Working document on standards & trade of agricultural products

Disclaimer: this working document was prepared by the services of DG Agriculture and Rural Development for information purposes and does not necessarily represent the views of the European Commission.

This document is distributed to the participants in the Advisory Group on international aspects of agriculture to be held on 28 January 2013. The request to discuss standards and agricultural trade came from the Advisory group in its previous meeting.

1. DEFINITIONS

The World Trade Organisation (WTO) Agreement on Technical Barriers to Trade (TBT) distinguishes between mandatory requirements – the technical regulations, and voluntary ones – the standards\(^1\).

A technical regulation is defined as a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

A standard is defined as a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

For the purpose of this note, the term "standard" may on occasion be used also in relation to mandatory requirements (e.g. 'marketing standards').

2. "STANDARDS" AND AGRICULTURAL PRODUCTS AND FOODSTUFFS

There are numerous requirements applicable to producers, processors, traders and/or retailers in the agricultural sector.

Some of these requirements are mandatory (e.g. food safety requirements), other are voluntary (e.g. organic standards, fair trade standards).

For some areas (e.g. welfare of animals), mandatory rules apply to certain sectors (e.g. EU welfare rules for laying hens\(^2\)) while voluntary ones exist for others (e.g. the RSPCA\(^3\) welfare standards for beef cattle\(^4\)).

These requirements can be tentatively classified as follow:

- Food safety and plant and animal health regulations, e.g. maximum limits for microbial and chemical contamination, as well as medicines and phytosanitary products residues; maximum level of salmonella in meat; only authorised medicines and phytosanitary products may be used by farmers; the use of hormones and of β-agonists are prohibited;

- environmental regulations: farmers have to comply with practices that ensure the conservation of species and their natural habitats as well as halting biodiversity loss, the protection of the soil, the protection of water resources including nutrient and pest management, reducing GHG emissions, protecting genetic resources;

- processing methods, e.g. oenological practices, olive oil production methods, milk processing methods, use of certain processing aids in food production under specific conditions requiring certified guarantees for compliance and/or respect of residue levels;

- marketing standards: technical requirement for product in terms of in particular production method, classification into classes, appearance, conservation method, composition, purity of components or water content. In the case of plant reproductive material this relates both to production method (e.g. minimum separation distances) and to minimal quality standards to be attained;

- labelling regulations, e.g. rules concerning the indication of the ingredients or of the provenance of a product;

- regulations for organic products (EU organic production and labelling rules).

In addition, there are other specifications impacting the marketing of agricultural products either directly or indirectly, e.g. animal welfare standards, fair trade standards, social standards (workers minimum wages; social security…), or religious considerations (halal, kosher).


\(^3\) Royal Society for the Prevention of Cruelty to Animals

\(^4\) http://www.rspca.org.uk/sciencegroup/farmanimals/standards/beefcattle
3. **WHO IS RESPONSIBLE FOR SETTING UP TECHNICAL REGULATIONS AND STANDARDS?**

Many public and private, national and international actors set technical regulations and standards.

At WTO level, the Sanitary and Phyto Sanitary Agreement (SPS) and the Technical Barriers to Trade Agreement (TBT) were adopted in the context of the 1994 Uruguay Round GATT agreement. They set basic international disciplines on sanitary and phytosanitary issues and technical barriers to trade. The provisions are actionable under the WTO dispute settlement mechanism.

These two agreements recognize that no country should be prevented from taking measures necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices. This is subject to having these requirement not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

The SPS and TBT Agreements request WTO Members to **base their measures on international standards, guidelines and recommendations**, as a general rule. The SPS Agreement expressly recognizes three international standard-setting bodies, known as the "**three sister organizations**": the Codex Alimentarius Commission (CAC), the World Organisation for Animal Health (OIE), and the Secretariat of the International Plant Protection Convention (IPPC). The TBT Agreement does not include a list of international standard-setting bodies. However, in 2000, the WTO TBT Committee adopted a Decision on Principles for the Development of International Standards. These principles are 1) transparency; 2) openness; 3) impartiality and consensus; 4) effectiveness and relevance; 5) coherence; and 6) the development dimension.

In the case of the SPS agreement, Members may introduce or maintain measures which result in a higher level of protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification. Another Member can request the scientific justification behind any SPS measure regardless whether there is an international standard on the topic and it shall be provided by the member maintaining the measures.

Outside the SPS area, requirements that are subject to the TBT agreement shall use international standards – if they exist or their completion is imminent – as a basis for their regulations unless they would be ineffective or inappropriate, for example due to fundamental climatic or technological factors.

**3.1. Public authorities**

The EU develops mandatory rules (e.g. definition of "milk" or "milk products", olive oil or wine production methods), as well as voluntary ones (specific method of production for broilers, organic farming).

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5 G/TBT/1/Rev.10
EU Member States can set their own requirements, in areas not covered by EU law (e.g. social legislation, animal welfare) or under the condition that they do not negatively impact the EU internal trade.

Third countries and regional governmental organisations also adopt their own rules.

3.2. International organisations

Several international organisations set global standards, like the International Standardization Organization (ISO), the United Nations Economic Commission for Europe (UNECE), the World Health Organisation (WHO), the International Organisation of Vine and Wine (OIV), the Organisation for Economic Co-operation and Development (OECD), or the Council of Europe among others.

3.3. Private companies

Historically, private specifications (commonly known as "private standards") were set (and many still are) by the trading organisation – the auction house, the abattoir, a port authority, governing authority of a town market, etc. in order to attract buyers and maintain their confidence that the goods delivered met expectations for quality. Today many private standards are being developed by private companies, including retail companies, which are setting up voluntary certification schemes. These schemes can relate to health and hygiene, environmental protection, animal welfare, organoleptic qualities, fair trade… Private standards are a matter of private contract. The EU neither mandates nor encourages the development of private standards, which fall outside the regulatory area; however, in an effort to induce more clarity and transparency in such schemes, the Commission has developed guidelines for voluntary certification schemes (see box 1).

3.4. Producers

In the case of geographical indications, the producers themselves develop the product specifications.

6 http://www.unece.org/
7 http://www.who.int/
8 http://www.oiv.int/
9 http://www.oecd.org/
10 http://www.coe.int
11 More than 400 private certification schemes existed in the EU in 2010, according to a DG AGRI study on the matter.
Box 1: The EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs

The guidelines, adopted in 2010 by the Commission aim at showing best practice for the functioning of the hundreds of voluntary certification schemes that have developed in the last decade (a 2010-released inventory study done for the Commission listed more than 400 schemes operating in the EU).

In the guidelines' preamble, the Commission acknowledge that certification schemes can bring benefits to intermediate actors in the food supply chain (by assuring standards and thereby protecting liability and reputation for product and label claims), to producers (by increasing market access, market share and product margins for certified products), and to consumers (by providing reliable and trustworthy information on product and process attributes).

At the same time, drawbacks were identified, such as questions relating to the transparency of scheme requirements and the credibility of claims, potential for misleading consumers, costs and burdens on farmers, particularly where they have to join several schemes to meet demands from their buyers.

The guidelines were therefore designed to describe the existing legal framework and to help improving the transparency, credibility and effectiveness of voluntary certification schemes and ensuring that they do not conflict with regulatory requirements. They offer guidance on how to:

— avoid consumer confusion and increase the transparency and clarity of the scheme requirements,
— reduce the administrative and financial burden on farmers and producers, including those in developing countries, and
— ensure compliance with EU internal market rules and principles on certification.

4. IMPACT OF TECHNICAL REGULATIONS AND STANDARDS ON AGRICULTURAL TRADE

Technical regulations and standards can be trade facilitators. Many of them represent a potential bridge between increasingly demanding consumer requirements and the participation of distant suppliers. SPS requirements ensure consumers' confidence and avoid market disturbances provoked by public health concerns. EU marketing standards inform the producers about the expected product quality; they also enable buyers to agree prices on paper or electronically without having to inspect every lot of the goods in question. Without commodity standards, trading in commodities would become more complex and costly.

Incidentally, the TBT agreement recognizes the contribution that international standards and conformity assessment systems can make by improving efficiency of production and facilitating the conduct of international trade.

Such rules, in particular when mandatory, may however also lead to **trade limitations or disputes**. The EU prohibition of hormones or the prohibition of certain animal carcasses antimicrobial treatment is criticized by some EU trade partners. EU exporters are also impacted by third countries requirements. EU exporters, and in particular the EU Fruits and Vegetables industry representatives, regularly emphasize that exports limitations are increasingly due to requirements applied in third countries than to tariff duties or the EU production costs.

Some requirements are challenged in the WTO dispute settlement process (see box 2).

The EU high agricultural products and food requirements may imply **higher costs** for EU producers, and for the food chain as a whole. They need to be set against the saving of avoiding safety crises, the saving of maintaining consumer confidence, and in general against other legitimate goals that are pursued (health and safety, environmental protection). The EU often has access to third countries markets due to its standards applied internally. Thus EU standards facilitate EU exports, by contributing to the reputation of EU produce and thus conferring on them a competitive advantage, or by avoiding import bans for reason of non-compliance with the requirements (SPS measures in particular). Some standards may however be more difficult to valorise outside of the EU, e.g. the animal welfare standards.

As regards **organic farming**, the EU organic legislation foresees that imported products marketed as organic have to be produced according to equivalent production rules and that organic operators in third countries are subject to control measures of equivalent effectiveness. These provisions entail that EU producers are not faced with higher costs than producers in third countries.

Many **developing countries** already enjoy duty free / quota free access to the EU market for most of their agricultural products. The EU's stringent requirements have therefore become one of their most important market access issues. Food standards may lead to the exclusion of small farmers in particular who do not have the resources to comply with them. At the same time, demonstrating compliance with high standards can facilitate access to the EU market on equal terms as EU producers. It has been shown\(^\text{16}\) that the benefits of compliance may outweigh the costs, and that the benefits of compliance may be distributed to a wide range of actors along the value chain, including the poor. In addition, private sustainability-bound schemes (e.g. fair, ethical or organic) can be an effective way to foster sustainable and inclusive growth in developing countries\(^\text{17}\).


\(^{17}\) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee; Trade, growth and development Tailoring trade and investment policy for those countries most in need - COM(2012) 22 final.
**Box 2: the dolphin-safe label dispute (DS381)**

The United States Department of Commerce established the "dolphin-safe" label in 1990. This label guarantees that tuna catches did not involve the deliberate netting or circling of any dolphins.

On 24 October 2008, Mexico requested consultations with the United States with respect to the measures which established the conditions of use of the "dolphin-safe" label. Mexico alleged that these measures were inconsistent because the conditions for use of the label varied depending on the area where tuna was harvested and on the fishing method.

A panel was established by the Dispute Settlement Body (DSB) in April 2009. After the USA and Mexico appealed the panel's report, the Appellate Body concluded in particular that:

- the conditions for the use of the dolphin-safe label are to be considered as "technical regulation" within the meaning of the TBT agreement, i.e. they are considered mandatory requirements despite the use of the logo being voluntary. The reason is that the measures are "composed of legislative and regulatory acts of the US federal authorities and includes administrative provisions" and set out "a single and legally mandated definition of a "dolphin-safe" tuna product and disallows the use of other labels on tuna products that use the terms "dolphin-safe", dolphins, porpoises and marine mammals and do not satisfy this definition";

- by excluding most Mexican tuna products from access to the "dolphin-safe" label while granting access to most US tuna products and tuna products from other countries, the measure modifies the conditions of competition in the US market to the detriment of Mexican tuna products and are therefore not inconsistent with Article 2.1 of the TBT Agreement;

The DSB eventually adopted the Appellate Body report and the panel report, as modified by the Appellate Body report on 13 June 2012.

Source: [http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm)

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**5. HOW IS THE ISSUE DEALT WITH IN EU BILATERAL AND REGIONAL AGREEMENTS?**

**5.1. Agreements in force**

**5.1.1. The European Economic Area (EEA)**

The EEA, which comprises the countries of the European Union plus Iceland, Liechtenstein and Norway, allows these countries to participate in the EU's Internal Market without being members of the EU. However, despite agriculture is not covered by the EEA Agreement, the member countries fully apply the whole EU acquis relevant to the four freedoms (free movement of goods, persons, services and capital), along with that pertinent to flanking policies including consumer protection. As a result, the EEA agreement provides for a high degree of compliance with the EU legislation concerning
veterinary and phytosanitary matters, technical regulations, standards, testing and certification;

5.1.2. EU-Switzerland

The bilateral agreement between Switzerland and the EU for trade in agricultural products\(^{18}\) contains several annexes laying down provisions on standards in the field of plant health (annex 4), animal health (annex 11), animal feed (annex 5), seeds (annex 6), organic products (annex 9) and conformity checks for fruit and vegetables subject to marketing standards (annex 10). Other provisions concern the mutual protection of geographical indications and traditional expressions of wines and spirits. It has to be noted that the EU and Swiss standards are very similar in all the fields quoted above and the agreement lists the domains of equivalency and the corresponding legislation of both sides.

5.1.3. EU Turkey Customs Union Agreement

The bilateral EU-TR agreement on trade in agricultural products\(^{19}\) contains a joint statement on veterinary and phytosanitary matters whereby "both parties are prepared to undertake discussions on veterinary and phytosanitary issues of mutual interest, including the establishment of closer cooperation and exchange of information".

5.1.4. EU-Mexico Free Trade Agreement

Article 5 states that liberalisation of trade in goods should be **done in accordance with WTO rules**, including, in particular technical regulations and standards, sanitary and phytosanitary legislation, mutual recognition of conformity assessment, certifications, marks systems.

5.1.5. EU-Chile Association Trade Agreement

**Cooperation on agriculture and rural sectors and sanitary and phytosanitary measures** is foreseen in Art. 24. Article 89 relates to Sanitary and phytosanitary measures, stating that the objective of section V is to facilitate trade between the Parties in the field of sanitary and phytosanitary legislation, whilst safeguarding public, animal and plant health by further implementing the principles of the WTO on the Application of Sanitary and Phytosanitary Measures. An additional objective of this section is to consider animal welfare standards.


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\(^{18}\) Agreement between the European Community and the Swiss Confederation on trade in agricultural products. OJL 114 of 30.04.02, p132

5.1.6. EU-Western Balkans

In the Stabilisation and Association Agreements, reference is made to the need to develop cooperation between the Parties in all priority areas related to the EU acquis in the field of agriculture, as well as veterinary and phytosanitary domains. Cooperation shall notably aim at modernising and restructuring the agriculture and agro-industrial sector, in particular to reach EU sanitary requirements, to improve water management and rural development and at supporting the gradual approximation of countries legislation and practices to the EU rules and standards.

5.1.7. EU-Korea Free Trade Agreement (FTA)

In addition to general provisions referring to the TBT Agreement the FTA enhances bilateral co-operation on TBT, in particular via exchange of information, TBT coordinators and possible regulatory dialogue.

Concerning SPS measures, the FTA refers to the rights and obligations under the SPS Agreement and establishes a Committee on sanitary and phytosanitary measures, which should among other things discuss problems arising from the application of SPS measures. Furthermore, the FTA provides for cooperation on animal welfare.

Regarding solution of possible disputes over non-tariff measures, the FTA provides for a mediation mechanism. The mediation mechanism should apply to any measure which a Party believes adversely affects bilateral trade and which is related to any matter falling under market access in goods, including TBT and SPS.

The FTA establishes cooperation on trade and sustainable development, including the Civil Society Forum which is formed by representatives of stakeholders from the Parties, and the Committee on Trade and Sustainable Development. With respect to labour and environmental standards, it mainly refers to international agreements, while recognising the right of each Party to establish its own levels of environmental and labour protection.

5.1.8. Wine & spirits agreements:

In the case of the EU-US and EU-Australia wine agreements, as well as of the EU-Canada wine & spirits agreement, provisions cover areas such as wine-making practices, wine labelling and certification, which might be considered as standard related. These agreements include mechanisms of enhanced cooperation, consultation, mediation and arbitration on areas referred above.

5.1.9. EU-Neighbouring countries

For the countries with an association agreement in force (Morocco, Tunisia, Egypt, Jordan, Algeria, Lebanon and PLO and Gaza Strip), provisions on SPS issues are provided in the text of the agreements. These provisions should take account of the standards, procedures and recommendations of international standards organisations.
5.2. **On-going negotiations:**

5.2.1. **EU- Peru and Colombia Free Trade Agreement (FTA)**

The Agreement mentions facilitation of trade in goods through the application of the agreed provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment procedures and sanitary and phytosanitary measures (Chapter 5 of the Agreement).

The Agreement establishes a **sub-committee on Sanitary and Phytosanitary Measures** (Art.103). The signatory Andean Countries will allow goods originating in the EU to benefit from the harmonised procedures and requirements applied to trade. The SPS Subcommittee will examine the implementation.

Regarding import requirements, **Guidelines** are set out under Appendix 3 of Annex VI (Sanitary and Phytosanitary Measures)

5.2.2. **EU- Central America Association Trade Agreement**

The objectives of the Agreement are the facilitation of trade in goods through, in particular, the agreed provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment, procedures as well as sanitary and phytosanitary measures. The **promotion of economic regional integration** in the area of customs procedures, technical regulations and sanitary and phytosanitary measures is also foreseen to facilitate the circulation of goods between and within the Parties;

Chapter 5 deals with Sanitary and Phytosanitary measures. The **general principle** (art. 145) is that the sanitary and phytosanitary measures applied by the Parties shall follow the principles established in Article 3 of the WTO SPS Agreement.

5.2.3. **Japan**

Future negotiations with Japan should also cover **non-tariff barriers** to trade. Major non-tariff measures, which the EU requests to address in the negotiations, have been already listed in the scoping exercise (e.g. harmonisation of conditions for imports into Japan of bovine meat and other bovine products with international standards (OIE) on BSE). Moreover, set-up of a **consultation mechanism** to prevent and address specific non-tariff barriers and to establish sectoral disciplines should be also discussed within the negotiations.

5.2.4. **United States**

Should the High Level Working Group on Jobs and Growth propose in its Final report the launch of comprehensive trade negotiations with the United States, it is expected that such negotiations would include ambitious SPS+ and TBT+ chapters, including horizontal disciplines on regulatory coherence and transparency, provisions containing additional commitments on regulatory compatibility in agreed sectors and specific bilateral forums to address regulatory issues.
Specific disciplines could also be included in the wine sector, incorporating also existing disciplines covered by the EU-US wine agreement in the areas of geographical indications, wine-making practices, wine labelling and certification.

5.2.5. EU-Neighbouring countries

Under the Eastern Partnership, the EU and a number of Eastern Partner countries (Moldova, Georgia, and Armenia) have accelerated the pace of deepening political association and fostering economic integration through the conclusion of Association Agreements which include i.a. the establishment of a Deep and Comprehensive Free Trade Areas (DCFTAs) on the model of the already initialled agreement with Ukraine. After the political changes of the Arab Spring in the South Mediterranean countries, the opportunity of negotiating DCFTA has been offered also to some of the South ENP countries (Morocco, Tunisia, Egypt, Jordan).

In order to achieve the DCFTA with the EU, the partner countries will have to reach a high degree of convergence towards EU legislation and standards through deep regulatory approximation with the EU law and institutional practices in the trade and trade-related areas (including adjustment, proper implementation and enforcement of law and institutional capacity-building) according to a calendar that will have been set out in the agreement. To be noted that, according to the negotiating directives, negotiations on DCFTAs could only begin once it had been ascertained that sufficient progress had been made on, i. a., a number of key regulatory issues, in terms of adopting and starting to implement essential legal acts and improve the institutional framework in phytosanitary measures (SPS).

5.2.6. ACP (Africa / Caribbean / Pacific)

Support to ACP countries to comply with or adopt quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices, is being provided both through the National Indicative Programmes (when this has been identified as a priority sector by partner countries) or through horizontal programmes (such as intra-ACP programmes). Through this support the EU assists in implementing Economic Partnership Agreements (EPAs).

EPAs also include provisions on core labour standards, as defined by relevant International Labour Organisation (ILO) Conventions, with the aim to strengthen compliance with international labour standards.
ANNEX

Disclaimer: the list below is not exhaustive. It is provided as a concrete illustration of existing technical regulations and standards.

WTO agreements:

(1) SPS agreement: [http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm](http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm)

(2) TBT agreement: [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm](http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

EU requirements:

(1) Food safety and plant and animal health regulations:


(2) Environmental regulations:


– Communication of the Commission - Roadmap to a Resource Efficient Europe, COM(2011) 571

(3) Marketing standards

– COUNCIL REGULATION (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Chapter I of TITLE II.

(4) Labelling requirements


(5) EU organic production and labelling requirements


(6) Other requirements:


List of voluntary certification schemes in Europe: