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Training for the National Trade Negotiations Team Uganda

Standards, Metrology, Conformity Assessment and
Accreditation (SMCA) issues in the regional and
international trade setting

tralac Short Course

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SHORT COURSE

Overview of Training Programme for Uganda's National Trade Negotiations

Team: SMCA Issues in Regional and International Trade

Objective: This training seeks (among other things) to improve the knowledge and appreciation of the SMCA issues in the regional and international trade setting.

A revised Draft Agreement for the Tripartite Free Trade Agreement was circulated in December 2011. The T-FTA addresses standards in member states using Article 25 on Standardisation, Metrology, Conformity Assessment and Accreditation (SMCA), and Article 26 on harmonisation of Sanitary and Phytosanitary (SPS) Measures. This FTA marks one of several major multilateral agreements governing standards to which Uganda is a party. As a member of the WTO, Uganda is party to the SPS and Technical Barriers to Trade (TBT) Agreements and is further subject to agreements on standards contained in the East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA) treaties. Specifically, Chapter 15 of the COMESA Treaty regards Standardisation and Quality Assurance, while the EAC enacted the Standardization, Quality Assurance, Metrology, and Testing (SQMT) Act in 2006.

Uganda's negotiating position regarding standards should reflect its export profile, which is largely based on coffee, cotton, tea, fish and fish products, flowers, and horticultural products. Furthermore, COMESA and the European Union represent the primary destinations for Uganda's exports, receiving 39% and 25% of Uganda's exports, respectively.¹ Export income from these non-traditional agricultural exports, primary from fish and flowers, has surpassed that of traditional agricultural exports in the twenty first century.²

Uganda has not typically experienced market access constraints regarding traditional agricultural exports (eg. coffee, cotton, tobacco, sugar and tea), however non-traditional agricultural exports can face issues regarding food safety, agricultural health, and environmental standards.³ Examples of such market constraints include the fish bans imposed on Uganda in 1997 and 1999 by the EU, and the self-imposed ban in 2000. These bans had negative effects on the industry, yet also led to the revision of food safety standards and the streamlining of regulatory and inspection systems.⁴ While the UNBS has been in place since 1983, capacity building regarding awareness of standards and compliance remains in demand. According to the Ministry of Tourism, limited coordination exists amongst ministries responsible for standard setting, and inadequate legislation exists to govern technical regulations, standardization and conformity assessment. "Even where specific policies, laws and regulations are relevant and or appropriate, their enforcement is often weak. In addition, the regulatory capacity is limited in terms of coverage and outreach, number of personnel and facilitation to do market surveillance and inspection. Some of the existing laws do not provide for deterrent penalties which

¹ "Strategic Market Forecast for Uganda's Export Products," Uganda Export Promotion Board, 2009, http://www.ugandaexportsonline.com/2009/documents/reports/trace/strategic_market_forecast.pdf at 3.

² Ibid, at 2.

³ See Steven Jaffee, "Uganda, Standards and Trade: Experience, Capacities and Priorities," Diagnostic Trade Integration Study, 2006, at 11.

⁴ See "Agribusiness for Africa's Prosperity," Kandeh K Yumkella et al eds, United Nations Industrial Development Organization, 2011, http://www.unido.org/fileadmin/user_media/Services/Agro-Industries/Agribusiness_for_Africas_Prosperty_e-book_NEW.pdf at 94.

have resulted in non compliance.”⁵ In light of these needs, Uganda should aim to secure technical assistance for compliance with global standards (such as Codex) during the T-FTA negotiations.

SPS and TBT Agreements

The SPS Agreement was implemented to establish a multilateral framework guiding members’ adoption of measures relating to plant, animal and human health. Members must notify the WTO when they adopt such measures and consultations may be engaged. Uganda has never been a party to an SPS dispute (38 consultations have occurred thus far), nor has any other African country.⁶

The Agreement identifies three organizations whose standards members must adhere to for food, animal health, and plant health respectively: FAO/WHO Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC). The SPS Committee monitors how countries apply the SPS.

The TBT Agreement is aimed at minimizing technical barriers to trade by ensuring that technical regulations and standards are not used as disguised instruments of protectionism. The Agreement sets out a Code of Practice for the Preparation, Adoption and Application of Standards, found in Annex 3. Members are encouraged to adopt the Code; over 200 standards-setting bodies have applied the code thus far, including UNBS.⁷ It includes typical WTO provisions such as most favoured nation treatment and national treatment, and calls upon national standards bodies to play a role in international standard-setting and publish a work programme every six months.

The main international standard-setting bodies for the TBT Agreement are: International Organization for Standardization (ISO); International Electrotechnical Commission (IEC); International Telecommunication Union (ITU); and Codex Alimentarius Commission (Codex standards only recommended, not compulsory).

The UNBS was established through the UNBS Act (1983). The Bureau is a member of ISO as well as the African Regional Standards Organisation (ARSO). It has issued over 1200 standards thus far, based on the ISO Manual for the Development of National Standards. It is also the contact point for FAO/WHO Codex, and was designated the National Enquiry point for TBT and SPS Agreements in 1997. Notably, “three-fourths of Uganda’s standards are based on international or regional standards. Codex Alimentarius standards are commonly used as a basis for Ugandan food standards. All food and agricultural product standards are ostensibly compulsory, even though many such standards relate to quality parameters rather than food safety.”⁸ While UNBS has notified the WTO of its adoption of the Code of Good Practice, it lacks the power to enforce standards.

Neeliah et al have noted certain barriers faced by developing countries in international standard-setting. In particular, developing countries are often unable to participate in WTO plenary sessions where standards are proposed and adopted in agreements and developed countries are reluctant to

⁵ Draft National Standards and Quality Policy, Ministry of Tourism, Trade and Industry, Uganda, September 2010, at 13.

⁶ See “Disputes by Agreement,” WTO website, http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#selected_agreement

⁷ See “Understanding the WTO: The Agreements - Standards and Safety,” WTO website, http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#TRS.

⁸ Steven Jaffee, “Uganda, Standards and Trade: Experience, Capacities and Priorities,” World Bank Diagnostic Trade Integration Study, 2006, at 26.

accept the equivalence measures set by developing countries due to lack of data on SPS system or lack of trust in SPS management.⁹

Furthermore, a report by the International Centre for Trade and Sustainable Development (ICTSD) has documented lessons learned regarding standards in the SPS and TBT agreements. For instance, the smaller the enterprise, the more difficulty it will have in complying with SPS and TBT measures; high investments that are required to comply with SPS and TBT yield improved competitiveness and better market access for large businesses; and private sector standards are arguably now more important than public standards. Private standards are seen by industry to fill the gap where harmonization has been slow in the public sphere.¹⁰ As a result, any attention paid to standards should address private standards in particular. Ugandan negotiators should explore how technical assistance for state-controlled standards can positively impact compliance with private standards.

Regional Organizations and Standards Governance

EAC

Article 81 of the EAC Treaty calls for harmonization of standards. In 2006, the EAC Standardization, Quality Assurance, Metrology, and Testing Act (SQMT) was signed, which established the EAC Standards Committee. The Committee must (*inter alia*) coordinate and monitor activities related to SMCA, submit standards, reports and recommendations to the EAC Council concerning SMCA, establish procedures for the development, approval, gazetting, and withdrawal of harmonised EAC Standards; liaise with regional and international standards organisations; monitor and review the TBT enquiry points; and hear appeals regarding compulsory standards.¹¹ The Committee executes its mandate of eliminating TBTs, boosting regional trade, and protecting the health and safety of consumers through individual sub-committees on Standards, Quality Assurance and Accreditation, Metrology, and Testing.

COMESA

As noted above, Chapter 15 of the COMESA Treaty concerns Standardisation and Quality Assurance. In 2003, the Sub-Committee on Standards Harmonization was created and given responsibility over harmonization of standards in the common market. It has agreed to approximately 300 standards to date.¹² Through its Regulations on the Application of Sanitary and Phytosanitary Measures (2009), COMESA created the *Green Pass*, a commodity-specific certification scheme and authority for movement of food and agricultural products within the Common Market.¹³

A report from the WTO Standards Development Trade Facility importantly notes that despite incorporating many SPS provisions, COMESA Regulations may actually conflict with the SPS Agreement. “In most cases, this is due to partial use of the text of the SPS Agreement out of its context and completed with a different set of words, which modifies the letter and the meaning (not to

⁹ Ibid, at 110.

¹⁰ ICTSD, “Trade Effects of SPS and TBT Measures on Tropical and Diversification Products,” ICTSD Programme on Agricultural Trade and Sustainable Development, May 2008, Issue Paper No 12, at 13.

¹¹ See EAC SQMT Act (2006) Article 4(2).

¹² See “Overview of Standardisation, Accreditation, Metrology and Conformity Assessment,” COMESA Activities, http://programmes.comesa.int/index.php?option=com_content&view=article&id=101&Itemid=120.

¹³ COMESA: Legal Analysis of the Green Pass Certification Scheme, http://famis.comesa.int/com?option.com_news/task.viewarticle/sid.591/Itemid.129/pillar.sps/lang./sectionid/

mention the spirit) of the SPS Agreement.”¹⁴ Efforts should be made to ensure that the T-FTA does not serve as another potential source of conflicting provisions.

TRIPARTITE DRAFT AGREEMENT - Recommendations

Articles 25 and 26 of the T-FTA pertain to standards in the region. Several recommendations are offered below with reference to provisions that merit clarification or elaboration.

Article 25: Standardisation, Metrology, Conformity Assessment and Accreditation (SMCA)

Art 25(2): Member States shall establish a Tripartite Sub-Committee on SMCA, under the Trade and Customs Committee, for the technical elaboration of policy on and implementation of Tripartite SMCA...

1.) Article 25(2) of the T-FTA could elaborate on the funding, implementation and composition of the Tripartite Sub-Committee on SMCA. Article 25(2) states that the Committee’s functions are to include the (a) harmonisation of standards and conformity assessment procedures relating to the most traded products in the Tripartite Member States; (b) proficiency testing, measurement inter-comparisons and harmonisation of metrology practices in order to achieve mutual recognition; (c) harmonisation of accreditation practices and systems for the purpose of achieving mutual recognition of accreditation services in the Tripartite Member States with the long term objective of facilitating full international recognition of regional SMCA systems. While Article 25(7) directs us to Annex 8, the Annex provides no direction on how the Committee will be funded, implemented, or who will be involved.

Similarly, Article 3(7) of the Annex states that, “Tripartite Member States shall foster harmonization of and co-operation in standardisation, metrology, accreditation and conformity assessment within the Tripartite region, by establishing a Sectoral Committee to be known as the Tripartite Sub-Committee on Standardisation, Metrology, Conformity Assessment and Accreditation (SMCA).” Again, the plan for how this Committee will take effect is absent. Given that standards are a highly technical trade issue, negotiators must ensure that active commitments exist in the Agreement regarding the operations of the Committee.

Art 25(6): Member states recognize the progress already made by regional economic communities including the adoption of joint programs and activities.

2.) Article 25(6) could reference the use of RECs to promote conformity assessment of goods. Progress made by the EAC, SADC, COMESA must not simply be recognized, but also *utilized*. Attention should be paid to how regional labs and standards can be used by countries in the T-FTA that lack their own capacity to ensure standards compliance. Many countries in the region are unable to finance costly laboratories. Can compliance be streamlined through the leading Tripartite nations? Active language calling for the use of and support for COMESA, SADC and EAC standards programmes may be helpful.

¹⁴ Joao Magalhaes, “Sanitary and Phytosanitary Frameworks and Strategies in Africa,” Standards and Trade Development Facility, July 2010 at 10.

3.) Article 25 of the T-FTA could include a requirement that any T-FTA country rejecting another member state's exports on the basis of SMCA must explain its reasons for the rejection.

An Australian Department of Foreign Affairs guide to Negotiating Free Trade Agreements notes that, "Some standards chapters in free-trade agreements require the economy rejecting the other party's standards or conformity assessment results to explain its reasons for doing so." Such a requirement is useful to promote transparency.¹⁵ Given Uganda's export interests, it may seek to pursue such a provision. This can serve as capacity building by increasing exporters' knowledge of standards by way of an explanation for the refusal of goods.

Article 26: SPS Measures

Article 26 (1): 'members shall comply with the SPS Agreement; (2) members shall harmonize their SPS measures and initiate activities to achieve regional certification of products in accordance with a programme to be determined by the Council. The programme shall be part of Annex 15.'

4.) No mention is made of SPS Article 9 on technical assistance. This provision could be built into Article 26 since it assists exporting developing countries that lack capacity to comply with SPS requirements. Article 9(1) of the SPS Agreement explicitly calls on members to "facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets." Furthermore, Article 9(2) requires that importing members consider providing technical assistance where substantial investments are required in order for an exporting developing country member to fulfill the SPS requirements.

According to the WTO, "Much technical assistance is provided bilaterally by WTO Members, as well as by international organizations, especially the three standard-setting organizations. Assistance can take many forms; from scientific advice to hands-on assistance in setting up national inspection services or investments in laboratory infrastructure."¹⁶ This assistance should be actively sought by Tripartite members, and such efforts should be formally recognized in the T-FTA.

While Article 7 of Annex 15 calls for Cooperation, Capacity Building and Technical Assistance on SPS Measures, no mention of 'assistance' is made. Rather, the provision uses vague language such as: 'building of technical capacity,' 'cooperation in facilitating regional standards,' and 'strengthening coordination mechanisms for managing SPS programmes.' The Annex should stipulate that Member States shall seek technical assistance as per Article 9(1) of the SPS Agreement. It could also include a reference to the WTO Standards and Trade Development Facility, which aims to improve SPS capacity in developing countries.¹⁷

¹⁵ Walter Goode, "Negotiating Free Trade Agreements: A Guide," APEC Branch, Department of Foreign Affairs and Trade, 2005, at 63.

¹⁶ SPS Agreement Training Module, Chapter 6: Developing Countries, WTO website, http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c6s2p1_e.htm.

¹⁷ See Standards and Trade Development Facility, <http://www.standardsfacility.org/en/index.htm>.

Adopting a more active position in negotiations regarding technical assistance for SPS and SMCA compliance will favour Uganda's interests as an exporter in need of capacity building.

Matrix on Comparative Ugandan and International Standards for Selected Commodities

Commodity	Ugandan Standard	International Standard	Relevant Codes of Conduct or private standards
Flowers*		Reference UN/EEC Standard H-1 on cut flowers	UFEA Code of Practice
Honey		European Honey Directive and in the Codex Alimentarius Standard for Honey (Codex STAN 12-1981, last modified 2001)	
Fish*		European standards: EU Directive 91/493/EEC CODEX STAN 165-1989	Codex Code of Practice CAC/RCP 52-2003
Textiles		ISO TC 38**	
Horticulture (flowers; vegetables)*		Horticultural products generally: Good agricultural practice MAAFF, UK; Integrated Crop Management, UK; and Environmental Protection Agency, US	
Organic Coffee		Several ISO standards for coffee generally, eg. ISO1-104760 Green Coffee Defect See also ISO TC SC 15 for coffee and ISO Guideline 65 for organic product inspection bodies	UCTF Code of Conduct for coffee Organic coffee is a primarily private sector initiative under NOGAMU (certification through IFOAM)
Other relevant exports			

*Private sector Codes of Conduct exist for these products, reflecting market standards and EU technical standards

** See http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_tc_browse.htm?commid=48148

Enhancing Uganda's standards implementation capacity

Which organizations provide funding support; which support Ugandan organizations, and which activities are funded.

Organization	ISO	ARSO	Codex	EU (specify)	Other	Activities Funded
UNBS						
Uganda Coffee Development Authority						
Dairy Development Authority						
Ministry of Trade, Industry and Cooperatives						
National Agriculture Research Organisation						
Cotton Development Organisation						
Uganda Tea Authority						
Uganda Export Promotion Board						
Ministry Agriculture, Animal Industry and Fisheries						
Ministry of Health						
Ministry of Finance Planning and Economic Development						
Ministry of Water and Environment						

Organization	ISO	ARSO	Codex	EU (specify)	Other	Activities Funded
Ministry of Information and Communication Technology						
Ministry of Justice and Constitutional Affairs						
Ministry of East African Community Affairs						
Ministry of Energy and Mineral Development						
Ministry of Foreign Affairs						
Ministry of Works and Transport						
Uganda Communications Commission						
National Forestry Authority						
National Information Technology Authority - Uganda						
National Roads Authority						
National Drug Authority						
Electricity Regulatory Authority						

Organization	ISO	ARSO	Codex	EU (specify)	Other	Activities Funded
Uganda Investment Authority						
Private Sector Foundation - Uganda						
Uganda Manufacturers Association - UMA						
Uganda National Chamber of Commerce and Industry						
Kampala City Traders Association						
Uganda Small Scale Industrialists Association						
Uganda National Farmers Federation						
Uganda Flower Producer and Exporters Association						
Uganda Fish Exporters Association						
Horticultural Exporters Association						
Uganda National Agriculture Development Organisation						

Organization	ISO	ARSO	Codex	EU (specify)	Other	Activities Funded
Uganda Services Exporters Association						
Uganda Clearers and Forwarders Association						
National Water and Sewerage Corporation						
Southern and Eastern African Trade, Information and Negotiations Institute						
Consumer Education Trust						
Uganda Consumer Protection Association***						
Development Network of Indigenous Voluntary Associations						
Advocates Coalition for Development and Environment						
Economic Policy Research Centre						
Makarere University Business School						

***Capacity building for consumer protection organizations may be another important area of interest since greater awareness and enforcement of standards by consumers will force producers to adhere to higher international standards