

**IMPACT OF PRIVATE FOOD STANDARDS IN THE SOUTHERN CONE:
FINANCIAL COSTS AND LEGAL IMPLICATIONS**

Communication from the Inter-American Institute for
Cooperation on Agriculture (IICA)

The following communication, received on 23 June 2011, is being circulated at the request of IICA.

1. The present document contains a summary of the main conclusions drawn from the study *Incidencia de los requisitos privados para alimentos en el Cono Sur* (Impact of private food standards in the Southern Cone).

1. Background

2. In 2005, Saint Vincent and the Grenadines raised the issue of private standards with the Committee on Sanitary and Phytosanitary Measures (SPS Committee) of the World Trade Organization (WTO). This resulted in a series of consultations, surveys and discussions on the impact of private standards and their implications for the production and marketing of agrifood products. As the issue gained momentum within the SPS Committee, IICA decided to provide follow-up and support the discussion in its member countries.

3. The issue of private standards and the discussions taking place within the multilateral framework were of special interest to the Standing Veterinary Committee (CVP) of the Southern Cone (made up of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay). As a result, the impact of private standards was discussed within the framework of the technical cooperation of IICA and the CVP and it was decided that a study was needed to identify the financial and legal effects of such standards on beef production and trade in the southern region. A profile for a regional activity was designed in collaboration with the *Programa de Inserción Agrícola* (Agricultural Insertion Program)¹ and the parties involved followed the progress of the study closely.

4. The objectives of the study were to:

- (a) Identify, through in-depth, qualitative research, the costs associated with the implementation of, and demonstration of compliance with, the private standards imposed by retail chains and other food industries on beef producers and exporters in Argentina, Uruguay, Brazil, Paraguay and Chile (Bolivia was not included in the

¹ Made up of the Fundación Instituto para las Negociaciones Agrícolas Internacionales (INAI), the Centro de la Industria Lechera (CIL), the Sociedad Rural Argentina (SRA), Confederaciones Rurales Argentinas (CRA), the Federación Agraria Argentina (FAA), the Multilateral Investment Fund (MIF) and the Inter-American Development Bank (IDB), <http://www.insercionagricola.org.ar/>.

study because the country is a net beef importer and its industry is not integrated into international markets).

- (b) Analyse the legal consistency of such standards with the rules of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

2. The approach adopted by the study

5. Surveys were carried out to compile information directly on the impact of private standards on the meat exporting sectors of the countries in question, and a wide-ranging legal study looked at private standards, the multilateral legal framework, and the role played in this sphere by the countries' governmental authorities.

3. The findings of the study

6. Based on the responses of producers and business people in the region, the authors concluded that the adoption of private standards, at least for beef exports, is a structural condition for selling products in developed markets.

7. This trend will become more pronounced in the years ahead. The speed with which it does so will depend on the adaptability of exporters, the role of governmental sectors and the establishment of new requirements by importers and retail chains.

8. These practices are becoming an increasingly important factor in international trade, and there is widespread recognition among exporters of the advantages of having private certifications, of the opportunities they offer, and of their implications and implementation costs.

9. Such requirements are part of growing efforts to boost consumer confidence and guarantee food safety. If a business and/or a primary producer adopt(s) these practices, they can become a powerful internal organizational tool (records, management of claims, audits, etc.); and if the senior management plans them carefully, it will be possible to keep down some of the initial costs involved in their implementation and subsequent certification.

10. An additional aspect that has contributed to this trend in the meat industry is the fact that meat is one of the products that has seen the biggest advances in innovations and regulations designed to improve product security and safety (product quality is, in fact, closely linked to this aspect), following a series of animal and human health scares that undermined consumer confidence. The region's meat industries were not immune to these changes and had to adopt traceability, pathogen control, HACCP and many other systems. It is reasonable to assume that such innovations created a consistent platform for responding to the new requirements of buyers.

11. The dynamics of international beef markets have also had an important impact, for two reasons: the presence of foot-and-mouth disease in the region and the high commercial quality demanded, which have led companies in the region to adopt different business profiles. Commercial considerations determine the speed with which new standards are implemented: when the most active markets are the least stringent in terms of quality and safety, standards are adopted more slowly, but when the most attractive markets offer better relative prices, they are introduced more quickly.

12. However, although private standards help businesses to improve their production systems and, therefore, to make them more efficient, they can also have the effect of excluding exporters from markets. The one-on-one meetings that were held yielded the following results:

- (a) Nearly all the leading companies in the region are quick to assume the implementation costs, except in specific situations;
- (b) the adoption of such standards makes it possible to obtain better prices and position the business in the international market;
- (c) infrastructure costs, but particularly human resources and training, tend to reduce the possibilities of obtaining certifications of private standards;
- (d) the impact of private standards is therefore felt most keenly by the businesses and producers of relatively less developed countries;
- (e) certification costs are lower than implementation costs, giving the lie to the traditionally held view that certification makes the beef business unviable;
- (f) large or medium-sized companies that can afford to hire experts and train personnel can easily cover the costs of implementation;
- (g) in the case of the businesses surveyed, laboratory accreditation costs were not high, particularly because most of the laboratories are not part of export companies. They should not be ruled out as one of the chief obstacles to compliance with private standards, however.

13. All in all, the existence of private standards that are more stringent than public ones limits the market access opportunities of relatively less economically developed countries and businesses or producers whose scale of operation rules out investment in infrastructure, human resources, training, etc. In other words, the adoption of private standards requires resources in proportion to each company's volume of production.

14. The second objective of the study relates to the legal aspect; it analyses the legal framework, in order to determine whether governments need to assume direct responsibility for the implementation of the SPS Agreement and thus ensure that the rights that Members acquired as a result of the Uruguay Round are not prejudiced or undermined; and looks at the specific aspects of the SPS Agreement that should be considered when evaluating the application of private standards in multilateral trade.

15. Taking into account the responses contained in the Descriptive Report adopted by the SPS Committee, based on Members' replies to the questionnaire circulated in December 2008, it is obvious that the requirements contained in private standards are not always consistent with the rules of the SPS Agreement.

16. This is especially worrying because, although compliance with private standards is "voluntary", in practice they constitute market access conditions. Therefore, since their impact on international trade could be similar to that of official standards, governments and the international reference organizations should become involved in the issue.

17. As stated in the Introduction, the objective of the present document is not to contribute to the ongoing theoretical debate about the costs or benefits of private standards, but to shed light on the challenge that governments face in addressing new situations not envisaged when the Uruguay Round

was negotiated, and that inevitably involve complex scenarios that should be addressed multilaterally, using the tools created within the legal framework of the existing agreements.

18. Consequently, the first conclusion of this section of legal analysis is that private standards are a new and growing reality and the situation they are creating should therefore be addressed by governments.

19. This conclusion is based on the analysis of the relationship between private standards and international trade, in a broader legal framework than that of the GATT/WTO system, which points to the desirability of governments defining lines of action aimed at preventing such standards from undermining the rules of the SPS Agreement, using the tools provided for in the Agreement itself.

20. Governments' failure to take such action would constitute tacit acceptance of the fact that the GATT/WTO rules and, in particular, the SPS Agreement, have ceased to be effective because private standards are playing an increasingly important role in the global trading system.

21. The Codex Alimentarius placed the question of private standards on the Agenda of the Commission's meeting in July 2009.² During the meeting of the IPPC Commission on Phytosanitary Measures held in April 2008, several Members expressed concern at the proliferation of private standards and asked the Commission to discuss the implications of such standards. In May 2008, the OIE adopted Resolution No. XXXII on the implications of private standards in international trade of animals and animal products.

22. The second conclusion of this section is that the tools needed to address these issues are to be found in the letter and spirit of the SPS Agreement itself, and that the competent forum is the SPS Committee, which is equipped to perform the task under its current work programme. The OIE has already stated that the SPS Committee should be used as a forum for countries to identify and discuss specific problems they have experienced due to the application of private standards.³

23. The third conclusion is that, in the work of the Committee, Members should explore all possible alternatives for strengthening the analysis of the concerns arising from the implementation of private standards (transparency, equivalence, harmonization, regionalism, special and differential treatment (SDT), among others). In this regard, it is to be hoped that the ad hoc working group⁴ will identify a wide range of actions that governments could take to influence the new scenario created by the rapid spread of private standards.

24. The fourth conclusion is that the international reference organizations should play a key role in supporting the efforts of the SPS Committee to monitor and analyse private standards in the light of international standards.

25. As a contribution to the discussion, the next section describes some of the possible lines of action that could help improve the articulation between the multilateral forums and governments with respect to the role that private standards play in international trade today.

² ALINORM 09/32/REP, paragraphs 246-271.

³ Document G/SPS/GEN/822 of 25 February 2008.

⁴ G/SPS/W/30.

What can the SPS Committee do?

1. Development of guidelines for Article 13

26. In relation to the formulation and implementation of positive measures and mechanisms in support of the observance of the provisions of the Agreement by other than central government bodies, and in the light of the information presented, it would be appropriate for the SPS Committee to address the development of guidelines for the implementation of Article 13, as some Members have already proposed.⁵

27. The Committee could thus analyse and propose reasonable measures that governments should take and suggest those that should be avoided. Clearly, the Article provides a positive instrument that Members should use to ensure observance of the Agreement. Legal interpretations of the wording of Article 13 aside, Members have an obligation under Article 13 to take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories comply with the provisions of the Agreement. In this regard, several authors have expressed support for a broad interpretation of the phrase "non-governmental entities".⁶ Therefore, it is recommended that, without prejudice to any other interpretations that may arise, the SPS Committee begin drafting guidelines to encourage the application of Article 13, since it is governments, through the SPS Committee, that have the authority to define and make use of this tool. Keeping the Committee on the side-lines and leaving governments without alternative means of action would be to admit that they have lost their role as guarantors of the rules established and that the WTO has been unable to provide a platform for the discussion or building of solutions.

2. Inclusion of private standards on the Agenda

28. Secondly, practically all the concerns raised in the Descriptive Report with regard to the application of private standards already form part of the SPS Committee's permanent Agenda. Nearly all the items on the Agenda, which relate to the issues arising out of the application of the sanitary and phytosanitary measures imposed by governments, reflect the concerns over the application of private standards.

29. The issues addressed by Members in their activities - specific trade concerns, the operation of the provisions on transparency, special and differential treatment, equivalence, pest and disease-free areas, technical assistance and cooperation - would be appropriate for inclusion in Members' concerns regarding private standards.

30. Review of the operation and implementation of the SPS Agreement is another area of the Committee's work, although not a permanent activity. There is also an item concerning monitoring of the use of international standards. A specific item was added relating to concerns with private and commercial standards. As the OIE has pointed out⁷, on the basis of discussion it may be possible for the SPS Committee to develop recommendations on future action for Members' consideration. Therefore, although these points on the Committee's Agenda reflect the issues arising from the application of the sanitary and phytosanitary measures imposed by governments, they could be adapted to address the concerns arising from private standards.

⁵ Documents G/SPS/W/245 and G/SPS/W/236.

⁶ Bohanes and Sandford in SIEL, 2008:38; Gascoine and O'Connor and Company in WTO G/SPS/GEN/802.

⁷ Document G/SPS/GEN/822 of 25 February 2008.

3. Periodic meetings with certification organizations

31. At the request of Members, meetings could be held to jointly examine systemic issues, such as aspects relating to transparency and harmonization, and other, specific matters on a case-by-case basis. This would provide the opportunity to address particular difficulties that Members encounter when exporting. The meetings with the entities that develop and certify private standards could be workshops or ad hoc meetings held during the meetings of the SPS Committee.

4. Monitoring and transparency

32. It is suggested that in the framework of the SPS Committee Members pay special attention to two aspects that, if incorporated into the Committee's work, could make a huge contribution to observance of the provisions of the Agreement:

- Ongoing monitoring of the evolution of private standards, which implies identifying their effects on trade and analysing any specific trade issues that may arise; the implementation of technical assistance programmes; and ensuring consistency with the SPS disciplines and international reference standards, for which the Committee should interact closely with the Codex, OIE and IPPC, among other actions.
- The notification of draft private standards at an early stage in the process, for which a transparency mechanism should be created through the SPS Committee in order to enable the entities that develop private standards to publish their draft standards and allow countries and commercial operators to examine them and, where appropriate, to make comments or suggestions.

What recommendations could the Committee make to governments?

- (a) A relevant step would be for the Committee to recommend that governments adopt possible courses of action to address the special impact that private standards are having on agro-exporting developing countries, and to explore possible alternatives. On this point, the OIE recommended that, while private standards are a global issue, the SPS Committee should focus on the effects they are having on developing countries' capacities to access world markets.⁸
- (b) Another interesting recommendation that the Committee could make would be to encourage governments to interact on an ongoing basis with the international reference organizations, so that the latter can respond to queries and advise the national agencies and other stakeholders on issues that may arise from the implementation of government regulations with regard to the requirements contained in private standards, such as the existence of international reference standards and their scope and application, the compatibility or otherwise of international reference standards with the requirements imposed by private standards, etc. It would also be advisable for the governments of importing countries to maintain permanent contact with the companies that develop and certify private standards for market access in their territories.

⁸ Document G/SPS/GEN/822.

What could governments do?

- (a) Meet with the entities that develop and certify private standards, and with importers and exporters, in order to examine the requirements contained in government rules and those incorporated in private standards, pass on concerns raised within the Committee and work with the stakeholders to find solutions that can contribute to observance of the Agreement. It is also recommended that representatives of the international reference organizations be invited to take part in such meetings.
- (b) Implement technical assistance and specific training projects for small-scale producers and small and medium-sized businesses. It should be borne in mind that one of the key roles of governments is to guarantee that international trade leads to growth and development for their peoples. Governments have a responsibility to ensure that the most vulnerable stakeholders and the most disadvantaged regions of the planet, whose income is usually derived from exports of primary products, are able to share in the benefits of international trade and expect their production to penetrate the most demanding markets.

The complete document can be obtained from the following websites:

<http://www.infoagro.net/salud>

<http://www.insercionagricola.org.ar/>

<http://www.iica.org.uy/>

<http://www.cvpconosur.org/>

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