



African Continental and Regional Sanitary and Phytosanitary Approaches and Alignment with SPS Good Regulatory Practices

Literature Review
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LIST OF ABBREVIATIONS

ACTESA	Alliance for Commodity Trade in Eastern and Southern Africa
AfCFTA	African Continental Free Trade Area
AFD	Agence Française de Développement
AIMS	Agricultural Information Management System
APPSA	Agricultural Productivity Program for Southern Africa
ASTF	Africa Solidarity Trust Fund
AU	African Union
BSE	Bovine Spongiform Encephalopathy
C-MRF	Mutual Recognition Framework for conformity assessment
CABI	Centre for Agriculture and Bioscience International
CEN-SAD	Community of Sahel-Saharan States
CFTA	Continental Free Trade Area
CIMMYT	International Maize and Wheat Improvement Center
Codex	Codex Alimentarius Commission
COM-SHIP	COMESA Seed Harmonization Implementation Plan
COMESA	Common Market for Eastern and Southern Africa
COVID-19	Coronavirus Disease of 2019
EAC	East African Community
ECCAS	Economic Community of Central Africa States
ECOWAS	Economic Community of West African States
ECOWAS	Economic Community of West African States
EU	European Union
EUROPHYT	European Phytosanitary
FAW	Fall Armyworm
FMD	Foot and Mouth Disease

FoRHC	Food Regulatory Harmonization Committee
FSCBRC	Food Safety-Capacity Building in Residue Control
GPC	Green Pass Certification
GRP	Good regulatory practices
HPAI	Avian influenza
IGAD	Intergovernmental Authority on Development
IPPC	International Plant Protection Convention
ISO	International Organization for Standardization
ISPM	International Standards for Phytosanitary Measures
MARKUP	Market Access Upgrade Program
MLND	Maize Lethal Necrosis Disease
MRA	Mutual Recognition Agreement
NARS	National agriculture research systems
NPPO	National Plant Protection Organization
NSB	National Standards Bureaus
OIE	World Organisation for Animal Health
P-IMA	Prioritization of SPS Investments for Market Access
PCE	Phytosanitary Capacity Evaluation
PPR	Peste des petits ruminants
PRA	Pest risk assessment
PRINT	Promotion of Regional Integration in the SADC Livestock Sector
RAAF	Regional Agency for Agriculture and Food
RAHC	Regional Animal Health Centre
RECs	Regional economic communities
RIA	Regulatory Impact Assessment
RISDP	Regional Indicative Strategic Development Plan
SADC	Southern African Development Community

SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary
STDF	Standards and Trade Development Facility
STOSAR	Support Towards the Operationalization of the SADC Regional Agricultural Policy
SyRIMAO	Regional Innovative Fruit Fly Control System in West Africa
TADs	Transboundary Animal Diseases
TBT	Technical barriers to trade
TFTA	Tripartite Free Trade Area
TMEA	TradeMark East Africa
ToRs	Terms of Reference
TRAISE	Trade of Agriculture Safely and Efficiently in East Africa
UNIDO	United Nations Industrial Development
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
WAEMU	The West African Economic and Monetary Union
WTO	World Trade Organization
WAVE	Central and West African Virus Epidemiology Center

EXECUTIVE SUMMARY

Sanitary and phytosanitary (SPS) measures are important in setting product criteria, testing, inspection, certification, quarantine, and biosecurity rules that protect human, animal, or plant life or health from risks arising from the introduction, establishment, and spread of pests and diseases and from risks arising from additives, toxins, and contaminants in food and feed. At the continental level within Africa, SPS measures are included under the African Continental Free Trade Area (AfCFTA), while the regional economic communities (RECs) contain similar measures, setting the regulatory foundation for Member States. In addition to the AfCFTA, among the RECs, the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) are the focus of this report, as they have more well-developed SPS regimes.

African continental and regional SPS measures are largely based on the World Trade Organization's (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which calls for science-based measures that follow international standards and also provides for harmonization, equivalence, and mutual recognition across systems. There are, however, a few notable differences across African instruments (see Table 3 below), which raise regulatory concerns and will impact implementation of SPS measures at the national level, considering that most countries have overlapping membership in the RECs. It will be important to address questions of duplication, overlap, and contradiction of obligations, both between the AfCFTA and the RECs, horizontally across the RECs, and vertically with the WTO SPS Agreement. This will be particularly important as the AfCFTA, which is relatively new, is fully implemented.

While SPS measures exist at the African continental, regional, and domestic levels, various SPS challenges continue to exist with regard to food safety and animal and plant health. These include challenges associated with the absence of SPS legislation in some countries, duplication and overlap in regulatory functions, insufficient notification by Member States of new laws or regulations, lack of trust and confidence between enforcement agencies in different countries, political insecurity, poor adoption of regional and international standards in domestic SPS controls, limited understanding and interpretation of SPS standards and regulations, ineffective SPS risk management, and insufficient use of Mutual Recognition Agreements (MRAs) and agreements on equivalence.

These challenges highlight the need to root SPS measures in good regulatory practices (GRPs). SPS GRPs follow recognized good practices and include tools to ensure that SPS measures are developed, reviewed, and implemented in a transparent, coordinated, effective, and sustainable manner. SPS measures based on GRPs reduce procedural obstacles to trade and improve alignment with the WTO SPS Agreement and international standards on food safety and animal and plant

health. In 2021, the Standards and Trade Development Facility developed the Practical Guide on SPS Good Regulatory Practices (STDF GRP guide), highlighting six GRPs with which SPS measures should be aligned. Within the RECs, some of these SPS GRPs have commendably been adopted both under regional SPS rules and in practice, as summarized in Table 1 below. While there has been notable progress to align SPS measures with GRPs, however, significant regulatory and implementation gaps remain (see Table 1 below), necessitating more strategic approaches in institutionalizing the adoption and implementation of SPS GRPs.

Table 1: Summary Findings on RECs' Alignment with SPS GRPs

GRP	REC	SPS GRP Measure/Tool
<p>Stock-taking of regional SPS Measures</p> <p>Identifying all relevant regulations, practices, procedures, and processes applicable in an area; the responsible SPS institutional framework; and any existing regulatory and implementation gaps, challenges, and conflicts.</p>	EAC	<ul style="list-style-type: none"> There are no specific tools for stocktaking of regional or Partner States' SPS measures, but EAC takes stock of existing regional SPS-related regulatory frameworks and mechanisms prior to development or review of any regional SPS measure.
	COMESA	<ul style="list-style-type: none"> There are no specific tools for stocktaking of regional or Member States' SPS measures, but COMESA has previously supported its Member States in reviewing and strengthening their SPS regulatory frameworks
	SADC	<ul style="list-style-type: none"> SADC has some tools to enable Member States take stock of their SPS measures and continues to provide them technical support in the process, and SADC has some measures to take stock and review regional SPS mechanisms as well.
	ECOWAS	<ul style="list-style-type: none"> ECOWAS does not yet have tools to take stock of Member States' SPS measures, but it has previously initiated programs for countries to provide the status of their SPS measures.
<p>Forward-Looking Regulatory Agendas within RECS</p> <p>SPS policy, strategy, or plan that addresses the region's short-, medium-, and long-term SPS priorities.</p>	EAC	<p>The EAC's SPS priorities are contained in various instruments:</p> <ul style="list-style-type: none"> The Agriculture and Rural Development Policy and Strategy (2005–2030). The Control of Transboundary Animal Diseases and Zoonoses, (2020-2024) The Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework (2018-2024). The Fruits and Vegetables Value Chain Strategy and Action Plan 2021-2031, the Export Promotion Strategy (2020-2025) The Regional Agricultural Investment Plan (RAIP) 2018-2025, and The African Growth and Opportunity Act Strategy 2015-2025.

	COMESA	<ul style="list-style-type: none"> • COMESA developed an SPS strategy for the period 2016-2020, with medium-term SPS Priorities, but this SPS Strategy is yet to be updated. • COMESA's Medium-Term Strategic Plan 2021-2025 includes priorities with regard to SPS measures.
	SADC	<ul style="list-style-type: none"> • SADC does not have a specific forward-looking regulatory agenda but has developed a SADC Regional Indicative Strategic Development Plan (RISDP) 2020–2030, which mentions focus on regional compliance in SPS implementation and calls for an annual review of regional SPS measures through the SPS Coordinating Committee.
	ECOWAS	<ul style="list-style-type: none"> • ECOWAS does not have a specific SPS forward-looking regulatory agenda but the agricultural policy in ECOWAS also mentions a regional focus on SPS issues more generally.
<p>Regulatory Impact Assessments (RIAs)</p> <p>A systemic approach to critically assess the positive and negative effects of proposed and existing regulations and non-regulatory options based on robust quantitative and qualitative analysis.</p>	EAC, COMESA, SADC, and ECOWAS	<ul style="list-style-type: none"> • None of the focus RECs has specific guidelines, measures, or tools on conducting RIAs.
<p>Monitoring and Evaluation</p> <p>Mechanisms that continuously track the implementation and performance of SPS measures, periodically assessing their effectiveness and efficiency, with adjustments made as needed.</p>	EAC	<ul style="list-style-type: none"> • The EAC's SPS-related forward-looking instruments provide for monitoring and evaluation of the region's SPS measures.
	COMESA	<ul style="list-style-type: none"> • COMESA had an elaborate monitoring and evaluation mechanism in its SPS Strategy, but the Strategy expired in 2020, and a new one is yet to be put in place. • COMESA SPS Regulations established the SPS Committee as the regional monitoring and evaluation enforcement body. • The COMESA Seed Trade Harmonisation Regulations also mandate that COMESA NPPOs facilitate technical review of phytosanitary measures and their impact on seed movement in the region
	SADC	<ul style="list-style-type: none"> • The SADC Guidelines on Regulation of Food Safety advise that a food safety management system has

		<p>mechanisms in place to continuously update, review, and analyse information on SPS.</p> <ul style="list-style-type: none"> The SADC Regional Indicative Strategic Development Plan (RISDP) 2020–2030 mentions focus on regional compliance in SPS implementation and calls for an annual review of regional SPS measures through the SPS Coordinating Committee.
	ECOWAS	<ul style="list-style-type: none"> ECOWAS does not yet have in place specific SPS monitoring and evaluation tools. The ECOWAS SPS Regulation creates a regional early warning network and mandates that it monitor information on food safety risks, but ECOWAS does not provide any SPS monitoring guidelines, and it is unclear whether it is operational in practice.
Transparency and Stakeholder Engagement	EAC	<ul style="list-style-type: none"> The EAC SPS Protocol requires that Partner States transparently share information relating to animal and food safety related risks. An SPS information-sharing platform is being developed to enable electronic sharing and access of trade documents. It is the practice of the EAC to engage stakeholders while developing or reviewing any SPS measure. Regional SPS measures are also made accessible online in the EAC library.
	COMESA	<ul style="list-style-type: none"> COMESA’s SPS Regulations encourage Member States to conduct consultation between public and private sector on SPS issues. The COMESA SPS Regulations mandate COMESA Member States to communicate any notification, report, or information made under Article 7 of the WTO SPS Agreement to the Secretariat. COMESA engages stakeholders in the review and development of regional SPS measures through consultation and validation meetings.
	SADC	<ul style="list-style-type: none"> The SADC Protocol on Trade, SPS Annex VIII (SADC SPS Annex), includes detailed mandatory transparency compliance requirements under Appendix A for SADC Member States and also requires Member States to observe WTO transparency rules. Appendix A of the SADC SPS Annex includes obligations to publish SPS measures promptly to enable access to interested Member States, establish WTO SPS Enquiry Points at the national level to provide answers to any matters of SPS, and put in place notification procedures.

	ECOWAS	<ul style="list-style-type: none"> • The ECOWAS harmonized SPS Regulation mandates that Member States “notify changes in their SPS measures and provide information on these measures in accordance with the procedures and modes of presentation established by the WTO, notably Annex B on transparency.”
Coordination and Cooperation Mechanisms	EAC	<ul style="list-style-type: none"> • EAC Partner States are required to cooperate on agriculture and food security under the EAC Treaty, and regional cooperation and coordination on SPS measures and activities is a key objective of the EAC SPS Protocol and under the SPS issue-specific strategies on aflatoxin prevention and the control of transboundary animal diseases and zoonoses. • The EAC SPS Protocol establishes an SPS Office and SPS Committee to coordinate SPS issues in the region. These, however, do not exist in practice within the current EAC structure. • The EAC has established several other specialized bodies within the Secretariat that are responsible for coordination of regional cooperation on specific SPS issues. • The EAC has undertaken various cooperation and coordination initiatives in support of Partner States’ capacity building and implementation of SPS measures at the national and regional levels.
	COMESA	<ul style="list-style-type: none"> • Cooperation of COMESA Member States in the export of agricultural commodities, including on SPS measures, is mandated under the COMESA Treaty, and it is a key objective under the COMESA SPS Regulations with regard to the implementation of SPS measures. • The COMESA SPS Regulations established the SPS Subcommittee under the Technical Committee on Agriculture and tasked it with coordinating SPS actions at the national and regional levels. • The SPS Unit was also created with the mandate of coordinating all regional programs and institutions related to SPS matters. • The COMESA Green Pass Certification (GPC) Scheme is based on mutual recognition of SPS certification by National Green Pass Authorities. • COMESA has encouraged its Member States to use several capacity building tools developed and endorsed by international organizations, and it has a number of programmes and initiatives focused on capacity building. •

	SADC	<ul style="list-style-type: none"> • The SADC SPS Coordinating Committee was established under SPS Annex VIII of the SADC Protocol on Trade. Funding constraints have affected the ability to hold regular physical meetings. • SADC has continued to support cooperation on SPS matters through various initiatives.
	ECOWAS	<ul style="list-style-type: none"> • There are various coordination mandates for ECOWAS Member States under the ECOWAS SPS Regulation. • The SPS Regulation creates a Regional Sanitary Safety Committee, with sub-committees on plant health, animal health, and food safety, as well as various networks of experts, which are tasked with coordination and cooperation of SPS issues in the region. • SADC has continued to support cooperation on SPS matters through various initiatives.

INTRODUCTION

Domestication and implementation of harmonized and well-aligned regional and international sanitary and phytosanitary (SPS) measures are critical in order to streamline certification, shorten lengthy procedures, avoid discrimination between trading partners, and provide a level of predictability to facilitate regional trade.¹ Within Africa, the African Continental Free Trade Area (AfCFTA),² as well as within different regional economic communities (RECs) incorporate measures governing SPS issues.³ These measures are generally largely based on the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement),⁴ with some notable exceptions,⁵ and follow international SPS standards under the Codex Alimentarius Commission (Codex) for food safety, the World Organisation for Animal Health (OIE) for animal health and zoonoses, and the International Plant Protection Convention (IPPC) for plant health.

The development, review, and implementation of SPS measures at any level, but especially at the regional level which tends to be more specific and sometimes create binding rules, should be based on good regulatory practices (GRPs). GRPs are internationally recognized processes, systems, tools, and methods used to improve the quality of regulatory measures and ensure that regulatory outcomes are effective, transparent, inclusive, and sustained.⁶ Using GRPs improves the design and implementation of SPS measures and reduces procedural obstacles to trade, including by

¹ Katrin Kuhlmann, “Legal and Institutional Dimension of the AfCFTA in the Context of Agricultural Development and Trade,” in *Cultivating Trade: The AfCFTA and Agriculture*, Initiative for Free Trade (July 2022), at 20-21, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4167388 [hereinafter Kuhlmann 2022].

² Agreement Establishing the African Continental Free Trade Area (Mar. 21, 2018), 58 I.L.M. 1028 [hereinafter AfCFTA]. Available at: <https://afcfta.au.int/en/documents/2018-03-21/agreement-establishing-african-continental-free-trade-area-afcfta>.

³ The African Union (AU) recognized eight RECs in Africa, and each of these has some sort of SPS regulatory regime in place: The Common Market for Eastern and Southern Africa (COMESA), The East African Community (EAC), The Intergovernmental Authority on Development (IGAD), The Southern African Development Community (SADC), The West African Economic and Monetary Union (WAEMU), The Economic Community of West African States (ECOWAS), The Community of Sahel-Saharan States (CEN-SAD), and The Economic Community of Central Africa States (ECCAS). See, e.g., João Magalhães, “Regional Sanitary and Phytosanitary Frameworks and Strategies in Africa, Report for the Standards and Trade Development Facility,” July 2010. Available at: https://standardsfacility.org/sites/default/files/STDF_Regional_SPS_Strategies_in_Africa_EN_0.pdf [hereinafter Magalhães]. See also, Kuhlmann, 2022, *supra* note 1 and Gabor Molnar and Samuel Benrejeb Godefroy, “Review of mechanisms for food safety-related SPS measures within African regional Economic Communities (RECs): Paving the way for a continent-wide food safety coordination effort,” *Food Control*, Volume 115, 2020, 107206, ISSN 0956-7135, <https://doi.org/10.1016/j.foodcont.2020.107206>.

⁴ World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures, 1869 U.N. Treaty Series 493. Available at: https://www.wto.org/english/docs_e/legal_e/15-sps.pdf [hereinafter WTO SPS Agreement].

⁵ Kuhlmann, 2022, *supra* note 1.

⁶ Standards and Trade Development Facility (STDF), “Good Regulatory Practices to Improve SPS Measures: A Practical Guide,” 2021. Available at: https://standardsfacility.org/sites/default/files/STDF_GRP_Guide_EN.pdf [hereinafter STDF 2021].

improving compliance with the WTO SPS Agreement and supporting greater alignment with international standards for food and feed safety and human, animal, and plant health.⁷

This literature review, which is based on desktop research, assesses alignment with SPS GRPs under the AfCFTA and other African Union (AU) instruments,⁸ including the Common Africa Agriculture Development Program (CAADP). Among the RECs recognized by the AU, this literature review focuses on the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC), as well as the Tripartite Free Trade Area (TFTA) Agreement among COMESA, SADC, and the EAC.⁹ Among the RECs recognized by the African Union, these four RECs have the most well-developed SPS regimes.¹⁰

The literature review provides a background of SPS measures and implementation challenges in sub-Saharan Africa at the continental and regional levels. This includes an assessment of legal frameworks and their alignment with international SPS rules or standards, SPS implementing bodies within the RECS, reporting mechanisms, support to member states within a regional body on SPS-related matters, dispute resolution, stakeholder involvement in regional SPS rulemaking, and SPS implementation gaps. The assessment then examines alignment with the six key SPS GRPs highlighted in the 2021 “Practical Guide on SPS Good Regulatory Practices” (SPS GRP Guide)¹¹ developed by the Standards and Trade Development Facility (STDF), which could form the basis for deeper assessment.

I. OVERVIEW OF SPS MEASURES AND IMPLEMENTATION CHALLENGES

The WTO SPS Agreement focuses on application of SPS measures, including regulations, to protect humans, animals, and plants from the risk of disease, pests, and disease-carrying organisms; protect humans and animals from toxins or additives in food and feedstuffs; and protect damage within a territory due to the spread of pests.¹² The WTO SPS Agreement also calls for harmonization with international standards, equivalence, and mutual recognition.¹³ While SPS measures at the regional level within the RECS and TFTA and at the continental level under the AfCFTA are largely founded on the WTO SPS Agreement, there remain notable differences, which raises regulatory concerns and impacts the implementation of SPS measures at the national level, considering that most countries have overlapping membership in the RECs.¹⁴ Table 1 below

⁷ Id.

⁸ AfCFTA, *supra* note 2.

⁹ Agreement Establishing a Tripartite Free Trade Area Among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community, 10 June 2015. Available at: <https://www.eac.int/documents/category/comesa-eac-sadc-tripartite>.

¹⁰ Kuhlmann 2022, *supra* note 1.

¹¹ STDF 2021, *supra* note 6.

¹² WTO SPS Agreement, *supra* note 4.

¹³ Id.

¹⁴ Kuhlmann 2022, *supra* note 1.

highlights countries' overlapping membership in the focus RECs, with * denoting membership in multiple RECs (these constitute more than half of the list).

Table 1: Countries' (Overlapping) Membership to COMESA, EAC, ECOWAS, and SADC

<i>Regional Economic Community</i>	<i>Countries</i>
COMESA	Angola, Burundi*, Comoros*, Democratic Republic of Congo*, Djibouti, Egypt, Eritrea, Ethiopia, Kenya*, Libya, Madagascar, Malawi*, Mauritius*, Namibia*, Rwanda*, Seychelles, Sudan, Swaziland*, Somalia, Tunisia, Uganda*, Zambia*, Zimbabwe*
EAC	Burundi*, Democratic Republic of Congo*, Kenya*, Rwanda*, Tanzania*, Uganda*
ECOWAS	Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
SADC	Angola*, Botswana, Comoros*, Democratic Republic of Congo*, Lesotho, Madagascar*, Malawi*, Mauritius*, Mozambique, Namibia*, Seychelles*, South Africa, Swaziland*, Tanzania*, Zambia*, Zimbabwe*

Source, *New Markets Lab, 2024.*

a) SPS Measures at the Continental and Regional Levels and SPS Implementation Challenges

In June of 2015, the TFTA Agreement was signed by COMESA, the EAC, and SADC, and, five days later, the AU summit of heads of state and government launched negotiations for the Continental Free Trade Area (CFTA) (subsequently renamed the AfCFTA), with the entry into force of the AfCFTA in May of 2019.¹⁵ Both the TFTA and the AfCFTA contain provisions on SPS measures, but there is concern regarding duplication, overlap, and contradiction of obligations, both horizontally among the RECs and vertically with the WTO SPS Agreement.¹⁶ Although the AfCFTA is meant to establish prevailing law under certain circumstances, given that it is relatively new, it is unclear how the regional frameworks under the RECs will continue to provide governing law and be effectively aligned in practice.¹⁷

¹⁵ Luke, David; Mabuza, Zodwa, "The Tripartite Free Trade Area and the African Continental Free Trade Area: the Case for Consolidation." United Nations. Economic Commission for Africa (2018-11). Available at: <https://hdl.handle.net/10855/41841>.

¹⁶ Harrison O. Mbori, "Combating Unjustified Sanitary and Phytosanitary Measures in the African Tripartite Free Trade Area (SADC-EAC-COMESA): SPS-Plus or SPS-Minus," *Hungarian Journal of Legal Studies* 58, no. 4 (2017): 409 [Hereinafter, Mbori, 2017].

¹⁷ Kuhlmann 2022, *supra* note 1.

The AfCFTA incorporates aspects of the WTO SPS Agreement,¹⁸ including explicitly adopting the definition of SPS measures;¹⁹ reiterating the importance of international harmonization, equivalence, and mutual recognition; and incorporating provisions on risk assessment, equivalence, and the precautionary principle. There are, however, some noticeable departures from the WTO SPS Agreement. For instance, the AfCFTA omits important SPS provisions on minimizing negative trade effects, not applying SPS measures in a manner that is arbitrary or unjustifiable, and ensuring that measures are not more trade-restrictive than necessary.²⁰ The TFTA has also been criticized for similar reasons, such as omitting important provisions on risk assessment, non-discrimination, equivalence, and the precautionary principle.²¹

It is commendable, however, and in line with the SPS GRP on coordination and cooperation, that the AfCFTA creates a Committee on Trade in Goods with a Sanitary and Phytosanitary Subcommittee,²² and the AfCFTA's dispute settlement system puts emphasis on consultation,²³ which tracks with the SPS GRP on transparency and stakeholder engagement.

Notably, Annex 5 of the AfCFTA also includes a mechanism to address non-tariff barriers (NTBs), including SPS measures, which, according to the United Nations are among the most common NTBs,²⁴ building upon a foundation established by RECs such as the EAC, COMESA, and SADC (with a mechanism also established under the TFTA).²⁵ Annex 5 contains important institutional aspects as well and mandates that the AfCFTA Secretariat and NTB Subcommittee establish a Unit for the Coordination of NTB Elimination to work with National Monitoring Committees and National Focal Points, as well as REC NTB Units to identify, resolve, and monitor NTBs, working in collaboration with the private sector.²⁶ Appendix 2 to Annex 5 contains the Procedure for Elimination and Co-operation in the Elimination of Non-Tariff Barriers.²⁷ Transparency is central to this process, including through regular status reports.²⁸ This focus on cooperation and

¹⁸ WTO SPS Agreement, *supra* note 4.

¹⁹ WTO SPS Agreement, *supra* note 4, Annex A. See “The WTO Agreements Series: Sanitary and Phytosanitary Measures,” WTO, 15 (2010). Available at: https://www.wto.org/english/res_e/publications_e/sps_agreement_series_e.htm#:~:text=The%20Agreement%20on%20the%20Application,animal%20and%20plant%20health%20regulations.

²⁰ Kuhlmann 2022, *supra* note 1. See WTO SPS Agreement, *supra* note 4, Articles 5.4-5.6.

²¹ Mbori, 2017, *supra* note 16.

²² AfCFTA, *supra* note 2, Protocol on Trade in Goods establishes the Committee on Trade in Goods, Article 31 (1).

²³ AfCFTA, *supra* note 2, Protocol on Rules and Procedures on the Settlement of Disputes, Articles 3(3) and 7.

²⁴ According to the United Nations Conference on Trade and Development (UNCTAD), SPS measure cover nearly 20 percent of world imports and particularly impact agri-food products. UNCTAD, *The Unseen Impact of Non-Tariff Measures: Insights from a New Database*, UNCTAD/DITC/TAB/2018/2, at 9 (2018). Available at: https://unctad.org/system/files/official-document/ditctab2018d2_en.pdf.

²⁵ NTBs are defined in the main AfCFTA text as “barriers that impede trade other than the imposition of tariffs”. AfCFTA Protocol on Trade in Goods, art. 1. See also, Article 10 and Annex III of the TFTA on NTBs, and the Tripartite Working Procedures for Implementation of Annex III on Non-Tariff Barriers. Available at: <https://www.comesa.int/wp-content/uploads/2019/09/ANNEX-III0001.pdf>

²⁶ AfCFTA, *supra* note 2, Annex 5, arts. 6-8.

²⁷ AfCFTA, *supra* note 2, Appendix 2 to Annex 5, Non-Tariff Barriers, pp. 35-38.

²⁸ AfCFTA, *supra* note 2, Annex 5, arts. 14-15.

transparency in addressing trade-restricting SPS measures also aligns with the GRPs, as discussed below.

b) SPS Measures Within the Focus RECs and SPS Implementation Challenges

The SPS regimes under COMESA, the EAC, ECOWAS, and SADC are largely based on the text of the WTO SPS Agreement.²⁹ Each of the treaties establishing the four focus RECs emphasizes the need to have harmonized SPS measures at the national and regional levels, complemented by specific instruments on SPS measures. However, a closer examination reveals challenges and opportunities in the context of SPS GRPs. In the development of SPS measures under the RECs, one of the main challenges is to avoid overlap, omission, duplication, and contradiction in relation to the WTO SPS Agreement and other regional SPS regimes, which could result in implementation challenges in addition to capacity and resource constraints, summarized in Table 2, and discussed in detail below.

Table 2: Continental and Regional SPS Frameworks and Alignment with the WTO SPS Agreement

	Legal Instrument(s)	Differences from the WTO SPS Agreement
AfCFTA	Agreement Establishing the African Continental Free Trade Area	<ul style="list-style-type: none"> The AfCFTA omits important SPS provisions on minimizing negative trade effects, not applying SPS measures in a manner that is arbitrary or unjustifiable, and ensuring that measures are not more trade-restrictive than necessary.
TFTA	Agreement Establishing a Tripartite Free Trade Area Among COMESA, the EAC, and SADC	<ul style="list-style-type: none"> Similar to those noted with regard to the AfCFTA above.
EAC	<ul style="list-style-type: none"> EAC Treaty EAC Customs Union Protocol EAC Common Market Protocol on Cooperation in Agriculture and Food Security EAC Protocol on SPS Measures Compendium of SPS measures: a) Phytosanitary Measures (Volume I), b) Animal Health Measures for Mammals, Birds and 	<ul style="list-style-type: none"> The Protocol on SPS Measures refers to some terms like “principles of regionalization,” which are not defined, and defines international standards in a way that goes beyond the WTO SPS Agreement. There are instances in which the EAC SPS Protocol does not expressly provide for regional SPS measures to be based on international standards as referenced in the WTO SPS Agreement. Although the EAC SPS Protocol is in place, enactment of the Phytosanitary (Plant Health) Measures Act remains pending, so a binding legal framework for the enforcement of EAC

²⁹ Mbori, 2017, *supra note* 16.

	Bees (Volume II), c) Animal Health Measures for Fish and Fishery Products (Volume III), and d) Food Safety Measures (Volume IV).	SPS measures and instruments is not yet in place.
COMESA	<ul style="list-style-type: none"> • The COMESA Treaty • Regulations on the Application of Sanitary and Phytosanitary Measures 	<ul style="list-style-type: none"> • The Preamble of the COMESA SPS Regulations redefines the scope of relevant international standards, calling into question the role of the WTO SPS Committee. • With regard to the precautionary principle, the COMESA SPS Regulations omit reference to use of relevant scientific evidence as provided for in the WTO SPS Agreement, which could undermine the rights and obligations of WTO Member States.
SADC	<ul style="list-style-type: none"> • SADC Protocol on Trade, which includes the SPS Annex VIII to SADC Protocol on Trade (SPS Annex) (revised in 2014) 	<ul style="list-style-type: none"> • The provision on harmonization mandates that SADC Member States to consider “relevant international standards” with respect of the mandatory SPS requirements, which is contrary to the WTO SPS Agreement, which requires that members ‘base their sanitary or phytosanitary measures on international standards, guidelines, and recommendations, where they exist’ (Art. 3.1)
ECOWAS	<ul style="list-style-type: none"> • ECOWAS Revised Treaty • Harmonized Regulation C/REG.21/11/10 related to the structural and operational rules for plant health, animal health, and food safety in the ECOWAS region 	<ul style="list-style-type: none"> • Some definitions are missing from the ECOWAS SPS Regulation, while others are reduced in scope compared to the WTO SPS Agreement. • The language used with regard to application of international standards is broad in scope, which could cause confusion in interpretation.

1. SPS Measures in the EAC

Within the EAC, Article 108 (c) of the EAC Treaty and Article 38 (1C) of the EAC Customs Union Protocol provide for Partner States to harmonize SPS measures in order to facilitate trade within the community and with other trading partners. Article 45 of the EAC Common Market Protocol on Cooperation in Agriculture and Food Security calls for an effective regime on SPS instruments, standards, and technical regulations in the region.

Specifically, the EAC Protocol on SPS Measures (EAC SPS Protocol) includes provisions on Partner States’ cooperation on matters of human, plant, and animal health and food safety and

harmonizing their policies, laws, and programs while implementing principles of equivalence, regionalism, transparency, and risk assessment using science-based approaches.³⁰ The EAC SPS Protocol is largely aligned with the WTO SPS Agreement; however, a few discrepancies exist that could limit Partner States' obligations and rights.³¹ For instance, the Protocol makes reference to some terms like “principles of regionalization,”³² which are not defined, and defines international standards in a way that goes beyond the WTO SPS Agreement. There are other instances in which the EAC SPS Protocol does not expressly provide for regional SPS measures to be based on international standards as referenced in the WTO SPS Agreement. For instance, the EAC SPS Protocol contains an objective to enhance SPS in the region through a science-based approach grounded on a common understanding among the Partner States, without expressly providing for such to be based on international standards as referenced in the WTO Agreement.³³ The EAC SPS Protocol also does not expressly mention whether pest risk assessment would be based on scientific evidence and international standards,³⁴ which is different from the language used in the WTO SPS Agreement.³⁵

Although the EAC SPS Protocol is in place, enactment of the Phytosanitary (Plant Health) Measures Act remains pending, so a binding legal framework for the enforcement of EAC SPS measures and instruments is not yet in place. The draft bill and harmonized SPS Regulations and Standard Operating Procedures required to facilitate its implementation have been adopted by the Sectoral Council on Agriculture and Food Security and are awaiting enactment by the East African Legislative Assembly.³⁶

In the meantime, as part of the EAC SPS Protocol, in 2016 the EAC developed and adopted four SPS measures: a) Phytosanitary Measures (Volume I); b) Animal Health Measures for Mammals, Birds and Bees (Volume II); c) Animal Health Measures for Fish and Fishery Products (Volume III); and d) Food Safety Measures (Volume IV)³⁷ which are summarized in Table 3 below.

³⁰ EAC, Sanitary and Phytosanitary Measures (SPS). Available at: <https://www.eac.int/agriculture/sanitary-and-phytosanitary-measures-sps> [hereinafter EAC SPS].

³¹ See, Magalhães, *supra* note 3.

³² EAC Protocol on SPS Measures (hereinafter EAC SPS Protocol), Article 2(b). Available at: <http://repository.eac.int/bitstream/handle/11671/24136/SGN%204%209%2046%20%20EAST%20AFRICAN%20COMMUNITY%20PROTOCOL%20ON%20SANITARY%20AND%20PHYTOSANITARY%20MEASURES.pdf?sequence=5&isAllowed=y>

³³ *Id* Article 2(d).

³⁴ *Id* Article 4(2)(e).

³⁵ WTO SPS Agreement, *supra* note 4, Article 5.

³⁶ EAC, SPS, *supra* note 30.

³⁷ World Trade Organization, Trade Policy Review Report by The Secretariat of the EAC, WT/TPR/S/384, (2019). Available at: https://www.wto.org/english/tratop_e/tp_r_e/s384_e.pdf.

Table 3: EAC's Harmonized SPS Measures and Procedures³⁸

Area	Import requirements	Export requirements
Plants	<ul style="list-style-type: none"> • A plant import permit from the relevant authority; • A phytosanitary certificate is required at the port of entry; and • Compliance with relevant EAC quality standards 	<ul style="list-style-type: none"> • A plant import permit from the destination country; and • A phytosanitary certificate; and • Inspections are carried out if required
Mammals, birds, and bees	<ul style="list-style-type: none"> • An import permit from the veterinary administration specifying all the tests and conditions have been fulfilled; and • Compliance with relevant EAC standards 	<ul style="list-style-type: none"> • Compliance with exportation permit requirements from the relevant veterinary authorities; and • Certification systems consistent with OIE guidelines
Fish and fishery products	<ul style="list-style-type: none"> • Risk analysis to assess disease risks associated with the importation of fish and fishery products 	<ul style="list-style-type: none"> • Control of aquatic animal feed and feed ingredients, and use of veterinary drugs; • Requirements for certification using OIE standards; and • Aquatic animal health measures
Food safety	<ul style="list-style-type: none"> • Compliance with the requirements set out in relevant EAC standards, member States' standards, or food and feed safety measures; and • In the absence of relevant EAC standards and member States' standards, international food and feed safety standards, such as Codex Alimentarius, IPPC and OIE, must be used. 	<ul style="list-style-type: none"> • Compliance with EAC food and feed safety measures, standards, laws, regulations and other legal procedures.

SPS Challenges in the EAC Region

With regard to implementation of regional SPS measures at both the national and regional levels within the EAC, there have been challenges associated with duplication and overlaps in regulatory functions that increase the cost of trade; insufficient notification by Partner States when they

³⁸ Id.

update laws or introduce new regulatory rules (as evidenced by the low utilization of the Tripartite web-based reporting mechanism); lack of confidence between enforcement agencies in different countries within the EAC, due in part to poor adoption of EAC standards in domestic SPS controls; poor access to market information; lack of understanding and interpretation of the SPS standards and regulations; ineffective pest and disease management,³⁹ lack of surveillance data; absence of necessary phytosanitary documentation;⁴⁰ the presence of chemical residues and heavy metals;⁴¹ a lack of adequate transparency and notification of measures and procedures; an ineffective complaint redress system; political protectionism; limited use of the ePing system,⁴² and poor use of Equivalence Agreements and Mutual Recognition Agreements (MRAs).⁴³ These challenges are exacerbated by a lack of SPS coordination and weak diagnostic, surveillance, and conformity assessment capacities in both the regional and national SPS control systems.⁴⁴ Box 1 below highlights some of the instances of inconsistency with SPS standards within the EAC.

Box 1: Examples of Instances of Non-Compliance with SPS Standards Among EAC Partner States

Plant health interceptions records from EUROPHYT in 2018 include eighty-nine (89) interceptions from Kenya and Uganda each, with Rwanda at eight (8), Tanzania at fifty-one (51), and Burundi at one (1). These instances of non-compliance were mainly due to False Codling Moth (*Thaumatotibia leucotreta*), fruit flies (*Bactrocera dorsalis*), and African cotton leafworm (*Spodoptera littoralis*) detections. Exports to the European Union (EU) for some commodities such as curry leaves (*Murraya* spp) from Uganda have been banned because of repeat pest interceptions. EUROPHYT showed that poor documentation and lack of phytosanitary certification were significantly high in 2018 with Kenya having one hundred and fifteen (115) interceptions, Tanzania twenty-six (26), Uganda fifty-nine (59), Burundi eight (8), and Rwanda three (3).

The EU Rapid Alert System for Food and Feed (RASFF) portal lists food safety non-compliance incidences from Uganda in 2019 at thirty-two (32), mainly for *Salmonella* on sesame seeds and high pesticide residue levels on fruits and vegetables. Exported fruits and vegetables from Kenya were intercepted due to high pesticide residue levels, and fish meat exports from Tanzania for salmonella and histologic lesions in frozen Nile perch fillets.

³⁹ See, Land O'Lakes Venture37, "Trade of Agriculture Safely and Efficiently in East Africa (TRASE): Assessment of SPS Legal/ Regulatory Frameworks in the EAC Partner States," USDA [hereinafter Land O'Lakes], Available at: <https://storcpdkenticomedia.blob.core.windows.net/media/idd/media/lolorg/publications/assessment-of-sps-legal-systems-in-eac-partner-states-4th-june-2021.pdf>.

⁴⁰ See Land O'Lakes, *supra* note 39.

⁴¹ See, Land O'Lakes, *supra* note 39.

⁴² Notification alert systems ePing, a joint initiative of the UN, WTO and the International Trade Center, is a global online tool that enables private and public stakeholders to access, keep track, and react to notifications of new/revised SPS (and TBT) measures. See, www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/2016_eping_flyer_v4.pdf and www.epingalert.org/en.

⁴³ See, Land O'Lakes, *supra* note 39.

⁴⁴ *Id.*

There have been and continue to be various examples of food safety, animal, and plant health risks and challenges in the EAC countries. For instance, in 2017, Uganda had an outbreak of the Avian Influenza (HPAI) H5N8, which resulted in Rwanda and Kenya suspending all chicken imports from Uganda. Tanzania incinerated over 10,000 one-day old chicks that were imported from Kenya without proper documentation and veterinary checks to prevent the possible spread of the bird flu. The National Plant Protection Organizations (NPPOs) in the EAC were unable to detect, identify, or intercept the Fall Armyworm (FAW) at the border or in infested fields and did not have risk management systems in place to adequately respond to its emergence until later when it had already widely spread. Uganda banned live cattle and beef exports due to Bovine Spongiform Encephalopathy (BSE) safety concerns. Attempts in early 2018 by the EAC Sectoral Council on Trade, Industry, Finance, and Investment to solve the concern of Uganda's ban were futile, with the EAC Sectoral Council calling for further political goodwill. In 2023, South Sudan confiscated maize and maize flour shipments from Uganda without evidence based on allegations of contamination with aflatoxin, even when the Ugandan Bureau of Standards presented proof to the contrary.

2. SPS Measures in COMESA

Article 132(d) of the COMESA Treaty requires that COMESA Member States “harmonize their policies and regulations relating to SPS measures without impeding the export of crops, plants, seeds, livestock, livestock-products, fish, and fish-products.”⁴⁵ To facilitate coordination and cooperation efforts, in 2007 COMESA established the SPS Sub-committee under the Technical Committee on Agriculture, which is convened annually with the objective of implementing the decisions of COMESA's Council of Minister to formulate programs and effectively coordinate SPS matters at the regional level.⁴⁶ In December, 2009, the Council of Ministers also adopted the Regulations on the Application of Sanitary and Phytosanitary Measures (COMESA SPS Regulations).⁴⁷

The COMESA SPS Regulations also (i) establishes a SPS Unit to coordinate SPS issues in the region, (ii) creates a COMESA Green Pass recognizing Member States' SPS certification schemes, (iii) encourages member states to enter into Mutual Recognition Agreements (MRAS), (iv) provides for the creation of regional accreditation bodies and SPS reference laboratories, and (v) mandates Member States to mutually support and cooperate with each other on SPS issues, among other things.

⁴⁵ COMESA, Treaty Establishing COMESA. Available at: https://www.comesa.int/wp-content/uploads/2019/02/comesa-treaty-revised-20092012_with-zaire_final.pdf.

⁴⁶ COMESA, SPS Strategy 2016-2020. Available at: <https://www.comesa.int/wp-content/uploads/2020/10/SPS-Strategy-2016-2020-final.pdf>.

⁴⁷ COMESA, Regulations on the Application of Sanitary and Phytosanitary Measures, December 2009. Available at: https://www.comesa.int/wp-content/uploads/2020/10/COMESA_SPS_Regulations_16_12_2009-1.pdf.

The COMESA SPS Regulations are largely aligned with the WTO SPS Agreement, but there are a few areas of divergence from the WTO SPS Agreement. For instance, the interpretation of “international standards, guidelines, and recommendations” under the WTO SPS Agreement⁴⁸ specifically identifies international standards developed by Codex, OIE, and IPPC, with reference also to other organizations identified by the WTO SPS Committee.⁴⁹ In contrast, the Preamble of the COMESA SPS Regulations makes reference to “any other organization relevant to SPS matters,” redefining the scope of relevant international standards and calling into question the role of the WTO SPS Committee.⁵⁰ With regard to the precautionary principle, the COMESA SPS Regulations omit reference to use of relevant scientific evidence as provided for in the WTO SPS Agreement,⁵¹ instead referring to ‘sufficient scientific information,’⁵² which could undermine the rights and obligations of WTO Member States.⁵³

SPS Challenges in the COMESA Region

SPS challenges in COMESA are similar to those in the EAC, as all EAC Partner States share membership in COMESA (with the exception of Tanzania), and the nature of regional laws under these RECs requires domestication at the Member States level in order to adopt and make binding regional rules,⁵⁴ which is lagging with regard to SPS measures. In addition, food safety standards and regulations vary across the COMESA region and occasionally translate into trade barriers that contribute to high trading costs and/or trade disputes.⁵⁵ Cases have, for instance, included: (i) the disruption of the Zambia/Kenya milk trade due to microbiological criteria applied to the East African raw milk standard and (ii) high cost of trading due to unpredictable sampling and conformity assessment checks for fish traded across the Busia border (Kenya/ Uganda) and Luangwa border (Zambia, Malawi, Zimbabwe and Mozambique).⁵⁶

3. SPS Measures in SADC

The SADC Protocol on Trade requires that Member States base their practices on international standards, guidelines, and recommendations to harmonize SPS measures for agricultural and livestock production. Pursuant to this, SADC developed an SPS Annex VIII to SADC Protocol on

⁴⁸ WTO SPS Agreement, Annex A, *supra* note 4.

⁴⁹ *Id.*

⁵⁰ Magalhães, *supra* note 3.

⁵¹ WTO SPS Agreement, *supra* note 4, Article 5(7).

⁵² COMESA SPS Regulations, *supra* note 47, Article 5(1).

⁵³ *Id.*

⁵⁴ Kuhlmann 2022, *supra* note 1, at 20-21. See also Mwangi S. Kimenyi & Katrin Kuhlmann, “African Union: Challenges and Prospects for Regional Integration in Africa”, 7 *Whitehead Journal of Diplomacy and International Relations* 7, 7 (2012) and Katrin Kuhlmann, “Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment”, Syngenta Foundation for Sustainable Agriculture, (2015).

⁵⁵ COMESA, COMESA SPS Program Annual Report, 2018/9. Available at: <https://www.comesa.int/wp-content/uploads/2019/08/2019-Annual-Report-for-COMESA-SPS.docx>.

⁵⁶ *Id.*

Trade (SPS Annex) (revised in 2014).⁵⁷ This document lays out the framework for SPS in the SADC region setting out provisions on harmonization, equivalence, risk assessment, transparency, control, inspection, approval procedures, and technical assistance amongst other.⁵⁸

Notably, SADC Member States are also members of the WTO, meaning that the rights and obligations under the WTO SPS Agreement apply to them even without the more specific obligations in the SADC SPS Annex.⁵⁹ The SADC SPS Annex is largely aligned with the WTO SPS Agreement with, however, some noticeable discrepancies that could have the potential to limit Member States' obligations and rights. For instance, the provision on harmonization mandates that SADC Member States to consider "relevant international standards" in respect of the mandatory SPS requirements,⁶⁰ which is contrary to the WTO SPS Agreement, which encourages that members 'base their sanitary or phytosanitary measures on international standards, guidelines, and recommendations.'⁶¹

SPS Challenges in the SADC region

The challenges in implementing the SADC SPS Annex are similar to those noted in COMESA and EAC, and some countries in those RECs share membership with SADC (See Table 1). SPS challenges in the SADC region are, however, exacerbated by the non-binding nature of SADC rules, which are based on Memoranda of Understanding (MOUs) among SADC Member States, as compared to binding instruments in the EAC and other RECs.⁶²

Challenges include limited use of the ePing system, non-compliance of imported or transit consignments owing to documentation errors, such as absent or expired SPS certificates, incomplete declarations of consignment, or absence of valid required treatment certificates and presence of prohibited commodities.⁶³ In most SADC Member States, the regulatory agencies enforcing compliance with SPS issues are operating on manual systems, which hinders real-time data and information sharing to aid decision-making and constrains coordination and cooperation

⁵⁷ SADC, SPS Annex VIII to the SADC Protocol on Trade, Approved by the SADC Committee of Ministers of Trade on 17 July 2014, Gaborone, Botswana [hereinafter SADC SPS Annex]. Available at: https://www.sadc.int/sites/default/files/2021-12/SPS_Annex_to_the_SADC_Protocol_on_Trade_-_Approved_Version_-_17_July_2014_-_English.pdf.

⁵⁸ Id.

⁵⁹ Mbori, 2017, *supra* note 16.

⁶⁰ SADC SPS Annex, Article 6(1), *supra* note 57.

⁶¹ WTO SPS Agreement, Article 3(1), *supra* note 4.

⁶² Mwangi S. Kimenyi and Katrin Kuhlmann, "African Union: Challenges and Prospects for Regional Integration in Africa", 7 *Whitehead Journal of Diplomacy and International Relations* 7, 7 (2012) and Katrin Kuhlmann, "Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment", (Syngenta Foundation for Sustainable Agriculture, 2015).

⁶³ Food and Agriculture Organization, "Selected Border Assessment for Potential Sanitary and Phytosanitary Issues, Gaps and Other Challenges Affecting Trade in Agriculture Commodities in SADC Region", July 2021. Available at: <https://www.fao.org/3/cc4102en/cc4102en.pdf>. See also, Jennifer M. Rathebe, "The Implementation of SPS Measures to facilitate safe trade: Selected Practices and Experiences in Malawi, South Africa and Zambia.", STDF Available at: https://standardsfacility.org/sites/default/files/STDF_Rathebe_Report_Final_Nov2015.pdf.

among the national agencies.⁶⁴ Agencies enforcing compliance with SPS measures are also constrained by the limited alignment of procedures and technical standards.⁶⁵ Challenges in SADC highlight that issues such as a lack of trust among regulators of Member States further constrain enforcement of SPS measures.⁶⁶

4. SPS Measures in ECOWAS

Article 25 of the ECOWAS Revised Treaty⁶⁷ mentions cooperation between Member States to develop, promote integration, and adopt (i) plant and animal protection; (ii) the harmonization of agricultural development strategies and policies, particularly pricing and price support policies on the production, trade, and marketing of major agricultural products and inputs; and (iii) a common agricultural policy. It is against this background that, in 2010, ECOWAS adopted Harmonized Regulation C/REG.21/11/10 related to the structural and operational rules for plant health, animal health, and food safety in the ECOWAS region (ECOWAS SPS Regulation).⁶⁸ The ECOWAS SPS Regulation is significantly different from the WTO SPS Agreement, which affects the nature and obligations of ECOWAS Member States, especially considering that ECOWAS regional rules are binding legal instruments on Member States and are not only to be used as guiding instruments.

For instance, some definitions are missing from the ECOWAS SPS Regulation, while others are reduced in scope compared to the WTO SPS Agreement. The ECOWAS SPS Regulation, for instance, does not define “animal health,” “food safety,” or “zoonoses,” and, while it defines a “free zone” with regard to animal health through a reference to the OIE guidelines and recommendations, it does not define an area of low pest or disease prevalence, nor does it define a pest-free area. The language used in Article 5(a) of the ECOWAS SPS Regulation with regard to application of international standards is broad in scope, making a reference to standards under the WTO SPS Agreement and WTO Agreement on Technical Barriers to Trade (TBT Agreement),⁶⁹ which, while perhaps intended to reference provisions on international standards under these agreements, could cause confusion due to its wording.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ SADC, “Cross Border Road Transport Agency Report, March”, 2021. Available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2F210317C-BRTA_-_Presentation_to_Parliament_Select_Committee_17_MARCH_2021_Updated.pptx&wdOrigin=BROWSELINK.

⁶⁷ ECOWAS, “Revised Treaty, ECOWAS Commission,” 2010. Available at: <https://ecowas.int/wp-content/uploads/2022/08/Revised-treaty-1.pdf>.

⁶⁸ ECOWAS, “Harmonization of the Structural Framework and Operational Rules Pertaining to the Health Safety of Plants, Animals and Foods in The ECOWAS Region”. Available at http://legaldocs.ecowas.int/_lang/en/doc/_iri/akn/ecowas/statement/regulation/2010-11-26/C_REG.21_11_10/eng@/!main.

⁶⁹ Agreement on Technical Barriers to Trade, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120 [hereinafter TBT Agreement].

Nonetheless, ECOWAS' efforts to reinforce regional SPS measures is continuous, and in March 2023, the ECOWAS Commission, with the support of the United States Department of Agriculture (USDA) and United States Agency for International Development (USAID), adopted the West Africa and Sahel Harmonized Phytosanitary and Inspection and Decision-Making Guide,⁷⁰ which has been used to facilitate trainings for NPPOs.⁷¹

SPS Challenges in the ECOWAS Region

There are significant SPS challenges in the ECOWAS region due to limited knowledge and awareness about SPS issues, absence of SPS legislation in some countries, limited communication and information sharing among Member States, and limited use of the ePing system to make and receive notifications.⁷² There is also reluctance among national regulators to enforce SPS measures. For example, relatively low-cost test kits for aflatoxin in soil and maize are not available in some countries, most borders lack meters to measure moisture levels which fuels aflatoxin risks, and national laboratories generally suffer from some combination of poor infrastructure, insufficient equipment, and duplication of effort between laboratories.⁷³ National policies are usually not aligned with ECOWAS rules, and, even where there is alignment, implementation is hampered by political protectionism⁷⁴ and insecurity and is generally lacking.⁷⁵

⁷⁰ ECOWAS, "West Africa and Sahel Harmonised Phytosanitary and Inspection and Decision-Making Guide," ECOWAS, (2021) Available at: <https://ecowap.ecowas.int/see-document/337>.

⁷¹ ECOWAS Implemented Sanitary and Phytosanitary Activities During the Period of March - June 2022, G/SPS/GEN/2019. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2019.pdf&Open=True>.

⁷² Gbemenou Joselin Benoit Gnonlonfin, "ECOWAS Regional Coordination and Status on Application of the Transparency Provison of the WTO SPS Agreement," Thematic Session on Transparency, 16th July, 2019. WTO, Centre William Rappard, Geneva. Available at: https://www.wto.org/english/tratop_e/sps_e/workshop15072019_e/d2_s7_ecowas_e.pdf.

⁷³ Olaf Kula and William Vu, "Evaluation of Sanitary and Phytosanitary Trade Policy Constraints within the Maize and Livestock Value Chains in West Africa: Nigeria, Ghana, Côte D'ivoire, Burkina Faso & Mali," USAID/E3's Leveraging Economic Opportunities (LEO) project, 2016. Available at: https://www.marketlinks.org/sites/default/files/resource/files/Report_No_37_-_Evaluation_of_Trade_Policy_Constraints_in_West_Africa_fu_.pdf.

⁷⁴ Id.

⁷⁵ Katrin Kuhlmann, Yuan Zhou, Adron Nalinya Naggayi, and Heather Lui, "Seed Policy Harmonization in ECOWAS: The Case of Nigeria," Syngenta Foundation for Sustainable Agriculture Working Paper, December 2018. Available at: https://www.newmarketslab.org/_files/ugd/095963_f267ca4ee1734aa7b00c43f07a034075.pdf.

II. USE OF GRPS FOR SPS MEASURES AT THE REGIONAL LEVEL

The STDF GRP Guide highlights key GRP mechanisms to be considered by policymakers and other stakeholders involved in the process of development or review of SPS measures or tools in order to ensure that SPS measures are of quality; aligned with international standards under Codex, IPPC, and OIE; and effective in facilitating trade.⁷⁶ At the African regional and continental levels, the development of SPS measures in alignment with the SPS GRP mechanisms would ensure effective and efficient SPS systems based on international standards and alignment with the WTO SPS Agreement in terms of appropriate and least-trade restrictive trade measure that avoid unnecessary barriers to trade and mitigate costs. Such SPS measures based on GRP mechanisms should be developed with the consideration of critical factors such as trade, economics, health, social factors, and gender, enabling RECs' Member States to provide effective responses to SPS issues.

Transparency, information sharing, and continuous dialogue based on SPS GRP mechanisms would improve trust among REC Member State governments, enhance regional SPS cooperation to address SPS risks, improve confidence among private sector trading partners and investors, and encourage greater public/private sector cooperation that is critical in identifying emerging SPS issues, regulatory implementation challenges, and opportunities.⁷⁷ Regional strategic and institutionalized stock-taking of SPS measures could help the RECs better tailor their technical support to Member States, leverage successes in applying GRP mechanisms in the region to the benefit of additional countries, reduce administrative and regulatory burdens, and foster a better understanding of compliant SPS measures.

This next section discusses alignment in EAC, COMESA, SADC, and ECOWAS with the six GRP mechanisms discussed in the STDF GRP Guide, based on the scope, range, and quality of GRP mechanisms used by RECS and the tailored flexibilities they apply in their application.⁷⁸ Some GRP mechanisms such as transparency and cooperation are reflected in and align with obligations and international commitments under the WTO SPS Agreement and SPS-related international commitments and obligations,⁷⁹ which means the RECs and domestic governments are mandated to include them in their regulatory SPS measures and regional implementation. These GRPs should be given priority.⁸⁰ Other GRP mechanisms could simply take the form of initiatives that are institutionalized at the regional level, resulting in either binding obligations or guiding frameworks

⁷⁶ STDF 2021, *supra* note 6.

⁷⁷ *Id.*

⁷⁸ For a discussion of fit-for-purpose regulatory flexibility, see Katrin Kuhlmann, "Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development", *African Journal of International Economic Law* 2 (2021) 48. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3912907. and Katrin Kuhlmann and Bhramar Dey, "Using Regulatory Flexibility to Address Market Informality in Seed Systems: A Global Study", (2023) 11 *Agronomy* 1, 14. Available at: <https://www.mdpi.com/2073-4395/11/2/377>.

⁷⁹ STDF 2021, *supra* note 6.

⁸⁰ *Id.*

for RECs' Member States, depending on the nature of the instrument.⁸¹ These could include administrative simplification, trade facilitation, legal streamlining, or clear SPS GRP policies and guidelines.⁸² This analysis recognizes that there is no one-size-fits-all approach to implementation of GRP at the regional level, and thus GRP mechanisms used by the RECs could differ as long as they are in place. There are various initiatives among the focus RECs that are aligned with the SPS GRP mechanisms, but a number of significant gaps remain, contributing to challenges in implementation of SPS measures, as illustrated in some of the examples noted in this review.

a) Stocktaking of Regional SPS Measures

The first SPS GRP mechanism is stocktaking of existing SPS measures. For RECS, such stock taking should encompass all SPS measures in the region, including those of Member States and relevant RECs. A stocktaking that compares measures across the RECs would also be invaluable, particularly as implementation of the AfCFTA moves forward. Taking stock of existing SPS measures would help RECs ensure that regional and domestic SPS frameworks remain relevant and effective in management of emerging SPS issues, taking into account emerging trends like new technologies and remaining compliant with international SPS-related obligations, including new standards.⁸³ It could also help reduce inconsistencies, gaps, and overlaps in existing SPS measures at the national and regional levels and assist RECs with pinpointing where technical support could best be focused to align with regional and international standards and facilitate regional trade by extension.

Taking stock of SPS measures can be done through a regulatory mapping process of identifying all relevant regulations, practices, procedures, and processes applicable in an area; the responsible SPS institutional framework; and any existing regulatory and implementation gaps, challenges, and conflicts.⁸⁴ The mapping process can focus on an SPS area, such as animal health, plant health, or food safety, or it could be focused on a particular issue within the general area, such as SPS regulatory approaches on aflatoxin.⁸⁵ Stocktaking of RECs' SPS measures should be benchmarked against the international standards (Codex, IPPC, and OIE) and other relevant regional and

⁸¹ Id.

⁸² See for instance "The ASEAN Good Regulatory Practice (GRP) Core Principles, adopted by the AEM at the 50th AEM Meeting and endorsed by the AEC Council", in November 2018 [hereinafter ASEAN 2018]. Available at: <https://asean.org/wp-content/uploads/2020/12/Adopted-ASEAN-Good-Regulatory-Practice-GRP-Core-Principles.pdf>.

⁸³ Id.

⁸⁴ Id. For more detailed mapping of regulatory and implementation gaps, challenges, and conflicts, see New Markets Lab Regulatory Systems Maps (www.newmarketslab.org), as described in Katrin Kuhlmann et al., "Development and Comparison of Seed Regulatory Systems Maps in Ethiopia," USAID 2022 A Feed the Future Supporting Seed Systems for Development activity report, available at https://pdf.usaid.gov/pdf_docs/PA00ZJ3Z.pdf and New Markets Lab with the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) Centre Ltd. For the Alliance for a Green Revolution in Africa (AGRA) and USAID (Kuhlmann et al.), "Legal Guide to Strengthen Tanzania's Seed Input Market," April 2016.

⁸⁵ ASEAN 2018, *supra* note 82.

continental standards.⁸⁶ Transparency and continuous stakeholder engagement will be key in the stocktaking process.⁸⁷ International standards setting bodies have developed some tools relevant to stocktaking,⁸⁸ which could be used in the assessment of SPS legislation, regulations, and institutions.

1. EAC SPS Stocktaking Mechanisms

The EAC does not have specific tools for stocktaking of regional or Partner States' SPS measures, and it does not provide a framework to be followed in taking stock of SPS measures. The EAC, however, does take stock of the existing regional SPS-related regulatory frameworks and mechanisms prior to development or review of any regional SPS measure. For instance, in 2014, 2018, and 2019, the EAC Secretariat conducted regional pest risk analyses with the objectives of reviewing Partner States' national pest lists for rice, beans, and maize, respectively, developed a harmonized EAC pest list for these crops, and developed phytosanitary import conditions for maize to be applied within the EAC. From this analysis, the regional quarantine list for these crops was harmonized, as were phytosanitary import conditions for the same.⁸⁹

Stocktaking of SPS measures is not only done by the EAC when developing new regional SPS measures, but it also occurs when assessing how existing measures are being implemented by Partner States. For instance, in February and March of 2020, the EAC Secretariat convened national stock-taking workshops,⁹⁰ which focused on assessment of Partner States' efforts towards

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ The OIE Tool for the Evaluation of Performance of Veterinary Services (OIE PVS) includes a Veterinary Legislation Support Programme to provide countries with the opportunity to have legislation in the veterinary domain systematically reviewed, with identification of gaps and weaknesses and guidelines for developing new legislation. See World Organization for Animal Health, Performance of Veterinary Services Pathway (PVS), available at <https://www.woah.org/en/what-we-offer/improving-veterinary-services/pvs-pathway/>. The IPPC Phytosanitary Capacity Evaluation (PCE) tool includes a module on legislation. See, WTO, Phytosanitary Capacity Evaluation, available at <https://www.ippc.int/en/pce/>. There is also the FAO/WHO Food Control System Assessment Tool, which includes attention to the quality of policy and legislation drafting processes, available at www.fao.org/3/ca5334en/CA5334EN.pdf and www.who.int/publications/i/item/9789241515719.

⁸⁹ EAC, "Pest Risk Analysis (PRA) for Grain and Seed of Beans, *Phaseolus vulgaris* L. within East African Countries (Kenya, Burundi, Rwanda, Tanzania and Uganda): A Qualitative, Pathway-Initiated Risk Analysis" 2019. Available at: <http://repository.eac.int/handle/11671/24138>. See also, EAC, "Pest Risk Analysis (PRA) for Maize (*Zea Mays* L.) within East African Countries (Kenya, Burundi, Rwanda, Tanzania and Uganda): A Qualitative, Pathway-Initiated Risk Analysis, 2019) EAC." Available at: <http://repository.eac.int/handle/11671/24137>, and EAC, "Pest Risk Analysis (PRA) for grain and seed of Rice, (*Oryza sativa* L.) within East African Countries: A Qualitative, Pathway-Initiated Risk Analysis, 2019." Available at: <http://repository.eac.int/handle/11671/24139> <http://repository.eac.int/handle/11671/24139>.

⁹⁰ EAC, "Agriculture and Food Security Department, Policy Brief", Agriculture and Food Security Programmes September 2020. Available at: <http://repository.eac.int/bitstream/handle/11671/24140/Agriculture%20and%20Food%20Security%20Department%20202.pdf?sequence=1&isAllowed=y>.

implementation of the EAC 2018 Aflatoxin Prevention and Control Strategy.⁹¹ From this stocktaking, the EAC Secretariat found that Partner States had allocated funding for aflatoxin mitigation and invested in capacity building, research and development, manufacturing, and distribution of technologies for aflatoxin prevention and control and increased communication and awareness efforts.⁹²

2. COMESA SPS Stocktaking Mechanisms

While there are no specific SPS stocktaking tools and mechanisms under COMESA, COMESA has supported its Member States in reviewing and strengthening their SPS regulatory frameworks. COMESA supported the review of phytosanitary and food legislation in Madagascar, aquaculture and fisheries legislation in Rwanda, and phytosanitary legislation in Kenya (ongoing), Eswatini, Zambia, and Malawi.⁹³ COMESA, with development partners, also maintained a project to review the SPS policy and legislation in Seychelles in 2018/19 and supported Comoros with the review of its food hygiene and plant pesticide legislation and development of a national SPS strategy.⁹⁴

COMESA's Breaking Barriers project supported analysis of costs associated with SPS measures on specific trade flows between the following countries: (i) Kenya/Uganda, (ii) Kenya/Tanzania (iii) Zambia/Malawi, (iv) Egypt/Sudan, and (v) Zambia/Zimbabwe. Country teams were facilitated by COMESA to conduct border assessments at selected border crossings, assess direct and hidden SPS costs, and establish mechanisms to improve the efficiency of SPS measures in overall border management.⁹⁵ COMESA is also using the STDF's Prioritizing SPS Investments for Market Access (P-IMA) framework⁹⁶ as a planning and sector-wide resource mobilization tool and encourages its Member States to use P-IMA to take stock of SPS capacity needs, prioritize and cost investment options with the best returns, and integrate SPS investments into national investment frameworks.⁹⁷

⁹¹ EAC, "Harmonization and Strengthening of Aflatoxin Standards Regulation for Human Food and Food Products to Promote Public Health," EAC Policy Brief on Aflatoxin Prevention and Control | Policy Brief No. 3, 2018. Available at: <http://hdl.handle.net/11671/24112>.

⁹² EAC, "High Level Stock-Taking Meetings on Implementation of the EAC Regional Strategy and Action Plan on Aflatoxin Prevention and Control: Summary of Findings," 2020. Available at: <http://hdl.handle.net/11671/24119>.

⁹³ COMESA, "COMESA Sanitary and Phytosanitary Programme (SPS) Annual Report 2018/9," Available at: <https://www.comesa.int/wp-content/uploads/2019/08/2019-Annual-Report-for-COMESA-SPS.docx>. See also, COMESA, Annual Report, 2020. Available at: <https://www.comesa.int/wp-content/uploads/2021/10/COMESA-Annual-Report-2020-English.pdf>.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Prioritizing SPS Investments for Market Access (P-IMA). Available at: <https://standardsfacility.org/prioritizing-sps-investments-market-access-p-ima>.

⁹⁷ COMESA, "New SPS Project to Increase Market Access of Agricultural Products." Available at: <https://www.comesa.int/new-project-to-increase-market-access-to-regional-products/>.

3. SADC SPS Stocktaking Mechanisms

SADC has some tools to enable Member States take stock of their SPS measures and continues to provide them technical support in the process, and SADC has some measures to take stock and review regional SPS mechanisms as well. For instance, under the SADC- EU Trade Facilitation Program, the SADC Secretariat is currently supporting the investigation of standards and conducting of conformity assessment needs along key SADC economic corridors (notably this includes work on fisheries and aquaculture related standards and regulations).⁹⁸

SADC has also supported the development of tools to track the implementation of regional SPS measures under the Support Towards the Operationalization of the SADC Regional Agricultural Policy (STOSAR) project.⁹⁹ In 2022, under the project, the SADC Agricultural Information Management System (AIMS) was launched to provide early warning of imminent disasters, assess vulnerabilities, monitor patterns, and provide an integrated database for use in food security planning for the SADC region.¹⁰⁰ AIMS ensures that policymakers access valid data, critical to the development of sound, evidence-based, and need-driven policies, including on SPS, and use that information to inform the development and review of their SPS measures.¹⁰¹ SADC works to ensure that Member States frequently update the AIMS modules, and information is disseminated through the built-in analytics engine in the AIMS platform. Under the project, SADC also supported a comprehensive review of new transboundary plant pests threatening the cropping sector in the region, and pest lists were developed for priority tradeable commodities for eight SADC Member States (Angola, Botswana, Democratic Republic of Congo, Malawi, Namibia, Seychelles, the United Republic of Tanzania, and Zambia).¹⁰² SADC also conducted an assessment of the region’s plant health laboratories to establish their readiness for accreditation.¹⁰³

Regional alignment in SPS implementation is reviewed annually through the SPS Coordinating Committee, which is comprised of the Livestock, Plant Protection, and Food Safety Technical Committees.¹⁰⁴ This body has, however, not met physically in the last four years due, in part, to travel restrictions imposed by the COVID-19 pandemic and funding constraints.¹⁰⁵

⁹⁸ FAO, “Support Towards the Operationalization of the SADC Regional Agricultural Policy (STOSAR) bulletin,” December 2022. Available at: <https://aims.sadc.int/sites/default/files/2023-02/STOSAR%20Bulletin%202nd%20Edition-compressed.pdf>.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ WTO, Committee on Sanitary and Phytosanitary Measures, “SADC Secretariat Report on SPS Activities,” G/SPS/GEN/2128, 13 June 2023. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2128.pdf&Open=True>.

¹⁰⁵ Id.

4. ECOWAS SPS Stocktaking Mechanisms

ECOWAS does not yet have tools to take stock of Member Countries' SPS measures, but it has previously initiated programs for countries to provide the status of their SPS measures. For instance, in July of 2022, ECOWAS, in partnership with USDA and USAID, organized a Regional Meeting on Food Safety Regulation Convergence in Abidjan, Côte d'Ivoire, where ECOWAS countries gave an update on the status of national Codex structures, discussed a Mechanism for Convergence of Food Regulatory Measures amongst Countries of ECOWAS, reviewed and updated the statutes of the network of food safety actors of West Africa, and adopted terms of reference for the Food Regulatory Harmonization Committee (FoRHC), an action plan for the implementation of the FoRHC, and statutes of the Network of Food Safety Actors of West Africa.¹⁰⁶

ECOWAS also created the West Africa NPPOs and Partners' Taskforce, which meets annually to review West Africa and Sahel NPPO priorities and discuss major plant health and SPS trade issues.¹⁰⁷

b) Forward-Looking Regulatory Agendas within RECS

Having a forward-looking regulatory agenda is the second GRP mechanism under the STDF GRP practical guide. At the regional level within the RECs, a forward-looking regulatory agenda could take the form of an SPS policy, strategy, or plan that addresses the region's short-, medium-, and long-term SPS priorities. This agenda could improve the RECs' planning, ensure allocation of resources to where they are most needed, and align new or revised measures with broader regional policy initiatives.¹⁰⁸ It could also improve coordination among REC member improve countries, cooperation with other RECs and international SPS-focused organization, and enhance transparency and predictability of actions by SPS regulators at both the national and regional levels.

A forward-looking SPS agenda within the RECs could cover all SPS measures; focus in a particular area, such as food safety, or animal and plant health; or cover a particular threat, as needed.¹⁰⁹ It is important that a forward-looking agenda is created for a defined period, describes the SPS risk or challenge, justifies the targeted priorities, and provides future response actions.¹¹⁰ It should also identify responsible national and regional agencies and how they are to coordinate on SPS issues,

¹⁰⁶ FAO, "Summary Report of West Africa and SAHEL Food Safety Convergence Meeting", (2022),. Available at: <https://www.fao.org/fao-who-codexalimentarius/news-and-events/news-details/en/c/1600668/>.

¹⁰⁷ WTO, "ECOWAS Implemented Sanitary and Phytosanitary Activities During the Period of November 2022 – February 2023," Communication From ECOWAS-USAID Senior Sanitary and Phytosanitary Standards Advisor, G/SPS/GEN/2096 (2023). Available at: <https://docs.wto.org/imrd/directdoc.asp?DDFDocuments/q/G/SPS/GEN2096.pdf>.

¹⁰⁸ STDF 2021, *supra* note 6.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

as well as highlight how the set priorities fit within broader regional frameworks, including cross-sectoral synergies in agriculture, health, trade and/or environment.¹¹¹ To ensure transparency, stakeholder engagement and consultation should be done during development and implementation of the agenda as well as during its implementation, and the agenda must be widely accessible and available, preferably online.

1. EAC Forward-Looking Regulatory Agenda

The EAC does not have a forward-looking SPS agenda, and its short-, medium-, and long-term SPS priorities are contained in various instruments, with the major one being the Agriculture and Rural Development Policy and Strategy (2005–2030).¹¹² Under the Strategy, the EAC has the SPS priorities of strengthening capacity for inspection and surveillance of transboundary pests and diseases, promoting joint control measures, promoting liaison with international organizations, developing modalities for establishment and maintenance of pest and disease-free zones, harmonizing SPS policies, legislation, and standards, and harmonizing regional referral laboratory standards.¹¹³ Notably, the strategy does not highlight any specific SPS priorities on food safety.

Currently, the EAC has two up-to-date SPS-specific strategies on the Control of Transboundary Animal Diseases and Zoonoses, (2020-2024)¹¹⁴ and the Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework (2018-2024).¹¹⁵ Other instruments that mention an SPS-related forward-looking agenda include the Fruits and Vegetables Value Chain Strategy and Action Plan 2021-2031,¹¹⁶ the Export Promotion Strategy (2020-2025),¹¹⁷ the Regional Agricultural

¹¹¹ Id.

¹¹² East African Community, Agriculture and Rural Development Policy and Strategy for the East African Community (2005–2030). Available at: <http://repository.eac.int/bitstream/handle/11671/338/Agriculture%20and%20Rural%20Development%20Strategy.pdf?sequence=1&isAllowed=y>.

¹¹³ Clause 5.14 of the Agriculture and Rural Development Policy and Strategy for the East African Community (2005–2030).

¹¹⁴ The EAC, “Strategy for the Control of Transboundary Animal Diseases and Zoonoses,” (2020-2024). Available at: <http://repository.eac.int/bitstream/handle/11671/24348/EAC%20TADs%20and%20Zoonoses%20%20Strategy%202020.pdf?sequence=1&isAllowed=y>.

¹¹⁵ EAC, EAC Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework, (EAC/CM/36/Decision18) 2018-2023.

¹¹⁶ EAC, Fruits and Vegetables Value Chain Strategy and Action Plan 2021-2031, Available at: <http://repository.eac.int/bitstream/handle/11671/24347/EAC%20Fruits%20and%20Vegetables%20Value%20Chain%20Strategy%20and%20Action%20Plan%202021-2031.pdf?sequence=1&isAllowed=y>.

¹¹⁷ EAC, Export Promotion Strategy 2020-2025 Adopted 31st May 2019. Available at: <http://repository.eac.int/bitstream/handle/11671/24472/EAC%20EXPORT%20PROMOTION%20STRATEGY%20-%20Adopted%2031%20May%202019%20%281%29.pdf?sequence=1&isAllowed=y>.

Investment Plan (RAIP) 2018-2025,¹¹⁸ and the African Growth and Opportunity Act Strategy 2015-2025.¹¹⁹

2. COMESA Forward-Looking Regulatory Agenda

COMESA's Medium Term Strategic Plan 2021-2025 includes priorities with regard to SPS measures.¹²⁰ These include short-, medium-, and long-term strategies for creating effective, risk-based, harmonized SPS measures, including supporting improved border management, facilitating implementation of SPS e-certificates and Single Window Systems, coordinating simplified and harmonized SPS/TBT verification/conformity assessment procedures, and re-engineering the COMESA Reference and Satellite Laboratories Model.

COMESA has also focused on upgrading the regional measurements infrastructure; strengthening regional conformity assessment systems; supporting national laboratory requirements for accreditation assessments; strengthening NPPOs with respect to designing early warning and emergency response systems for plant health and food safety, including creation of a regional networking platform for sharing information on risks to human health and plant health arising from trans-boundary pests and diseases; establishing an accreditation Mutual Recognition Arrangement in COMESA, leveraging existing capabilities in different geographical regions; and capacity building for an extensive pool of accreditation lead assessors/auditors, technical assessors/auditors, and women and youth farmers in COMESA Member States.¹²¹

COMESA developed an SPS strategy for the period 2016-2020, with medium-term SPS priorities,¹²² but this SPS Strategy is yet to be updated. The SPS Strategy prioritized four SPS objectives: capacity building for the public and private sectors; improved regional leadership, coordination, and collaboration on SPS issues; reduced trading costs associated with SPS measures; and prioritization of SPS risk management.¹²³ COMESA reported that many of these priorities had been advanced by the end of 2020.¹²⁴ A number of these priorities appear to align with GRPs and would benefit from deeper assessment.

¹¹⁸ East African Community, Regional Agricultural Investment Plan (RAIP) 2018 ~ 2025, January 2019. Available at: <http://repository.eac.int/bitstream/handle/11671/24121/EAC%20Regional%20Agriculture%20Investment%20Plan.pdf?sequence=1&isAllowed=y>.

¹¹⁹ EAC, African Growth and Opportunity Act Strategy 2015-2025. Available at: <http://repository.eac.int/handle/11671/24476>.

¹²⁰ COMESA, COMESA Medium Term Strategic Plan 2021-2025, available at: https://www.comesa.int/wp-content/uploads/2022/03/4Final-MTSP-2021-2025-English-Reviewed-2_feb.pdf.

¹²¹ Id.

¹²² COMESA, "SPS Strategy 2016-2020," available at: <https://www.comesa.int/wp-content/uploads/2020/10/SPS-Strategy-2016-2020-final.pdf>.

¹²³ Id, Clauses 3.2.1-3.2.4.

¹²⁴ COMESA, "Annual Report," 2020. Available at: <https://www.comesa.int/wp-content/uploads/2021/10/COMESA-Annual-Report-2020-English.pdf>.

3. SADC Forward-Looking Regulatory Agenda

There is no specific SPS policy instrument under SADC. There is, however, a SADC Regional Indicative Strategic Development Plan (RISDP) 2020–2030,¹²⁵ which mentions focus on regional compliance in SPS implementation and calls for an annual review of regional SPS measures through the SPS Coordinating Committee, which is comprised of the Livestock, Plant Protection, and Food Safety Technical Committees.

4. ECOWAS Forward-Looking Regulatory Agenda

ECOWAS does not have a specific SPS Policy instrument. The agricultural policy in ECOWAS mentions a regional focus on SPS issues in passing, with no particular SPS priorities identified.

c) Regulatory Impact Assessments (RIAs)

Conducting an RIA is the third GRP mechanism highlighted under the STDG GRP Guide. An RIA is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory options based on robust quantitative and qualitative analysis.¹²⁶ At the regional level, RECs can use RIAs to examine SPS options that achieve the desired outcomes based on robust quantitative and qualitative analysis, while avoiding unnecessary barriers to trade. RIAs can be used either before developing SPS measures to inform their design or after SPS measures are in place to assess their effectiveness. At the regional level, the RECs can use RIAs to determine whether a certain measure is needed to address an SPS challenge, design cost-efficient measures, ensure that policy decisions are made based on best available evidence, and tailor technical support to Member Countries.¹²⁷

None of the focus RECs has specific guidelines, measures, or tools on conducting RIAs. The EAC is in the practice of conducting economic and regulatory impact assessments prior to development of SPS measures, involving stakeholder consultations. For instance, in 2019, the EAC, with support from the Alliance for a Green Revolution in Africa, commissioned an economic and regulatory impact assessment of the EAC Seed Bill and Fertilizer Bill and Policy, which, among other things, addressed regional phytosanitary issues.¹²⁸ These RIAs by the EAC are, however, not based on systemic RIA guidelines or tools, nor are they regularly published.

¹²⁵ Southern African Development Community (SADC) Regional Indicative Strategic Development Plan (RISDP) 2020–2030, Gaborone, Botswana, 2020.

¹²⁶ STDF 2021, *supra* note 6.

¹²⁷ *Id.*

¹²⁸ EAC Secretariat, EAC Partner State validate Draft EAC Fertilizer Policy and Draft EAC Fertilizer Bill, 15 November 2019, available at: <https://www.eac.int/press-releases/141-agriculture-food-security/1622-eac-partner->

Some of the countries in the focus RECs have embedded RIA requirements in their laws or have guidelines RIA in place, and lessons could also be drawn from these national level case studies for a broader approach on RIAs at the regional level. For example, Kenya has a law that requires RIAs in all its legislative processes,¹²⁹ and Uganda and Tunisia¹³⁰ have RIA guidelines.¹³¹

d) Monitoring and Evaluation

Monitoring and evaluation is the fourth SPS GRP mechanism discussed in the STDF GRP Guide. Monitoring and evaluation mechanisms continuously track the implementation and performance of SPS measures, periodically assessing their effectiveness and efficiency, with adjustments made as needed.¹³² For RECs, having effective monitoring and evaluation mechanisms could help identify any unintended or unforeseen impacts of regional SPS measures and support observation of Member States' use of international SPS standards when standards change. The GRP practical guide recommends, for quality assurance and transparency, that monitoring and evaluation processes should be done by an external body or agency, with robust stakeholder engagement. The monitoring and evaluation mechanisms should identify the objectives of what is to be monitored and evaluated, define monitoring and evaluation indicators, identify methodologies to be used, and include available and needed data.¹³³

While none of the RECs has general SPS GRP guiding framework on monitoring and evaluation of SPS measures, there are a few instances in which the RECs have integrated this GRP mechanism into their regional SPS regulatory instruments, as discussed below.

1. EAC Monitoring and Evaluation Mechanisms

The EAC's SPS-related forward-looking instruments provide for monitoring and evaluation of the region's SPS measures. For instance, the EAC Agriculture and Rural Development Policy and Strategy (2005–2030),¹³⁴ which incorporates the region's SPS priorities, creates the Community Progress Review Team under the EAC Secretariat to undertake monitoring and evaluation of the

state-validate-draft-eac-fertilizer-policy-and-draft-eac-fertilizer-bill. New Markets Lab, "Economic Impact Assessment and Legal Review and Analysis of the East African Community Seed and Fertilizer Regulation," 2019, prepared for the East Africa Community Secretariat under the Partnership Toward Catalyzing the Implementation of CAADP-Malabo 2017–2020 (with Emerge Centre for Innovations-Africa).

¹²⁹ The Statute Law Act (as amended), 2015, Part III.

¹³⁰ Prime ministerial circular N. 14 of May 27, 2011.

¹³¹ Office of The President, A Guide to Regulatory Impact Assessment issued by the Cabinet Secretariat. Available at: <http://www.mwe.go.ug/sites/default/files/library/Uganda-Guide-to-RIA-Cabinet-Office-Undated%20%281%29.pdf>.

¹³² STDF 2021, *supra* note 6.

¹³³ *Id.*

¹³⁴ East African Community, Agriculture and Rural Development Policy and Strategy for the East African Community (2005–2030), available at: <http://repository.eac.int/bitstream/handle/11671/338/Agriculture%20and%20Rural%20Development%20Strategy.pdf?sequence=1&isAllowed=y>.

Strategy, with reports to be submitted semi-annually. It is, however, unclear whether this team exists in practice or whether it has made any evaluation of EAC SPS measures.

Commendably, in the two SPS-issue specific strategies under the EAC, namely the Strategy for the Control of Transboundary Animal Diseases and Zoonoses and the Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework referenced above, there are clear monitoring and evaluation mechanisms. Clause 10 of the Strategy for the Control of Transboundary Animal Diseases and Zoonoses describes the monitoring and evaluation plan, clearly stating its goals, objectives, output and outcomes; outlining a methodology and a framework and accomplishment matrix; and describing alignment of the plan with the CAADP Results Framework. The box below shows an excerpt of the monitoring and evaluation provisions under the EAC's Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework.

Box 2: Monitoring and Evaluation Provisions Under the EAC's Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework.¹³⁵

7.5.1 Monitoring of the Strategy

The monitoring of the Aflatoxin Control Strategy will comprise continuous and systematic collection and analysis of information (data), in order to inform the Secretariat and key stakeholders the extent to which progress against stated goals and objectives has been achieved. Baseline surveys (field, market, farmer stores, aggregation points, millers etc.) will be conducted, first at the endorsement of the Strategy to provide baseline data and periodically (at least two-year period) to support impact evaluation.

7.5.2 Evaluation of the Strategy

The evaluation of the EAC Aflatoxin Control Strategy will entail planned and periodic assessment of results in key areas (e.g., appropriateness, effectiveness, efficiency, impact and sustainability).

The evaluation will build on the monitoring process by identifying the level of short to medium-term outcomes and longer-term impacts achieved; the intended and unintended effects of these achievements; and approaches that worked well and those that did not work well; identifying the reasons for success or failure and learning from both.

Main evaluations that will be carried out in the course of implementation of the EAC Strategy on Aflatoxin prevention and Control will include (i) Baseline Evaluation and (ii) One Mid Term Evaluation and (iii) Final evaluation at the end of the strategy implementation process.

¹³⁵ Id., Clause 7.5.

2. COMESA Monitoring and Evaluation Mechanisms

COMESA had an elaborate monitoring and evaluation mechanism in its SPS Strategy, but the Strategy expired in 2020, and a new one is yet to be put in place. Although there are no SPS monitoring and evaluation guidelines under COMESA, the COMESA SPS Regulations establish the SPS Committee as the regional monitoring and evaluation enforcement body, with a mandate of maintaining review of any program developed under the SPS Regulations.¹³⁶ The COMESA Seed Trade Harmonization Regulations also mandate that COMESA NPPOs facilitate technical review of phytosanitary measures and their impact on seed movement in the region.¹³⁷ This SPS GRP is aligned with requirement 6.1 under the International Standards for Phytosanitary Measures (ISPM) No. 7 that mandates that NPPOs periodically review the effectiveness of all aspects of export phytosanitary certification systems and implement changes to the system if required.

3. SADC Monitoring and Evaluation Mechanisms

The SADC Guidelines on Regulation of Food Safety include as an essential element of a food management system that a food safety management system has mechanisms in place to continuously update, review, and analyze information on SPS. The SADC Regional Indicative Strategic Development Plan (RISDP) 2020–2030 mentions focus on regional compliance in SPS implementation and calls for an annual review of regional SPS measures through the SPS Coordinating Committee.¹³⁸

4. ECOWAS Monitoring and Evaluation Mechanisms

ECOWAS does not yet have in place specific SPS monitoring and evaluation tools. The ECOWAS SPS Regulation creates a regional early warning network and mandates that it monitor information on food safety risks,¹³⁹ but ECOWAS does not provide any SPS monitoring guidelines for it, and it is unclear whether it is operational in practice.

¹³⁶ COMESA SPS Regulations, Article 21(1)(b), *supra* note 47.

¹³⁷ Article 8(2) of the COMESA Seed Trade Harmonization Regulations, 2014. Available at, <https://www.aatf-africa.org/wp-content/uploads/2021/02/COMESA-Seed-Trade-Harmonisation-Regulations-English.pdf>.

¹³⁸ Southern African Development Community (SADC) Regional Indicative Strategic Development Plan (RISDP) 2020–2030, Gaborone, Botswana, 2020.

¹³⁹ Article 17(2)(c) of the ECOWAS SPS Regulation, *supra* note 68.

e) Transparency and Stakeholder Engagement

Transparency and stakeholder engagement is the fifth SPS GRP mechanism under the STDF GRP Guide. It is a GRP mechanism that is relevant throughout the lifecycle of SPS measures,¹⁴⁰ and it is fundamental principle of the WTO SPS Agreement,¹⁴¹ as also reflected in all international standards issued by Codex,¹⁴² IPPC,¹⁴³ and OIE.¹⁴⁴ Implementation of transparency GRP mechanisms within RECS could promote trust and confidence in SPS regulatory processes; enhance understanding of, and compliance with, SPS measures; build the private sector's trust and confidence in the work of SPS authorities; and help ensure that SPS measures serve public interest and are informed by the legitimate needs of those interested in and affected by these regulations.¹⁴⁵

1. EAC Transparency and Stakeholder Engagement GRP Mechanisms

Transparency is a key objective in the EAC's SPS regional framework.¹⁴⁶ The EAC SPS Protocol requires that Partner States transparently share information relating to animal¹⁴⁷ and food safety¹⁴⁸ related risks. Article 9 of the EAC SPS Protocol requires that Partner States cooperate in sharing information on SPS measures through the establishment of an information management system. An SPS information-sharing platform is being developed with the support of TradeMark East Africa (TMEA) to enable electronic sharing and access of trade documents, such as phytosanitary and import permits issued from the country of origin to the country of destination in a manner that will eventually eliminate the need for traders to present paper documents at points of entry, transit, or exit in the EAC.¹⁴⁹

In the area of technical barriers to trade, there is also the example of transparency and stakeholder engagement in the Principles and Procedures for the Development of East African Standards.¹⁵⁰ Clause 4.2 provides for sufficient and regular updating of information to make it easily accessible

¹⁴⁰ STDF 2021, *supra* note 6.

¹⁴¹ WTO SPS Agreement transparency obligations include notification of draft regulations, publication of regulations with a transition period, establishment of National Enquiry Point responsible for the provisions of answers to all reasonable questions and provision of relevant documents, and designation of National Notification Authority responsible for implementing the notification requirements of the WTO SPS Agreement. See, WTO, "Sanitary and Phytosanitary Measures, Members' transparency toolkit." Available at: https://www.wto.org/english/tratop_e/sps_e/transparency_toolkit_e.htm.

¹⁴² Principle 3 of the Codex Principles and guidelines for national food control systems CAC/GL 82-2013.

¹⁴³ Requirement 5.1.9.2 under ISPM No. 20 mandates NPPOs to disseminate export regulations.

¹⁴⁴ OIE Terrestrial Animal Health Code, Article 3(4)3).

¹⁴⁵ STDF 2021, *supra* note 6.

¹⁴⁶ EAC, EAC SPS Protocol, Article 2(b), *supra* note 33.

¹⁴⁷ EAC, EAC SPS Protocol, Article 5(2)(a) *supra* note 33.

¹⁴⁸ EAC, EAC SPS Protocol, Article 6(2)(f) *supra* note 33.

¹⁴⁹ East Africa Community, Sanitary and Phytosanitary Measures (SPS), available at: <https://www.eac.int/agriculture/sanitary-and-phytosanitary-measures-sps>.

¹⁵⁰ East African Standards Committee, Principles and Procedures for the Development of East African Standards, EAC Secretariat 4th Edition, 2022. Available at: <https://www.eac.int/trade/sqmt/sqmt-act-implementation/270-sector/trade/sqmt>.

in due time and to allow all parties to participate in the standardization process. This may be achieved, *inter alia*, through announcement of approved new work items on the websites of the EAC Secretariat and respective National Standards Bureaus (NSBs); announcement of drafts for public comment on the websites of EAC Secretariat and NSBs and a joint notification to WTO Secretariat in 60 days; publication of the standards work program bulletin on the EAC website and notification of the national work program to each Partner State and to the International Organization for Standardization (ISO); publication of approved standards; and an accessible catalogue of East African Standards.

It is the practice of the EAC to engage stakeholders while developing or reviewing any SPS measure, which is primarily done through national and regional consultation and validation meetings. Regional SPS measures are also made accessible online in the EAC library.¹⁵¹

2. COMESA Transparency and Stakeholder Engagement GRP Mechanisms

COMESA's SPS Regulations encourage Member States to conduct consultation between public and private sector on SPS issues. Article 6(2)(e) of the COMESA SPS Regulations mandates that COMESA Member States communicate any notification, report, or information made under Article 7 of the WTO SPS Agreement to the Secretariat. COMESA engages stakeholders in the review and development of regional SPS measures through consultation and validation meetings.¹⁵²

3. SADC Transparency and Stakeholder Engagement SPS Mechanisms

Transparency is a key tenant under the SADC SPS framework. The SADC Protocol on Trade, SPS Annex VIII, includes detailed mandatory transparency compliance requirements under Appendix A for SADC Member States and also requires Member States to observe WTO transparency rules.¹⁵³ Appendix A of the SADC SPS Annex includes obligations to publish SPS measures promptly to enable access to interested Member States,¹⁵⁴ establish WTO SPS Enquiry Points at the national level to provide answers to any matters of SPS,¹⁵⁵ and put in place notification procedures.¹⁵⁶

SADC Regional Guidelines on the Regulation of Food Safety instruct SADC Member States to conduct “open and transparent public consultation, directly or through representative bodies,

¹⁵¹ East African Community, “Resources.” Available at: <https://www.eac.int/resources>.

¹⁵² EAC, “EAC Annual Report,” 2018/2019, available at: <http://repository.eac.int/handle/11671/24452>; See also, COMESA Medium Term Strategic Plan 2021-2025, Available at: https://www.comesa.int/wp-content/uploads/2022/03/4Final-MTSP-2021-2025-English-Reviewed-2_feb.pdf, pg 65-66.

¹⁵³ Article 10, SADC SPS Annex VIII (*supra* note 57).

¹⁵⁴ SADC SPS Annex Appendix A, Article 1 (*supra* note 57).

¹⁵⁵ SADC SPS Annex Appendix A, Article 3 (*supra* note 57).

¹⁵⁶ SADC SPS Annex Appendix A, Article 5 (*supra* note 57).

during the preparation, evaluation and revision” of food safety laws.¹⁵⁷ The SADC Guideline on the Regulation of Veterinary Drugs encourages SADC Member States to promote transparency by encouraging stakeholder participation and involvement in the decision-making processes relating to veterinary drugs.¹⁵⁸ While there are no regional stakeholder engagement guidelines, SADC engages key SPS stakeholders when developing or reviewing any regional SPS-related measure.

Under the SADC-EU Trade Facilitation Program, SADC is supporting the development of a regional database on SPS and TBT-related non-tariff measures.¹⁵⁹ In 2021, the SADC Secretariat, under the SADC-EU Trade Facilitation Program, initiated the process of developing a database for non-tariff measures to provide an open and systematic source of information for trading partners and give information on each SADC member State in terms of the product category, associated regulations, and conformity assessment requirements. It is unclear whether this process has stalled.¹⁶⁰

4. ECOWAS Transparency and Stakeholder Engagement SPS Mechanisms

Under Article 19 of the ECOWAS harmonized SPS Regulation, Member States are mandated to “notify changes in their SPS measures and provide information on these measures in accordance with the procedures and modes of presentation established by the WTO, notably Annex B on transparency.”

f) Coordination and Cooperation Mechanisms

Coordination and cooperation mechanisms is the last SPS GRP mechanism highlighted in the STDF GRP practical guide. They can take any form of measures aimed at fostering better SPS management and can be relevant at all stages of the SPS regulatory management cycle.¹⁶¹ As a binding principle under the WTO SPS Agreement, coordination is the core tenant of SPS harmonization and alignment within the RECs at the regional level. Cooperation within the RECs can foster exchange of knowledge and experience on SPS GRPs among Member States and facilitate prevention of cross-border SPS risks.¹⁶² It can also reduce the prevalence of unnecessary differences in SPS measures between countries, lower trade barriers, and support REC Member

¹⁵⁷ Article 7 of the SADC, Regional Guidelines for the Regulation of Food Safety in SADC Member States, November 2011. Available at: https://www.sadc.int/sites/default/files/2021-08/Regional_Guidelines_for_the_Regulation_of_Food_Safety_in_SADC_Member_States_EN.pdf.

¹⁵⁸ SADC, Regional Guidelines for the Regulation of Veterinary Drugs in SADC Member States November 2011. Available at: https://www.sadc.int/sites/default/files/2021-08/Regional_Guidelines_for_the_Regulation_of_Vet._Drugs_in_SADC_Member_States.pdf.

¹⁵⁹ World Trade Organization Committee on Sanitary and Phytosanitary Measures, “SADC Secretariat Report on SPS Activities,” SADC Report to the WTO Committee on Sanitary and Phytosanitary Measures, G/SPS/GEN/2128, 13 June 2023. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2128.pdf&Open=True>.

¹⁶⁰ Id.

¹⁶¹ STDF 2021, *supra* note 6.

¹⁶² Id.

States in compliance with relevant international SPS obligations and standards. This can result in enhanced coherent, predictable, and uniform application of regional and international SPS measures; lower costs of national and regional SPS management and implementation; and prioritization of resources at the national level. Regional cooperation and coordination hinge on sharing of information,¹⁶³ thus compliance with transparency provisions under the WTO SPS Agreement is key in facilitating this SPS GRP at the regional level.

At the regional level, coordination among Member States can take many forms, including initiatives focused on harmonization of SPS measures, equivalence, or mutual recognition and capacity building on SPS-related issues. Regional SPS bodies are generally responsible for coordinating the use of regional SPS measures across governments in Member States, and these bodies are, in most cases, explicitly created under the trade agreements.¹⁶⁴

1. EAC Coordination and Cooperation GRP Mechanisms

EAC Partner States are required to cooperate on agriculture and food security under the EAC Treaty,¹⁶⁵ and regional cooperation and coordination on SPS measures and activities is a key objective of the EAC SPS Protocol.¹⁶⁶ These principles are also reiterated throughout the EAC SPS issue-specific strategies on aflatoxin prevention and the control of transboundary animal diseases and zoonoses.

To facilitate regional coordination and cooperation on SPS issues, the EAC SPS Protocol requires the establishment of a support structure, including an SPS Office and SPS Committee.¹⁶⁷ These, however, do not exist in practice within the current EAC structure.¹⁶⁸ The EAC has established several other specialized bodies within the Secretariat that are responsible for coordination of regional cooperation on specific SPS issues. These include the Livestock Desk Office established in 2005 at the EAC Secretariat; a Regional Steering Committee on Transboundary Animal Diseases composed of the Partner States' departments of veterinary services, medical services, wildlife services, and animal production services (which seeks, as necessary, the support of the AU, FAO, OIE, USAID, and other stakeholders); a nine-member Technical Working Group on Avian Influenza; Specialized Technical Committees (for instance to address Rift Valley Fever); and a Regional Experts Working Group on Aflatoxin (a multi-sectoral, multi-disciplinary working-

¹⁶³ Id.

¹⁶⁴ Kauffmann, C. and C. Saffirio (2021), "Good Regulatory Practices and Cooperation in Trade Agreements: A Historical Perspective and Stocktaking," OECD Regulatory Policy Working Papers, No. 14, OECD Publishing, Paris, available at https://www.oecd-ilibrary.org/governance/good-regulatory-practices-and-co-operation-in-trade-agreements_cf520646-en.

¹⁶⁵ Articles 105 to 110 of Chapter 18 of the Treaty Establishing the East African Community, 1999. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download>.

¹⁶⁶ Article 2(2) of the EAC SPS Protocol, *supra* note 33.

¹⁶⁷ Gabor Molnar and Samuel Benrejeb Godefroy, 2020, *supra* note 3.

¹⁶⁸ Id. See also, Katrin Kuhlmann, 2022.

group).¹⁶⁹ The regular meeting and operation of some of these bodies has been affected by limited funding, which impacts their SPS coordination mandates.

There are several case studies of the EAC undertaking various cooperation and coordination initiatives in support of Partner States' capacity building and implementation of SPS measures at the national and regional levels. For instance, in 2010, the EAC supported the "trade capacity building in agro-industry products for the establishment and proof of compliance with international market requirements in EAC" project, which facilitated public/private sector dialogue on SPS issues and supported national food safety institutions to effectively align SPS measures and develop SPS policies.¹⁷⁰ In 2011, with the first detection of Maize Lethal Necrosis Disease (MLND) in the EAC region, the EAC Secretariat partnered with the International Maize and Wheat Improvement Center (CIMMYT) to create a regional rapid response mechanism involving national agriculture research systems (NARS), NPPOs, and seed sector partners, and trained them on the MLND management using various technical resources including the MLND portal.¹⁷¹

Through the 2018–2021 EAC Market Access Upgrade Program (MARKUP), the EAC Secretariat identified and developed several SPS standards and supported Partner States in their adoption. In December 2022, the EAC Secretariat transferred laboratory equipment and consumables to the NPPOs in the Partner States to support alignment of procedures for testing, inspection, and certification protocols and build trust and confidence between Partner States' regulatory agencies.¹⁷²

Under the five-year USDA-supported "Trade of Agriculture Safely and Efficiently in East Africa (TRASE)" project initiated in 2021, EAC countries have been supported in capacity building in animal health, plant health, and food safety systems, including support for laboratory services and training workshops on the practical implementation of various international standards for phytosanitary measures to enhance regulatory compliance.¹⁷³ A technical guide for Huanglongbing bacteria *Liberibacter asiaticus* (Asian greening disease) and a pest alert for EAC Partner States have also been developed under the project.¹⁷⁴

¹⁶⁹ The EAC, Strategy for the Control of Transboundary Animal Diseases and Zoonoses, (2020-2024). See also the EAC Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework, (2018-2023).

¹⁷⁰ East African Community, "Trade Capacity Building in agro-industry products for the establishment and proof of compliance with international market requirements in EAC," NIDO project: TE/RAF/06/014, United Nations Industrial Development Organization Vienna, 2011. Available at: https://www.unido.org/sites/default/files/2012-03/EAC%20Evaluation%20Final%20Report_0.pdf.

¹⁷¹ Land O'Lakes, *supra* note 40; See also, CIMMYT, Maize Lethal Necrosis Information Portal, available at: <https://mln.cimmyt.org/>.

¹⁷² EAC, "EAC Secretary General hands over Laboratory Equipment to EAC Partner States to improve regional trade in seed potatoes," (2022), Available at: <https://www.eac.int/press-releases/141-agriculture-food-security/2693-eac-secretary-general-hands-over-laboratory-equipment-to-eac-partner-states-to-improve-regional-trade-in-seed-potatoes>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

2. COMESA Coordination and Cooperation GRP Mechanisms

Cooperation of COMESA Member States in the export of agricultural commodities, including on SPS measures, is mandated under the COMESA Treaty,¹⁷⁵ and it is a key objective under the COMESA SPS Regulations in the implementation of SPS measures.¹⁷⁶ The COMESA SPS Regulations also specifically provides for Member States to mutually support and cooperate in harmonization of national SPS legislation; develop codes of practice, guidelines, and procedures on SPS measures; foster training and capacity building; establish and implement SPS monitoring and surveillance mechanisms; and establish an early warning system in matters of biosafety.¹⁷⁷

In tandem with the COMESA SPS Regulations,¹⁷⁸ the 23rd Council of Ministers established the SPS Subcommittee under the Technical Committee on Agriculture in 2007¹⁷⁹ and tasked it with coordinating SPS actions at the national level to implement the Council's Decisions and programs, coordinating joint programs with other RECs at the regional level (SADC and EAC under the TFTA), and participating in the work of international standard setting bodies at the international level.¹⁸⁰ The SPS Sub-Committee convenes annually,¹⁸¹ and one of its more noticeable achievements was development of the COMESA SPS Strategy for the period of 2016 to 2020 and coordination of its implementation.¹⁸² Following the request of the 29th Council of Ministers,¹⁸³ an SPS Unit was also created at the COMESA Secretariat in tandem with the COMESA SPS Regulations.¹⁸⁴ Among the SPS Unit's mandates is the role of coordinating all regional program and institutions related to SPS matters.¹⁸⁵

The COMESA Green Pass Certification (GPC) Scheme,¹⁸⁶ a regional SPS certification system for commodity-based trading created under the COMESA SPS Regulations, is perhaps the most important and innovative regulatory coordination and cooperative mechanism under COMESA. The GPC Scheme is based on mutual recognition of SPS certification by National Green Pass Authorities. Its implementation is based on effective coordination among Member States, including compliance with notification requirements and coordination with the regional SPS Unit.¹⁸⁷

¹⁷⁵ Article 132(d) of the COMESA Treaty, *supra* note 45.

¹⁷⁶ Regulation 2(a) of the COMESA SPS Regulations, *supra* note 47.

¹⁷⁷ Regulation 19(1) of the COMESA SPS Regulations, *supra* note 47.

¹⁷⁸ Regulation 21(1)(c) of the COMESA SPS Regulations, *supra* note 47.

¹⁷⁹ Kuhlmann, 2022, *supra* note 1.

¹⁸⁰ Gabor Molnar and Samuel Benrejeb Godefroy, 2020, *supra* note 3.

¹⁸¹ Kuhlmann 2022, *supra* note 1.

¹⁸² Paragraph 11 of the Executive Summary to the COMESA SPS Strategy (2016-2020), *supra* note 123.

¹⁸³ COMESA, SPS Strategy 2016-2020, *supra* note 123.

¹⁸⁴ Regulation 21(2) of the COMESA SPS Regulations, *supra* note 47.

¹⁸⁵ Regulation 21(2)(f) of the COMESA SPS Regulations, *supra* note 47.

¹⁸⁶ Regulation 7 of the COMESA SPS Regulations, *supra* note 47.

¹⁸⁷ Regulation 10(f) of the COMESA SPS Regulations, *supra* note 47.

The COMESA Secretariat has initiated several regional cooperation initiatives in accordance with the COMESA SPS Regulations, Strategy, and Strategic Plan to implement SPS measures in a coherent and consistent manner, consistent with the provisions of the WTO SPS Agreement. For instance, COMESA, in collaboration with STDF and TradeMark East Africa, launched a regional initiative to help strengthen the management of SPS measures in the region through a program called Prioritization of SPS Investments for Market Access (P-IMA). P-IMA is program launched in Uganda, Ethiopia, Kenya, Malawi, Rwanda, Seychelles, Zambia, Namibia, and Madagascar. Its benefits include enhanced public-private dialogue, evidence to support program design and fundraising, high-level awareness building on the value of investing in SPS capacity building, transparency and accountability, and greater resource efficiency.¹⁸⁸

COMESA has encouraged its Member States to use several capacity building tools developed and endorsed by international organizations. For instance, since 2016, Kenya and Zambia conduct plant health capacity evaluations using the IPPC Phytosanitary Capacity Evaluation (PCE) tool.¹⁸⁹ COMESA has also supported a number of its Member States, such as Zambia, Seychelles, Madagascar, Rwanda, Eswatini, Malawi, and Uganda, in addressing their SPS human resource needs through various organized technical training programs baseline assessments of their SPS constraints.¹⁹⁰ COMESA regional reference laboratories have been provided with some equipment. For example, the aflatoxin analysis laboratory at Chitedze Agricultural Research Station in Malawi was refurbished and given new equipment in 2019.¹⁹¹

COMESA has a number of other relevant programs and initiatives. The Secretariat initiated a capacity development program to strengthen skills and capacity of professionals within African plant biosecurity agencies and institutions in order to address critical plant pest and disease issues.¹⁹² The network brought together African Biosecurity Fellows and industry members from Burundi, Ethiopia, Kenya, Malawi, Mozambique, Rwanda, Tanzania, Uganda, Zambia, and Zimbabwe with Australian biosecurity colleagues to share information, provide ongoing mentoring, and boost training and outreach.¹⁹³ COMESA launched a Regional Enterprise Competitiveness & Market Access Program (RECAMP), which is a food safety capacity building initiative, to leverage the experience and expertise of the United Nations Industrial Development (UNIDO) to strengthen food safety certification and build the capacities of selected local institutions to provide accredited training services and sustain food safety advisory services in the region.¹⁹⁴ In Zimbabwe, the COMESA Secretariat supported fruit fly surveillance that improved

¹⁸⁸ COMESA, “New SPS Project to Increase Market Access of Agricultural Products.” Available at: <https://www.comesa.int/new-project-to-increase-market-access-to-regional-products/>.

¹⁸⁹ *Supra* note 55.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Centre for Agriculture and Bioscience International (CABI), “Breaking Barriers, Facilitating Trade.” Available at: <https://www.cabi.org/projects/breaking-barriers-facilitating-trade/>.

¹⁹³ COMESA, COMESA Sanitary and Phytosanitary Programme (SPS) Annual Report 2018/9.

¹⁹⁴ *Id.*

field inspections and verification of consignment compliance that subsequently supported horticulture exports.¹⁹⁵ Further, under the Agricultural Productivity Program for Southern Africa (APPSA), CIMMYT and the Africa Solidarity Trust Fund (ASTF) assisted in the training NPPO staff involved in the MLND survey in Malawi, Mozambique, and Zambia and created awareness among the agricultural staff and farmers.¹⁹⁶ Pest diagnostic kits were donated for use by the NPPOs.

The COMESA Mutual Recognition Framework for conformity assessment (C-MRF) has supported Member States in strengthening regional proficiency testing scheme for aflatoxin testing, particularly Member States that trade largely in maize and maize products.¹⁹⁷ Thirteen (13) laboratories in Kenya, Malawi, Rwanda, Uganda, Zambia, and Zimbabwe were supported to participate in a series of proficiency testing rounds, root cause analysis to identify causes of deviations, and training and technical support to address capacity gaps leading to equivalence of analytical results and mutual recognition of certificates of analysis.¹⁹⁸ Two pest risk workshops were organized in 2017 and 2019 to facilitate the establishment of a Technical Working Group on Plant Health, the development of a regional approach to Pest Risk Analysis (PRA), and the subsequent pest listing and alignment of mitigation measures for the ten priority crops.¹⁹⁹ To date, the countries have developed a common approach to pest risk analysis, harmonized quarantine pest lists for maize grain and seed, and harmonized mitigation strategies, including for FAW control.²⁰⁰

The COMESA Seed Harmonization Implementation Plan (COM-SHIP) was developed through the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA), COMESA's specialized agency that supports implementation of the COMESA Seed Trade Harmonization Regulations. It has been officially launched in nineteen COMESA Member States.²⁰¹ ACTESA has now developed the COMSHIP Mutual Accountability Framework (COMMAF), which outlines the principles, mechanisms, tools and specific activities to facilitate mutual accountability in COMSHIP and aims to assist in the evaluation, review, debate, dialogue, and negotiation performance within public-private partnership arrangements of COMSHIP.²⁰²

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ COMESA, "COMSHIP Launched in Tunisia to Widen Regional Seed Market," available at: <https://www.comesa.int/comship-launched-in-tunisia-to-widen-regional-seed-market/#:~:text=The%20overall%20goal%20of%20COMSHIP,southern%20and%20east%20African%20region.>

²⁰² COMESA, COMESA Sanitary and Phytosanitary Programme (SPS) Annual Report 2018/9.

COMESA is also actively engaged in the implementation of the TFTA to promote regional trade,²⁰³ including through the COMESA-EAC-SADC Tripartite Capacity Building Program.²⁰⁴ This is in alignment with Article 22 of the TFTA on SPS Measures (and its Annex 15). However, there is no clear SPS coordination mechanism associated with the TFTA, which affects implementation of SPS measures.²⁰⁵

3. SADC Coordination and Cooperation SPS Mechanisms

For effective coordination of SPS matters at the regional level, the SADC SPS Coordinating Committee was established under Article 14 of the SPS Annex VIII on the SADC Protocol on Trade.²⁰⁶ As noted above, funding constraints have affected the ability to hold regular physical meetings.²⁰⁷ However, SADC has continued to support cooperation on SPS matters through various initiatives. For instance, SADC, in partnership with the EU under the Food Safety-Capacity Building in Residue Control (FSCBRC) project, supported Member States in aligning food safety control regulations, guidelines, and procedures.²⁰⁸ SADC published a Field Handbook on Pests and Diseases of Phytosanitary Importance in the SADC Region for distribution to SPS officers at border posts.²⁰⁹ SADC has also supported the 2007 Foot and Mouth Disease (FMD) project to prevent the spread of this disease;²¹⁰ the Transboundary Animal Diseases (TADs) project aiming at strengthening institutions for risk management of Transboundary Animal Diseases in the SADC region; and, between 2005 and 2009, SADC the Promotion of Regional Integration in the SADC Livestock Sector (PRINT) project to establish a sustainable basis for a coherent regional approach to the development of the livestock sector in the SADC region.²¹¹

Under the STOSAR project, SADC has supported the provision of specialized services for risk analysis training and sample testing for the management of FMD and Peste des petits ruminants (PPR),²¹² with a special focus on PPR, from January 2020 through June 2022. This included surveillance, diagnosis, risk analysis, and risk mapping, as well as training of experts on the

²⁰³ Gabor Molnar and Samuel Benrejeb Godefroy, 2020, *Supra* note 3.

²⁰⁴ African Development Bank, COMESA-EAC-SADC Tripartite Capacity Building Programme, available at: <https://projectsportal.afdb.org/dataportal/VProject/show/P-Z1-KZ0-018>.

²⁰⁵ Gabor Molnar and Samuel Benrejeb Godefroy, 2020, *Supra* note 3.

²⁰⁶ SADC Report to the WTO Committee on Sanitary and Phytosanitary Measures, G/SPS/GEN/1889. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN1889.pdf&Open=True>.

²⁰⁷ *Id.*

²⁰⁸ Magalhães, *supra* note 3.

²⁰⁹ *Id.* See also, Katrin Kuhlmann, Yuan Zhou, and Shannon Keating, Seed Policy Harmonization in COMESA AND SADC: The Case of Zambia, Syngenta Foundation for Sustainable Agriculture February 2019. Available at: https://www.newmarketslab.org/_files/ugd/095963_71547c645cab423a8923a6eea65a50ea.pdf.

²¹⁰ *Id.* See also, SADC, Regional Livestock Programmes, Available at: <https://www.sadc.int/pillars/livestock-production#:~:text=The%20Promotion%20of%20Regional%20Integration,flows%20in%20the%20livestock%20sector.>

²¹¹ *Id.*

²¹² SADC, Control Strategy for Peste Des Petit Ruminants (PPR), 2023. Available at: <https://aims.sadc.int/sites/default/files/2023-02/STOSAR%20Bulletin%202nd%20Edition-compressed.pdf>

prevention and control of FMD and PPR and laboratory diagnosis of samples from outbreaks or active surveillance. Under the STOSAR Project, over 230 field and laboratory experts from SADC countries were trained on the diagnosis of PPR, and a total of 144 NPPO staff from all 16 SADC Member States benefited from the two regional PRA trainings.²¹³ In addition to training NPPO staff to better use the online PRA tools, SADC Member States were supported to review/develop PRA protocols and Terms of Reference (ToRs). SADC also supported training on Quality Management Systems to facilitate the accreditation of national veterinary diagnostic laboratories in some of the SADC countries.²¹⁴

A regional strategy for MLND was developed under the STOSAR Project as part of a harmonized and coordinated regional response to manage transboundary pests in the SADC region.²¹⁵ SADC countries were also supported to domesticate regional strategies. Overall, technical support enabled the development/finalization and/or validation of twelve national strategies in five SADC Member States (Botswana, Namibia, Mauritius, Zambia, and Zimbabwe), seven of which were validated during the project period.²¹⁶ Under the STOSAR Project, training workshops were hosted in South Africa in February and March 2020 to enhance the skills of NPPO staff in the identification, biology, and management of priority transboundary plant pests.²¹⁷ The first workshop focused on FAW and tomato leafminer, and the second workshop was on MLND and its vectors. A total of 62 delegates drawn from all of the 16 SADC Member States benefited from the trainings.²¹⁸

4. ECOWAS Coordination and Cooperation GRP Mechanisms

The ECOWAS SPS Regulation was designed to give rise to structures and mechanisms on cooperation in the areas of plant and animal health and food safety.²¹⁹ There are various coordination mandates for ECOWAS Member States under the ECOWAS SPS Regulation. Member States are mandated to coordinate activities of their different ministries, administration, and relevant services in development of technical regulations relating to food safety in accordance with the SPS WTO Agreement.²²⁰ Member States are also mandated to coordinate amongst themselves to use the existing regional health safety infrastructures and make them accessible to other Member States by supporting their capacity building.²²¹ The ECOWAS SPS Regulation also mandates Member States to ensure coordination of different government agencies and authorities

²¹³ Id.

²¹⁴ Id.

²¹⁵ Id.

²¹⁶ Id.

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Article 2 of the ECOWAS SPS Regulation, *supra* note 68.

²²⁰ Article 23(2) of the ECOWAS SPS Regulation, *supra* note 68.

²²¹ Article 33(b) of the ECOWAS SPS Regulation, *supra* note 68.

involved in food safety and designate a national committee for food safety.²²² With regard to preventive measures to address cross-border SPS threats, the Commission is mandated to take preventive measures in collaboration and with the cooperation of phytosanitary institutions from Member States.²²³

ECOWAS has various regional bodies responsible for coordination of SPS-related issues. The SPS Regulation creates a Regional Sanitary Safety Committee, with sub-committees on plant health, animal health, and food safety,²²⁴ as well as various networks of experts,²²⁵ which are mandated with coordination and cooperation of SPS issues in the region.²²⁶ ECOWAS also has other agencies that facilitate capacity building on SPS issues in the region, including the Regional Animal Health Centre (RAHC) for animal health, and the Regional Agency for Agriculture and Food (RAAF) for food safety.²²⁷ ECOWAS also uses centers of excellence to coordinate regional SPS activities based on GRPs. For instance, ECOWAS leverages the Central and West African Virus Epidemiology Center (WAVE), which is a regional center of excellence that fosters regional coordinated control and management of transboundary plant pathogens.²²⁸

Under a program led by USDA-FAS and USAID West Africa, ECOWAS is supporting training of NPPOs on “The Use of the Harmonized Phytosanitary Inspection and Decision-Making Guide” to support the West African NPPOs Task Force to disseminate the harmonized guide in order to promote best practices in the conduct of plant quarantine operations in the sub-region.²²⁹ In 2022, online trainings on inspection procedures were conducted for plant quarantine inspectors and technicians with the 15 ECOWAS Member States plus Chad and Mauritania. Overall, 46 inspectors and technicians were trained on these online modules.²³⁰ In 2022, the ECOWAS Commission received support from the Agence Française de Développement (AFD) and EU to build the capacity of plant protection directorate technicians in support of the national training of technicians for monitoring the fruit fly surveillance system in Liberia. This is in line with the objectives of the Regional Innovative Fruit Fly Control System in West Africa (SyRIMAO) project.²³¹

In 2022, the ECOWAS Commission organized various regional trainings, including on risk communication, disease emergency management on TADs, and zoonoses in Dakar, Senegal;²³² on

²²² Article 80(1) of the ECOWAS SPS Regulation, *supra* note 68.

²²³ Article 44(4) of the ECOWAS SPS Regulation, *supra* note 68.

²²⁴ Article 13 of the ECOWAS SPS Regulation, *supra* note 68.

²²⁵ Article 17 of the ECOWAS SPS Regulation, *supra* note 68.

²²⁶ Article 14(1) of the ECOWAS SPS Regulation, *supra* note 68.

²²⁷ Article 13 of ECOWAS SPS Regulation, *supra* note 68.

²²⁸ See, Central and West African Virus Epidemiology Center, available at: <https://wave-center.org>.

²²⁹ WTO Committee on Sanitary and Phytosanitary Measures, “ECOWAS Implemented Sanitary and Phytosanitary Activities During the Period of March - June 2022,” Communication From ECOWAS-USAID Senior Sanitary and Phytosanitary Standards Advisor, G/SPS/GEN/2019, 19 May 2022. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2019.pdf&Open=True>.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

data entry, analysis, and simulation for fruit fly management, using the ECOWAS data wizard and decision support system (DSS), through funding support from the AFD and the EU;²³³ and the first regional meeting for establishing an ECOWAS food safety regulatory convergence forum.²³⁴ In May 2023, ECOWAS held a regional training workshop on the development and monitoring of a harmonized guide for risk-based sanitary inspection of food products and decision making in the ECOWAS and Sahel region.²³⁵

III. CONCLUSION

At the continental level under the AfCFTA and the regional level under the TFTA and RECs, considerable efforts have been initiated towards alignment with SPS GRPs in the development, review, and implementation of SPS measures and more are currently underway. The focus RECs recognize some of the GRP SPS mechanisms and have embedded them in the regional regulatory frameworks. For instance, the GRPs on transparency and stakeholder engagement, as well as on coordination and cooperation of SPS measures, exist in legal instruments of all the focus RECs. However, even when on paper, significant gaps remain in relation to regulation and implementation of GRP mechanisms, exacerbated by limited knowledge and resource capacities and lack of political goodwill at the national and regional levels. For instance, none of the RECs has a framework on conducting RIAs, and this could explain why only a handful of countries have any form of regulatory or administrative framework on RIAs. Moreover, some GRPs exist in practice but are not institutionalized or lack a clear guiding regional framework, which creates ambiguity with regard to implementation and replication. For instance, none of the RECs has specific tools for stocktaking of regional or Member States' SPS measures, and they do not provide a framework to be followed for stocktaking of SPS measures. A forward-looking SPS agenda is also lacking in the EAC, SADC, and ECOWAS, and is outdated in COMESA, and there could be need for SPS-issue specific forward-looking agendas, based on regional SPS priorities or pressing risks. These gaps in inclusion of SPS GRP mechanisms at the regional level could partly explain the challenges that continue to exist with regard to implementation of SPS measures at the national, regional, and continental levels as discussed above.

Regional approaches to SPS GRPs could further be assessed to identify specific support needs with respect to strengthening observance of the GRPs across the RECs. To support all stakeholders, including in the RECs, to better develop and implement SPS measures based on SPS GRPs, specific tools focused on the legal and regulatory dimension could be designed to support

²³³ WTO Committee on Sanitary and Phytosanitary Measures, "ECOWAS Implemented Sanitary and Phytosanitary Activities During the Period of July - October 2022," Communication From ECOWAS-USAID Senior Sanitary and Phytosanitary Standards Advisor, G/SPS/GEN/2059, 13 October 2022. Available at: <https://docs.wto.org/imrd/directdoc.asp?DDFDocuments/q/G/SPS/GEN2059.pdf>.

²³⁴ Id.

²³⁵ ECOWAP, "ECOWAS holds a regional training workshop on the development and monitoring of a harmonized guide for risk-based sanitary inspection of food products and decision making in the ECOWAS and Sahel region," May 2023. Available at: <https://ecowap.ecowas.int/news/read-ecowap-news/200>.

application of SPS GRPs, with capacity building training on their use. The process should involve the participation of key stakeholders in the animal, plant, and food safety value chains.