in Chile, could in theory be used in this direction, as it allows involving various stakeholders in bilateral consultations on a regular basis. In reality, however, SPS issues are dealt with in the Association Committee (then called the ‘Joint Management Committee for Sanitary and Phytosanitary Matters’), while the Committee on Standards, Technical Regulations and Conformity Assessment deals with TBT-related questions. Both committees are composed of representatives and experts of the two parties.

Differences exist in the mode and timing of notification processes. Within the RTAs, trade partners are notified of any regulatory changes with trade relevance through bilateral information, often at the same time as the notification to the WTO Secretariat, which then informs other WTO Members. In some agreements, such as the EU-Chile Association, consultation takes place in advance of any official notification, thus allowing for additional time for bilateral discussions.

In most cases, stakeholders other than governments of WTO trade partners, have the possibility to comment on draft regulations, but are informed about these drafts only through the regulating country’s official journals and/or websites. Rarely, such as for regulations by Switzerland, relevant domestic stakeholders are officially invited to participate in consultations.

Finally, while in compliance with WTO rules, all surveyed countries confirm the use of international standards as a reference for domestic regulations, the international standard setting bodies are not involved in the design of individual countries’ food-import related regulations. Instead, countries actively participate in the development and definition of international standards.

An early and effective involvement of the relevant stakeholders in the making of regulations can help to reduce trade frictions in two ways. First, by accounting for potential costs arising from planned regulations that the regulating administration may not be aware of, the final regulation may be designed in a better way, thus potentially reducing the adaptation requirements by (domestic and) foreign firms. Second, their early involvement provides them with additional time for required adaptation, potentially reducing their costs. In addition, a possibly improved buy-in to the measure by foreign countries and firms may lead to a reduced need for extensive control, inspection and approval procedures, thus further reducing trade costs.

At the same time, however, an active involvement of a large number of stakeholders is likely to increase the costs of the regulatory process either by slowing down the process or by involving larger expenditures, or both. These costs are further augmented if the communication needs to take place in a language foreign to the regulating country or, in the case of direct consultations, for geographically distant stakeholders. In principle, the existence of an RTA does not reduce such costs, unless it provides for consultation committees that

could be piggy-backed for this purpose. Consultations with a large number of stakeholders, particularly in person, also risk becoming less effective if many different and possibly mutually exclusive arguments are brought forwards and need to be accounted for.

In contrast, a timely and efficient communication of regulatory plans to relevant stakeholders generally involves only marginal additional costs. The WTO, together with 14 Member countries, is testing an online notification system which could reduce notification costs and delays. An electronic distribution list, maintained by the WTO Secretariat, could also offer gains in time and costs when notifying regulatory changes. If complemented by a system of keywords, private stakeholders and NGOs could also benefit from automatic notifications of relevant regulations, although different languages would remain a potential burden.

#### *Procedures in the regulatory assessment*

Procedures in the regulatory assessment include the regular use of assessment tools and their sharing with and peer-reviewing by the relevant stakeholders. The regular and transparent use of regulatory assessment tools can help to improve the final regulatory outcome. It also helps to build trust in the regulating administration and provides a better basis for discussions.

WTO rules require their Members to base food-import related regulations, in particular if not based on international standards, on an assessment of risk that should account both for human, animal and plant life and health, and for economic effects of the planned regulations on markets and trade. Trading partners should be given explanations on the measures and their effects upon request.

Experience in the surveyed countries suggests that, while risk assessment techniques are applied in the majority of cases, countries have different processes with respect to the analysis of trade and welfare effects: while some assess those implications on a regular basis, others do this more rarely, and frequency and coverage of such effects may be different across the sectors affected by the proposed regulations. Apart from cost-benefit analyses, the Strategic Environmental Assessment is used as a “systematic process for evaluating the environmental, economic and social linkages of a proposed policy, plan or program” (Croal, P. and R. Basak, 2011), allowing the analysis of a broad range of regulatory implications, including welfare and trade effects.

Both the tools and assessment results are often shared with partner countries within the surveyed RTAs, albeit in several cases upon request only. Canada expects its regulating authorities to consider ways for international regulatory cooperation on the life cycle of regulation, and requires all regulatory impact assessments to be reviewed by other relevant branches of the Canadian government. After publication of the regulatory proposal, the regulatory impact assessment statement is made available to all stakeholders in the public journal. In addition, cost-benefit analyses may be published online. Similar cross-department review processes apply in other countries’ impact assessments, such as in the EU ones.

To make regulatory processes more reliable and trustworthy, the use of international standards is helpful. Similarly, the use of widely accepted tools for the assessment of the risks which regulations are to reduce, and for the calculation of the regulations’ potential economic and trade effects, can achieve the same objectives. In consequence, the risk of arbitrary regulations mainly protecting domestic producers diminishes, and the final regulations are likely to be more cost effective than if they were developed without the use of such tools. Sharing tools and assessment results further helps to build confidence among stakeholders, and a rigid peer review process helps to both improve the regulatory outcome and to learn for future regulatory requirements. If foreign stakeholders are involved in sharing and peer reviewing tools and assessment results, ideally in the form of international cooperation in

regulatory assessments, transnational spill-over can further improve outcomes and confidence, and could possibly lead to greater harmonisation of national regulations across countries.

Tools for the assessment of risks and regulatory impacts can be of varying complexity, and notably for small or poor countries the required resources and expertise may go beyond the countries' capacity. Similarly, the usefulness of sharing tools and assessment results depends on the resources and expertise of peer reviewers. Cooperation in the area of regulatory assessment can play an important role particularly within RTAs. One way to multilateralize the development of tools and peer reviewing of their use could be to more strongly involve the international standard setting bodies, which would require sufficient resources and economic expertise.

### *Transparency*

Transparency in the context of NTMs can be understood to include all measures that help relevant parties to understand the objectives, details and implications of regulations and reasons for rejecting alternative ones. In consequence, stakeholder involvement, the use of internationally accepted standards and assessment tools and the peer reviewing of these tools and their application can be seen as part of transparency. More narrowly, however, transparency refers to the way regulations and complementary information is shared with affected stakeholders, both domestic and foreign.

WTO rules require new and changed regulations that differ from international standards and that could affect trade to be notified to the WTO Secretariat either in English, French or Spanish. Notifications are then forwarded by the Secretariat to all Member countries. Except in case of emergency, notification has to be done ahead of the regulation's implementation in order to give trading partners the opportunity to comment and to adapt their export products. In case of emergency, the WTO Secretariat is to be notified without delay, and comments by trade partners are to be considered. Each WTO Member must define an 'enquiry point' able and equipped to provide requested information on regulations. Upon request, regulating countries must open the reasons and application of their regulations to scrutiny.

Experience in the surveyed countries suggests that regulating countries publish the regulatory texts in their own official language(s) only. In the case of the EU, the requirement to publish official documents in all 22 official languages can have indirect benefits for trade partners who also use one or more of those languages. Additional explanations and supporting material is published by the most developed countries most regularly, though again only in their own official language(s). Most countries provide for an exchange of experts or representatives to explain details of the new regulations at least upon request, with little difference between partners within and beyond the respective RTA. The EU-Chile Association puts a particularly strong focus on transparency by repeatedly referring to it, and by stressing the importance of various bilateral and multilateral fora for increasing transparency in trade matters.

Transparency of regulations is a key element in reducing trade frictions. Costs related to the finding and understanding of information on rules exported products need to comply with and on ways to prove this compliance (see below) can represent a potentially significant share in total trade costs. For small firms or countries, such costs can be prohibitive. Reducing information costs through improved transparency hence constitutes a major task for regulating countries that aim to reduce trade frictions – within a given RTA or more broadly – while at the same time pursuing SPS and similar objectives.

The WTO SPS and TBT Information Management Systems (IMSS) are a powerful tool to improve transparency of regulations. Surveys among users of the IMSS, including exporting countries or representatives of the relevant export industries, could provide useful insights on whether and how this tool could be further improved.

Languages are an important barrier in this context. As the surveyed countries publish their regulations and supporting material in their official languages only – which include at least one of the languages mandated for the notifications by WTO agreements, i.e. English, French or Spanish, as well as at least one of the official languages of the RTA partner countries – trade partners with other languages face additional costs due to the need of translation. These costs are related not only to the actual translation and the additional delay related to it, but also to the higher risk of misinterpretation that could potentially result in the rejection of exported consignments. A step to reduce these costs could be to make sure that regulations and supporting material are made available on the WTO Information Management Systems (IMSS) in all three WTO languages (i.e. English, French *and* Spanish) rather than in either of the three only, and possibly to gradually enlarge this language set to others. The responsibility for translating the documents, as well as the legal status of those translations, would need to be decided.

#### *Technical assistance*

Technical assistance provided to smaller and poorer partners, notably developing countries, can help them to meet the challenges of adapting the production of exportable goods to new regulations in importing countries.

The WTO SPS and TBT Agreements request its Members to provide technical assistance to other Members, notably to developing countries. Furthermore, developing countries may be granted special and differential treatment, such as longer time frames for compliance with new regulations.

Experiences from the countries surveyed for this study indicate that technical assistance is mainly provided through international cooperation or funding of programmes. Other, more direct measures, such as training or direct support, are provided neither within the respective RTAs nor relative to other trade partners.

Technical assistance is important to help particularly developing countries to comply with regulations in the importing countries, and is done largely through international cooperation. The experience with assistance given by the US to Mexico in the context of specific programmes for animal and plant health<sup>19</sup> shows, however, that regional technical assistance within RTAs can play an important role as well.

#### *Control, inspection and approval procedures linked to SPS measures*

Control, inspection and approval procedures include the certification of the products for compliance with the relevant regulations in the importing country, verification of documents accompanying consignments, and the physical testing of products before, at or after entering the importing country's market. While control, inspection and approval procedures do not directly impact the costs of compliance, they can represent a significant additional element in trade costs due to documentary requirements, testing and analysing costs, and quarantine requirements before entering the import market.

WTO rules require their Members to recognise as equivalent SPS measures implemented by their trading partners if these provide the same level of protection, even if they differ from their own measures. Such a recognition can involve a significantly reduced need for additional control and inspection. Exporting countries need to demonstrate the equivalence with the importing country's measures and give access to the importing country for

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19. USDA's Animal and Plant Health Inspection Service (APHIS) has invested some USD 280 million in collaborative efforts with Mexico within the first ten years of the implementation of the NAFTA, the bulk of funds spent on Medfly and Screwworm eradication programmes.

inspections or testing if requested. Required inspections, controls etc should not discriminate between domestic and foreign products.

In general, control, inspection and approval procedures for products imported from partner countries within the RTAs considered here are similar to those for products from other exporters, and recognition of equivalence depends on the relevant food regulatory systems of the trading partner and the level of food safety achieved by those systems rather than the trading partner's membership to an RTA. For instance, the USDA Food Safety Inspection Service has deemed ten countries equivalent for products regulated by USDA, including the fellow NAFTA countries Canada and Mexico. A more important role for the RTA can be seen in the EU-Switzerland Agricultural Agreement as Switzerland has adjusted its regulatory framework to EU legislation for a range of sectors. In consequence, border controls between Switzerland and the EU have been reduced or abolished in these sectors, while they are maintained for imports from third countries. These reduced or abolished controls at the EU-Swiss borders, namely with regards to veterinary aspects, also apply to products originating in third countries, having passed the external border controls upon first entry. Furthermore, the Agreement can benefit third countries' export to Switzerland which has reduced or abolished border controls in some sectors to align them with EU practice. The EU-Chile Association also stresses the role of mutual recognition of equivalent measures and provides for detailed process description for its determination (Table 1).

The recognition of equivalence of other countries' regulations and control, inspection and approval procedures can, as noted, potentially reduce trade costs. It is conditional on similar legislative frameworks, thus favouring partner countries with similar legal systems. In addition, trust and continued communication are prerequisites for the recognition of equivalence to work properly. In consequence, countries that are spatially or culturally close to each other may find it easier to implement a consistent policy of mutual recognition, as in the case of the EU and Switzerland. Unless regulations are fully consistent with international standards, equivalence of regulations is more difficult for countries spatially and culturally apart, and language and other differences may pose additional difficulties. While the objective of harmonised or mutually recognised regulation at a multilateral level is stressed in the WTO agreements, it is therefore more likely to advance in the context of RTAs.

#### *Mechanisms for resolving disputes*

The settlement of disputes, and particularly the efficient, timely and neutral functioning of related mechanisms, is important to reduce uncertainty-related costs due to the different interpretation of WTO or RTA provisions. At the same time, they offer a means to limit trade frictions resulting from inefficient or unjustified regulation in an importing country. Three international standards setting bodies, namely the World Organization for Animal Health (OIE), the International Plant Protection Convention (IPPC) and the Codex Alimentarius (CODEX), are the WTO reference organisations for developing standards relating to animal health, plant health, and food safety. Under the SPS Agreement, WTO members are encouraged to base their sanitary and phytosanitary measures on international standards, guidelines and recommendations, where they exist, which helps to mitigate disputes at the WTO.

The WTO Dispute Settlement Body handles disputes related to provisions in the SPS and TBT agreements, among others. The Body can establish a panel if the complaining or responding country requests one. It also can adopt panels' and appeals' reports, monitor the implementation of its recommendations and authorize retaliation if a country does not comply with the recommendations made by the panel. The WTO encourages its Members, however, to solve the problem through formal consultations, before embarking on dispute settlement. According to WTO target figures, the duration of dispute settlement should be one year, plus three months in the case of appeal.

Each of the RTAs includes its proper mechanisms to handle disputes and disagreements related to RTA provisions. For NAFTA and the EU-Chile AA these are similar to the WTO mechanisms and include formal consultations, mediation, arbitration, panels and the possibilities for appeal. In case a dispute concerns a provision common to both WTO and RTA agreements, the countries concerned can pursue settlement under either system. Before doing so, parties generally have the opportunity to discuss the problem in the relevant RTA committees, and experience suggests that disagreements are often solved through bilateral consultations before reaching the dispute settlement bodies, particularly between the EU and Chile. In contrast, the EU-Switzerland Agricultural Agreement does not provide for a specific dispute settlement body. Instead, Parties seek solutions for any difficulties in agricultural and veterinary trade by bringing them to the Joint Committee on Agriculture or to the Veterinary Committee.

Little information is available on the actual duration of the dispute settlement processes within RTAs, which also depend on the issue; official targets specified in some of the agreements (e.g. NAFTA, EU-Chile) suggest a faster handling of disputes. In practice, partners to some RTAs, particularly the EU and Chile, rarely use the RTA dispute settlement procedures, whereas the informal mechanism provided for by the EU-Switzerland Agreement is preferred over the WTO settlement mechanism. Within NAFTA, most disputes are settled using the RTA's dispute settlement mechanisms, with the exception of sensitive sectors for which the WTO dispute settlement body is called upon. The WTO Dispute Settlement database lists no SPS dispute involving the EU and Switzerland, three SPS dispute cases involving the EU as a respondent and Chile as a third party, and four SPS dispute cases involving NAFTA countries as both respondent and complainant.<sup>20</sup>

Two variables determine the value of a dispute settlement body: the duration of the process, and the neutrality and objectivity of the rulings. Within the sample of RTAs analysed, it appears that the mechanisms for resolving disputes within the EU-Switzerland Agricultural Agreement functions well, thus making the WTO system much less used in case of conflicts between those two parties. In contrast, disagreements between the EU and Chile, if not resolved by bilateral consultations in the relevant committees of the Association, are more likely to be brought forward to the WTO mechanisms. The total number of SPS cases involving Members of the three RTAs on both complainant and respondent sides is too small for any statistical analysis (see above), thus making a simple conclusion as to the relative merits of RTA versus WTO dispute settlement mechanisms impossible, and more information would be required to better understand the factors determining the eventual choice of either mechanism in case of a dispute within one of the RTAs.

#### *Evaluation of regulatory practices linked to non-tariff measures*

At the WTO level, the implementation and evaluation of the SPS and TBT Agreements are supervised by the SPS and TBT Committees. At a national level or within RTAs surveyed for this study, regulatory practices related to non-tariff measures do not seem to be formally evaluated according to the information available. However, regulations themselves are evaluated by the regulating administration. See the subsection on regulatory assessments above for details.

#### ***What can be learned from these insights?***

The involvement of a large number of stakeholders, including in other countries, has the potential to improve the quality of the final regulations, but at the same time involves potentially significant additional costs. Finding the optimal level of stakeholder involvement

20. [www.wto.org/english/tratop\\_e/dispu\\_e/find\\_dispu\\_cases\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm).

is an empirical problem that not only involves empirical analysis, but is likely also to be specific to each case. In contrast, making the relevant information on planned regulations available for interested stakeholders in time to give them an opportunity to comment is an important step towards improving trust and regulations, as recognised by the WTO Agreements. The process of informing stakeholders can be further facilitated by optimizing the information flow between WTO Members, as practiced within RTAs, and by extending the ‘advance notice’ period as regularly done within some. Similarly, an easily accessible database for existing regulations, including any complementary material and information on control, inspection and approval procedures, helps to lower information costs and hence potentially facilitates trade.<sup>21</sup>

The choice of tools to be used in the assessment of risks and potential implications of planned regulations will necessarily depend on the resources available to the regulating administration, but considering various costs and benefits of alternative measures – and discussing those with affected stakeholders – can improve both the final regulation and the trustworthiness of the regulator. Several tools for this analysis have been developed and applied, including a cost-benefit framework for the assessment of non-tariff measures in agro-food trade (OECD 2009, 2010). Promoting a more regular use of such tools would seem appropriate.

While all RTAs in this analysis feature their own mechanisms for resolving disputes and disagreements related to RTA provisions, the use of the related bodies appears to be quite different across agreements. In some cases, disagreements between trade partners can be resolved before they develop into disputes; close and regular contacts and trust significantly help to do so. Differences also exist as to whether an existing dispute is brought forward to the RTA’s dispute settlement body (if existing) or to the WTO one. Process duration and neutrality of the rulings are likely factors driving this decision, but more research is required to better understand these and potential other factors, as well as the consequences of this decision.

## Conclusions

This report looks at procedures and processes for the design and implementation of food-related regulations that potentially affect trade. In particular, it analyses the provisions in three regional trade agreements (RTAs, including reciprocal trade agreements between two or more partners but not necessarily belonging to the same geographical region). In addition, processes and experiences within the regulating administrations were analysed by evaluating a questionnaire-based survey. The selection of the RTAs in the analysis was determined by the respective parties’ willingness to contribute through completion of the questionnaire and bilateral follow-up discussions where required. In consequence, this analysis specifically covers the North American Free Trade Agreement, the EU-Switzerland Agreement on Trade in Agricultural Products as part of the EU-Switzerland Free Trade Agreement, and the EU-Chile Association Agreement.

Process analysis in the context of NTMs is important as it can help to better inform the policy design process, increase stakeholder’s knowledge and understanding of the relevant regulations and procedures, improve the regulating governments’ accountability and reduce informational costs faced by firms willing to sell products within the regulated markets. In addition, a well-functioning system to resolve disputes can help to reduce uncertainties faced by exporters. In short, they can reduce trade costs related to inefficient regulations, lacking

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21 . In addition to the above-mentioned Information Management Systems (IMSS) of the WTO, efforts are made by several countries to develop online databases on their respective regulations.

transparency and unpredictable application of the regulations, and hence potentially facilitate trade.

This report looks specifically at processes within RTAs given their interest in improving trade relations among RTA parties. Indeed, the three agreements all include provisions in the context of NTMs in agro-food trade going beyond those stipulated in the SPS and TBT Agreements of the WTO, although the focus differs among the RTAs looked at. The options for phased application of or specified exceptions from SPS measures to account for exporting trade partner's interests, and the specification of minimum advance notice periods for the provision new or modified regulations prior to adoption are examples within the NAFTA agreement, whereas the "positive list" approach defining sectors for which equivalence in regulations are broadly and mutually accepted forms a key element in the EU-Switzerland Agreement on Trade in Agricultural Products. Similarly, the EU-Chile Association Agreement provides a detailed process for the determination of equivalence, stipulates a 'dispute avoidance' strategy as well as the recognition of the status for animal diseases, infections in animals or pests.

Experiences documented in the questionnaires confirm the heterogeneity of processes among RTAs and their party countries. The relatively small number of countries involved in the survey constitutes a non-representative subset of existing RTAs and precludes drawing general conclusions and recommendations. However, three areas have been identified in which processes within RTAs could potentially inform process developments in other RTAs or at a multilateral level:

- Informing stakeholders – both domestically and abroad – about planned regulations or changes of regulations in a timely and consistent manner, and providing them with a channel to efficiently discuss these planned regulatory changes, their reasoning and their potential impacts is an important step in the policy design. RTA partner countries are regularly informed in parallel to, or even in advance of, the WTO Secretariat, which then forwards the notification to other WTO Member countries. An online notification system as currently tested by the WTO and 14 Member countries, or an electronic distribution list maintained by the WTO Secretariat, could offer gains in time and costs at a multilateral level. Language differences are likely to remain a potential burden to stakeholders not familiar with the English, French and Spanish language.
- Tools for the analysis of possible economic and trade effects of planned regulations appear to be used to different degrees across countries. Although critical for avoiding unnecessary trade barrier effects from domestic regulation, the analysis of economic and trade impacts of planned regulatory changes remains largely outside of some regulators' attention.
- While the surveyed RTAs all feature their own dispute settlement mechanisms, some of them appear to be rarely used. On the one hand, a strong focus on 'dispute avoidance' and regular, close contacts between RTA partners reduces the need for such mechanisms; on the other, the parallel availability of dispute settlement bodies under RTA and WTO rules allows partner countries to choose between these options.

Further research will be required to provide more details on these three areas. Good regulatory practice, including the processes listed above, potentially reduces trade costs, but the results of the present report cannot provide quantitative estimates of real cost reductions. While it is plausible to assume trade facilitating effects, a broader empirical investigation, involving a large number of regulating countries and stakeholders, including export oriented industries, is warranted. In addition, processes found to be trade facilitating need to be scrutinised for related procedural and administrative costs to allow for an assessment of their economic efficiency.



A number of other related questions have not been addressed in this report and offer relevant areas of future work. For instance, it could be useful to discuss different ways RTAs emphasise measures to reduce damage costs from the spread of diseases and pests, and to look at alternative measures within RTAs aimed at disease prevention. Other OECD work (2012) is looking at risks related to animal diseases and their prevention and handling in various countries, and could usefully be expanded to cover trade effects and specific measures within RTAs. Similarly, a detailed analysis of differences in the assessment of food-trade related risks across countries would be useful.

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## Annex.

### Questionnaire on NTM-Related Procedures in RTAs

#### Process settings

Which of the following stakeholders are, on a regular basis in a due process, actively involved in the making of rules and regulations (i.e. before their adoption)? Please tick:

|                        | Domestic | Within RTA | Third countries |
|------------------------|----------|------------|-----------------|
| Governments            | X        |            |                 |
| Scientific community   |          |            |                 |
| Commodity producers    |          |            |                 |
| Food processors        |          |            |                 |
| Traders                |          |            |                 |
| Consumers              |          |            |                 |
| Animal welfare NGOs    |          |            |                 |
| Environment NGOs       |          |            |                 |
| Other (please specify) |          |            |                 |

How does the regulating administration notify the planning of regulations (object, schedule, method of participation) to other countries? Are there differences between notification procedures to stakeholders in RTA partners and those to stakeholders in third countries? If so, please explain.

How do the above stakeholders interact with the administration in charge of developing food import related regulations? Please indicate for each of the stakeholders ticked above the means of interaction, the frequency at which they are used during the development of regulations, and the degree to which these possibilities are actually used by stakeholders:

- Allow for comments on published proposals / draft regulations
- Actively share proposals / draft regulations with stakeholders and Invite comments
- Initiate round-table discussions or similar meetings to exchange views
- Other (please specify)

Which international expert bodies (e.g. OIE, FAO) are, on a regular basis, actively involved in the making of rules and regulations? How do these bodies interact with the administration in charge of developing food import related regulations? Please provide information using the criteria given in the previous question.

## Procedures in the regulatory assessment

What kinds of tools or standards are used to assess the options for and implications of regulatory measures? Please indicate the frequency of the tools listed being used:

|   | Never | Rarely | About half the times | Mostly      | Always |
|---|-------|--------|----------------------|-------------|--------|
|   | 0%    | <33%   | 33% - <67%           | 67% - <100% | 100%   |
| International standards <sup>1</sup>  |       |        |                      |             |        |
| Risk assessment techniques <sup>2</sup>                                     |       |        |                      |             |        |
| Assessment of trade effects (e.g. with market models)                       |       |        |                      |             |        |
| Assessment of economic welfare effects (e.g. with a cost-benefit framework) |       |        |                      |             |        |
| Other tools (please specify)  |       |        |                      |             |        |

1. International standards include those developed by the Codex Alimentarius (food safety), the Office International des Epizooties (animal health) and the FAO International Plant Protection Convention (plant health)
2. Such as those developed by the above international organisations

Are the methods and results of the above assessment tools regularly shared and peer-reviewed by any of the stakeholders listed in question 1? Please indicate which of the stakeholders regularly take part in such a peer-review process, if any.

## Transparency and technical assistance

What is done by the regulating administration to make the regulations and their implications for exporters within the given RTA and/or in third countries transparent? Please indicate the degree to which the following individual measures are taken (please chose between “never” [0%], “rarely” [<33%], “about half the times” [33% - <67%], “mostly” [67% - <100%], always [100%]).

- Publish, easily accessible, regulatory text in the trading partners’ languages
- Publish, easily accessible, additional explanations / supporting material
- Publish, easily accessible, additional explanations / supporting material in the trading partners’ languages
- Invite representatives of trading partners to explain regulations and their implications for exporters
- Send experts to trading partner countries to explain regulations and their implications for them
- Other (please specify)

Please describe any other steps taken by the regulating administration in order to prevent any discrimination in access to relevant information for stakeholders in RTA partners and third countries.

What is done by the administration to help producers / exporters in trading partner countries and/or third countries overcome the hurdles raised by the regulations? Please

indicate the degree to which the following individual measures are taken (please chose between the levels used in the previous question).

- Provide training in your country for producers / exporters of trading partner countries / third countries
- Provide training for producers / exporters in trading partner countries / third countries
- Provide financial support to producers / exporters in trading partner countries / third countries
- Provide in-kind support to producers / exporters in trading partner countries / third countries
- Other (please specify)

### **Conformity assessment mechanisms linked to SPS measures**

Please indicate whether, and if so how, conformity assessment mechanisms for compliance of imports with SPS regulations differ between exporting countries within the RTA. For instance, are there regulations for which standards in partner countries within the RTA are considered equivalent while specific conformity assessment and inspection is required for imports from third countries? Are there regulations for which conformity assessment mechanisms are less costly / time consuming for imports within the RTA than for those from third countries? Please provide details.

In which areas are other countries' sanitary inspection and conformity assessment systems accepted as equivalent to those in your own country, in which other areas are exporting companies in other countries inspected and certified directly by your country? Please provide details on the criteria applied for the identification of cases where individual inspection and certification by your country prevails, on any differences between partner countries within your RTA and third countries, as well as on the billing procedures for inspection and certification costs.

### **Mechanisms for resolving disputes**

Does the RTA have specific institutions to handle disputes or points of divergence arising from domestic food import related regulations, in addition to the settlement mechanisms foreseen at multilateral levels (e.g. WTO panels, OIE mediation, etc.)? If so,

- Which institutions handle such disputes? What is the role of designated contact points, if any?
- How do these institutions work?
- Does the existence of these institutions render the available mechanisms at multilateral levels less relevant for RTA intra trade? Please describe the way the different institutions cooperate.
- How are such disputes resolved?
- What is the typical / average time of resolving such disputes?

**Evaluating regulatory practices linked to non-tariff measures**

Do you apply formal evaluation mechanisms to measure the impact of the various processes linked to NTMs?<sup>22</sup> If so, please provide details on how these are evaluated, and give a picture of the outcomes of these evaluations. Where applicable, please distinguish between the involvement of stakeholders, specific transparency measures, technical assistance, certification mechanisms and dispute settlement mechanisms, contrasting intra-RTA procedures against procedures relative to third countries / third country imports.

**Other relevant information**

Please provide any further information that you consider important in the context of food import related regulation within the RTA.

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22. Note that this question is not about evaluating regulations themselves, which is asked further above. Here, the focus is on the impact different procedures can have on costs and volumes in trade.