The International Food Safety Complex in Southern Africa: Cooperation or Competition?

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**Introduction**

Access to stable, consistent and safe food is a pressing problem on the African continent. While achieving food security in Africa is a huge concern, food safety has been overlooked in light of bigger food security issues like famine, malnutrition and starvation. However, as African countries engage in efforts to develop, societal expectations change and the result is that governments need to consider food safety policy and systems. Another reason to focus on food safety is African countries maintain a comparative advantage in agricultural production and export food products but face serious non-tariff barriers to trade in the form of standards for food safety. This domestic and international imperative has resulted in the development of a International Food Safety Complex (IFSC) to oversee and ensure fairness in the food safety standards and to assist African countries improve technical capacity in this area. Indeed, African countries face many challenges in this regard and improving food safety is not only linked to improving a state’s developmental status but also nutrition and health outcomes.¹

The focus of this paper is an examination of how the various actors of the IFSC interact and how this influences food safety regulation in South Africa. The paper contributes to understanding how international institutions influence state policy frameworks, particularly when multiple institutions maintain a similar competency. Recent work suggests that interlocking structures of international institutions related to a similar issue area can emerge but that roles are defined through

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¹ World Bank, *Food Safety Issues in the Developing World, 2000*
institutional competition.² Through rooting their analysis in the organisational ecology literature, Gehring and Faude contend that “...competition, not-coexistence or symbiosis constitutes the main characteristic of populations and organisations, because organisations compete over scarce resources.”³

Competition among international institutions results in functional differentiation and niche selection in a policy area. This then forms the basis of the emergence of a division of labour resulting in an interlocking governance structure. Whilst, we do not contradict the fact that international institutions divide labour in an issue area and establish functional niches, we contend that in the context of the IFSC and its role in promoting food safety policy advancement in Southern Africa, that interlocking structures and niche functions can emerge through cooperation and coexistence. Integral to this is timing in the emergence of the IFSC and the demand that exists in Africa for technical capacity assistance in food safety. Indeed, the component institutions within the IFSC have emerged over a long period of time and appear to have been created with the explicit idea of fulfilling a specific niche in international food safety governance as and when it was needed. In the context of Africa, many nations do not have fully functioning food safety systems and require significant technical and financial assistance from developed countries. This literally results in the supply (international institutions and developed countries) struggling to keep up with the demand (African countries).

For the purposes of conceptual clarity, it is important to demarcate between cooperation and competition in interlocking institution contexts. Competition suggests carving out policy space and seeking to establish relevance between actors that have a similar agenda and purpose. In competition contexts, actors vie to establish who is more relevant in addressing a particular policy problem. Concerns over jurisdictional overlap are met through attempts to assert authority and competence. The role of policing in Kosovo is a prime example of competition between interlocking international institutions where the UN competed with NATO and the EU in this regard.⁴ In contrast, cooperation suggests that interlocking institutions accept that each maintain a particular competency in a policy space, and come together to establish common goals and activities to promote policy advancement. Through establishing cooperative hubs and clearly establishing areas of responsibility, jurisdictional overlap and competition is avoided.

Interlocking Structures of International Governance

The twentieth century was an important period of international institution building particularly with the advent of the post-War institutional order embodied by the United Nations and the Bretton Woods institutions. As time has progressed, the twentieth century has seen a proliferation of international institutions with much of this recent institutional architecture seeking to address new types of transnational and global issues. The growth of international institutions has created numerous instances of institutional overlap.⁵ The growing trend of the rising density of international institutions is making it more difficult to isolate and deconstruct individual

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³ Ibid. p5
⁴ Brosig, M. (2011) "The Interplay of International Institutions in Kosovo Between Convergence, Confusion and Niche Capabilities" European Security. (Forthcoming)
⁵ Shank et al. 1999
international institutions for study. Increasingly, the international community has begun to see institutions rely on coordinated interaction with other organizations active in the same policy field, not only in an effort to prevent the negative effects of “forum shopping” by member states, but also for pooling competencies and resources and as a consequence of institutional and policy overlap.

This paper analyses the IFSC in Southern Africa and considers how institutional overlap and interlocking governance structures affect the uptake of food safety norms in the region. Consideration is given to how this institutional complex interacts and why cooperation appears to be more prevalent than competition between them. Indeed, the notion of competition among international institutions as the force behind the formation of complex dynamics that lead to functional specialisation of institutions and their selection of functional niches is challenged. Whilst there is little contention with the idea that functional specialisation produces a division of labour among the competent institutions, we seek to illustrate that a precondition for this occurring does not have to be competition. Finally, the paper concludes through looking to how cooperation in the IFSC has influenced food safety in South Africa.

Clearly food safety in Southern Africa is an area that requires lots of attention and support for building technical capacity and policy coordination. This reduces the opportunity for competition because there is just so much need. Second, timing matters in determining cooperation or competition. As detailed in subsequent sections of this paper, the relevant institutions in the IFSC emerged at different times and appear to have been formed as necessity dictated. This means that functional niches were established and understood in the process of forming institutions within the IFSC instead of institutions competing against each other to carve out space. Such an interlocking structure has led to some specific ramifications for advancing food safety in Southern Africa which have both been supportive and created challenges.

**The Meta-Structure of the IFSC in Southern Africa**

In an attempt to establish that an interlocking governance structure for food safety exists, it is imperative that the meta-structure is different from or comprises of more than the aggregate of the governance structures of the component institutions. The structural elements of an institutional complex should not be reducible to its component institutions although these institutions are an integral part of the complex themselves and do not lose their separate existence when becoming part of a larger complex. The new structure that evolves from repeated interaction among the component institutions of an institutional complex should reflect emergent system properties.

Within Southern Africa, the main actors of the food safety regime are the World Health Organisation (WHO), Food and Agriculture Organization (FAO), the Codex Alimentarius, the WTO SPS Agreement, external donors and SADC. The meta-structure that governs the food safety regime in this region is the interlocking structure that has allowed different actors to adapt and construct their own functional niches. Figure 1 highlights the relationship of the international institutions in the IFSC as it relates to Southern Africa. Whilst each plays a specific role in global food safety

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governance they overlap in cooperative endeavours that reinforce institutional roles and responsibilities in food safety regulation. Such a regime has emerged as a greater understanding that food safety regulation touches upon on multiple different policy areas. Trade, law, risk assessment, scientific cooperation, human health, animal health, plant health are all aspects that feed into a food safety regulatory framework. In the IFSC context, each regime has responsibility in particular aspects.

**Food Safety Interlocking Governance Structure in Southern Africa (fig. 1)**

**Roles and Functions of the Institutions within the Food Safety Interlocking Governance Structure in Southern Africa**

The role of each of these component institutions can be separated into three categories: Regulation of Food Standards, Development of Food Standards, and Implementation of Food Standards. These institutions overlap and are interlocked forming the IFSC. Each reinforce the other in the overarching pursuit of effective food safety policy and governance. The SPS Agreement, the OIE, the Codex Alimentarius (and by default the FAO and WHO), SADC, Standards Trade Development Facility (STDF) and external bilateral donors such as the EU each fulfil a specific function in the IFSC.

**Regulation of Food Standards**

Central to a good functioning of the IFSC is maintaining mechanisms that regulate the development and implementation of food standards and ensure compliance. Given that trade is a central reason for having an IFSC, the WTO plays a central role in the regulation of it. In particular, the WTO dispute settlement system resolves many food related trade disputes and has become the defacto enforcer of international standards. Indeed, WTO principles such as non-discrimination, most favoured nation etc... act as guidelines on how food standards can be developed and implemented. The WTO agreement that deals primarily with trade related food safety matters is the SPS Agreement.
The SPS Agreement embodies a number of key provisions that are meant to guide member states in the regulation of food. SPS measures are defined within Annex A of the Agreement as “those aimed at protecting animal or plant life or health arising from food-borne risks, pests, diseases, disease-carrying organisms, additives, contaminants, toxins or disease-causing organisms in food.” At its heart, the SPS Agreement seeks to establish a balance between the sovereign right of member states to provide a level of health protection deemed necessary but at the same time ensure these measures are not used as disguised protectionism in international trade. As a result, the SPS Agreement provides that states can apply food safety measures only if they do not arbitrarily or unjustifiably discriminate against other countries exports. In the event that a food safety measure does prevent the trade in goods, it must be based on a risk assessment where sufficient scientific evidence has been presented to justify the measure, and have the least trade restrictive effect.

In addition to stipulating when a food safety measure can restrict trade, the SPS Agreement also seeks to promote the harmonisation of approaches to food safety regulation. In this vein, the SPS Agreement provides that member states are required to base their food safety standards on international standards, guidelines or recommendations, where they exist coming out of the Codex Alimentarius and the OIE. To do so, ensures that member state regulations are consistent with WTO rules and enjoy freedom from judicial contestability in WTO dispute settlement. In the event that an international standard does not exist, a member state may take action on an identified risk as long as it is supported by sufficient scientific evidence. By deferring to international standards, the WTO acknowledges the technical expertise that exists within the international standard setting organisations for dealing with food safety.

Despite deferring to such institutions as the Codex Alimentarius and the OIE for standards development, the SPS Agreement requires food safety measures to be notified and justified to member states. Notifications are considered a key transparency mechanism that seek to make trade and regulatory authorities aware of new legislation emerging in member state markets. Having such a requirement allows for member states affected by a proposed food safety measure to object and attempt to resolve any inconsistencies prior to trade actually being inhibited. The SPS Committee is the forum where these issues are notified, debated and where informal disagreement arises, resolved between member states. The SPS Committee monitors and reviews the food safety activities of member states, promotes harmonisation and coordinates with international standard setting bodies like the Codex Alimentarius. In contexts, where disagreements arise between member states, the WTO also provides recourse to a dispute settlement system that will provide an arbitrated resolution. So, the WTO and particularly the SPS Agreement regulates the use of food standards in the international system placing at the centre of the interlocking structure of the IFSC.

Food Standards Development

Developing internationally recognized and consistent standards for production, processing and storage of food is a key function of the IFSC. There are a number of institutions that play an important role in this area such as the WHO, FAO, the Codex, and the OIE. These institutions tend to formulate food related standards through expert consensus and relying heavily on science and
scientific evidence to justify establishing particular international norms. As a result, they tend to be engaged in technical matters, utilizing scientific evidence to develop norms around production, processing and storage requirements.

**World Health Organisation + Food and Agriculture Organization**

The extent to which the WHO and FAO participate in the IFSC is through a realization that food safety issues are important components of promoting public health (WHO) and food security (FAO), especially as countries participate to a greater extent in the trade of food stuffs and agricultural products. Indeed, food borne illness can result in a number of acute or lifelong diseases affecting human health. In addition, unsafe food or differing standards for food safety can result in unnecessary shortage of food and exacerbate hunger. As a result, the WHO and the FAO have pooled financial resources to develop a cooperative institution that establishes international standards and debate common issues pertaining to food safety.

**Codex Alimentarius Commission**

The Codex Alimentarius Commission (CAC) is an intergovernmental body that implements the Joint FAO/WHO Food Standards Programme which was established in 1961. Its principle objective is to protect the health of consumers and to facilitate the trade of food by setting international standards on foods (i.e. Codex Standards) and other texts which can be recommended to governments for acceptance. The Codex emerged out of a consensus between members states and WHO and FAO officials that a new body was needed to highlight and negotiate international standards pertaining to food. As a result, the main purpose of the Codex is to coordinate and lead the development of food standards within the international framework, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purpose of this Programme is protecting health of the consumers and ensuring fair practices in food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations.

The Codex brings together technical scientific experts representing states to discuss, debate and decide international standards pertaining to food quality, and safety. Codex standards hold weight in global food safety governance and are viewed as beyond judicial contestability in the WTO dispute settlement system unless new scientific information emerges suggesting a risk. The FAO/WHO Project and Fund for Enhanced Participation in Codex (Codex Trust Fund) was launched in 2003 to help developing countries and those with economies in transition to enhance their level of effective participation in the Codex.17

**World Animal Health Organization (OIE)**

The role of the OIE in the IFSC appears tangential in the sense that its primary function is to develop international standards for animal health and welfare and to combat the spread of diseases. However, its remit does touch on food safety efforts through ensuring that animal products are not exposed or contain harmful pathogens such as Bovine Spongiform Encephalopathy (BSE) or Food and Mouth Disease (FMD) which can have deadly effects on human health and inhibit the availability of safe food. So, in the context of the IFSC, the OIE plays a role through setting standards that pertain to controlling and eradicating deadly pathogens in animals that can be transferred to humans.

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17 Ibid.
Implementation of Food Standards

The final aspect of the IFSC is the implementation of food standards. Here there exist a number of institutions and actors involved. Typically the IFSC integrates regional institutions with an appropriate mandate to coordinate and harmonize policies between states in a specific geographic area. In addition, institutions that focus on building technical capacity at the local level to ensure that food standards are implemented effectively and consistently with international standards are also included. In the context of Southern Africa, SADC, the STDF and bilateral donors like the EU are the most engaged in implementing food safety standards.

Southern African Development Community

Southern Africa is comprised of 15 countries that are all members of a regional multilateral agreement, Southern African Development Community (SADC). SADC seeks to coordinate SPS issues in the region and has been in existence since 1980, when it was formed as a loose alliance of nine states in Southern Africa known as the Southern African Development Coordination Conference (SADCC). SADCC had the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa. SADC’s objectives include promoting regional integration with the aim of improving economic development, alleviating poverty and enhancing the standard of living. Key to this is harmonizing the regulatory environment amongst the member states. For example, SADC maintains an SPS secretariat that collects information on food safety related issues emerging in Southern African nations to ensure no inconsistencies emerge or trade restrictive actions taken.

SADC is also meant to act as a forum for regional scientists to discuss issues and to coordinate policies. The SADC Protocol on Trade governs trade relations amongst the SADC countries and also pertains to the regulation of food safety. Article 16 of the SADC Protocol on Trade stipulates that Member States shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations, so as to harmonize measures for agricultural and livestock production. Annex VIII of the SADC Protocol on Trade also concerns sanitary and phytosanitary measures and reflects the principles of science based regulation, most favoured nation and non-discrimination as present in the SPS Agreement. This Annex was approved by the SADC Ministers of Trade and Industry, jointly with the TBT Annex, in 2008.

The SADC strategy is based on strengthening harmonization with the objective of facilitating trade, and promoting food safety in the region. SADC acknowledges the different level of development and technical capacity of its Member States and considers that its role is to assemble the adequate know-how to support the individual efforts of countries. The Food Safety Capacity Building on Residue Control (FSCBRC) project is an example of an initiative that has been designed by SADC to fill in the gap and build the capacity of Member States to set a comprehensive control system framework to address and harmonise WTO/SPS standards in order to smoothen trade of agri-products within and outside the region.

The FSCBRC aims to harmonize food safety control regulations, guidelines and procedures through institutional strengthening in the SADC region in conformity with international requirements - in order to increase exports while complying with consumer safety requirements. Rather than developing regional standards, which would then encroach on the role of Codex, SADC’s efforts to reinforce harmonization include the development of regional guidelines to help Member States to

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18 SADC, SADC Profile at http://www.sadc.int/index/browse/page/52
19 SADC Treaty,
20 http://www.standardsfacility.org/Files/Publications/STDF_Regional_SPS_Strategies_in_Africa.pdf p. 15
implement international standards. Reportedly, three such guidelines have already been developed.\textsuperscript{21}

Another important aspect of SADC's approach relates to the operation of SADC Cooperation in Standardization (SADCSTAN) which aims to promote the coordination between SPS and TBT in relation to standardization activities and services with the purpose of achieving harmonization of standards and technical regulations in the region.\textsuperscript{22} In addition to this SADC is planning on developing a comprehensive strategy and action plan to help Member States implement the SPS Annex.

In cooperation with several partners, SADC launched several capacity building activities that relate to SPS matters in the region such as; the SADC Harmonized Seed Regulatory System; the publication of a "Field Handbook on Pests and Diseases of Phytosanitary Importance; Foot and Mouth Disease (FMD) project to prevent the spread of this disease; Transboundary Animal Diseases (TADs) project; and the Promotion of Regional Integration in the SADC Livestock Sector (PRINT) project, which attempts to "lay down a sustainable basis for a coherent regional approach to the development of the livestock sector in the SADC region".

SADC'S also offers SPS training under a EU-funded project on Standardization, Quality Assurance, Accreditation and Metrology (SQAM), for food safety and the PAN-SPSO project.\textsuperscript{23}

**Standards in Trade Development Facility**

Technical capacity in developing food safety standards still remains a challenge for many developing countries. As a result, the SPS Committee along with the FAO, WHO, Codex, United Nations Trade and Development Committee (UNCTAD), the OIE, and the UN Industrial Development Organization (UNIDO) established the STDF in 2003. The STDF derives its funding from these organizations and from individual states. Its focus is on building technical capacity in developing countries for food safety systems, in particular, developing member states can seek assistance from the STDF in establishing food safety measures and regulatory capacity. Recent STDF projects have related to improving risk assessment techniques in Colombia, pesticide residue monitoring in Africa, and building trade capacity for fresh fruits and vegetables in South Asia.

The STDF epitomizes the cooperative nature of the IFSC. Here, different institutions and actors come together to fund a crucial activity that promotes effective food safety system implementation. Each institution does not attempt to broaden its competence in the IFSC leading to competition, rather empowers the STDF to fulfill an important role in the IFSC, that of implementation. The STDF is a crucial entity particularly as regional organizations like SADC remain ineffective in Southern Africa in ensuring the implementation of food standards.

**External Donors**

External donors such as the European Community and Japan also provide assistance to the food safety regime in developing countries in an effort to assist in the development of mechanisms required for their trading partners to meet their safety standards. Through explicit bilateral initiatives, SADC countries benefit from the provision of technical expertise in making advancements in food safety systems. These bilateral technical capacity development programs serve to fill gaps identified by developing countries and ensures compliance with international standards.

\textsuperscript{21} Personal Interview with SADC Official, October 21, 2010
\textsuperscript{22} http://www.standardsfacility.org/Files/Publications/STDF_Regional_SPS_Strategies_in_Africa.pdf
\textsuperscript{23} http://www.standardsfacility.org/Files/Publications/STDF_Regional_SPS_Strategies_in_Africa.pdf p16
The Case for Cooperation in the IFSC

In considering the IFSC, each institution plays a specific role and does not encroach onto any of the others’ policy remits. The pure existence of an international complex that cooperates and has functional niches does not support the hypothesis that cooperation has been at the heart of IFSC evolution. Indeed, Gehring and Faude would likely contend that the functional niches held by the IFSC were a result of competition in the early days of the IFSC emergence. However, the context through which these institutions emerged and the timing of their creation suggests that relevant institutions and actors cooperated rather than competed. For example, consider the STDF, the EU led project with SADC and even Codex. Each of these actors were established with the intent of filling a functional niche not accounted for by existing institutions in the IFSC complex. Codex was formed in 1963 by the FAO and the WHO recognizing that international standards on food would contribute to improved food safety and security globally. The FAO and WHO both predated the Codex and no evidence that these two institutions competed for competence in the food safety area exists. Each had specific mandates that pertained to food safety but neither was responsible for the development of multilateral standards. Rather, it appears that officials in both the FAO and WHO and member states recognized the need for multilateral standards and came together to establish the necessary institution to facilitate it. So, right from the beginning the Codex filled a functional niche through bringing together state actors to debate, discuss and negotiate food standards that was not based on competition between the FAO and WHO, rather was a cooperative endeavour.

As the relationship between food safety standards and non tariff barriers to trade became apparent the TBT Agreement was established in 1975 and the SPS Agreement in 1994 respectively to monitor and enforce the use of these in international trade. The SPS Agreement, in particular, acknowledges that governments have the right to take sanitary and phytosanitary measures necessary for the protection of human health and considers Codex standards to be beyond contestability in the WTO dispute settlement system. This explicit ceding of responsibility to the Codex, reinforces the idea of cooperation underpinning the establishment of the IFSC. The only point at which the SPS Agreement permits member governments to deviate from these norms is if there is a legitimate scientific justification, which is also consistent with the rules of the Codex. The SPS oversees international consistency with Codex standards and offers a recourse when a state unjustifiably deviates from them. SADC, on the other hand, has developed the SPS Annex. This Annex was approved by the SADC Ministers of Trade and Industry, jointly with the TBT Annex, in 2008 and seeks to oversee implementation and harmonisation of food safety standards in the Southern Africa region. The SADC SPS Annex resembles that of the SPS Agreement and is clearly an attempt to promote regional integration in light of multilateral principles.

The STDF was founded under a similar context in 2003 after IFSC institutions recognized that key to the success of international standards was also building technical capacity to implement them. Indeed, meeting food safety standards is considered a significant non-tariff barrier to trade for developing countries. As a result, the STDF was not created with the intent of taking responsibility for technical capacity development away from other IFSC institutions, it was not that each institution was trying to carve out space for supporting technical capacity development, rather that there was need that was acknowledged and addressed. As a result, the STDF was created by a group of international institutions to fill the functional niche of capacity development in developing countries under a cooperative context.

The EU project on maximum residue limits (MRL) in SADC is another example of how cooperation in the IFSC is endemic. Here, EU officials saw that many Southern African nations struggled to regulate and meet MRL requirements for food products. So here, the EU filled a functional niche

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24 SPS Article 3.1 and 3.2
25 http://www.fao.org/docrep/w9114e/w9114e06.htm
providing bilateral aid and training personnel to SADC to build technical capacity in this area. At no point has the EU project overlapped or competed with activities of other IFSC members in this regard.

So, it appears that functional niches embodied by the component institutions of the IFSC were present at the time of their creation. This supports the idea that timing matters in how functional niches can be formed. Indeed, the IFSC has seen coordination between the different institutions with each playing a complementary role within the institutional complex. This appears to be a result of the evolution of the IFSC over a long period of time, as opposed to within a short concentrated period like in conflict or security situations. The IFSC was developed piecemeal as and when it was realized that new institutions were required to deal with specific issues. This temporal component reinforces cooperation over competition as institutions and functional niches are filled when the need is identified and cannot be addressed through the existing institutional structure.

Another reason for cooperation relates to the high level of demand for technical capacity in food safety regulation. There exists a real need for resources to facilitate the implementation of the food safety standards within Southern Africa. There is much need for food safety capacity building within the region, providing much room for a multiplicity of actors to perform the role of financial assistance. Recognizing this, member institutions in the IFSC have come together to form cooperative initiatives that address developmental issues in food safety regulation in Africa. The Codex Trust Fund and the STDF provide financial assistance and expertise to a region in addition to external donors. The nature of the technical and financial assistance mechanisms also appear to fill functional niches within the IFSC. For example, STDF focuses on technical capacity development for developing and Least Developed Countries (LDC). The Codex Trust Fund is primarily used for ensuring developing country participation in standard development meetings as opposed to actual technical capacity development programs. External donor efforts tend to be targeted in building technical capacity in areas where the STDF falls short or where there is a specific requirement for market access to a specific region or state (e.g. EU and MRL for pesticides).

Again, given the timing of the emergence of these technical and financial assistance mechanisms within the IFSC and the developmental nature of the African region, a likely explanation for cooperation and the establishment of functional niches emerges. However, this idea is contested by Gehring and Faude who argue that institutions within a complex start from the same point and compete to create a functional niche.26 Further, this literature argues that no two populations can apply the same niche for a long time because the competition between them will force the weaker party to adapt by carving out another niche or abandon the system altogether.27 But looking to simply when the STDF, Codex Trust Fund and EU activity in the region occurred and under what auspices, cooperation in carving out a functional niche for each actor seems to have occurred from the beginning. Indeed, each actors mechanisms are available to different countries with little or no overlap. The STDF was created in 2003 always with the mandate to assist developing and LDC with technical capacity development such as inspection systems, risk analysis models and testing facilities. The Codex Trust Fund was also established in 2003 always with the mandate to help developing countries participate in the work of Codex.28 The EU activities in the region have been

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27 Ibid. p6
28 http://www.who.int/foodsafety/codex/trustfund/en/ for example Codex recently held a session in Bali Indonesia for developing countries to assist in preparing them for putting forward national positions on Codex proposals at full Codex meetings.
ongoing over a long period and always related to developing technical capacity in order to ensure African products would meet EU import requirements for foodstuffs. The lack of technical capacity in Southern Africa, therefore, is also a likely explanation for the lack of competition between these actors and institutions in the IFSC. The demand for technical and financial assistance is just so great that supply provided from actors within the complex is not being exhausted.

Figure 2

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The notion of timing and absolute need does not appear to figure into the general belief about institutional complexes and how they compete in contexts of overlap. The IFSC in Southern Africa consists of highly overlapping memberships in all of the stakeholders of the governance structures but this does not appear to create problems. The institutions involved within this complex are all concerned with food safety, yet there is no evidence of competition.

Overlap can also extended beyond membership to a normative context between relevant institutions within the IFSC. For example, there is a remarkable coherence between the standards of behaviour laid out by the SPS Agreement and the SADC SPS Annex. This raises questions about whether similar institutions continue to be effective or if they end of working against each other. Sydnes, discusses the overlap between the SPS Agreement and the Cartagena Biosafety Protocol demonstrating how they can work against each other instead of being mutually reinforcing. However, the IFSC continues to buck this trend despite the fact that each institution focuses on food safety. However, it is the clear delineation between the functions and roles of the institutions and organisations involved that results in a structure that is not redundant and nor contradictory. The institutions function under one monitoring and enforcement regime, the WTO SPS Agreement, and thus avoid the risk of contradictory norms or legally binding dispute settlement systems that might undermine the performance of each institution. The role of SADC is to implement the norms coming from the IFSC in a manner consistent with the SPS Agreement and in a way that fosters regional harmonisation.

The IFSC can therefore be identified as an empirically relevant case where a group of state actors has actually maintained overlapping memberships in a group of international institutions, which are similar and function to ensure globally compatible food safety regulation in Southern Africa. What the development and evolution of the IFSC demonstrates is that establishing a new institution within an already densely populated institutional landscape can be done in a cooperative context without risk of overlap. This avoids causing policy inertia or competition between the institutions. Indeed, it appears that in the context of food safety, institutions can be created to fill an area of

need. This development holds that the creation of regional cooperation agreements such as SADC do not necessarily generate tensions with other international institutions that maintain similar competencies in areas such as food safety but rather reflect a grand design type of approach to food safety regulation where every actor's functional niche is pre-determined. This approach to setting up a food safety complex is an inherently efficient process as it negates overlap and a period of competition between the institutions until a functional niche is established.

The establishment of the SADC SPS Annex in an area already governed by the WTO’s SPS Agreement did not incite any competition between the two institutions but rather reflected a recognition that Southern Africa regulatory frameworks need to ensure consistency with international trade obligations. SADC’s involvement in the food safety regime allows for further implementation of SPS measures and SADC’s recent admittance as an observer at the SPS Committee ensures consistency in the regional approach to international trade activities. This is highly beneficial for Southern Africa as individual countries find it difficult to attend all the meetings and stay current on SPS deliberations. As a result, SADC’s inclusion allows for a more effective dissemination of discussions at the WTO.

Given that the case for cooperation in the emergence of the IFSC has been made through highlighting that timing of institutional emergence and technical and financial need matter, the next section assesses how food safety regulation in the Southern African region functions in light of a cooperative IFSC. A single case study of South Africa offers some insight into the opportunities and challenges that exist in the African region.

South Africa is an ideal case study as it maintains a sophisticated food safety system which acts as a regional leader in Southern Africa. Indeed, there is much disparity surrounding the support of food safety laws by developing countries, not only in Africa but around the world. Some developing countries strongly support the SPS Agreement whereas some consider them opportunities to erect protectionist barriers to trade. Large middle-income countries with great agricultural and food export potential like Mexico, Chile, Argentina, Brazil, many of the ASEAN countries as well as South Africa support the SPS Agreement and work hard both to exploit its current opportunities as well as to improve it.

The IFSC and South Africa

In understanding how the IFSC and the South African food safety regulatory framework relate, the present paper focuses on the notion of participation. In particular, South African participation in IFSC institutions can be determined through considering two aspects: normative congruence in the structure and legislation of the South African food safety system with the IFSC; and the degree to which officials participate and advocate South African positions in IFSC institutional meetings.

South African Food Safety System

South Africa has the biggest market within the SADC region and as such plays a leadership role in the development of food safety standards. In South Africa, food legislation is the responsibility of mainly the health and agricultural sectors. The area of food safety is shared between three governmental departments – the Department of Health, Department of Agriculture, Forestry and Fisheries and the Department of Trade and Industry – provinces, municipalities, industry and consumers as highlighted in Figure 3. Provincial or district health authorities that exercise food safety control at land ports of entry are expected to take cognizance of developments regarding SPS measures within the region and internationally.

32 Jensen, M.F., Reviewing the SPS Agreement : A Developing Country Perspective, 2002, p.36
Foodstuffs entering the country are meant to comply in all respects to the requirements of the Foodstuffs, Cosmetics and Disinfectant Act, 1972 (Act 54 of 1972) which, in turn, bases technical standards, guidelines and recommendations from the Codex.\textsuperscript{33} Indeed, there is a great deal of coherence between principles underpinning the IFSC and South African Food Safety Regulation. Both privilege scientific information and evidence in risk based decision-making and there is recognition for the important role that Codex and other IFSC institutions play in international standard development.

**Figure 3 South Africa's Food Safety Regime**

For example, the DoH is responsible for setting food safety and regulatory nutrition standards at the national level. Internationally it participates in Codex, the WHO International Food Safety Authorities Network (Infosan), EU Rapid Alert System for Food and Feed and other African regional initiatives including SADC and the AU. Compliance, monitoring and law enforcement is done by the local and provincial authorities with DoH taking responsibility for the overall coordination, determination of norms and standards, international liaison and cooperation and provision of support to the provinces and local authorities. DoH maintains a Directorate of Food Control that prepares and administers food legislation, regulations and policies ensuring compliance with international standards. Food Control coordinates and acts as the national contact point for the Codex Alimentarius Commission, International Food Safety Authorities Network (INFOSAN) of WHO and the Rapid Alert System for Food and Feed (RASFF) of the EU. Food Control also participates in the SADC Trade Negotiation Forum (TNF) and the Southern African Free Trade Agreement (SAFTA) and has contributed to the development of the Terms of Reference for the SADC Coordinating Committee on SPS/TBT Measures for Agricultural Products and related Commodities accepted by the Ministerial Council of SADC.\textsuperscript{34}

The Food Control directorate in the DoH is responsible for the administration of the following legislation related to foodstuffs that are guided by the Codex's Recommended International Code of Practice: General Principles of Hygiene. The Foodstuffs, Cosmetics and Disinfectants Act 1972 (Act 54 of 1972) governs the manufacture, sale and importation of all foodstuffs and is guided by the Codex Code of Practice, Section III on Primary Production which includes handling, storage and

\textsuperscript{33} http://www.doh.gov.za/department/dir_foodcontr.html
\textsuperscript{34} http://www.doh.gov.za/docs/factsheets/import.html
The Health Act of 1977 (Act 63 of 1977) which relates to hygiene standards of food and resembles the Codex Code of Practice with specific reference to Section III and Section IV. Both refer to Primary Production of food and the Establishment: Design of Facilities respectively. The Medicines and Related Substances Act, of 1965 (Act 101 of 1965) makes provision for the registration of veterinary drugs and reflects the recommendations provided by the Codex Committee Residues of Veterinary Drugs in Foods (CCRVDF).

In contrast, implementation of SPS measures within South Africa fall under the responsibility of DAFF. This department maintains coherence with the SPS Agreement and is the national body responsible for monitoring and enforcing such areas as Veterinary Public Health, Plant Health, Food Safety and Quality Assurance, and Agricultural Products Inspection Services units. Indeed, DAFF is the lead South African agency at the SPS Committee and is responsible for notifying when new South African legislation is pending to WTO members. DAFF also participates jointly with DoH in Codex activities particularly in areas coming under the prevue of the Food Safety and Quality Assurance unit such as inspection procedures, protocols and testing MRL.

DTI plays a role in the food safety regulatory framework through maintaining responsibility for the National Regulator for Compulsory Specifications (NRCS). The NRCS is responsible for food safety issues related to canned meat products, containing more than 10% meat and frozen and canned fish and fishery products and is guided through the Standards Act 1993 (Act 29 of 1993). The NRCS ensures that fish products conform to the compulsory specifications and is the appointed authority for certifying all fish exports to the EU and Australia. The NRCS is also responsible for administering the legislation around food labelling and is guided by Section IX of the Codex Code of Practice: Product Information and Consumer Awareness.

So, as can be seen the South African food safety system is maintains a normative congruence with institutions in the IFSC through its legislation and deference to Codex and SPS Agreement principles and guidelines. Food safety authorities participate extensively in international standard setting activities and the food safety system structurally resembles the IFSC in terms of decentralized roles. Indeed, participating in the IFSC is critical to maintaining market access for South African foodstuffs, particularly the EU and North America.

The participation of South Africa in the IFSC suggests the country plays a leadership role on the international stage, acting as a strong voice for African and developing country interests. Ensuring a prominent African voice in the various institutional settings ensures that the region and continent’s views are taken into account. The extent which South Africa engages and contributes to IFSC institution meetings is assessed below.

South Africa’s Participation in the IFSC

The two most prominent institutions in the IFSC are the Codex Alimentarius and the WTO SPS Agreement. South Africa became a member of Codex on 26 July 1994 after the Department of Health initiated the country’s application. South African officials are particularly active in Codex deliberations as a means to ensure that Codex standards are taken up in food regulations. South

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35 Recommended International Code of Practice : General Principles Of Food Hygiene, CAC/RCP 1-1969, Rev.4-2003
36 http://www.oie.int/RR-Europe/eng/events/FS-SS-Codex-vet-drugs.pdf
Recommended International Code of Practice : General Principles Of Food Hygiene, CAC/RCP 1-1969, Rev.4-2003
Africa has established a National Codex Committee (NCC) that brings together all the relevant departments to develop national positions on Codex draft standards, guidelines and recommendations. Indeed, the National Codex Committee also considers South Africa’s strategic interests in preparations for sessions of the Commission as well as those committees whose activities are relevant to the functions of the NCC representatives. The NCC comprises officials from the DoH (Directorates: Food Control, Medicines Administration and Nutrition) DAFF, (Directorates: Agricultural Production Inputs, Genetic Resources, Veterinary Services and Plant Health and Quality),DTI,South African Bureau of Standards and the National Consumer Forum.

The Directorate: Food Control is the National Codex Contact Point for enquiries from different states. The National Contact Point acts as the link between the Codex Secretariat and the National Codex Committee, serving as a liaison point with the food industry, consumers, trade interests and any other concerned parties to ensure that Government is provided with an appropriate balance of policy and technical advice. The National Codex Contact Point acts as the one stop shop in South Africa for information pertaining to Codex rules, guidelines and standards, and seeks to raise awareness of Codex issues to all interested parties.

Given South Africa’s limited financial and administrative resources and the wide range of Codex programmes and activities, South Africa’s participation in Codex committees is substantial. Indeed, South African officials are consistent contributors to technical discussions influencing the development of international standards. One only needs to look Codex Committee reports to note the interventions and influence of South Africa either as a single voice or part of a regional grouping. For example, at the 33rd session of the Codex Alimentarius, it is evident that South Africa was active at a technical level in the dealings of subcommittees with such things as standards for preventing campylobacter and salmonella in chicken, Maximum Residue Limits for Ractopamine, proposed standards for fish sauce, General Principles for Establishing Nutrient Values of Vitamins and Minerals for the General Population, and revisions to the international standard for Milk and Milk Products.

In contrast, South Africa’s participation in the SPS Committee at the WTO is relatively low. An enquiry point and national notification authority are the two institutions, which are in charge of consultation regarding SPS matters within the country and other members of the WTO. For Transparency, WTO members are required to notify “SPS enquiry points” and “national notification authorities”. The enquiry points are responsible for answering relevant questions in the SPS area. The notification authorities are responsible for ensuring that new or changed SPS measures are notified to the WTO. In spite of the fact that many African countries do not have these institutions, South Africa has both an enquiry point and notification authority which are both overseen by the Director: International Trade based at the Department of Agriculture, Forestry and Fisheries. Since South Africa’s first notification on 11 April 1996 concerning the temporary suspension of the importation of beef from the United Kingdom due to the possible health threat of the occurrence of Bovine Spongiform Encephalopathy (BSE) in cattle in the United Kingdom, South Africa has only made 27 notifications since. The last one being in 2009 regarding maximum levels of melamine in foodstuffs. Such a low number of official notifications is a surprising figure given South Africa’s active participation in the Codex. As well, in contrast to its middle income country partners like Brazil which has notified over 927 regulations and India that has notified over 90 issues since 1996,

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42 G/SPS/N/ZAF/26
it is interesting to consider if South African participation in the WTO SPS activities is seen as core to food safety regulation. Indeed, a DAFF official acknowledged that communicating and being transparent in SPS contexts is an area of ‘low performance’ and technical coordination with WTO partners is an area of ‘critically low performance.’

However, it is also apparent that representation of South African interests in SPS matters is a low performance area as well. In particular South Africa has not been active in challenging foreign SPS regulations through mechanisms such as the Specific Trade Concerns (STC) function at the SPS Committee or in the Dispute Settlement Mechanism. South Africa has raised only one STC and supported five others in the total history of the SPS Agreement. In contrast, Brazil has raised 24 STCs and supported another 19 over the same period. It is hard to believe there have been no foreign food safety regulations that have affected market access to South African products worthy of being formally challenged. Particularly given that Gebrehiwet et al., show that stringent sanitary and phytosanitary measures enacted by OECD countries continue to hinder South African food exports costing over US $70 million per year.

So why does there appear to be a disconnect between South Africa and the SPS Committee and the reverse with South Africa in Codex? Despite actually being present at many IFSC institution meetings, there continues to be a number of challenges presented by a cooperative IFSC in Southern Africa. In particular, the lack of a one-stop-shop for food safety at international level means that a country with modest financial and administrative resources must choose carefully where to direct much of its focus at the international level. Given that Codex is much more of a technical institution for developing international standards, South African officials appear to focus on this institution and proactively represent and negotiate the details of technical standards that will affect market access as opposed to challenging them post-hoc through the WTO. Ultimately, this makes the most sense when considering the use of financial resources and the decentralized structure of the IFSC. However, as South Africa develops government officials will be required to actively safeguard the interests of its agricultural sector, and this involves taking a real interest in the institutions that monitor and enforce international standards.

In addition, South Africa appears not to have set up the appropriate institutional framework to participate in the SPS Committee. For example, there is no overarching body that coordinates country positions on SPS issues, whilst there is for Codex matters. As Figure 4 highlights, the different departments play different roles within South Africa and are involved in the different international institutions. This leads to a context where the in-country institutional framework for dealing with SPS issues at the WTO looks like policy silo’s and lacks systemic coordination. This is meant to be rectified by constituting a national SPS committee within South Africa that coordinates

roles and activities of all the public entities involved, as per SADC rules, but this committee has fallen into abeyance after briefly being established in the late 1990’s.\textsuperscript{49}

Figure 4

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Functional Niches

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<thead>
<tr>
<th>Food Standards Development</th>
<th>Regulation of Food Standards</th>
<th>Implementation of Food Standards</th>
<th>Financial Assistance</th>
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<tbody>
<tr>
<td>(WHC)</td>
<td>International Food Safety Complex</td>
<td>South African Food Safety Regime</td>
<td></td>
</tr>
<tr>
<td>DoH</td>
<td>DAFF</td>
<td>DAFF</td>
<td>STDF</td>
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This lack of a national coordinating body reinforces that SPS Committee issues are not central to South African food safety regulatory activities. However, the fact that one existed in the past suggests that more is going on. Indeed, it appears to be a reflection of underlying politics in the region and internally to South Africa. First, South Africa directly engages with the various institutions with the IFSC as opposed to going through SADC. SADC’s role as a regional coordinating hub and voice at international standard setting institutions will only emerge once each member state government sets up a national SPS Coordinating Committee. For the time being, SADC’s role is to identify areas for technical capacity development and promote harmonisation with international standards, a relatively benign role that does not infringe on the sovereign right of South Africa to make its own policy decisions. All this means is that food safety authorities in South Africa still play a big role in implementing standards coming out of the IFSC and appears to prefer it that way.

Second, with each department and governmental level maintaining a specific competence, South African officials see little need for national coordination. Each engage with the IFSC based on their competence and international food safety standards trickle down through these connections, as highlighted in Figure 4. Whilst, this seems to work well, not having a one-stop-shop at the international or national level for food safety creates significant financial and administrative burdens. For example, One South African official noted that it cost approximately ZAR160,000 (USD 26,000) per meeting per institution to send representatives.\textsuperscript{50} In addition, the same official noted that just trying to keep up with international standards and import requirements coming from trading partners such as the EU was more than enough to keep officials busy. Whilst South Africa is a so-called middle-income country, this still results in a significant expenditure of time and financial resources.

Another administrative challenge posed by maintaining a decentralized approach to food safety regulation is efficient regulatory activity, information sharing and effective risk assessment and management. Given that international institution participation is the prevue of particular

\textsuperscript{49} Personal Interview with DAFF Official October 18, 2010.

\textsuperscript{50} Personal Interview with DAFF Official October 18, 2010
government departments, the potential for interdepartmental duplication of efforts exists or information sharing across departments regarding new rules or requirements does not automatically occur. In times of a food safety crisis, government efficiency and sharing of information are critical to assessing and managing risk effectively.

Indeed, the lack of a major food safety crisis in South Africa and Southern Africa as a region could help explain why South Africa maintains such a decentralized approach. Unlike, the EU, US or Canada no major food safety crisis has shaken public or international confidence in food safety regulation. The lack of such a crises has arguably mollified public interest in food safety regulation in South Africa and the region and placed little pressure on officials to streamline or centralize the South African approach. Unlike in the EU where the emergence of the European Food Safety Agency is linked to public concern in the ability for the EU to ensure the integrity of food in the region.51

Given the challenges of food safety regulation in South Africa that appear to be reinforced through a cooperative, decentralized IFSC, one must wonder if centralizing all aspects of food safety regulation at the international level might inspire a similar approach in South Africa. Certainly, centralizing food safety regulation at the international level would help in easing financial and administrative pressures of attending and participating in a multitude of international institutions. In addition, creating a South Africa Food Safety Agency could improve efficiency of government operations and result in less financial costs, increased coordination and improved flexibility for dealing with any food safety crises that might emerge at the national and regional level.

Conclusion

The present paper has established that an International Food Safety Complex exists and is influential in building food safety regulatory capacity in Southern Africa. The conditions under which this interlocking governance structure emerged suggest that cooperation amongst the component international institutions has been a constant feature of this regimes’ evolution. Integral to this has been the timing with which component institutions in the IFSC emerged and the demand for technical and financial assistance in Southern Africa for food safety regulation. The notion of timing and demand have been given little attention in the literature despite their importance as variables in understanding the emergence of international complexes and functional niches. Such a contention challenges the idea that competition amongst international institutions for policy space is a constant and requirement in the emergence of interlocking governance structures and functional niches. Indeed, cooperation can also be a starting point for international complexes if component institutions are created as and when the need arises. In addition, cooperation can be reinforced as a trait of international complexes when existing institutions engage in cooperative endeavours like they did in the IFSC with the creation of such institutions as the Codex and STDF, or promoted the development of technical assistance programs like those lead by the EU.

The role of an IFSC that cooperates and sticks to its functional niches has resulted in a real development of capacity for food safety regulation in South Africa. Indeed, South African officials are present and engaged in food safety initiatives within the component institutions. However, the degree to which South Africa participates and takes on a leadership role for Southern Africa depends on the institution in question. South Africa appears to focus its political energies on the Codex as opposed to the SPS Committee. Given the technical nature of the Codex, this speaks well to the sophisticated food safety regulatory environment that South Africa maintains but does not

51 Alemanno, Alberto. (2007). Trade in Food: Regulatory and Judicial Approaches in the EC and WTO: Cameron May,
bode well for South African interests seeking a fair deal in international markets. The cost for South Africa to participate in multiple different meetings in different organisations is a costly endeavour for this transitioning developing country. Despite the availability of a number of funding sources to assist with such challenges, South African officials do not partake of such initiatives as the Codex Trust Fund. This reinforces that a smattering of funding pots spread across different institutions in the complex available to developing countries can work against promoting effective participation.

The decentralised nature of the IFSC has ramifications on the development of a more coherent regional strategy for the attainment of improved food safety standards within the region. The SPS Annex to SADC Protocol on Trade speaks to the creation of a SADC SPS Committee but this has not been established yet. The precursor to its creation is that every SADC member has a national SPS committee but this condition has not yet been met. The difficulty lies in that most of the member states also have decentralised food safety governance structures which are a replica of the example outlined within the international arena. This proves to be of great difficulty because in order to increase participation of these countries at international level, due to the large discrepancies in economic development, a regional effort needs to be put forward to address their concerns. SADC’s recent admittance as an observer at the SPS Committee also demands that Southern Africa’s regional food safety complex become more lucid in order to fully utilize this position to the benefit of all the SADC Member States in order to ensure consistency in the regional approach to international activities. A coherent regional strategy is necessary due to the difficulties encountered by a number of the Member States to attend all the meetings and stay current on SPS deliberations. The SADC SPS committee would also subsequently allow for a more effective dissemination of discussions at the WTO. The move would give these African countries an added boost in their ability to follow WTO work on food safety, animal and plant health, and to trade more effectively.

In a 2009 paper published by the SADC Secretariat entitled Measures to Address Food Security in the SADC region, SADC highlights that food and safety standards imposed by OECD countries – predominantly by the EU – despite efforts by the IFSC, remain the most distorting market access barriers for SADC countries. Food safety standards are seen as imposed by the international community because developing countries participation in the IFSC remains low. In spite of attempts by the international institutions that have been highlighted in this paper, international food safety measures remain burdensome. Such a cited example is the EU traceability regulation. The food safety standards through heavy domestic support from international trading partners have made SADC agricultural prices uncompetitive resulting in rendering the production of cotton and sugar unattractive within the region in spite of the competitive advantage. The need to further improve technical capacity within the SADC region remains high as the prevailing mindset underscored by SADC in the 2009 publication remains that the EU has undermined the development opportunities of large numbers of smallholder farmers in the SADC region. SADC calls for a need for better access to OECD markets for labour-intensive manufactured goods, primary agricultural goods such as sugar and cotton, and processed agricultural products and insist that the protection of domestic agricultural markets as a result of SPS measures in OECD countries together with export subsidies, has reduced prices for many SADC farmers and rendered their products uncompetitive.52

SPS measures have resulted in depressed prices for many SADC farmers, thereby rendering their products uncompetitive within the international market. Until such a time as SPS Measures are not seen as protectionist non-tariff barriers to trade, there remains a much room for cooperative efforts in this areas. SADC purports that protecting domestic agricultural markets through food safety standards, such as SPS measures and the traceability regulation, and by subsidising exports the OECD countries protecting their markets in order to support their farmers and as such calls for the conclusion of the Doha Round negotiations that would address these barriers.

52 Measures to Address Food security in the SADC region p 44
Intra-SADC trade in food is also constrained by lack of harmonization of SPS measures between member states, other non-tariff barriers, and rules and disciplines governing trade in agricultural products. The challenges are to expedite the harmonization of SPS measures and the rules and disciplines governing trade in agricultural products, as well as to reduce non-tariff barriers. In addition to this, since the SADC Trade Protocol was designed for formal trade, informal cross-border traders are not benefiting from implementation of trade liberalisation measures. These traders face all sorts of trade barriers, including stringent visa requirements, high customs duties, licensing requirements, transport problems, and lack of space for selling their wares. The challenges are to adopt a regional policy framework specific to the needs of informal cross-border traders, simplify customs documents, eliminate border delays, provide them with market spaces in towns, and to build capacity and awareness among stakeholders, among other things.

At the South African level, the decentralized structure of the IFSC ensures that specialized institutions can dedicate sufficient time and attention to specific food safety considerations and transfer that knowledge to participating countries like South Africa. However, for a country of the economic size of South Africa, there is clearly a challenge in coping with all the new information and standards coming out. Indeed, it appears that South African officials spend much time just trying to keep up with implementing international standards and norms at the domestic level, at the expense of considering overarching issues such as national coordination or the efficiency of the food safety regulatory environment.

Despite the challenges identified, the presence of an IFSC in Southern Africa has been of benefit for food safety regulation in the region however there still remains a lot of work to do within this area. Both inter- and intra-African trade is still suffering as a result of the implementation of these food standards and there is still much work to do in the way of increasing food safety standards so that they do not negatively impact on much needed trade in the region. A fully implemented food safety complex within the Southern African region would have a highly positive effect on ensuring access to safe and quality food. It also helps African states that maintain a comparative advantage in areas of agriculture, to export their goods to foreign markets. Given the role of food standards as non-tariff barriers to trade, the role of the IFSC has facilitated improved access to important economic markets which is a key component to the development of the region.