Assessment of Policy, Legal And Regulatory Constraints Affecting Agribusiness in Georgia

Support of Added-Value Enterprises (SAVE)
ACDI/VOCA

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Executive Summary

This paper identifies and ranks policy, legal and regulatory (PLR) constraints in relationship to their importance to the agribusiness market chain and proposes remedies where they are indicated.

The application of a filter to identify and rank PLR constraints generates the following list of high priority areas:

- Standards and certification (of processes and products)
- Leasing of agricultural land
- Procedures for the introduction of new varieties
- WTO obligations
- Use of contracts and private arbitration
- Freight forwarding
- Agricultural water rights
- Banking law

Recommendations are advanced for the mitigation of each of these constraints. Lesser constraints are also described and addressed with recommendations. Conditions that are not within the Support of Added-Value Enterprises (SAVE) project's scope, *e.g.*, the general level of corruption and the general tax code, are not addressed.

An extensive section on standards and certification describes the current mix of Soviet and post-Soviet standards, obligations under WTO and the need for Georgia to move deliberately to the most market-relevant standards and certification procedures. It is recommended that Georgia move aggressively to introduce the principles of HACCP (hazard analysis and critical control points) and replace the current standards and certification regime with *Codex Alimentarius*, the effective world standard. At this stage, neither the relevant organs of the Government of Georgia nor Georgian processors appreciate the need to adopt internationally accepted, market-relevant standards. Migration from the current mixture of irrelevant GOST and poorly applied Georgian post-GOST standards to the world of HACCP and *Codex* will be painful for certain entrenched interests and will require extensive public education activities.

Extensive annex material includes a catalog of laws and regulations related to constraints, a critique of the current and proposed seed laws, background on standards and certification, material on HACCP, a brief review of relevant donor projects and discussions of the Georgian Law on Private Arbitration.

POLICY, LEGAL AND REGULATORY ASSESSMENT

SAVE PROJECT

1.0 OBJECTIVES

The primary tasks of Phase I for the Policy, Legal and Regulatory (PLR) focus of the SAVE Project are:

1. **Identify and rank agribusiness policy, legal and regulatory (PLR) constraints in relationship to their importance to the agribusiness market chain;**
2. **Propose strategies to remove targeted constraints;**
3. **Provide recommendations for PLR test pilot activities to test the validity of identified constraints and proposed remedies; and**
4. **Determine the baseline of standards and certification capacity in Georgia and make recommendations for its improvement.**

1.1 Breaking Constraints and Promoting Agribusiness Development A Policy Framework to Achieve SAVE's Goals

This Policy Assessment examines policy, legal and regulatory constraints that hinder the development of Georgian agribusiness. Many constraints are identified and specific actions are recommended to improve the agribusiness environment. However, simply eliminating these legal and regulatory constraints is not sufficient to ensure agribusiness and export development. Policies, laws and regulatory regimes must be promoted that will be consistent with and promote agribusiness needs on a continuing basis.

It is too early in the life of the SAVE project to advocate specific mechanisms (e.g. whether or not credit, production and marketing cooperatives should be given special emphasis, the best institutional basis for extension services, the extent of land privatization and the model that should be used, *etc*.). Generally, however, we know that those mechanisms must address the agribusiness sector's needs for:

- New resources (*e.g.* production credit, new capital equipment, new cultivars, chemicals, handling equipment, processing and storage technologies);
- Information about what foreign markets want (*e.g.* quality, timeliness, food safety and packaging expectations);
- Legitimate market power (*e.g.* the institutional capacity to capture the economies of scale, where they exist, by the collective purchase of quality assured inputs, transport services and final product marketing);
- Continuing awareness of and ability to analyze proposed policy changes that affect production, processing and marketing (*e.g*. changes in the tax code, harmonization of standards with WTO expectations, land lease and privatization legislation);

- Advocacy power to inform other elements of the production-marketing chain, the public, the Government and Members of Parliament of changes in the policy, legal and regulatory environment of agribusiness and to lobby for those changes.

Our analysis of the existing policy, legal and regulatory constraints to agribusiness is conducted with the knowledge that reform must be consistent with the development of solutions that address these five needs.

1.2 SAVE's Pro-Active Role

SAVE is not a policy-making project. Policies, laws and regulations that promote agribusiness and the general welfare of Georgia are the responsibility of the Government of Georgia and the Parliament. SAVE's proper role is to identify beneficial changes and articulate them to stakeholders for their consideration and action.

SAVE cannot create political will for change, but it can provide stakeholders with information and examples with which to advocate and implement appropriate changes. SAVE will pursue the role of analyst, educator, facilitator and mid-wife to the vision of a transition from the current economic environment to a fully demand-driven, privatized agricultural sector that faces and responds to world as well as national market signals. SAVE will pursue this role by means of:

- Continuous monitoring and updating of legal and regulatory constraints identified in Section 3;
- Creation of policy papers and draft legislation and regulations that would influence GoG policy makers and inform stakeholders about the five points in Section 1.1;
- Selecting and working with a limited number of enterprises in the production-marketing chain to assist them to exploit production, processing and marketing opportunities, including those that lead the sector in a migration from Soviet-era standards and certification modalities to an ISO/HAACP-based quality assurance system that is consistent with evolving EU and WTO expectations;
- Encouragement and support to the development of value-added producer, processor, marketing and input service providing associations;
- Selection of an internationally recognized ISO/HACCP subcontractor to develop a Georgian capacity for standards and certification training; and,
- Regular dialogue with stakeholders at the regional and national level.

2.0 A FILTER FOR DETERMINING POLICY CONSTRAINT PRIORITIES

In the draft report "SAVE Assessment of Constraints to Agribusiness in Georgia," (previously submitted and approved by USAID), a set of project filters was developed to identify constraints that impede the creation of value-added agricultural export or import-substitution opportunities.

In this paper we propose a slightly different filter consisting of criteria more appropriate for analysis of policy and legal and regulatory issues to assist in selecting PLR constraints. In identifying constraints, we first cast the net widely, from both primary and secondary sources of information, to ensure that all significant constraints are identified.

Primary information was obtained through direct contact and discussions with the participants identified at the initial stakeholders workshop (22 May, 2002) held by SAVE. Interviews were conducted with enterprise managers and entrepreneurs, ministry officials, Members of Parliament, donor organizations and implementing agencies. Over 25 interviews were carried out with key individuals in these industry, government and NGO sectors. See "PLR Contact List" in Annex 6. These interviews will be expanded, especially at the district level, over the remainder of Phase I.

Concurrent with primary information collection, a desk study was undertaken, using secondary information obtained from project reports, consultant reports, the World Bank, EU TACIS, and NGO's. The use of secondary sources was intended to identify constraints and to learn from the documented accomplishments and mistakes, and to avoid duplication of effort.

The filter criteria are presented below.

Filters

Eliminating or ameliorating the constraint will have a fairly immediate and positive effect on Georgian agribusiness and exports, *i.e*. within the first two years of Phase II
Eliminating or ameliorating the constraint is within the scope of the SAVE Project
The constraint has been identified by at least two of the following groups: Georgian agribusiness practitioners, technical experts and policy makers
Eliminating or ameliorating the constraint will not substantially increase other transaction costs, aid or abet corruption, work against rule of law reforms, offend basic human rights standards or result in significant environmental damage
The political will for eliminating or ameliorating the constraint is present and a practical solution is available

3.0 LEGAL AND REGULATORY CONSTRAINTS AFFECTING GEORGIAN AGRIBUSINESS – DOMESTIC AND EXPORT

All candidate constraints identified through primary and secondary sources were tested against the above filter and assigned to one of three priority groups – 1) Higher, 2) Lower, or 3) Eliminated from consideration – according to our judgment on their fit with the filter criteria. The constraints are not ranked within groupings. In other words, all higher priority constraints are regarded as being of equal significance to the agribusiness market chain and therefore equally valid recipients of project resources. Each constraint in the higher and lower groups is followed by recommended actions to relieve the constraint. The eliminated constraints are followed by an explanation for their exclusion.

Like any transition country, Georgia's policy and legal and regulatory agenda can sometimes be fluid and often less than transparent. Contributing to a clear and more stable PLR environment will be an underlying SAVE theme. Policy re-prioritization will be an inter-active and on-going process. As additional issues are identified, they too, will be tested against the policy filters. Similarly, as constraints are successfully resolved and removed from SAVE's priority list, other constraints may be placed on the list from the "lower priority" list.

For a catalogue of laws, Presidential Decrees, and other regulations referred to, or relevant, see Annex 1.

GROUP I: HIGHER PRIORITY CONSTRAINTS

3.1 Standards and Certification[1]

After Georgia became independent, it continued to adhere to and apply the system of mandatory standardization that was based on the system of GOSTSTANDARDS, regardless of the dangers presented to the public from the various products. Since 1992, with Georgia depending heavily on imports, testing and certification have been mainly carried out for import purposes. Sixty percent of all testing laboratories work in the fields of foodstuffs and agricultural products.

Georgia is obligated to harmonize its standards and system of certification with international norms, standards, and conditions resulting from Georgia's WTO membership. This means that Georgia must change its compulsory certification system to a voluntary system. The main legal act in the field of standardization in Georgia is the "Law of Georgia on Standardization", which was promulgated from June 1999.[2] This

[1]Since many of the issues related to Georgian standards and certification process are identical for food safety analysis, food safety is not being treated in this report as a separate subject. For a list of the applicable Georgian laws and regulations relevant to food safety, see Annex 1(b).

[2] Georgian legislation specified the requirements for, and the list of products subject to, obligatory certification in the "Law on the Certification of Goods and Services," (No. 376, 6 September 1996), which was passed by Parliament pursuant to the "Resolution of the Cabinet of Ministers" (No. 605, 29 August 1994,). The number of mandatory standards was significantly reduced with the issuance of a presidential decree, No. 313, on 27 July 2002, "Regarding the Steps of Changing the Obligatory Certification to the Voluntary Certification." The Decree specifies the list of products that are still subject to the compulsory certification, although it includes about 50 fewer products than the GOSTSTANDARD system.

legislation introduced the system of voluntary standardization that is typical for modern market relations.

WTO requirements notwithstanding, the accession agreement for Georgia allowed the *de facto* mandatory GOSTSTANDARDS to continue to operate in Georgia during a transitional period of three years. However, unless Georgia's current attempts at re-negotiating the extension of this deadline are successful, all GOSTSTANDARDS will lose their mandatory power after expiration of this initial transitional period, slated to end in 2003.

Given that the Georgian Constitution regards international obligations (*e.g.*, the Technical Barriers to Trade (TBT) Agreement of WTO) to prevail over national legislation and regulatory acts, Georgian exporters could begin compelling the enforcement of international standards through the courts when the deadline for transitional period ends. This could become an effective spur for an industry-led standards and certification reform effort.

For the present, though, the standards officially recognized in Georgia include:

1. The all-Union GOSTSTANDARDS were inherited from the Soviet era. There are still thousands of such standards officially in force in Georgia, as the new ones have not been worked out.
2. National Standards, which are worked out by various Georgian working committees and registered by "Sakstandarti ("GeoStandard," in English), which apply on the whole territory of Georgia. These standards are worked out by the 31 product cluster committees of Sakstandarti, many of which are located in the relevant GoG ministries.
3. Company Standards, which are determined by individual companies and voluntarily applied to those companies' various products. These standards must also be registered by Sakstandarti to become official.

As noted, the registry of standards maintained by the State Department of Standardization, Metrology and Certification (Sakstandarti or Geostandard), which was established by presidential decree No. 170 of 27 March 1998 (as amended by Decree No. 23 from 27 January 2000). It defines Sakstandarti as an independent governmental body that is responsible for the development and implementation of state policy and regulation in the field of standardization. These regulatory activities include:

- Approving certification rules and procedures;
- Publishing official information for the public regarding certification;
- Approving licenses for testing laboratories and other certifying organs; and
- Signing agreements with regional and international organizations regarding mutual acknowledgement of certification results.

Problems:

Because of this lack of harmony in standards systems between Georgia and its potential foreign markets, the export marketing process is more expensive and lengthier than it needs to be. Adherence to the GOST criteria negatively affects Georgian product competitiveness by omission as well, *e.g.* there is no GOST standard for frozen

vegetables (a potential export product cluster for Georgia). All issues of quality must be decided privately between the buyer and seller by contract, which entails higher transaction costs and narrows potential markets for Georgia agriculture products. This is where a HACCP program that leads to ISO (International Standards Organization) certification could rapidly provide an improvement.

Further, despite its high aspirations, the Government of Georgia's (GoG) testing and standards agency, Sakstandardi, maintains a testing process that is almost inoperative, given its lack of funding, limited testing capacity and shortage of adequately trained personnel (see Section 4 of this report for a detailed analysis of this problem.) One of the consequences is that Georgian certificates are currently not recognized anywhere in the world.

Another constraint to Georgian exporters can be observed in the way Georgian law addresses the testing problem by authorizing laboratory testing to be performed by private entities that have been licensed by Sakstandardi. Such licenses are good for three years. To date, 49 Georgian laboratories are licensed to conduct food safety and certification testing, although some subcontract much of their work to other labs, despite rules to the contrary. Private sector testing would seem like a boost for efficient government. Unfortunately, some of the firms that are currently licensed are partly or wholly owned by staff of Sakstandardi. This obvious conflict of interest will further undermine foreign confidence in Georgian product standards and institutionalize opportunities for corruption.

SAVE staff and consultants believe that the optimal strategy by which to relieve this constraint is to assist Georgian exporters develop a HACCP strategy that has the long-term aim of securing ISO certification. This strategy is intended to set the quality assurance process in motion and allow sustainability of efforts beyond the life of SAVE, which is a more reasonable timeframe for Georgia. Another benefit of enterprise-led efforts for the reform of standards is that it closely involves the private sector in the standardization process, in line with international practice and the requirements of the Georgian "Law on Standardization." It also obviates the delay in Georgian standardization reform that is likely if emphasis is placed on a comprehensive reform of Sakstandarti first, a process that will undoubtedly be time-consuming, expensive and a questionable use of SAVE resources.[3]

Donor coordination regarding technical assistance with standards and certification is also an issue that requires careful monitoring. In an interview with Deputy Foreign Minister, Tamar Beruchashvili, she asserted that lack of donor coordination creates jurisdictional problems among GoG Ministries, especially the MoAF, the Ministry of Industry, Economy, and Trade (MIET) and the Ministry of Foreign Affairs (MFA). She cited as examples the funding by GTZ of a testing laboratory at the MoAF, while UNDP was simultaneously funding a testing laboratory under the auspices of the MIET. The latter is being built by TUV-Nord for operation under the management of the Association of Georgian Exporters (AGE), a Georgian NGO.

To avoid establishing duplication of effort and conflicting authorities, GTZ requested Deputy Minister Beruchashvili's intervention in sorting out the respective mandates of

[3] Section 4 describes an enterprise-led strategy.

each project. The time-consuming compromise resulted in a division of labor being agreed between the two ministries whereby the MoAF will certify wine standards, leaving AGE responsible for all other export certifications.

This "official" compromise required an enormous amount of Deputy Minister Beruchashvili's time and demonstrated that coordination by GoG ministries cannot be assumed. She suggested that SAVE could make a significant contribution by assuring that agricultural export projects are coordinated so they support and build upon other work, not work at cross-purposes.

A second "potential" constraint to Georgian agricultural exports appears in the evolving structure of Georgian standards and certification reform. The AGE laboratory is scheduled to begin operating by the end of 2002. Vazha Kapanadze, Deputy Minister of MIET, expressed doubt about the ability of the MoAF to establish a testing lab, saying that it had made no progress in the last two or three years. Thus, given Sakstandarti's minimal resources, it would appear that AGE will effectively assume responsibility for Georgian standards and certification in the future.

While transferring this function out of the Georgian bureaucracy would appear to be commendable, we were told in a meeting with AGE that AGE planned to reserve its testing facilities for use only by AGE members and those of the Georgian Export Promotion Agency (GEPA), which seems to be a close partner in the project. The Director of AGE also reported that he intended to have his testing laboratory accredited by the European Union (EU), although he was reluctant to inform us of how this was to be done. Indeed, he was not responsive to our questions about what would become of the currently licensed Sakstandarti testing labs or whether AGE/GEPA would have a monopoly in granting mandatory certification.

This is an issue that should be carefully monitored. Without the adoption of the necessary regulatory provisions and oversight structure, it is our concern that granting a monopoly to AGE/GEPA could set back the reform of the Georgian standards and certification processes. Indeed, it seems a distinct possibility that Georgian agricultural exporting could remain the domain of only the few and the well connected, just as it was under GoG control.

Recommendations:

- Promote a separate Law on Accreditation that will clearly separate the functions of laboratory accreditation, product testing and certification by designating different organizations to be responsible for each task.

- Work with Georgian agribusiness enterprises to improve quality and sanitary standards by assisting them to develop a HACCP strategy.

- Further study the standards and certification reform intentions of the GoG regarding the future roles of Sakstandardi and AGE/GEPA and provide an analysis of its policy implications.

- Establish partnerships between Georgian and foreign companies that will accept HACCP quality assurance programs and who can provide ISO mentoring and certification.

3.2 Uncertainty in Leasing and Owning Agricultural Land

A little less than one-half of Georgia's arable and perennial crop-land remains state-owned. The State makes this land available for use by the private sector through a lease process that constrains agribusiness development in several ways. One constraint derives from a "right to void" granted by the Georgian Civil Code to any of the parties entered into a lease contract running longer than ten years. This essentially allows tenants or owners to nullify the extension of leases beyond a ten-year period, despite the issuance of a presidential decree that allows for 49-year leases.[4] Under Georgian law, the authority of the Civil Code trumps that of presidential decrees. Consequently, the longer leases have no basis for enforcement unless the Code is amended.

Another constraint stems from the widely practiced Georgian custom of small farmers relying exclusively on verbal agreements in setting up leasing arrangements. In fact, such agreements are not legally binding under Article 593 of the Georgian Civil Code, which requires that all lease contracts be put in writing. If lease contracts are not in written form, the length of the lease is presumed to be for an indefinite term only, which is defined under Article 601 of the Civil Code to be for three months or until the end of the calendar year, depending on the time of the year that the oral agreement starts to run.

Further, legal conflicts between the state property registering organ (the Bureau of Technical Inventarization, (BTI)) and the State Department of Land Management and Registrars (SDLM) have caused ownership confusion due to the lack of information exchange between the two bodies. During alienation of tracts of land, the SDLM performs the registration of immovable property (land, buildings) based on the information provided by BTI, which keeps the old cartographic data and land-allotment deeds. Following registration of the tract of land, SDLM needs the information from the BTI only during the first transaction (any transfer following 1997) of the tract of the land; BTI is no longer involved for all future transactions for the same tract. There was an attempt by the SDLM to unify these two agencies in pursuance to the German model. This action was overpowered by the BTI and there is no unification planned in the near future.[5]

The relationship between these agencies is obviously bad and has caused some administrative obstacles to the creation of a viable land market in Georgia. Sometimes the SDLM does not trust the information provided from the BTI and sends its own personnel to get the information at the location of the tract, *e.g.*, to measure the tract. This makes for very inefficient administration of registration, of course. The essence of this conflict resides in the fact that both agencies are attempting to increase their respective incomes, from both official and "unofficial" sources. This rivalry is another example of government officials using their offices for personal gain, irrespective of the public interest.

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[4] It has been noted that the 49-year lease, together with a non-commercial lease award procedure, allows land to be acquired at very low lease rates by powerful and well-connected individuals who then sub-lease the land to others who are the real value-added cultivators. The social and political wisdom of enabling a non-productive landlord class is questioned by some.

[5] SAVE is aware of potential sensitivity surrounding the relations between the SDLM and the KFW-funded (German) cadastre project on one hand and the APLR-USAID Land Titling Project on the other.

The use of non-market mechanisms to award leases is another problem. This method awards leaseholds on the basis of business plans submitted by applicants. The criterion for selection of the leasehold property is supposed to be "best use." The decree governing this selection process, though, does not specify or give any guidance about how "best use" is to be determined by the local special selection committee charged with making decisions. Hence, the process is nontransparent and allows for awards to be made for non-meritorious reasons and cronyism.

All of the above, to the extent that they contribute to lease tenure insecurity, exacerbate the problem of using a lease for collateral and work counter to private investment in the improvement of leased land.[6]

Recommendations:

- Work with APLR to evaluate further the provision in the Civil Code that grants the right to invalidate lease contracts after ten years and propose an amendment on the basis of that analysis.
- Provide information to farmers' groups about the legal requirement of written lease agreements and make lease forms available. The newsletter published by the Association for the Protection of Landowners Rights (APLR) would be a useful instrument for distribution.
- Reform land and property registration either by merging the functions of the State Department of Land Management and Registrars with the Bureau of Technical Inventarization, or eliminating one from the land and property registration process altogether, so that their jurisdictional rivalry can no longer sabotage Georgian land reform.
- Propose a new decree or law for awarding leaseholds to applicants that limits selection committee discretion by incorporating specific decision-making criteria that it must consider in the selection process. APLR could lead this effort with SAVE's assistance.
- Continue evaluation of land reform proposals and build alliances that support enhancing a rule of law-observant, market-mediated access of value-added entrepreneurs to land.

3.3 Introduction of New Seeds and Plant Varieties in Georgia

In order to offer agricultural products demanded by today's market, it will be necessary for Georgia to update its current seed and plant materials stock. This goal is frustrated by a constraint imposed by the current Georgian "Law on Permission for the Distribution of Agricultural Crop Varieties, Seeds and Planting Material." This Law's restrictive testing requirements have spurred Georgian farmers, seed dealers, and others to smuggle cultivars into the country to meet the demand to expand Georgia's varietal portfolio. Smuggling presents a serious disease risk to existing Georgian cultivars.

[6] In January 2003, the APLR hosted a regional conference on land policy. SAVE anticipates that the conference will substantially improve the understanding of how Georgian law and practice constrain agribusiness and how legislative and administrative reform might relieve those constraints. Accordingly, we offer the recommendations below with the understanding that we expect to adjust and improve them later in Phase I.

The Seed Law mandates a three-year testing period before new cultivars can be made available to the public for commercial planting. While this might not be an excessively lengthy testing period for internationally untested varieties, it is unreasonable to require ALL newly introduced varieties to Georgia to be tested, if prior testing and approval has occurred in other countries.

Finally, the three-year testing provision is not appropriate for fruit-bearing trees that may require five-to-seven years to bear their first fruit. Other countries have used market forces and truth-in-labeling laws to protect farmers from fraudulent sales practices. This model should be seriously considered by Georgian agricultural policy makers.

Although this report later criticizes certain components of the Georgian Seed Law, more rigorous enforcement of some its provisions could protect Georgian farmers from fraudulent seed sales. The sale of bags of seed by Georgian seed dealers tagged with labels misrepresenting the purity of the seed contents is not an uncommon experience for Georgian growers. Low seed purity can result in poor crop stands. Mandatory seed analysis tests of dealers' samples required by the Law and conducted by the Inspectorate for Quality Seeds and Planting Materials are effective in determining purity and germination. Unfortunately, if the field of origin of the sample is unknown, the seed's genetic purity is dependent upon the dealer's honesty only. If the Field Inspection Certification procedure in the Seed Law was conducted while the crop is still in the field, as called for in the Law, growers might be more confident that they were receiving the exact seed they thought they had purchased.

There is a draft Seed Law that continues to be promoted by the Ministry of Agriculture and Food's (MoAF) Center for the Protection of Plant Variety and Breeders' Rights of Georgia to replace the current Seed Law. Annex 2 presents a critical and comparative review of the current and draft laws. This analysis identifies the pros and cons of both, but concludes that, while the current law could be improved by adoption of one or two of the draft law's provisions, it should not be wholly replaced. We believe it is important to maintain the current law's division of responsibility for approving new cultivars in which testing and decision-making are performed by separate units. This division of authority seems to be an effective administrative procedure for guarding against conflicts of interest slipping into the process.

Recommendations:

- Draft and offer to the MoAF for its consideration, amendments to the current Seed Law, incorporating the changes recommended in Annex 2.
- Circulate information about the defects of the proposed draft law among farmers' groups and policy makers along with arguments against its adoption.
- Encourage collaboration with European or other institutions involved in seed testing, reproduction and legislation (e.g. the National Institute of Agricultural Botany of the UK, which has strong FSU experience).

3.4 WTO

Georgia joined the World Trade Organization (WTO) on June 14, 2000. Membership gives certain benefits to Georgian exporters in relationship to other member states of WTO. Membership also requires Georgia to treat imports from these countries in an equal and reciprocal manner. The relevant extract from the WTO membership obligations specifies the following:

- The same excise duties must be applied to imported and local products (including tobacco and alcohol products).
- Freight forwarding services and inspection must be brought into compliance with the WTO procedures and rules, namely with the agreement on import licensing, determining the country of origin, anti-dumping execution, subsidies and compensation measures.
- The Soviet-era "GOST" standards must be replaced with internationally accepted standards (This is one of the most pressing issues facing Georgia's WTO compliance at the present).
- The number of categories of imported products subject to compulsory certification must be reduced (The process of transition to the voluntary certification system should be completed by June 2003, a deadline it cannot possibly meet. Now Georgia must make the case for receiving a year's extension from the WTO).

Benefits of WTO membership for Georgia include the following:

- Products originating in Georgia will fall under the Preferential Trade Regime in the other 145 member countries of WTO, *i.e*. low customs tariffs will be applied to them when entering these countries.
- International disputes related to trade will be settled through WTO dispute committee.
- Much of Georgia's legislation will be harmonized with international norms.
- Low tariffs will exist for raw materials and industrial equipment, increasing opportunities for their import into Georgia, thereby lowering input costs.
- Georgia's integration into the global economic system will be advanced, stimulating further liberalization of trade and the introduction of new technologies, thereby increasing the competitiveness of Georgian products.

Low import tariffs will put Georgian producers in competition with more developed foreign exporters. Ultimately, it will remove the possibility of defending the local market and local producers from cheap imports. Fortunately, though, Georgia has been granted General System Preferences (GSP) status from both the United States and the European Union (EU), which exempts it from reciprocal Most Favored Nation requirements when importing and exporting certain products. Once Georgian companies begin adhering to international quality standards – and Georgian exporting increases accordingly – their ability to benefit from GSP status will be further enhanced.

For reasons of national prestige, or perhaps due to a lack of the necessary technical expertise within the Georgian Government to design agricultural development programs that are in compliance with WTO guidelines, officials seem reluctant to apply for trade exemptions allowed under the WTO. Georgia will probably need a variety of deadline postponements in adopting the necessary legislation to be in compliance with WTO

requirements and standards. It should be provided with the necessary technical assistance in doing so, thereby avoiding unnecessary damage to its budget or to its economy while attempting to fulfill its WTO commitments.

Recommendations:

- The MoAF requires technical assistance to ensure that its development programs and policies are WTO-compliant. In seeking any exemptions from WTO standards, particular care should be made to support only agricultural products that represent a true comparative advantage for Georgia, and which will be time-limited in their effect. Using such "protectionism" for prolonging old, uncompetitive products will be counterproductive to SAVE's goals. (*e.g.* the MoAF is under pressure to subsidize the tea sector in spite of the fact that this artifact of the Soviet era is highly unlikely to be competitive in the world market at the current level of potential production.)
- GoG needs to complete the reform of the Georgian standards and certification process, so that Georgian agribusiness can reap the maximum trade benefits from the WTO General System of Preferences (GSP) status granted to it by the USA and EU. For instance, this could include petitioning the EU for a quota figure of perhaps 5,000 tons of Georgian apple concentrate. This would allow this emerging product industry to find a market niche despite the currently depressed world prices arising from a large supply of Chinese apple concentrate on the world market.
- Georgia needs technical drafting assistance to aid in achieving some of its other WTO obligations, including Customs and export-relevant transportation requirements, being careful not to duplicate TACIS-funded efforts undertaken by the Georgian Policy and Law Analysis Center (GEPLAC).

3.5 Contracts

The buyers of Georgian exports invariably require their own or an international jurisdiction to decide contract disputes, a reflection of a low level of foreign confidence in the fairness of Georgian courts. The establishment of a branch of the International Court of Arbitration may alleviate some of this foreign distrust, but this will serve only the interests of the largest companies, due to setting a minimum amount in dispute having been set at $100,000. Typically, Georgian exporters negotiate a resolution to a dispute by offering price discounts on merchandise or some other incentive in order to maintain a desired trade relationship.

It is uncommon for Georgian parties to enter into written agreements for domestic trade. One reason may be a lack of traditional practice in doing so, especially among farmers and between farmers and processors. Another may be a consequence of the business person's desire to avoid creating a paper trail that could render his business more vulnerable to investigation by tax and other authorities. A third reason impeding the use of contracts in Georgia may stem from lack of faith in Georgian courts to fairly enforce and adjudicate contract disputes.

A reluctance to form contracts, or being allowed to break contracts with impunity, is destructive to every facet of agribusiness – supply, distribution, and sales. Such behavior also works against predictability and risk minimization in the market chain, when, for instance, agricultural processors cannot honor their forward contracts with domestic or export clients because growers have not honored their contracts with the processors. The loss is even greater when the process has advanced money to the growers in order to assist in crop production. Processors and exporters face the additional danger of losing their export markets if they cannot locate alternative sources of product supply of equal quality in a timely manner.

Private courts of arbitration may serve as an alternative to resolving contract disputes in the regular courts. Such alternatives can represent a quicker, less formal, and often more mutually satisfying dispute resolution process to the parties involved. Regions of Georgia that have a tradition of using alternative dispute mechanisms, such as those where community elders intervene to settle disputes, may be fertile ground for promoting this initiative. A public education campaign undertaken to promote both the use of contracts and the use of private arbitration courts might be mutually reinforcing.

Private arbitration has been available in Georgia since 1997, but there are problems with the current law that have discouraged its use. A working committee to draft a new law was established under former Justice Minister Mikheil Saakashvili, but it fell into abeyance with his resignation last fall. A well-designed and properly implemented Law on Private Arbitration would provide an effective alternative to a populace that has lost its faith in the regular court system and lacks the money for court fees. (See Annexes 8.1 and 8.2 for a summary of the provisions of the current Law on Private Arbitration and a critique of the law and suggested improvements, by a prominent Georgian jurist).

Recommendations:

- Educate growers, processors and exporters on the importance of forming contracts and offer form contracts as models for relevant transactions.
- Promote the use of private courts of arbitration and provide information on how to use them.
- Write and distribute to relevant policy makers and NGOs a policy paper citing the defects of the current Law on Private Arbitration and recommending its replacement by a new law.
- Help form another working committee to draft a new private arbitration law and facilitate the committee's work by providing expertise and drafting technical assistance.

3.6 Freight Forwarding Constraints

Georgian freight forwarders operate in a very competitive international market. The heavy regulatory costs imposed on the industry by the Georgian Government place Georgian freight forwarders at a competitive disadvantage with respect to foreign freight forwarders. For example due to the heavy cost burden of complying with regulatory requirements, it is reportedly cheaper for the EU to import some products from China than from Georgia.

Georgian freight forwarders reported the following concerns to SAVE staff and consultants.

- They pay double road taxes. Georgian freight forwarders must pay road tax when they license their trucks annually and then pay again when they are assessed a percentage of a cargo's value when they re-enter the country carrying cargo originating in another country.
- They are unable to obtain reasonably priced insurance coverage for their freight. If cargo is damaged in transit, some freight forwarders must compensate customers from their own revenues.
- Georgian port fees are so high that some clients forward their freight from Iranian port facilities instead of Georgian ports.
- Customs duty is 37 percent and more on all new and used trucks purchased by Georgian freight forwarders abroad and brought into the country.
- A current concern of Georgian freight forwarders is pending legislation that would impose the value-added tax on the currently VAT-free freight forwarding industry.

The legal base for freight forwarding includes international conventions, inter-governmental agreements, rules of international organizations, and national legislation. Georgia is a party to 34 international conventions on trade and transport, customs procedures, control at the boarder and related issues. Georgian legislation is essentially based on these conventions, but there are some gaps that have caused problems. For example, conspicuously lacking are a Railway Code, a Law on Transport and a Law on Freight Forwarding. Also absent are national normative acts in accordance with International Federation of Forwarders' Associations (FIATA) standard rules of freight forwarding. The following articles of the Civil Code should have such rules included among their provisions:

- Contract of Carriage (Chapter 12, articles 668-708)
- Mandate (Chapter 13, articles 709-723)
- Entrustment of Property (Chapter 14, articles 734-739)
- Freight Forwarding (Chapter 15, articles 763-779)
- Warehouse Bailment (Chapter 19, articles 780-798)

Translation errors are also a problem in some of the Civil Code articles that are based on international conventions.[7] Article 730 excludes the mediation of the freight forwarder when he represents the client, even though this is international practice. Article 740 needs to be more flexible as well, since international practice allows much leeway in assigning responsibilities. Since Georgian law does not take the above into account, much of its legislation in this area violates the Convention on Contracts for International Carriage of Goods by Road (CMR) Convention and Convention on Multi-Model Transportation.

Freight Forwarding is often confronted with regulations issued by the Government (which sometimes are not even registered at the Ministry of Justices and thus are illegal) that contradict Georgian legislation and international conventions. For example the "Statutes and Convention of Free Transit" states that transit is free from special fees, only to be

[7] In Article 669, the terms "baggage" and "cargo" are used interchangeably, which can result in removing the Freight Forwarder of liability for late delivery and damage to cargo.

contradicted by the Georgian Law on Customs Fees. Under international conventions to which Georgia belongs, the customs regime for transit cargoes should be simplified and strictly limited. This obviously is not the case now with Georgian Customs. Consolidating tax payments in one tax office would also make the tax process more efficient and less time-consuming for freight forwarders. Last, Georgia must focus effort and resources if it wants to develop the full potential of the TRACECA Corridor.

Recommendations:

- Eliminate the "double road taxation" on freight forwarders.
- Reduce high customs fees on new and used trucks purchased abroad.
- Reduce port fees.
- Simplify and limit Customs requirements to conform to the international conventions to which Georgia is a signatory.
- Simplify tax compliance by allowing freight forwarders to pay all of their taxes at one payment center, a version of "one-stop shopping".
- Amend the Georgian Civil Code and other legislation as enumerated above.

3.7 Water Rights

Securing water rights is a critical issue to Georgian agriculture since water is an essential factor in growing high quality fruit and vegetables. The following is an enumeration of Georgian laws that are relevant to this policy issue area.

1. The Georgian Law on Licenses assigns a one-time-only GEL 400 fee to obtain a license to drill a well on one's land to obtain irrigation water for cropping purposes.
2. The Tax Code assigns an annual tax that is payable on that well of between 2 and 8 percent of the price of the water in that area, as determined jointly by the Ministries of Economy and the Environment.
3. The Law on Land Melioration (No. 938, October 16, 1997) allows the establishment of Cooperatives of Melioration Services – that is, land and water user's cooperatives – to manage and maintain irrigation works. Under the law, the service is free for members, but nonmembers may be charged a charged a fee. The Inspection Office of Melioration and the Department of Management of Melioration Systems in the MoAF supervise water cooperatives and monitors water use.
4. These cooperatives are created in accordance with the Law on Entrepreneurs (see Annex 3 for a description of the requirements for registering cooperatives). The primary goal of the association must be the maintenance of the melioration systems and providing services to the farmers, not to gain profits.
5. Water can be transited over the property of a third party by right of easement under the Civil Code (Chapter 2 – Law of Neighboring tenements).
6. Usage of running or standing water is covered by the Law on Water and the Law on Usage of Natural Resources. Diverting the stream or pumping from the lake requires a license.

Recommendations:

- Further research the relevant laws and issues to determine how SAVE can best allocate resources to benefit the water rights policy area.
- Determine lessons learned from the World Bank irrigation project and write a "best practices" and a legal "how-to" guide for potential water associations to follow.

A future water issue that Georgian policy makers must take into consideration is Georgia's "Partnership and Cooperation Agreement" with the European Union (EU), in which it has undertaken to harmonize Georgian legislation with that of the EU. Consequently, Georgia will need to demonstrate that it has an ecologically friendly water policy that is compatible with EU standards.

3.8 Establishing Foreign Banking Entities in Georgia

Foreign banks are effectively shut out of the Georgia credit market by the Georgian Law on Commercial Banks. This law states: "No one shareholder or group of shareholders of a commercial bank in Georgia shall own or control more than 25 percent of the starting capital of a Georgian bank." However, if petitioned, The National Bank of Georgia (NBG) may grant exceptions to foreign registered banks that have a Georgian banking license. This special permission has no legislative basis and can be rescinded at the whim of the NBG. We believe that no serious foreign commercial bank would enter the Georgian market on these terms. In consequence, competition is reduced, foreign investors are constrained to use banks that they may not trust and an important element of the capital market will be absent.

Recommendations:

- Work to amend the banking law to allow foreign bank entities registered as banks in Georgia to control at least 75 percent of voting shares, preferably more.
- Whether the same treatment should be extended to native Georgian banks as well is a question that requires more research and discussion.

GROUP II: LOWER PIORITY CONSTRAINTS

3.9 Law on Leasing

Farm equipment, much of which has not been replaced since the Soviet era, is becoming quite old and outdated in Georgia. It is common for a group of small farmers to share one tractor owned by one person, with the others contributing a share of the petrol and maintenance costs. The time will arrive, of course, when the tractor will no longer be repairable, or cost too much even for a group of farmers to repair. When that occurs, their best option may be to lease-to-own a tractor together. This scenario can be extrapolated to include other farm equipment, too, of course. Unfortunately, there are very few farm equipment distributors present in Georgia and none of them offers a lease option. After analyzing the Law on Leasing, we have concluded that it acts as a constraint to such transactions.

Leasing is currently regulated by the Civil Code, in particular by Articles 576-580 and Law of Georgia on Promotion of Leasing Activity (No. 1392-IIS, 7 May 2002).

A working group formed at the initiation of USAID has recently begun to meet to draft amendments to Law of Georgia on Promotion of Leasing Activity. SAVE will monitor and contribute to the drafting of this bill and utilize its resources to promote its adoption by Parliament.

Recommendation:

- Provide technical assistance in drafting a new law that would define the legal and financial aspects of equipment leasing, including appropriate tax treatment of equipment and leasing enterprises.

3.10 Tax Code

There are several different types of taxes that constrain Georgian agribusiness. First on the list for many exporters is the Value Added Tax (VAT). The primary constraint is that VAT on inputs is not refunded when products are exported. Consultants from SAVE have also been told by several sources that the Ministry of Finance unofficially instructs the Georgian courts not to rule in favor of claimants filing for VAT refunds. Although VAT and other taxes that are due may be offset by VAT rebate claims, this is not an efficient way to manage business cash flow.

In general, business taxes are extremely complex, not uniformly applied and excessive. Farmers and processors complain that if they strictly paid their entire tax bill, negative income would be the result. The 31 percent wage tax was cited repeatedly by interviewees.

The impact of the tax system is complicated by a collection process in which tax inspectors – often pressed by Government revenue shortfalls – appear unannounced and negotiate a "reasonable" tax bill. This process has obvious implications for informal payments, as well as impeding efficient business planning, since taxes become due immediately upon being assessed.

SAVE chooses not to make broad recommendations about the Georgian Tax Code. Instead, where we do make tax amendment suggestions, we do so in the appropriate functional category, e.g. double road taxation in the freight forwarding section. This primarily explains our relegation of this constraint to the lower priority group. It should be noted that two working committees have submitted their Tax Code amendments for consideration by Parliament and that changes in this area are imminent once again.

3.11 Counterfeit Products and Inputs

Georgian exporters are losing a significant share of their export markets to product counterfeiters. This is particularly so for the Georgian wine and mineral water industries. This usually takes the form of low quality products originating in other – typically FSU – countries with labels appearing to authenticate the products' Georgian origin.

Unfortunately, because most FSU countries – particularly Russia – are not WTO members, Georgia's membership will probably not be of much use in curbing this practice.

Agricultural producers often complain that inputs – especially chemicals – are out of date or not what they are represented to be on the package labels. This results in a loss of money and reduced product quality. It may also result in the over-application of pesticides in the producer believes that the product concentration is weaker than represented on the product label.

A multi-pronged approach incorporating aspects from all of the below strategies would probably meet with the most success (see Annex 1(i) for a list of Georgian trade treaties).

Recommendations:

- Current Georgian bilateral and multilateral trade treaties could be re-negotiated and amended to include a provision in which each of the signatories declares their willingness to monitor a list of other the countries' commonly counterfeited products being sold within their borders on a reciprocal basis.
- Companies, associations and chambers of commerce can also enter into mutually beneficial reciprocal monitoring agreements with their counterparts in foreign countries.
- Enforcement action through the international trademarks convention may also be helpful.

3.12 Laws on Notaries and on Notaries' Fees

The role of notaries in civil law systems such as Georgia's is well established. While their function may seem unnecessary to many of us originating from common law jurisdictions, civil law systems are actually the norm throughout the world. They almost always include the notary in his or her customary capacity of providing forms, attesting to signatures, authenticating documents, performing translations, and acting as an official document depository. This includes many western nations as well. Indeed, the French and German civil law systems have institutionalized the notary in their legal processes and served as models for others.

After reviewing the Georgia legislation on the notary profession and notaries' fees, it is our opinion that only the latter represents a constraint on agribusiness or export in Georgia. As is typical in other civil law countries, Georgian notaries are required to have a legal degree, pass a professional exam to obtain a license to practice, and are required to belong to a professional society that enforces discipline in the profession.

There are some defects that are legal in nature that the Law on Notaries' Fees that should be corrected. The Law on Notary's Fees allows a percentage of the value of the contract to be collected by Georgian notaries for business deals related to secured transactions. Obviously, this can represent a huge cost to the parties.

Furthermore, according to the Law on Arbitration Law, the arbitral awards are subject to notarial attestation. However, the Law on Notaries' Fees does not specify the amount to be paid for this function (see critique of the Private Law on Arbitration in Annex 8.2(f). This gap should also be filled by the Georgian Parliament by amending the Law on Notarial Fees.

There have been frequent complaints that fees charged by some notaries do not conform to those listed on the notary's fee schedule. The problem is probably due to a lack of information within the business community about the fee schedule and the ability of certain notaries to exploit this information gap. Public education is a better alternative than new legislation to correct this problem.

Recommendations:

- Amend the Law on Notary fees to establish a fixed fee at a level that is more appropriate to the work performed by a notary in a secured transaction.
- Amend the Law on Notary fees to include a fee to be charged by notaries involved in attestation of an arbitration award.
- Conduct a public information campaign to inform the business community about the fees that notaries are legally authorized for various transactions.

III. GROUP III: CONSTRAINTS CONSIDERED AND ELIMINATED

3.13 Customs Process

Relevant legislation does not set up clear requirements for procedures to be followed and documents to be presented by exporters. This ambiguity allows Customs officials excessive use of discretion in their job performance, which creates opportunities for "unofficial" payments to expedite an exporter's shipment. Further, few of the certificates required for passage through the Georgian Customs process are accepted by customs offices abroad, a situation that creates unnecessary customs paperwork and expense for Georgian exporters. Only the phytosanitary certification and Form A for transportation of freight are required by foreign countries. The Georgian certificate of origin issued by the Chamber of Commerce is not accepted abroad, nor is the verification stamp of the Chamber of Commerce Expertise Committee required.

REASON: While WTO obligations and EU harmonization requirements place pressure upon Georgia to promote further Customs reforms, this objective was eliminated as a SAVE constraint priority because almost none of the processors and exporters interviewed claimed that it was a problem for them. While they all admitted to making "unofficial payments" to expedite their goods through Customs, they did not seem to object since it was perceived as a "predictable" cost of doing business in Georgia, and therefore easily calculable and budgeted for. The level of the unofficial fees paid did not seem to them to be unreasonably high, either. Hence, Customs reform did not strike us as a "real" constraint, at least not for exporters. It also was eliminated because it did not seem to be capable of attracting the necessary political will to foster its reform. Nor did it seem to have potential for "a fairly immediate and positive" effect on exporting

agricultural products. For a summary of the Customs process and certifications requirements, see Annex 5.2.

3.14 Draft Law: "On the Implementation of Biological Agro-Processing and Certification"

The consideration here is not whether this proposed law will act as a constraint if adopted, but whether aiding the development of organic farming in Georgia would be a wise allocation of SAVE resources. We think this must be answered in the negative.

REASON: As is well known, there are only "upscale" organic foods markets throughout the world, which, of course, makes entering such a market so tempting. The investment required to enter the organic market is large and probably beyond the reach of Georgian farmers under current economic conditions. Organic farming does not entail merely refraining from the use of chemicals and pesticides in production processes, a condition which many Georgian growers meet by default. Instead, it replaces manufactured chemical agents with "natural" agents, making the product potentially healthier but more expensive to produce.

4.0 STANDARDS AND CERTIFICATION: POLICY REVIEW AND RECOMMENDATIONS

4.1 Introduction

As noted above, Georgia still adheres to the Soviet GOST criteria for standards and certification. While these standards are often "higher" than those found in western countries, they are mandatory, unnecessarily expensive for businesses to comply with, and cover an excessive number of products. This is unlike the so-called "voluntary" classification systems that have become common internationally. Under such regimes, the number of mandatory standards is greatly reduced. Minimum product standards set by law allow companies flexible means to achieve such standards, and encourage surpassing them to obtain a competitive advantage. The key difference is that the voluntary system sets minimum standards only for product categories that are inherently dangerous, such as electrical appliances, or present a potential risk to human health.

The introduction of voluntary standardization requires new roles of the state and the private sector in the development and adoption of standards. Close co-operation of all parties with an interest in the development of standards is a key target.

The Georgian "Law on Standardization" lays down the main principles of the new system of standardization to be introduced in the country, as well as delineating its activities. It also provides for the classifications of standards to be in force on the territory of Georgia. The law explicitly states that Georgian standards and technical regulations shall be based on international and regional standards unless they might appear ineffective due to national climate, geographic conditions or technical problems. This provision serves as the main guarantee in preventing the imposition of unnecessary obstacles to trade as required by WTO membership.

4.2 Certification Bodies

As mentioned in Section 3.1, certificates of compliance are issued by testing laboratories that are accredited and registered by Sakstandarti. Product certification is based on tests conducted in accordance with the procedures approved by that body. The accreditation is valid for the period of three years.

There are 49 certifying bodies currently accredited by Sakstandarti. They are located in Tbilisi, Kutaisi, Telavi, Gurjaani, Sagarejo, Mtskheta, Rustavi, Gori, Poti, Batumi, Kobuleti, Ozurgeti, Zugdidi and Akhaltsikhe. Each certifying body is authorized to test and certify specific product clusters for which it has been certified. They can contract out 25% of the tests, but they must have capacity to conduct at least 75% of tests in their own laboratories.

During this policy assessment, two laboratories were visited in Tbilisi: "Norma" LLC, and "Expert" LLC. These laboratories are the most advanced in the country, based on equipment and experience. "Norma" LLC specializes in food and agricultural products and perfume, while "Expert" LLC certifies a wider range of products including food, fuel oils, paints, perfume, chemical and light industry products, paper, ceramics, furniture, construction materials and glass. Most of the equipment used by these agencies is in a

similar condition: they are outdated (manufactured in the 1980s) and are not connected to a computer network.

The major pieces of equipment used by the two labs include:

- Nuclear absorbing spectral photometers (NAS); produced in the former East Germany;
- Gas chromatographs (Czechoslovakia) are used for identifying chrome, pesticides, spirits and organic substances in test samples;
- Photo-electric color meters (East Germany & USSR), used for identifying non-organic substances;
- Spectro-photometers (made in the USSR) used for tests on metals; and,
- Sterilization units, propagation boxes and microscopes for conducting microbiological tests.

"Norma" LLC does not have the facilities for conducting microbiological tests, though they plan to install it soon. Currently, they subcontract with other certifying bodies to perform such work. They obtained the existing equipment from the old state-owned entity after the collapse of the Soviet Union. The used equipment was repaired and continues to work.

"Expert" LLC was founded under the auspices of the Sakstandarti. It is staffed with personnel from the Institute. It is the best laboratory in Georgia and employs the most experienced professionals.

4.3 Laboratory Problems

Managers of both bodies acknowledged that their equipment is obsolete. Tests are conducted manually, despite the existence of more accurate and convenient equipment being available on the market. Improved equipment is very expensive and, hence, unaffordable for them. Only if there are joint projects with of foreign partner(s) will it be possible to acquire modern testing equipment.

These certifying bodies also have problems with testing new chemicals (*e.g.* pesticides), because they do not have the relevant standards available to them. New pesticides are required to be tested and registered by the Ministry of Agriculture and Food (Plant Protection Institute) and the Ministry of Environment before import permission is issued. This is attributable to funding problems. Inadequate funding is also responsible for Sakstandarti's lack of progress in translating new standards acquired from other countries into Georgian, as required as part of the reform effort to internationalize Georgian standards.

Even the existing standards requirements of potential or new trading partners are sometimes not available to Georgian testing labs. Hazelnuts represent a good example. Obviously, if size requirements for hazelnuts in other countries are not, the labs can be of little help to exporters.

Conclusions:

- The Georgian standards and certification system is in transition from a compulsory to a voluntary form, in order to comply with WTO requirements. However, the majority of standards currently used in Georgia date from the Soviet times (GOST) and need to be brought in compliance by the end of 2003.
- Many food safety norms in Georgia are similar to those of the EU and US, although there is a low capacity for enforcing standards. Testing laboratories are under-funded, employ obsolete equipment and are staffed by personnel with few opportunities to update essential skills.
- While ISO certification for most Georgian testing laboratories and enterprises is probably not an achievable objective within the lifetime of the SAVE project, reform of Georgia's system of standards and certification can be greatly advanced by providing training and assistance in the principles, techniques and procedures of HACCP and Best Management Practices (BMP).

4.4 *Codex Alimentarius*, HACCP and ISO Standards

International standards and quality control procedures, such as *Codex Alimentarius* (Recommended International Code of Practice – General Principles of Food Hygiene), HACCP (Hazard Analysis and Critical Control Points) and ISO (International Organization for Standardization) were developed as voluntary mechanisms to assure a quality management system for international agricultural commerce.

HACCP and ISO are international food safety quality assurance procedures and standards that food processors should follow in order to export agricultural products to western markets. ISO is a worldwide federation of national standards bodies. HACCP is a systematic quality process control system for eliminating contaminants or hazards at critical areas in the food production and distribution process; it is, recommended and encouraged by such agencies as the US Department of Agriculture's Food and Safety Inspection Service (FSIS) and the Food and Drug Administration (FDA). *Codex Alimentarius* is built on the basic principles of Good Manufacturing Practices (GMP) and HACCP.

HACCP principles (See textbox below) are endorsed by the United Nations Food and Agriculture Organization, *Codex Alimentarius*, the European Union, Canada, Australia, New Zealand and Japan. They apply to meat, seafood and poultry plants, grocery stores and restaurants, fruit and vegetable processing plants and other food processing and handling facilities.

The Seven HACCP Principles

1. ***Conduct a hazard analysis***. Prepare a list of steps in the process where significant hazards occur and describe the preventative measures.
2. ***Identify the critical control points (CCPs)***. CCPs are steps in the food process at which control can be applied to prevent or eliminate a food hazard.
3. ***Establish critical limits***. Establish maximum or minimum values for hazards, and preventive measures associated with each identified CCP.
4. ***Establish monitoring requirements***. Establish CCP monitoring procedures and frequencies to ensure that the process is working correctly at each critical control point.
5. ***Establish corrective actions***. Detail the steps to be taken when monitoring indicates that there is a deviation from an established critical limit.
6. ***Establish record-keeping procedures***. Maintain records documenting the HACCP system, including monitoring, verifying and handling deviations.
7. ***Validation***. Establish procedures for verification that the HACCP system is working correctly.

Internal and external parties, including certification bodies, are encouraged to apply these international standards and implement control processes to assess, devise and monitor quality assurance strategies implemented by organizations and enterprises. HACCP and BMP promote the adoption of a procedural approach for developing, implementing and improving the effectiveness of a quality management system that aims to enhance client satisfaction by meeting demands and requirements for safety, hygiene, quality and consistency.

HACCP helps to prevent, as close to 100 percent as possible while still being cost-effective, harmful contamination of any kind in the food supply. To ensure safer food, the HACCP system is designed to analyze biological, chemical and physical hazards, identify preventive measures and critical control points, establish critical limits and monitor critical control points, establish corrective action when deviations occur, stop processes when a system breakdown or deviation occurs and establish a record-keeping system and verification procedure. This requires a monitoring process to be in place to ensure compliance and provide remedial advice.

The requirements of ISO standards are universal and are intended to be applicable to all organizations, regardless of type, size, industry and product provided. HACCP certification should be viewed as a company's policy and responsibility. The company should be willing and committed to invest in the management, training, maintenance and registration fees to be HACCP registered/certified in order to identify and service new markets. This is a long-term commitment that includes the establishment of hygiene and sanitation standards, in-plant testing and quality control facilities.

In Georgia, the private sector is beginning to recognize the importance of applying international standards. There were already half-a-dozen Georgian companies moving towards ISO certification by 2001, although none were in the agriculture sector. The HACCP system is less known here, probably because it is specific to the food industry. The requirements of the WTO and EU, where food source tracking is becoming standard

practice, will force Georgian agro-processors to become HACCP compliant if they want access to world markets.

In reality, at this point in Georgia's economic development, installing HACCP quality assurance systems must take precedence over attaining ISO certification. Model HACCP procedures can be rapidly disseminated and replicated to the widest possible audience to become a focus for activities at all levels of the food and marketing chain. As some Georgian companies become successful exporters, these companies will lead other companies as change-agents and eventually contribute to making Georgian Certification and Standardization a simplified system for domestic consumer protection as well. A standards and certification system comprised of exporters who follow international standards by voluntary compliance will evolve.

4.5 SAVE Strategy for HACCP Capacity Building

Several SAVE policy options arise regarding HACCP implementation in Georgia. SAVE can:

- Provide training and capacity building to targeted GoG agencies, such as Sakstandarti, or GoG-designated NGOs like AGE/GEPA, to enable them to issue internationally accepted standards and certificates;
- Provide training and capacity building to targeted individual private agro-processors to enable them to develop and follow quality assurance practices and methods; or,
- Provide training to existing educational or business-consulting companies to help develop quality-assurance training capacity that can be offered to private pursue several of the above approaches simultaneously.

Several issues arise in choosing among these alternative implementation strategies:

- How should private agro-processors be selected?
- Which Georgian partners could assist in identification and provision of the training needed to assure compliance and successful certification?
- What strategy or combination of strategies is best for Georgia and the best allocation of SAVE resources?

Formation of an acceptable governmental food safety, hygiene, testing, and regulatory program that would conform to international standards and be recognized by foreign trading companies is desirable. The question is whether reforming the Georgian government standards by itself would change the attitude of foreign buyers toward Georgian products and Georgian companies. This is doubtful in the foreseeable future.

The natural alternative to official GoG certifying structures is private company compliance. The SAVE project will focus on identification and selection of a limited number of agro-processors. Those companies must be committed to being trained in quality control management and be willing to make the enterprise investments necessary to implement best manufacturing practices, to pay fees to become certified and to maintain their own quality control management programs.

The Georgian companies leading such an effort can set and maintain their own standards, with testing performed privately in their own or association-based laboratories. Achieving and maintaining market competitiveness will be the underlying motivation

behind adhering to such voluntary standards. Associations can also assist Georgian companies in marketing their members' products abroad, as well as in providing information about Georgian companies' products and production standards. As Georgian products become increasingly successful abroad, the GoG may become motivated to copy some of the companies' quality assurance models and techniques as it struggles to conform to WTO standards and certification compliance deadlines.

The results of HAACP and BMP training could be tangible in two or three years. Georgian firms can then help change the image of Georgia as an unpredictable (in the terms of quality) and risky trade partner. Eventually these firms can help raise standards on the domestic market, too. As domestic consumers become more confident in Georgian quality and product safety as well, import substitutions will develop. Over time, the Georgian certification and standardization system will be market-driven and accepted by the world market.

Once lead firms are selected, the SAVE project should assist companies technically, and financially where necessary, to become ISO or HACCP operational, certified and to remain in compliance. This is not a "hit and run" activity: it will require a significant level of effort throughout Phase II.

Given SAVE's limited resources, an international consulting firm specializing in HACCP training, implementation and certification could train and certify Georgians who are interested in providing business services to enterprises who can, in turn, train their agro-business managers in HACCP and develop the required infrastructure necessary for sustainability.

Using the mechanism of pilot projects, SAVE has the opportunity to promote 'best practice' standards and certification implementation to introduce HACCP and ISO at appropriate levels.

5.0 SUMMARY OF FINDINGS

This paper identifies and analyzes policy, legal and regulatory constraints that hinder the development of Georgian value-added agribusiness, particularly those that impede exports. The adopted policy framework emphasizes that the elimination of existing legal and regulatory constraints is not, in itself, sufficient to assure the achievement of SAVE's fundamental goal. That is, well-executed legal and regulatory change by itself can create incentives and reveal opportunities for value-added activities throughout the market chain, but it may not be enough to "make it happen". Therefore, we have suggested additional areas of policy, law and regulation that need to be addressed in order provide the push – Sections 4 through 8 – that is required to mobilize resources for agribusiness development.

SAVE staff and consultants interviewed farmers, agro-processors, government officials, freight forwarders, and local agriculture experts, many of whom are named in Annex 6. They recognize that their understanding of market signals and knowledge of marketing is inadequate. This recognition of knowledge deficit encourages us to believe that strategies which build capacity will be well received and implemented throughout the market chain, especially as they are demonstrated to be effective in the pilot cases and in general practice.

We believe an important pro-active element in the SAVE Project will be the replacement of Soviet-era standards and certification modalities with a path leading to ISO/HACCP and Best Manufacturing Practices that will promote Georgian food processors as reliable, food-safety-conscious participants in the global food products trade. The institutionalization of modern procedures of handling and certification will not be easy, but we believe it is necessary to the establishment of a positive Georgian reputation in the trade.

There is an acute need for dissemination of information and training about farm management, marketing, product processing and handling, and international standards and certification throughout the Georgian farm market chain. SAVE partners must be selected who are committed to SAVE's objectives of promoting value-added agricultural products and exports. The details of that education component will emerge more clearly as a consequence of working with pilot projects and will be articulated more generously in the proposed Phase II work plan.

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ANNEX 1 Catalogue of Laws and Regulations Related to Constraints

a) Standards and Certification

- Law of Georgia on Standardization
- Law concerning the Trade-Enterprise Chamber of Georgia, No. 1131, February 26, 2001
- Law on Certification of Products and Service, No. 376, September 6, 1996
- Presidential Decree, March 27, 1998: "Concerning the Statute of the State Department of Standardization, Metrology and Certification"
- Presidential Decree No. 313, July 27, 2002: "Regarding the Steps of Changing Obligatory Certification to Voluntary Certification"
- Minister of Agriculture, Order No. 30, March 6, 2000: "On Approval of the Rule for Issuing by the "Samtresti" Department a Certificate of Georgian Origin for Export of Alcoholic Beverages"
- Minister of Agriculture, Order No. 245, October 11, 2000: "Concerning the Approval of the Statute for 'Samtresti', the State Regulatory Department for Viticulture and Wine-making"
- State Department of Standardization, Metrology and Certification, Decree No. 16, February 8, 2002: "Concerning the Approval of the Means for Measurements by Geostandard and Verification of Works"
- State Department of Standardization, Metrology and Certification, Decree No. 14, February 6, 2002: **"**Concerning the Approval of Service Fees for the Performed Works in the Fields of Standardization, Metrology, Certification and Accreditation"
- State Department of Standardization, Metrology and Certification, Order No. 218, December 31s, 1998: "On Approving the National Standards of Georgia"

b) Food Safety and Testing

- Law of Georgia on Provisions and Tobacco, No. 2212, June 25, 1999
- Law of Georgia on Protecting Plants from Malicious Organisms, No.846, October 12, 1994; amendment No. 846, September 16, 1997; Amendment No. 1890, April 16, 1999
- Law of Georgia on Agricultural Quarantine No. 716, May 15, 1997
- Law of Georgia on Pesticides and Agrochemicals No. 1696, November 25, 1998
- Presidential Decree No. 72, March 17, 1997: "On Issuing the Certificate of Origin (form "A") for Products Produced in Georgia for Export"
- Presidential Decree No. 187, March 10, 2001: "On Preventing the Falsification of Food Products"
- Presidential Decree No. 469, August 2, 1999: "On implementing Sanitary and Phyto-Sanitary Norms of WTO"
- State Minister, Order No. 59, June 30, 2001: "On Setting Up the Working Group for Preventing the Falsification of Food Products"
- Ministry of Agriculture and Food, Decree No. 82, May 31, 2002: "Approving the Fees for Laboratory Testing Provided by the Department of Expertise and Monitoring of Food Products"

- Ministry of Agriculture and Food, Decree No. 10, January 18, 2002: "On Approving the Charter of Department of Expertise and Monitoring of Food Products"
- Ministry of Agriculture and Food, Decree No. 288, June 19, 2002: "On Approving the Charter of the Department of Plant Protection"

c) Customs

- Customs Code of Georgia No. 1101, November 14, 1997
- Law on Customs Fees No. 1226, February 18, 1998
- Law on Customs Tariffs and Duties, No. 1316, March 20, 1998
- Customs Department, Order No. 263, December 5, 1998: "Law on the Movement of Mechanical Transport Means, Customs Control and Declaration Rules on the Territory of Georgian Customs"
- Customs Department, Order No. 186, October 4, 1999: **"**Concerning the Approval of the Determined Customs Cost on the Imported Goods in Georgia"
- Customs Department, Order No. 209, October 26, 1999: "Concerning the Approval of Temporary Rules for Goods Processing on the Territory of Customs and Issuing of License form for the Goods Control Under the Customs Processing Regime"
- Customs Department, Order No. 61, May 9, 1994: "On Joint Inspection of Transit and Export-Import Cargos by Customs Department, Boarder Veterinary Department and Department of Plants Quarantine"
- Ministry of Tax Revenues, Order No. 87, May 25, 2000: "Concerning the Customs declaration form-2"
- Ministry of Tax Revenues, Order No. 228, April 17, 2001: "Concerning the approval of customs broker and customs forwarder provision"
- Ministry of Tax Revenues, Order No. 798, November 21, 2001: "Concerning the approval of necessary documents and certificates list for the export-import of goods customs declaration"
- Ministry of Tax Revenues, Order No. 10, January 15, 2002: "Concerning the approval of the behavior of Customs Staff "
- Ministry of Transport and Communications, Order No. 48, July 16, 1998: "Concerning Floating Tariffs in Georgian Ports"

d) Uncertainty in Leasing and Owning Agricultural Land

- Law on Land Registration, No. 490, November 14, 1996
- Civil Code No. 786, June 26, 1997, Items 311-318
- Law Concerning the Ownership of Agricultural Land

e) Law of Georgia Concerning the Introduction of New Seeds and Plant Varieties

- Law of Georgia Concerning Implementation of Quality Agricultural Seeds and Plants Varieties, No. 2195-II, June 15, 1999
- Ministry of Agriculture and Food, Decree No. 2-17, Feb. 9, 2001: "On the Creation of a Center for the Protection of Rights of Georgian Plant Variety Selections – Sakjishcentri"

- Ministry of Agriculture and Food, Decree No. 2-18, Feb. 9, 2001: "On Legal Protection of Varieties Presented to the Center of Protection of Rights of Georgian Plant Varieties Selections and on the Rules for Changing the Fees for Permission of Usage (distribution)"
- MoAF, MoF and MoEIT, Joint Decree No. 2-56-84-01/01-01/52-170, March 5, 2002

f) On Establishing Quotes

- MoAF, MoF and MoEIT, Joint Decree No. 2-86//165//01/01-01/86, June 13th 2002
- MoAF, MoF and MoEIT, On Changes into Joint Decree of No. 2-56-84-01, 01/01/02

g) World Trade Organization

- Agreement on establishment of World Trade Organization
- List of Appendices
  1) Agreement concerning the technical barriers in Trade
  2) Agreement concerning investment measures related to Trade
  3) Agreement concerning the use of clause VI of the 1994 General Agreement on Tariffs and Trade
  4) Agreement concerning the realization of clause VII of the 1994 General Agreement on Tariffs and Trade
  5) Agreement concerning the procedures of import licensing
  6) Agreement concerning the rules of origin
  7) Agreement concerning measures of subsidies and compensation
  8) Treaty concerning security measures
  9) Appendix b General Agreement on Trade service
  10) Appendix c Agreement concerning the aspects related to the trade of rights of intellectual property
  11) Treaty concerning Agriculture
  12) Appendix 3, Mechanism of Trade policy
  13) General Agreement on Tariffs and Trade
  14) Appendix 4 Multilateral trade Treaties
  15) Treaty concerning the trade of civil airplanes
  16) Agreement concerning the obligations related to financial services
  17) CXLV tariffs tables-this table is valid only in English, Part I-most favorable customs tariffs, section II –other goods
  18) CXLV tariffs tables-this table is valid only in English, Part I-most favorable customs tariffs, Section I-Agricultural products, section I-other tariffs
  19) CXLV tariffs tables-this table is valid only in English, Part I-most favorable customs tariffs, Section I-Agricultural products, section I-other tariffs
  20) Protocol of Georgia to join in World TRADE organization established by Marrakech Treaty
  21) Agreement concerning the pre-transportation inspection
  22) Types of service supply
  23) Agreement concerning clothing
  24) Agreement concerning the trade of civil aviation techniques

h) Contracts

- Law of Georgia Concerning Private International Law, No. 1362 April 29, 1998
- Law of Georgia Concerning Collective Agreements and Contracts, December 10, 1997
- Civil Code, Articles 311-952
- Law of Georgia on Private Arbitration, April 17, 1997

i) Law on Cooperatives

- Law of Georgia on Entrepreneurs, No. 557, October 28, 1994
- Law of Georgia on Cooperatives No. 713, May 15, 1997

j) Protecting Georgian Producers Against Counterfeit Products

k) List of Treaties

- Free trade regime – 6 CIS countries (signed with 8)
- Superior (prior) assistance regime – 146 WTO countries
- Regime of preferences under GSP – 21 countries
- Trade without regime – 2 countries
- Trade-economical cooperation – 22 countries

l) Multi-lateral Agreements

- Paris Convention on Protection of Industrial Property (20.03.1883), depositor – WIPO
- Agreement on Patent Cooperation (1970), depositor – WIPO
- Madrid Agreement on Illegal Registration of Trade Marks (14.04.1891)

m) Bilateral Agreements and Treaties

- Treaty between the Republic of Georgia and Republic of Turkey on Trade and Economic Cooperation – 1994
- Agreement between the Republic of Georgia and Ukraine on Free Trade – 1996
- Agreement between the Republic of Georgia and Republic of Azerbaijan on Free Trade – 1997
- Agreement between the Republic of Georgia and Republic of Armenia on Free Trade – 1997
- Agreement between the Republic of Georgia and Republic of Kyrgyzstan on Trade-Economical Cooperation – 1997
- Trade Agreement between Governments of Georgia and the Republic of Cyprus - 1998
- Agreement between the Republic of Georgia and Republic of Kazakhstan on Free Trade – 1999
- Agreement between Governments of Georgia and Russian Federation on Free Trade – 2000

- Agreement between Governments of Georgia and Turkmen on Free Trade – 2000

n) Banking Law

- Law of Georgia on the Activity of Commercial Banks, December 24, 1998, Chapter 1, Article 10.1

o) Water Usage

- Law of Georgia on Water, November 25, 1997
- Tax Code, Chapter X, On Taxes for Usage of Natural Resources
- Law of Georgia on License Fees, No. 2347, July 23, 1999

p) Freight Forwarding – Georgian Civil Code:

- Contract of Carriage (Chapter 12, articles 668-708)
- Mandate (Chapter 13, articles 709-723)
- Entrustment of Property (Chapter 14, articles 734-739)
- Freight Forwarding (Chapter 15, articles 763-779)
- Warehouse Bailment (Chapter 19, articles 780-798)

q) Equipment Leasing

- Law of Georgia on Promotion of Leasing Activity, No 1392-IIS, May 7, 2002
- Georgian Civil Code:

  Article 576. Concept
  Article 577. Form of a Contract of Finance Lease
  Article 578. Liability of the Lessor
  Article 579. Liability of the Lessee
  Article 580. Other Rules Applicable to Finance Leasing

r) Tax Legislation – Tax Code of Georgia

Part II – Income and Profit taxes

Chapter 4. Income Tax
Chapter 5. Profit tax
Chapter 6. Deductions and Losses
Chapter 7. Withholding of Tax at the Source of Payment
Chapter 8. International Taxation
Chapter 9. Rules for Tax Accounting
Chapter 10. Tax Administration Provisions

Part III - VAT

Chapter 12. Objects of Taxation
Chapter 13. Determination of Taxable Turnover and of Taxable Import
Chapter 14. Tax Preferences
Chapter 15. Transactions Taxed at a Zero Rate
Chapter 16. Time and Place of Taxable Transaction and Special Rules
Chapter 17. Procedure for the Calculation and Payment of Tax
Chapter 18. Administrative and Concluding Provisions

Part IV. Excise
Chapter 19. Excise

Part V. Tax on Property
Chapter 20. Tax on Property of Natural Persons
Chapter 21. Tax on the Property of Enterprises

Part VI. Tax on the Use of Land
Chapter 22. General Provisions
Chapter 23. Tax on Agricultural Land
Chapter 24. Tax on Non-Agricultural Land

Part VII. Tax on Ownership of Motor Vehicle
Chapter 25. Tax on Ownership of Motor Vehicles

Part VIII. Tax on Transfer of Property
Chapter 26. Tax on Transfer of Immovable Property
Chapter 28. Tax on Transfer of Motor Vehicles

Part IX. Social Tax
Chapter 29. Social Tax
Part X. Tax On the Use of Natural Resources
Chapter 31. Payers of the Tax on Use of Natural Resources and Object of Taxation
Chapter 32. Rate of the Tax on Use of Natural Resources and the Procedure for Payment
Chapter 33. Tax Preferences and Exemption

Part XII. Tax on Bringing Motor Vehicles onto the Territory of Georgia
Chapter 35. Tax on Bringing Motor Vehicles onto the Territory of Georgia

Part XIII. Local Taxes

Part XIV. Procedure for Administration of Taxes
Chapter 36. General Provisions
Chapter 37. Communications with Taxpayers
Chapter 38. Instructions and Ruling
Chapter 39. Presentation and Collection of Information
Chapter 40. Tax Assessments
Chapter 41. Payment, Collection and Refund of Tax
Chapter 42. Enforced Payment of Tax
Chapter 43. Liability
Chapter 43. Liability

ANNEX 2 Critique and Comparative Analysis of Current and Draft Seed Laws

REVIEW OF THE EXISTING SEED LAW ("On Permission for the Distribution of Agricultural Crop Varieties, Seeds and Planting Materials")

The existing Seed Law of Georgia was officially enacted in June 2000. It was the culmination of over three years of proposals, writing and editing by MoAF officials, GTZ staff, USAID-funded programs, FAO and EU initiatives. Because so many hands were involved, the final law was flawed even though it met minimum UPOV standards. It needs to be reviewed and revised to provide both for internal continuity and international realities.

Jurisdictional Conflict: Articles 5.1, 5.2 and 5.3
Under the existing Seed Law, there are four internal agencies that are involved in the introduction, testing and registration of new germplasm. These are:

1. Inspection for Testing and Protecting of Selection Achievements
2. Inspection for Phytosanitary Quarantine
3. Center of Protection of Plant Variety Breeders Rights of Georgia
4. Plant Variety Rights and National List Commission

Among the above four agencies, three are directly involved in the admission of new plant varieties into Georgia. The following is the chronological order of their respective activities:

1. Center of Protection of Plant Variety Breeders Rights of Georgia
   · Accepts and registers applications for testing in Georgia
   · Grants permission for the importation and testing of new germplasm
   · Reviews DUS and VCU data collected over the 2-3 years as required
   · Makes recommendations as to whether a variety should be released
   · Maintains the Official Bulletin for Protection of New Varieties of Plants

2. Inspection for Testing and Protecting of Selection Achievements
   · Receives new germplasm for testing
   · Determines where new germplasm will be tested (and for how long)
   · Conducts field trials and collects data
   · Submits data for evaluation
   · Makes recommendations as to whether a variety should be released

3. Plant Variety Rights and National List Commission
   · Reviews applicants' information and yield data
   · Reviews recommendations
   · Decides on whether to release the new cultivar
   · Lists the new cultivar in Register of Plant Varieties

Ostensibly these three agencies act independently of each other. One is to record what is being tested, one is to test the new varieties, and one is to grant permission for the release of new varieties. In fact there are two, and possibly three, clauses that define the role of the Center of Protection of Plant Variety Breeders Rights of Georgia. These are so close

to being contradictory that confusion will prevail in the future. The clauses in question are Article 5.1, 5.2 and 5.3.

Article 5.1 states that the “Center”, "is authorized to take the final decision to grant Plant Breeders Rights to a candidate variety and issue a special certificate to the applicant."

Article 5.2 states, that “the Plant Variety Rights and National List Commission will take the final decision as to whether or not to grant permission for the distribution of agricultural crop varieties in Georgia.”

And finally, Article 5.3 states that the functions and duties of the Center of Protection of Plant Variety Breeders Rights of Georgia are defined by “its statute, which is approved by the General Director of the Georgian National Intellectual Property Center.”

Further, the Head of the Center of Protection of Plant Variety Breeders Rights of Georgia is appointed by the Director General of the Georgian National Intellectual Property Center. (Article 5.4)

What will be the case if one agency disagrees with the other? In other words, a new variety is officially listed but denied permission for distribution? Under normal circumstances, if a cultivar is officially recommended for release (by the Plant Variety Rights and National List Commission), then it is automatically given Plant Breeders Rights protection. Under this law, confusion could result regarding the seed’s status. Fortunately, since no applications for new seed testing have been submitted in the two years that the law has been in effect, this conflict has been avoided.

Article 10: DUS and VCU

These are acronyms that respectively stand for:

Distinct - Uniform - Stable
Value for Cultivation and Use

The existing law calls for test and data collection on both guidelines. DUS is specifically cited as being carried out for two (2) years. The VCU test duration is **NOT STATED** in the current law (Article 9.3, Article 10.2). In Western Europe verification for VCU is normally conducted for three years. While Georgia has adhered to that practice since throughout its transition, a consistent practice is no substitute for a solid legal foundation.

Articles 12 and 13: Appeals Procedure

These articles were the most hotly contested during the formulation of the current Seed Law. They are also the only ones upon which the donors refused to compromise. The establishment of an independent "Plant Variety Rights and National List Commission" was critical to safeguarding arbitrary and “in-house” decision-making.

With Articles 37.4 and 37.5, the proposed “Plant Variety Protection Law” would water down any appeals process by stating that an applicant “may contest the decision,” and subsequently the Center of Protection of Plant Variety Breeders Rights of Georgia “may hold a hearing”. However, the “Plant Variety Protection Law” does provide for a better

definition for dispute resolution under Section 10: Appeals [Articles 43-45]. This will be discussed later.

Article 22.1

This provision allows the Ministry of Agriculture and Food to waive all required testing and allow, "…under conditions of an emergency" for the importation of any seed or grain without testing. One must always wonder how exemptions will be implemented in practice in Georgia and whether such a clause is little more than a "graft clause."

THE PROPOSED "PLANT VARIETY PROTECTION LAW"

The proposed Plant Variety Protection Law appears to be an attempt to re-write the current Seed Law to concentrate control of the introduction of new cultivars in the single office of the "Center of Protection of Plant Variety Breeders Rights of Georgia". While there are some clauses in this proposed law that should be included in any revision of the existing Law, overall the changes suggested offer little value

Section 2, Article 9: National List of Botanical Genera, Species and Subspecies

This doesn't appear to be relevant to the overall subject of the proposed law, unless this proposed National List of Botanical Genera, Species and Subspecies is meant to replace the Register of Plant Varieties, or the National List of Agricultural Crop Varieties Permitted for Distribution in Georgia, as stated in Article 10 in the existing Seed Law.

Section 13, Article 49.1, (on page 18) states, that "The Plant genetic resources of Georgia are a national asset and shall be protected." Article 49.3 says, that "Exportation of plant genetics resources included in the list of Protected Genera and species of Plants shall be prohibited."

QUESTION: Does the blending of the two Articles (9 and 49) mean that the breeding material that has been granted Plant Variety Breeders Rights (PBR) is to be listed on the proposed National List of Botanical Genera, Species and Subspecies? If so, the exportation of any seed or plant material would be banned "without the Permission of the Government of Georgia and issuance of a license by the Center of Protection of Plant Variety Breeders Rights of Georgia." (Art 49.3) The present Seed Law (Article 21) does not exclude the exportation of seed for any reason.

Section 3, Article 12.1: Novelty

The wording here seems deliberately ambiguous so as to exclude any new cultivar from meeting the standard of "novel" or "new". The section reads: "A variety is new if "[it] has not been sold or otherwise disposed of, (i) in the territory of Georgia for longer than one year, and, (ii) in the territory other than Georgia for longer than four years or, in the case of trees and grape vines, for longer than six years."

It would seem that under these provisions any variety that has been developed and been sold for more than 4-6 years in any country outside of Georgia cannot be considered new and, therefore, unable to pass the DUS standard. This would conceivable exclude older,

but still commercially viable grain hybrids and varieties available in the western countries. It would seem to also exclude ANY improved fruit trees and grape rootstock since some of these have been commercially available for decades.

Section 4, Article 16.4: Application for Plant Breeder's Rights

The proposed law states: "Employees of the Center of Protection of Plant Variety Breeders Rights of Georgia and the Inspection for Testing and Protecting of Selection Achievements shall not be entitled to apply for PBR during the time of their employment in the above agencies."

This is an excellent conflict-of-interest statement, and the drafters should be commended for including it. During the writing of the current Seed Law, this provision was included in the final draft sent to Parliament. Unfortunately, it lost support somewhere between the reading in committee, and the President's signature. To further strengthen the statement, as well as to make it completely logical, it should include employees or members of the Inspection for Phytosanitary Quarantine Office and members on the Plant Variety Rights and National List Commission.

Article 23.3

The second paragraph is more than a little disturbing. It reads: "The Inspection for Testing and Protecting of Selection Achievements may, whenever necessary in the light of technological developments, supplement or correct the official description of the variety during the life of the PBR."

This makes a variety very susceptible to patent infringement. By changing the description of a variety – ever so slightly – a different variety could be substituted. An example would be to change a single line in a hybrid that didn't alter its appearance significantly. In that way a new variety could be put into the market without having to go through all those years of testing and verification.

Article 35.1 and 35.1.1: Maintenance of the Variety

The intent of these sections are to be able to show the Center that the holder of the PBR has the parent lines or breeding stock necessary to produce the end variety of hybrid. However the way it is stated, the Holder has to "produce" this propagating material.

It may be a translation problem. Perhaps a phrase like, "have available for inspection or verification" would be better. Private companies are unlikely to comply with this requirement unless they have iron-clad guarantees that the material is not used in any way, a condition that might be hard to meet in Georgia.

Article 41: Compulsory License

This is a very ambiguous, if not an impossible Article. It sounds as though any entity holding a PBR can be forced to produce a variety of hybrid if it is in the nation's "public interest" to do so. The Article would most likely keep any foreign company from coming into Georgia to establish a Producer/Dealer relationship with a local company.

Section 16: Regulations

Article 57 is much more reasonable than the existing Seed Law, which tried to describe too many procedures and set the fees for services. Under the present Seed Law it would take an act of Parliament to change the fees for a service. Under the proposed law, changes can occur as the political or economic environment change.

Recommendations:

This analysis identifies the pros and cons of both, but concludes that, while the current law could be improved by adoption of one or two of the draft law's provisions, it should not be wholly replaced. Of particular importance is to maintain the current law's division of labor for approving new cultivars, in which separate units perform the testing and the decision-making. This seems to be an effective administrative procedure for guarding against conflicts of interest slipping into the process.

ANNEX 3 Guide to Registering Cooperatives Under the Law on Entrepreneurs

Registration of co-operatives is covered by the Law of Entrepreneurs. Article 2 provides general information about organizational and legal forms of enterprise and enterprise establishment. For example Article 2, stipulates that Enterprises as the subjects of the rights and obligations determined by the present Law can be established only after they are recorded in the Enterprise Register. The company's charter must be notarised. When establishing a company, its charter must be signed by the company's founding participants. The signatures of partners are not required when the charter is amended. The signature of an authorised agent is permitted, if it is performed on the basis of a notarised power of attorney only.

Article 5 sets the terms of registration.

Article 5.1 states that any partner has the right to demand the registration if the application is made in compliance with of the requirements of article 5. The Court shall verify whether the application meets these requirements.

Article 5.2 stipulates that partners, as well as other potential members of representative and observing bodies are obliged to sign the registration application. The Court should be presented samples of the signatures being used by partners in business relationships. The application for registration, the exact samples of signatures, and appropriate documents enclosed and their copies are to be presented in notarised form. The application is to be presented to the Court at the juridical address of the company or the individual entrepreneur.

Article 5.4 specifies the required information to be included in the application form:

- Firm name (firm)
- Organisational and legal form
- Location (legal address)
- Subject of the activity
- Data on the beginning and end the of the fiscal year
- Name, first name, date and place of birth, occupation and place of residence of each founder (not less than 2 partners - founders in case of co-operative), if a founder is a legal person - his firm name and registration data (legal address, name of the court which registered the legal person, date and number of registration, organisational and legal forms, information on his representative)
- Representative authorities
- The amount of authorised capital and a document confirming the contribution made
- The amount of contribution by each founding partner and their relative shares
- The surname, first name, date and place of birth, occupation and legal address of each Director and a member of the Supervisory Board (if it exists)
- Documents concerning the appointment of the Directors and the members of the council (if it exists)

Articled 5.5 states that the following documents should be enclosed with the application:

- Regulations of the company

- A document verifying the assessed value of non-monetary contributions
- Documents stipulating procedures to appoint Directors and members of the supervising council (if it exists), for limited liability companies and joint stock companies

Article 5.6 states that any alteration of the facts necessary to be registered according to article 5.4 is also subject to registration. These alterations come in force after their registration only.

Article 5.8 notes that if an enterprise is registered but does not meet the terms and conditions of the registration or, these terms and conditions are later on voided, the registration is to be annulled unless these shortcomings are eliminated within three months. The registration can be annulled on the basis of claims by any partner of the company or any third person. Unless the registration is annulled the enterprise registered incorrectly is considered as a correctly registered one except in those cases when it does not contradict the essential interests of individuals of the company and the persons mentioned above have not made such claims.

Article 5.9 stipulates that the Court shall carry out the registration procedure within 15 calendar days following the submission of necessary documents. If the registration procedure is not made within the defined term or the applicant is not notified in writing of the motivated refusal of registration, the enterprise shall be considered registered and the court shall immediately issue the certificate of incorporation at the request of the applicant.

Article 60.1 stipulates that a cooperative is a company based on the labour activity of its members or established for developing the economy and increasing the profits of its members. The co-operative is not motivated solely to gain profit.

The following entities belong to co-operatives:

- Co-operatives obtaining raw materials to meet their members' needs
- Co-operatives that jointly engage in agricultural and trade production
- Co-operatives, which produce agricultural as well as other goods and realise them with integrated expenditures (agricultural and industrial co-operatives)
- Co-operatives, which buy consumer goods for retail and obtain them by wholesale trade
- Co-operatives, which buy, use and jointly obtain material and technical resources necessary to produce agricultural and trade goods
- Rural credit co-operatives
- Consumer (diversified industry) co-operatives are regulated by the Law of Georgia “On Consumer Co-operatives”

Article 60.2 states that Members of a co-operative have the right to participate in the activity of another co-operative if the latter is aimed to develop the economy and to support the members of the said co-operative to gain profit.

ANNEX 4 Reviewed Documents of Georgian and International Observers

#	TITLE	SOURCE	DATE	RELEVANCE
1.	Export and National Marketing Development for Horticultural Products in Georgia	FAO	2002	High
2.	Georgian Policies And Experience With WTO	CERMA	June 5, 2002	Uncertain
3.	Country Strategy Paper 2002-2006 National indicative Program 2002-2003	EU/EC	Nov 30, 2001	Medium
4.	Samtskhe-Javakheti Integrated Development Program	UNDP Georgia		Low
5.	Recent Economic Developments and Selected Issues	IMF	April 7, 2000	Low
6.	Georgia: An Update of Agricultural Developments	WB, Iain Shuker	July 24, 2000	High
7.	The Agrarian Economies of Central and Eastern Europe and the CIS *Situation and Perspectives*	World Bank, Csaba Csaki, John Nash	1997	Low
8.	Georgia: Poverty Update	World Bank	January 10, 2002	Low
9.	Georgia Republic Poverty Profile Update	World Bank	June 01, 2001	Low
10.	Georgia Poverty and Income Distribution *Volume II: Technical Papers*	World Bank	March, 1999	Low
11.	Georgia Poverty and Income Distribution *Volume I: Main Report (Draft)*	World Bank	March, 1999	Low
12.	Project Appraisal Document On A Proposed Credit and GEF Grant to Georgia For An ARET Project	World Bank	April 11, 2000	Low
13.	Survey On Land Privatization Process In Georgia	EU K. Jean, J. Mariannick	Apr-Aug, 1999	Medium
14.	Georgia, Armenia and Azerbaijan: An Assessment Of Agricultural Input Markets in the Caucasus	IFDC	February, 1998	Medium
15.	Relief and Recovery Assistance for Vulnerable Groups	WFP	May, 2000	Medium
16.	Agricultural Output As a Georgian Macroeconomic Indicator *(Discussion Paper)*	IRIS	August, 1998	Low
17.	Socio-Economic Survey Of the West Georgia and Shida Kartli Regions	TSU, IRC, UNDP	June, 2000	Uncertain
18.	Observations On Agriculture in West Georgia	SCF	July, 2000	Uncertain

ANNEX 5 Selected PLR Research Reports and Interview Notes

5.1 Assessing Georgia's Standards & Certification Capacity

Horizon Group
July 24, 2002

Introduction

Georgian legislation specifies the requirement and the list of products subject to the obligatory certification (Law on the Certification of Goods and Services, No. 376, September 6, 1996; Resolution of the Cabinet of Ministers, No. 605, August 29, 1994).

Certification means obtaining the Certificate of Compliance, which confirms the compliance of the given product to the officially registered standard. The registry of standards is kept and maintained by the State Department of Standardization, Metrology and Certification ("Geostandard"). Geostandard also does the following:

- Approves certification rules and procedures
- Publishes official information regarding certification
- Provides licenses to the laboratories and certifying organs
- Works out suggestions regarding Georgia's joining the regional or international certification systems
- Signs agreements with international organizations regarding mutual acknowledgement of the certification results

Geostandard has 31 committees that specialize on the standardization of the specific product clusters.

Having joined WTO in 2000, Georgia is obligated to harmonize its standards and certificates with international ones. These works should be completed in 2003. WTO membership also obligates Georgia to change its compulsory certification system to a voluntary system. In this regard President Shevardnadze issued an order No. 313 on July 27th, 2002 "Regarding the steps of Changing the Obligatory Certification to the Voluntary Certification". The Order specifies the list of products that are still subject to the compulsory certification, though there are excluded about 50 items from the GOSTSTANDARD list.

Several standards are officially recognized currently in Georgia:

1) GOST, an all-Union standard system utilized during the Soviet era. Products standards were supposed to be uniform throughout the whole territory of the Soviet Union. There still are thousands of GOST standards officially in force in Georgia, as the new ones have not been worked out.
2) National Standards worked out in Georgia and registered by "Geostandard". They applied on the whole territory of Georgia.
3) Company Standards are worked out by an individual company as its standards. It should be registered by Geostandard to become official.

Certification Bodies

Certificates of compliance are issued by the certification bodies accredited and registered by Geostandard. Certificates are based on the laboratory tests conducted in accordance with the procedure approved by Geostandard. The accreditation is valid for the period of three years.

There are 49 certifying bodies accredited currently by Geostandard. They are located in Tbilisi, Kutaisi, Telavi, Gurjaani, Sagarejo, Mtskheta, Rustavi, Gori, Poti, Batumi, Kobuleti, Ozurgeti, Zugdidi and Akhaltsikhe. Each certifying body is entitled to test and certify specific product clusters that should comply with the testing capacity of the body. They can contract out 25% of the tests, though they must have capacity to conduct at least 75% of tests in their own laboratories. Otherwise their license will be suspended.

During this policy assessment, two laboratories were visited in Tbilisi: "Norma" LLC, and "Expert" LLC. These laboratories represent the most advanced in the country in terms of their equipment and experience. "Norma" LLC specializes in food and agricultural products and perfumery, while "Expert" LLC certifies a wider range of products, including food, fuel oils, paints, perfumery, chemical and light industry products, papers, ceramics, furniture, construction materials and glass. Most of the equipment used by these agencies is similar: they were manufactured in 1980s and are not connected to a computerized system, although test results are typed and printed by computer.

The major pieces of equipment used by the visited bodies are:

- Nuclear absorbing spectral-photometer (NAS), produced in the former Eastern Germany
- Gas chromatographs (Czechoslovakia), used for identifying Chrome, pesticides, spirits and organic substances in samples
- Photo-electric color meter (East Germany & USSR), used for identifying non-organic substances
- Spectro-photometer (USSR) used for tests on metals
- Sterilization unit, propagation boxes and microscopes for conducting microbiological tests

"Norma" LLC does not have the facilities for conducting microbiological tests, although they plan to install it soon. Currently they contract other certifying bodies for this testing. Their existing equipment was obtained from the old state-owned entity after the collapse of the Soviet Union. The aging equipment was repaired and continues to work.

"Expert" LLC was founded on the premises of the Institute of Standardization, Metrology and Certification and staffed with personnel from the Institute. It is the best laboratory in Georgia and has the most experienced professionals.

Problems

Managers of both laboratories acknowledged that their equipment is obsolete. They have to conduct all the tests manually, while there are more precise and convenient ones already available abroad. But, the equipment is very expensive and unaffordable for them. Only if there is a joint project with the participation of foreign partner(s) it will be possible to bring in modern testing equipment.

The certifying bodies have problem in testing new chemicals (*e.g.* pesticides), because they do not have the relevant standards. The new pesticides should be tested and registered by the Ministry of Agriculture (Plant Protection Institute) and the Ministry of Environment, before the import permission is issued. But there probably is little/no communication among these bodies and Geostandard receives no information regarding the composition and the effects of the new chemicals.

As for the existing standards, there are some that do not fit the requirements of the new markets. Hazelnuts represent a good example. There exist the old GOST standard from the Soviet times for shelled hazelnuts. But at present, a lot of this product gets exported to new markets, *e.g.* Turkey and Germany. The standard requirements for the size of hazelnuts in these countries are not known by Georgian certifying bodies, therefore they can be of little help to the exporters. If information about standards of other countries becomes available, it will assist Georgian exporters to better market their products and get higher margins of return.

Representatives of the certification system indicate that when Georgia introduces a voluntary certification system in place of the current obligatory one, it will cause a lot of problems in the market. At present, adulteration of food is a serious problem and constitutes about 30% of products sold in open markets. It is expected that under the voluntary certification, adulteration will reach much higher levels and will create a serious threat in terms of food safety.

Opportunities

Improvement of Georgian certification system is hardly possible without foreign investment. As mentioned above, the equipment needs to be updated and people need to be trained in modern methods and standards. There are first signs of interest expressed by foreign companies to improve certification system in Georgia.

The head of the Georgian Exporters' Association (GEA) mentioned that their joint project with TUV will provide a half-million US Dollars for establishing and equipping a modern testing laboratory in Georgia. If this project materializes, it will create a good basis for establishing an internationally recognized certifying body in Georgia.

Representatives of Bureau Veritas conducted a one-week training workshop in Tbilisi this June. The workshop covered the issues related to international standards and certification. Bureau Veritas plans to have more sessions in Georgia on similar topics, which is bound to increase awareness of ISO and HACCP requirements in Georgia and their importance for exports.

Conclusions

The certification system in Georgia is in a transition from the obligatory to the voluntary form to comply with the WTO requirements. The majority of standards currently used in Georgia come from the Soviet times (GOST), which need to be brought into compliance with international standards by the end of 2003.

The food safety norms in Georgia are quite similar to those of the EU and USA, although there is a low capacity to implement those high standards. The laboratories are under-funded, have old equipment and under-trained staff.

It seems unrealistic to try to introduce ISO during the lifetime of the SAVE project. But agribusinesses will definitely benefit if they receive assistance in familiarizing themselves with and then establishing HACCP and Best Management Practices in their enterprises. This task is more viable and can be pursued together with other entities (e.g. TUV, Bureau Veritas) which have international recognition and are interested in working in Georgia.

5.2 Stages of Certification of Wine and Other Agricultural Products Meant for Export

(The report below is based on legislation found in "The Law of Georgia on Product and Service Certification," "The Law on Chamber of Commerce and Industry," "The Decree on Food and Agriculture Nos. 2-7, "Decree N0. 26 of the Ministry of Trade, Industry and Finance," and the "Law on Standardization." It was written on June 18, 2002).

The stages necessary for obtaining certification are not only in one law or in one instruction. Rather several laws determine certification procedure, which are identified above.

I. In the first stage, exporter determines the certificate of quality, if he has his own laboratory, and tests the consistence and quality of the produced products. A certificate issued by the producer does not have any legal validity. As it is written in Law on "Products and Service Certification," Article 20, the "goal of the certification is to confirm the quality of the produced product." Quality certification is necessary for certification organs to confirm the quality with the certification issued by the producer and in accordance with law.

II. In the second stage, the producer-exporter should receive a product-testing protocol from Geostandard. To obtain this protocol, the certificate of quality must be submitted to Geostandard.

   a) The special laboratory under Geostandard issues product-testing protocol. A special laboratory tests the submitted samples and then sets up product testing-protocol. In the protocol, results of the product testing are mentioned. On the basis of product testing protocol, a certificate is issued. (Law on Products and Service Certification, Article 12)

b) This certificate assures that certified products meet the requirements. Geostandard, or laboratory under Geostandard, issues certificate of correspondence.

III. In the third stage, the exporter should receive application about export from "Samtresti". Samtresti is a subsidiary department of the Ministry of Agriculture and Food. This application is for obtaining the certificate of origin form the Chamber of Commerce and Industry and from the Ministry of Industry, Economy and Trade.

a) For obtaining the Certificate of Origin, a producer or exporter (hereinafter "the applicant") shall submit to the Samtresti Department an application together with the documents set forth below:

1. Application
2. Certificate of quality
3. Copies of certificate of correspondence and product testing protocol
4. The certificate of availability of raw material balances necessary for production as of the date of January 1 of the economic year and on the date of issue of such certificate
5. The certificate on quantity of sold products within the period from January 1 of the economic year up to the date of issue of the Certificate
6. A copy of the contract (agreement) concluded for exportation of products
7. Samples of all the various kinds of exported wine in three 0,75L bottles

b) In accordance with submitted documents, "Samtresti" decides whether the physico-chemical and organoleptic tests are necessary. If "Samtresti" considers that such physico-chemical and organoleptic tests are not necessary, the export product samples stored in one bottle each shall be required.

If "Samtresti" considers such physico-chemical and organoleptic tests are necessary, then it has the authority to:

- Take samples necessary for physico-chemical and organoleptic tests by itself;
- Assign, if necessary, the body accredited by the Geostandard Department to carry out physico-chemical testing of samples, on the basis of agreement made therewith.

The tasting commission of Samtresti Department performs the organopletic testing of the product twice a week (Monday and Thursday). If all of these tests are passed, Samtresti will issue application of origin for alcoholic beverages.

IV. Certificate of Origin

a) Certificate of origin is issued by the Georgian Chamber of Commerce and Industry and by the Ministry of Economy, Industry and Trade (MoEIT). If product is intended for export in CIS, the Chamber of Commerce issues export certificate of origin; if products are intended for export to other states, the MoEIT issues the certificate.

b) All documents that exporter collected from the first 3 stages must be submitted at the Chamber of Commerce and Industry to apply for another certificate of origin. This is so despite the fact that Samtresti has already issued a certificate of product

origin earlier. Hence, the Chamber of Commerce re-tests the products in its Department of Expertise and awards another certificate (CT) to the producer, which is then verified by the Chamber of commerce. Why it happens is not explained in the Law.

MoEIT also issues a certificate of origin, which is called Form A. Same documents must be submitted at the Ministry.

After receiving the certificate, the exporter has the right to apply to Customs to receive permission to submit appropriate documents for Customs review.

5.3 Meeting Notes: Tamar Beruchashvili, Deputy Minister for Foreign Affairs

July 18, 2002

Coordination, Communication and Cooperation

After a description of SAVE, the meeting began with Ms. Beruchashvili describing several other international donor projects that have similar objectives. We assured her that SAVE had attempted to monitor their progress and establish ongoing contact with them.

Ms. Beruchashvili was pleased with this effort by SAVE, because, she claimed, the GoG ministries are incapable of effective coordination among themselves or with international donors.

She cited the example of GTZ, the German taxpayers' funded aid agency, to finance a laboratory at the MoAF at the same time UNDP was funding a commercially based testing laboratory with the Association of Georgian Exporters (AGE). The Germans considered this to be a problem and requested Ms. Beruchashvili's help in dividing the responsibilities and resolving the potential conflict. Apparently, the compromise was that MoAF will certify wine standards in the future and the new AGE lab will handle all other export certifications. This "official" compromise required an enormous amount of her time.

It should be noted that in a July 16 meeting, Vazha Kapanadze, Deputy Ministry of Economy, Industry and Trade (MoEIT), expressed reservations about the MoAF effort, saying that it basically has gone nowhere in the last two or three years.

The above anecdote does suggest that coordination will not be forthcoming from the Ministries, even when one country is involved. Given that the World Bank, FAO, UNDP, USAID, JICA and several other bi-laterals are involved, SAVE should consider its position vis-à-vis the entire context in which it will operate.

Ms. Beruchashvili suggested that SAVE could make a significant contribution to assure that agricultural export promotion projects are coordinated and do not work at cross-purposes.

Georgia and the WTO: an Update

At present the division of labor between MoAF and MoEIT appears both unclear and unstable. MoAF will deal directly with the WTO and provide information, through its Division of World Trade Organization and an embryonic organization, The Georgian Center for Trade Policy and Law (GTPL), which is sponsored by MoAF, the Taxpayers' Union political party and AGE. Levan Lomidze is both the Head of the Division and Director of GTPL.

MoAF, through GTPL, will provide information about:

- What types of Georgian products may have a comparative advantage for export;
- What markets are realistic in the short-term and long-term; and
- What are the rules and certification requirements in trade relations for targeted export markets.

Ms. Beruchashvili provided two recent GTPL documents that are a first attempt to achieve these goals.

The first is a general introduction aimed at Georgian exporters to explain the General System of Preferences (GSP) under WTO that allows trade concessions for developing countries. The second is to familiarize Georgian exporters with USA GSP requirements in particular.

These brochures were funded by CIDA (Canada) and follow-up trading for exporters is apparently under negotiation with that agency. Carleton University is also a highly regarded partner. The lack of capacity-building expertise and the need to provide information to potential Georgian exporters needs attention.

MoFA points to two successes in its trade promotion activities:

- Removal Jackson-Vaneck trade restrictions
- Permanent MFN status

MoFA knows that it has not exercised all of its rights it has obtained with WTO accession. GoG does not have the capacity to do so. It has made significant progress and will apply to WTO for several extensions for the agreed timetables, with formal and detailed explanations about why it is not feasible to achieve all commitments. Mike Moore, the exiting Head of WTO, understood this, but new WTO director may not when he takes office in September. However the continuing head of the WTO Technical Division does understand.

Several suggestions were made about how SAVE could help through its network.

Ms. Beruchashvili said she promised Parliament, when re-confirmed, that she would leverage WTO advantages and exercise Georgia's rights to be in negotiation with members and potential members. The first instance would be false labelling of Georgian wine, especially in the FSU. "I, personally, will go to Geneva," she said.

MoEIT will promote specific export products, and monitor their certification. It will provide statistics to value-added exporters and recommend issues for negotiation about export promotion.

Other Comments

Several additional observations need to be considered by SAVE:

- The EU is our most promising but most difficult export market;
- Russia, Ukraine, and Uzbekistan and other FSU countries are the best export markets to target in the short-term;
- We are working to get "extended-scheme" EU GSP;
- Conversations with WTO about Georgia becoming a regional hub for WTO training;
- Geo-Standard is in an impossible position because of the need for changed procedures and mentality is obvious, but the resources required to support the changes are not available;
- Several Geostandard improvement options, clearly not precise, were suggested, such as the Bank as the main donor and dividing specific ownership among other donors, *e.g.* Japan (technical expertise), USAID (legal implications) and EU internships for Georgian officials with counterpart certification authorities.

Voluntary certification is already happening. Any serious Georgian exporter already knows what it is required and does it. Potential Georgian exporters need significant assistance.

ANNEX 6 PLR Contact List

Aldagi Insurance Company
Mr. Levan Jishkariani
Chief Underwriter

American Chamber of Commerce
Mr. Fady O. Asly
President

Association of Georgian Exporters
Mr. Tamaz Agladze
President

AUDIT-CENTER
Mr. Vazha Lalebashvili
Director

EBRD
Mr. Mariam Megvinetukhutsesi
Associate Banker

GEOAGROEXPORT
Mr. Givi Gachechiladze
Director

Georgian Foundation for Strategic and International Policy
Mr. Alexander Rondeli
President

Georgian Institute of Information and Telecommunications
Mr. Leri Gigineishvili
Head of GIIT

Georgian Agrarian University
Dr. Napoleon Karkashadze
Rector

Georgian Technical University
Mr. Tariel Kaktakishvili
Associate Professor, Head of Department

Geostandard
Mr. Avtandil Chichinadze
Head of department

GIRCA
Ms. Tamar Kvlividze
Head of TIR Department

Imereti Region Government Administration
Dr. Kakhaber Dzotsenidze
Deputy Governor of Imereti Region

Inspection of Testing Of Selectional Achievements
Mr. Peter Naskidashvili
Director

Institute of Biotechnology
Dr. Amiran Tserodze
Director

KPMG Consulting/Barents Group
MR. Peter Griffin
Fiscal Policy Specialist

Ministry of Agriculture and Food of Georgia
Mr. David Shervashidze
Minister

Ministry of Agriculture and Food of Georgia
Mr. Omar Maisuradze
Head of Department

Ministry of Economics, Industry and Trade of Georgia
Mr. Vazha Kapanadze
Deputy Minister

Ministry of Foreign Affairs of Georgia
Ms. Tamar Beruchashvili
Deputy Minister

Ministry of Foreign Affairs of Georgia
Mr. Levan Lomidze
Head of Division of World Trade Organization

National Bank of Georgia
Mr. Irakli Managadze
President

Norma – Certification Agency
Mr. George Manjgaladze
Director

Parliament of Georgia
Mr. Bejan Gonashvili
Chairman of Agrarian Issues Committee

TACIS
Mr. Stephen J Avalayan Newton
Team Leader, IMC Consulting Ltd.

Tea Association
Mr. Avtandil Tvalchrelidze
President

World Wildlife Fund (WWF) – Georgia
Mr. Kakha Tolordava
Head of Public Relations Department

ANNEX 7 Monitoring Progress of Other Donor Projects

WORLD BANK AGRICULTURAL PROJECTS

Contact Person: Tatyana Kandelaki – Project Coordinator
Contact Details: Tel: (995 32) 98 54 60
Address: 18a, Chonkadze Street, Tbilisi, Georgia

Project Description: Agricultural Credit System/Private Farming and Agro-Processing

In August 1997, the World Bank approved a loan of $15 million. Currently the project is (somewhat mysteriously) suspended.

The overall objective of the project was to increase agricultural productivity in Georgia by supporting development of private sector farming and agro-processing. The specific goals of the project were to develop an agricultural credit system, facilitate increased liquidity in land markets and identify, through a series of studies and pilot operations, constraints to agricultural development and investment impeding increases in agricultural productivity.

The strategy was to:

- Provide loans through private commercial banks to private agribusiness enterprises in rural areas with working capital and longer-term investments. Most of these loans were expected to assist processing enterprises since they make up a large proportion of Georgian enterprises that currently function. Selected agribusinesses were to receive direct technical assistance from Bank consultants with the assistance of the Georgia Investment Promotion Center to prepare business plans and loan applications;
- Develop a network of rural credit unions that would mobilize resources and provide loans and financial services to small farmers, micro-enterprises and the local rural population;
- Support the land reform program by establishing an institutional framework to develop the capacity to register and issue land titles to individuals and firms;
- Develop an agricultural sector investment program to provide agricultural services to small farmers, improve agricultural policy making, and encourage agricultural exports by training GOG economists in policy analysis and preparing a series of studies to initiate pilot operations**.**

This project focused on the following agribusiness sectors:

Canning Industry, (which lacks proper equipment and does not meet HACCP standards).

Spring Water Industry, (which the Bank contended lacked marketing skill but was a good candidate for export promotion).

Nut Processing Industry, (was viewed by the Bank as an indicator of Georgian responsiveness to market signals due to the cultivation of new plantations and increased global demand. The focus was Samegrelo, Imereti and Kakheti).

Livestock Industry, (which was originally viewed as potentially profitable despite its long incubation period. Actually, the Bank made one investment and concluded it was impossible to develop the sector via its credit facilities, mainly due to the poor condition of Georgian veterinary medicine). (It is possible that this reference to an investment in the livestock sector refers to a loan to produce ostriches or emus).

Primary Agricultural Industry, (which lacked both technology and managerial skills and was viewed as unacceptably risky).

Timber Industry, (the Bank funded one small company, but from the point of environmental protection, this project was finally considered unacceptable).

IRRIGATION AND DRAINAGE COMMUNITY DEVELOPMENT PROJECT

Contact Person: Konstantine Mgeladze – Head of the Project
Contact Details: Tel: (995 32) 92 14 66
Fax: (995 32) 92 14 67
Address: 8, Machabeli Street, Tbilisi, Georgia

Project Description:

Phase 1 of this project was implemented in April 2002. Phase 1 is five years. Overall, this project will continue for 12 years.

The objective of this project is to increase agricultural production and private sector farm income by arresting further deterioration of Georgia's Soviet-era irrigation and drainage infrastructure.

The Project has two goals:

- Establishment of Amelioration Services Associations that deal with water accession and drainage rights;
- Rehabilitation of irrigation and drainage infrastructure.

Currently, there are three pilot projects that began in spring 2002. Legislation has been approved to implementation the Amelioration Services Associations.

Overall objectives include:

- Preparation of a revised law to enable the formation of improved water user organizations (Amelioration Services Associations, ASAs);
- Repair and rehabilitation of selected public irrigation and drainage infrastructure;
- Repair and rehabilitation of on-farm irrigation and drainage infrastructure;
- Training program to improve public irrigation management;
- Technical assistance and training for staff in engineering, agricultural and management aspects.

AGRICULTURAL RESEARCH, EXTENSION AND TRAINING

Contact Person: Leri Gigineishvili – Project Manager
Contact Details: Tel: 877 43 45 89 (mobile)

The credit amount of the project is $7.6 mln. The project began in February 2001 and will continue through December 2005.

The overall objective of the project is to develop an efficient and cost-effective agricultural knowledge and information system to demonstrate, disseminate and promote the adoption of appropriate technologies that increase sustainable agricultural production and reduce pollution of natural resources. In support of this objective, the Project would assist the Government of Georgia to:

- Put in place a Competitive Grant Scheme for agriculture to be used as a vehicle for funding: (i) appropriate on-farm technology acquisition, adaptation and dissemination to enable the new farmers to respond better to the challenges of a privatized economy based on market principles; and (ii) investment in practices to reduce agricultural nutrient pollution of the Black Sea.
- Develop a national strategy and Action and Implementation Plan for reforming the national agricultural knowledge system that is responsive to the needs of farmers and agro-processors.

The Project will initiate measures aimed at improving on-farm environmental practices, which over the long-term would reduce nutrients entering the Black Sea. The Project activities, especially those relating to better manure management, including its storage and application, are linked directly to "The Black Sea Strategic Action Plan" formulated with the assistance of GEF. It was the first to develop a systematic approach to policy development through the application of a Trans-Boundary Diagnostic Analysis. Results of the pollution source inventory conducted during the preparatory work shows that non-point source of agricultural pollution is one of the most serious problems facing the Black Sea. In addressing this problem, through support for relatively low-cost investments, policy adjustments, changes in consumer practices and employing alternative technologies, the Project would also complement the Danube Delta Environmental Program and assist the Government in meeting its international commitments under the Bucharest Convention. An ancillary global environmental objective of the Project is to reduce greenhouse gas emissions from stored manure by promoting the use of biogas energy among rural farmers.

Consulting and informational service of farmers has started and on May 31, 2002, the first center, which aims at technical and theoretical support, will be opened in Telavi (Eastern Georgia). Another center is in the preparation stage and will be opened at the end of summer in Tskaltubo (Western Georgia).

These centers aim at increasing farmers' efficiency and improving connections between farmers and scientists. They are going to achieve this goal by creating so-called farmers house, where, by means of modern information technologies - computer network, Internet - farmers will have an opportunity to communicate with each other and get necessary information for their operations.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

Contact Person: Mamuka Meskhi – Liaison Officer in Georgia
Contact Details: Tel/Fax: (995 32) 33 31 12
Address: 41, Kostava street, Tbilisi, Georgia

ACTIVITES:

FAO is one of the largest specialized agencies in the United Nations system and the lead agency for agriculture, forestry, fisheries and rural development.

FAO has technical assistance projects with maximum direct contribution of $400,000, although it may augment project budgets by soliciting funds from member countries.

Currently FAO is implementing two projects in Georgia: 1) drought rehabilitation (in western Georgia) and 2) rehabilitation of fruit growing industry.

Rehabilitation of fruit growing industry aims at the institutional reform and creation of regulation in fruit growing industry. This project also aims at creation of a trial farm near Gori. It should be noted that this project was recognized as very successful by FAO committee. (It should be noted that FAO is well known for selecting evaluators who will give favorable evaluations.)

In two months, FAO is planning to launch two projects: 1) rehabilitation of nuts and walnuts production and 2) viticulture.

From October 2001, FAO undertakes the **Special Program for Food Security (SPFS),** which aims to help those living in developing countries, in particular the low-income food deficit countries (LIFDCs) to improve their food security through rapid increases in food production and productivity, by reducing year-to-year variability in food production on an economically and environmentally sustainable basis, and by improving people's access to food. The first phase of this program was implemented near Mtskheta. At present, FAO is launching the second phase. This stage envisages expansion of the first phase, which means usage of repaired irrigation systems and growth of vegetables and their processing, as well as export development.

WORLD WILDLIFE FUND (WWF) – GEORGIA

Contact Person: Kakha Tolordava – Public Relations
Contact Details: Tel: 8 99 15 55 98 (mobile)

ACTIVITIES:

WWF carries out projects in the environmental protection field. The only project of interest to the SAVE Project is construction of Borjomi-Kharagauli National Park, since its development will support the socio-economic development of the region.

The main objective for the socio-economic development of the surrounding zone is to support the park's neighboring districts in achieving sustainable protection of the park. In cooperation with the Georgian Social Investment Fund (GSIF), WWF is planning support of SMEs of that region, particularly by the reconstruction of infrastructure.

There is a project proposal in WWF regarding cultivation of medical plants in selected regions of the Caucasus. WWF believes there is a high demand for this particular product on the market, although no formal market research has been undertaken. However, development of local marketing skills will be an important component of this project, if it comes to fruition. Delivering training sessions in cooperation with potential partners, such as SAVE, is of interest to WWF.

EUROPIAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)

Contact Person: Mariam Megvinetukhutsesi – Associate Banker
Contact Details: Tel: (995 32) 92 05 12

ACTIVITIES:

EBRD is actively cooperating with Georgia. EBRD believes that by financing Georgia's priority spheres, the Bank is playing a key role in assisting Georgia to overcome its economic crisis and to ensure sustainable development.

As of April 1, 2002, EBRD has participated in twenty-three investment projects in Georgia. Total commitments are € 197.9 million.

EBRD financed two projects in the agricultural sector:

Georgian Wine & Spirits Ltd. (GWS)

In September 1999 a 6.5-year loan of five million dollars has been signed with GWS. The Company will develop its exports towards Russia, other FSU republics, and in Western markets by up-grading its production facilities, raising its quality standards, selectively increasing its production capacity and improving its marketing capacity.

Borjomi/GG&MW

In June 1997 an EBRD loan of 10 million dollars was extended to Borjomi for six years with two years' grace period to help modernize bottle-making and water-bottling facilities. The proceeds of the loan have been used for investments in machinery and equipment, working capital and building up strategic stocks of finished products in the main markets.

CARE – GEORGIA

Contact Person: David Gazashvili – Sustainable Livelihoods in Adigeni Rayon (SLAR) Project Coordinator
Contact Details: Tel: (995 23) 29 19 41, 29 15 31

ACTIVITES:

CARE began providing humanitarian assistance in Georgia in 1991 in response to the economic crisis that followed independence. CARE assumed a primary role delivering humanitarian assistance on a national scale during the initial transition period. In response to the ensuing civil conflict/ territorial disputes within the country, CARE continued and expanded its emergency relief activities.

In 1996, CARE operations in Georgia began a transition from humanitarian assistance to development initiatives in an effort to address longer term social, economic and productivity related issues. As part of this transition CARE has implemented the following projects:

- Primary infrastructure development (IDP housing, water/sanitation, schools, medical centers, electrification, road access, etc.);
- Small business development (business plan training, technical advice to businesses, limited short-term credit);
- Agricultural development in highland areas by offering training in production diversification, marketing skills and livestock and irrigation management.

CARE International/Caucasus recently began a three-year project in Samtskhe-Javakheti funded by the Department for International Development (DFID), UK, promoting agricultural development.

The Sustainable Livelihoods in Adigeni Rayon (SLAR) Project aims to improve access to resources, skills and markets for farmers, small rural businesses and community groups in Adigeni and neighboring region. This will contribute to sustainable development in rural regions and poverty reduction in the highland areas of Georgia.

The primary beneficiaries will be small agricultural producers and rural households in Adigeni and adjacent regions. These remote mountain communities are economically isolated and suffer from severely declining social welfare services, crumbling infrastructure and limited opportunities to augment their meager incomes. Serious environmental problems will also be addressed, including uncontrolled deforestation and increasing soil erosion.

The project will work with community-based organizations, small producer cooperatives, and other groups engaged in business development and advocacy. The project will facilitate the creation of Regional Working Groups comprising community members, regional officials and business representatives to promote and sustain project activities. This approach is intended to strengthen civil society and aims at improving the responsiveness of local government to community problems.

The project builds on the strengths of three previous projects in Samtskhe-Javakheti:

- Towards Sustainable Livelihoods in Adigeni (TSLAR), a pilot project funded by DFID;
- The Small Farmer Support Project funded by USDA;
- Water Resources Management Projects funded by USDA.

THE NETHERLANDS – AID PROGRAM TO GEORGIA

FODDER PRODUCTION IN DAIRY SECTOR

Contact Person: George Chkhubianishvili – President of GENEDA (beneficiary of the project)
Contact Details: Tel: (995 32) 99 97 35, 93 57 94
Fax: (995 32) 92 38 84
Address: 4, Tavisupleba Square, Tbilisi, Georgia

ACTIVITES:

Project is effective from January 1, 2002 and its duration is two years. The amount of project funds is $400,000. It aims at creation of modern farm in Tsnori. Project is undertaken in cooperation with Van Der Ploeg International B.V., a noted exporter of cattle and dairy equipment.

$250,000 will be used to purchase machinery for cultivating and harvesting and machinery for milking. The project also aims to improve seed quality.

WORLD FOOD PROGRAM (WFP)

Contact Person: Maia Maruashvili – Program Monitor
Contact Details: Tel: (995 32) 25 36 67

ACTIVITES:

The World Food Program started its operation in Georgia in 1993. Since that time the WFP provides refugees and other indigent population with food. Since 1997, within the framework of the program "Urgent Assistance for Indigent Population of Georgia," WFP started its new approach - food for work. This project was viewed as very successful and became the main strategy for the organization's activities.

Currently, WFP project consists of: 1) Food for work and 2) Food for training. According to this project, workers are paid not money but food rations to build vital new infrastructure that will increase the food security of households or communities. Program aims at giving people the chance to take the first steps out of the hunger trap. Food aid given to the right people, at the right time, makes it possible for them to devote time and energy to development opportunities.

Food for Work covers the following programs:

Agricultural Project – this project is carried out in regions, which have high agricultural development potential. The following project will be implemented: reconstruction of irrigation and drainage systems. This project is carried out in eastern Georgia, namely in Kakheti and Javakheti regions.

Reconstruction of Social Infrastructure – this project is carried out in areas remote from the center with indigent regions and envisages reconstruction of roads, bridges, schools and medical institutions. Project is implemented in Imereti, Racha-Lechkhumi and Guria region.

QUALITY CERTIFICATION LABORATORY

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Project duration is 8 month. It is financed by UNDP and the amount of project funds is $400,000. Project participants are: Association of Georgian Exporters and the Ministry of Economy Industry and Trade. It is being constructed by TUV NORD. The project was presented and approved by the Georgian Investment Council in April 2002.

The project goal is the creation of a Quality Certification Laboratory. The EU will accredit the laboratory, if it meets strictly defined EU requirements. Accreditation will be valid for five years although the EU has the right to check conformity with requirements at any time.

Laboratory will be focused on certification of exported products. This will be the first quality certification laboratory in the region. Although the price for certification will not be low, it is, as yet, undetermined. The laboratory plans to be operational by the end of this calendar year.

MINISTRY OF AGRICULTURE – JAPANESE GOVERMNMENT GRANT

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The executive body for Japanese Governmental grants is Japanese International Cooperation Agency (JICA). On the bases of this grant, Georgia receives agricultural equipment for the development of agricultural production.

The budget of this project is 20 million dollars. So far, Georgia has received 8,000 tons of fertilizer valued at GEL 24 million, which are given to farmers, who should cover the price of machinery within 4 years. This amount of money is placed in a counterpart funds. Since the price of chemical treatments remains expensive for farmers, it was decided to extend repayment period from 4 to 7 or 8 years. At present time, there is a project for using counterpart funds for further developing of agricultural sector.

ANNEX 8 Summary of the Law of Georgia on Private Arbitration

A well-designed and properly implemented Law on Private Arbitration should provide an alternative to those who lost the trust in the court system or who cannot afford court fees. This is not case of the present law. If it were changed or improved, farmers and SME's would have better chances to resolve their disputes both more quickly and with less expense.

Article 1. Once the parties agree in writing, a civil dispute will be referred for settlement to either a permanent or temporary private arbitration

Article 3. If during the arbitration the criminal case will be initiated on the matter, which is the subject of the dispute and which may influence the outcome of the proceedings, on the bases of the court's ruling the arbitration will not be deemed to be conducted.

Article 6. District (city) court will discuss the claim of the party or the appeal of the arbitration on the issues covered by this law.

Article 8. Any person can be nominated as arbitrator if he/she is not:

- An insolvent person or a person with limited legal capacity
- A political official or state employee
- A person under sentence for committing a deliberate crime
- A party's or his/her representative's spouse, child, mother, father, sister or brother

Article 9. The number of the arbitrators and the rules of their nomination are defined by the parties. The parties nominate even number of arbitrators. An arbitration agreement will not be valid if it gives one of the parties a privileged position with regards of appointment of arbitrators.

Article 17. The arbitration proceedings commence within 10 days after the arbitration claim has been presented before the arbitration tribunal.

Article 20. The arbitration tribunal shall notify the parties in writing on the date and place of each meeting in 5 days in advance, unless the parties provide otherwise.

Article 21. The arbitration tribunal may voluntarily interrogate witnesses and request the presentation of evidence, unless the parties have provided otherwise. If a witness's voluntary appearance or presenting of evidence is impossible, the arbitral tribunal shall be authorized to refer to the judicial authority on the above.

Article 30. The judicial authority has no jurisdiction to decide a dispute, which is the subject of an arbitration agreement, except in cases where the parties so request, or if the judicial authority finds that the agreement is not valid or terminated. An application to the judicial authority for invalidation of the arbitral agreement does not imply a termination of the arbitration proceedings or enforcement of an arbitration award.

Article 31. The arbitration award should be made within a one -month period of time, unless the parties agree otherwise. If the award is not made within the fixed period, the

office of arbitrator shall terminate, unless the parties have agreed otherwise. In such a case the parties shall within 10 days nominate new arbitrators.

Article 34. The arbitration tribunal composed of a plurality of arbitrator's shall make award by majority of votes, unless parties have agreed otherwise. Neither arbitrator may abstain from voting.

Article 36. An award shall be notarised. A copy of the award shall be forwarded to each party and the district (city) court. An award shall be binding upon the parties; however it shall not assign any liability to a third person.

Article 37. The arbitral tribunal shall make a decision on the allocation of the expenses in connection with the arbitral proceedings between the parties, unless the parties agree otherwise.

Article 38. The parties are not precluded from resorting to an arbitral tribunal of second instance. The term of such recourse shall be 30 days, unless the parties have provided otherwise.

8.1 Critique of Law on Private Arbitration and Recommendations

by

Zurab Vanishvili

Arbitration in Georgia, Current Experience and Practice

Introduction:

Georgia's Soviet arbitration system was abolished with the enactment of the new Constitution in 1995. Arbitration related legislation of Georgia was enacted in the course of the past five years, with the most important statutes governing arbitration in Georgia were adopted in the year 1997. They are as follows:

- The Law on Private Arbitration ("The Arbitration Law"),
- The Civil Procedure Code,
- The Law on the Private International Law (1998) as Well the New York Convention (1958).

a) Entrepreneurial Activities and Arbitration

In addition, there is a specific requirement for permanent arbitration courts introduced by the Arbitration Law. The requirement is that permanent arbitration institutions should conduct their activities following registration in accordance with the procedure provided for in the Law of Georgia on Entrepreneurs. In practice it means that the permanent arbitration institutions functioning in Georgia should be set up in the form of a Limited Liability Company, Joint Stock Company, Cooperative, an Individual Enterprise or a Limited Partnership.

I think it is a pretty strange requirement and I really doubt that it corresponds to universally recognized standards. I can hardly imagine an arbitration court called, let us say, the Joint Stock Company London Court of International Arbitration. However, under

the laws of Georgia it will be OK. As you may know, most of the Arbitration Courts functioning in Georgia exist in the form of Limited Liability Companies.

b) Arbitration Clauses

According to Artic1es 1 and 2 of The Arbitration Law, party's wishing to bring a dispute to arbitration is required to do so in writing by submission of an Arbitration Agreement. The Agreement should include the names of the parties, the subject matter of the dispute, and the date and place of the agreement. This procedure deviates from the universally recognized definition of an Arbitration Agreement stipulated in the New York Convention, which states in Article 2 that the term 'agreement in writing' shall include an arbitral clause in a contract".

In practice it means that parties to a dispute are required to execute a written Arbitration Agreement, in addition to the Arbitration Clause already included in the contract. This means that the opposing party may block such submission simply by refusing to sign the required second Arbitration Agreement. It also means that the arbitral clauses do not work automatically in Georgia, since a party to dispute is unable to present the case without a second written consent of the other party. I think it is nonsense. It is a typical technical barrier to freedom of contract and freedom of trade in general.

In order to minimize the risk of having the Arbitral Award suspended by the Georgian Courts of General Jurisdiction, and to fill the gap in Georgian legislation, we always advise the parties to submit to the International Court of Arbitration of Georgia the Arbitration Agreement either signed by both parties or contained in an exchange of letters. Otherwise our Arbitral Award might be easily suspended by the District Court at the request of the party against whom the Award is invoked.

We believe The Arbitration Law should be amended to obviate the need for a second written consent.

c) Jurisdiction Issues

Interestingly, there is no consistency among Georgian laws On what the limits of the jurisdiction of arbitration courts are. According to Article 1 of The Arbitration Law, any civil dispute may be brought to arbitration. At the same time, Article 11 of the Civil Procedure Code limits the subject matter capable of settlement by arbitration to property disputes.

Let us assume that the Arbitration Court decides to accept jurisdiction over the civil dispute, let us say, remedies for breach of contract. If so, the District Court may suspend execution of an Arbitral Award and even suspend the Award itself based on article 11 of the Civil Procedure Code limiting the subject matter capable of settlement by arbitration to property disputes.

In other words, it is not clear under the Georgian law whether arbitration is applicable to disputes related, for example, to construction, transportation, franchising, usufruct, brokerage, tourism, insurance, inheritance, joint venture agreements, etc. The authority of Arbitration Courts to award damages or restitution in a case of civil disputes is not defined. Under these circumstances, the only option available to parties is to follow court practice and rely on the generosity and fairness of judges of Courts of General Jurisdiction.

d) Set of Arbitration Rules
Parties who have not included in their arbitration agreement a stipulation that a set of arbitration rules will govern their arbitral proceedings might wish to do so after the arbitration has begun. If that occurs, Article 18.3 of The Arbitration Law may be used stating that "A dispute in the permanent arbitral tribunal shall be decided in accordance with its bylaws, unless the parties and the permanent arbitration have agreed otherwise". It should be noted that agreement on arbitration rules is not necessary and that, if the parties do not agree on a set of arbitration rules, the arbitral tribunal, according to Article 18.2 of The Arbitration Law, shall have the power to continue the proceedings and determine how the case wi11 be conducted.

e) Language of Proceedings
Article 9.4 of the Civil Procedure Code provides that the Georgian language should be used in the proceedings. The Law on Arbitration itself does not contain a reference to the language of proceedings. However, the rules of the International Court of Arbitration of Georgia empower the arbitral panel to specify English language be used in the proceedings.

f) Notary Fees
Notably, according to the Arbitration Law, the Arbitral Awards are subject to notarial attestation. However, the Law on Fees for Notarial Attestation enacted in 1998 does not specify the amount to be paid for notarization of an Arbitral Award. We believe this gap should be filled in the near future by the Georgian Parliament by amending the Law on Notarial Fees.

g) Place of Arbitration
The place of arbitration is one of the major issues of arbitration. Many sets of arbitration rules and laws on arbitral procedure expressly allow the arbitral tribunal to hold meetings other than at the place of arbitration. For example, under the UNCITRAL Model Law on International Commercial Arbitration "the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members for hearing witnesses, experts or the parties" (Article 20.2). The purpose of this provision is to permit arbitral proceedings to be carried out in a manner that is most efficient and economical.

According to Article 13 of the Rules of the International Court of Arbitration of Georgia, "The place of the arbitration shall be fixed by the Chairman of the Court if the parties have not agreed upon a place". The Law on Arbitration empowers a District Court, on whose operating territory the arbitral procedures are taking place, to consider a party's claim or the arbitral tribunal's request. If, let us say, the arbitration takes place in the city of Batumi, it will be the Batumi District Court that shall have the right to suspend the Arbitral Award.

In some countries such a power is vested only in several or even a single court. For example, according to Article 41 of Bulgarian Law on International Commercial Arbitration, "The arbitral award can be annulled by the Sofia City Court". Currently there are around 70 District Courts in Georgia, and each of them has right to suspend the Arbitral Awards. I believe it will be useful for Georgia to follow the Bulgarian example on this matter. It is recommended that only the Tbilisi and Kutaisi Appellate

Courts be given the power to suspend Arbitral Awards issued in Georgia. There are several reasons why this is desirable. First, abuse will be avoided at the District Court level. Second, it will promote expertise and specialization in those two Appellate Courts.

h) Exclusive jurisdiction of Georgian Courts of General Jurisdiction

Even though Georgia's Soviet arbitration system was abolished in 1995, it became clear that it was desirable to have an alternative institution of dispute resolution to complement the state judiciary, but not replace it. An alternative dispute resolution mechanism is one of the major devices the public has for strengthening the Rule of Law. It is also an important tool for ensuring increased protection of private interests of the parties concerned.

The Georgian Law on Private International Law grants Georgian courts of general jurisdiction several exclusive powers. For example, they have the exclusive right to consider disputes related to immovable property situated in Georgia, the validity of corporate decisions of legal persons having residence in Georgia, and the registration of Intellectual Property rights in Georgia, among other matters.

In practice this means that if X and Y enter into a contract of hypothecation for a non-agricultural land plot located in Georgia in order to secure a loan, the arbitration clause inserted in the contract will not be valid. Moreover, recognition and enforcement of a foreign Arbitral Award in this case may be refused by the Supreme Court of Georgia, according to article 5.2 (a) of the New York Convention, which states that enforcement may be refused if "the subject matter of the difference is not capable of settlement by arbitration under the laws of that country".

i) Possible settlement negotiations

Attitudes differ as to whether it is appropriate for the arbitral tribunal to bring up the possibility of settlement. The Civil Procedure Code of Georgia provides, and somewhat promotes, settlement. Notably, the recently created Big Chamber of the Supreme Court of Georgia, settled its first case, as did the International Court of Arbitration of Georgia. Some practitioners argue that the arbitral tribunal should suggest settlement negotiations with caution. We think that the Arbitral Tribunal should schedule the proceedings in a way that might facilitate settlement negotiations.

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ANNEX 9 Code of Practice For Production: HACCP

Introduction

Why introduce a voluntary Codes of Practice for farm production?

The answer is no different than it would be in any other advanced food producing country, in so far as the introduction of a code of practice is designed to address the growing concerns of processors and retailers, driven by the increasing demands of consumers, that the food products and raw materials they receive for processing or retailing are safe, of good quality and affordable.

There is a recognized need to revise ways in which products are regulated. It is considered necessary to move away from product certification and place a greater emphasis upon accrediting the production process.

The introduction of a Code of Practice for products embraces the changes considered necessary and strengthens producer requirement to work within the framework of the "Law on Food Quality and Safety''. The food law stipulates that greater responsibility for food safety and quality of food products is placed with the producer or processor. Working to an accepted Code of Practice is the first step in this process for producers.

The Agribusiness industry, as a whole, needs to respond to the new challenges it faces from the demands of consumers for increasingly superior products and some processors are well advanced in this direction. Producers face the challenge to produce higher quality raw material and half finished products, if they are to remain viable and continue to supply processors, who by working to high international standards supply the growing market for their products.

To satisfy consumer demands processors increasingly demand high quality raw materials for processing, for which they are prepared to pay a premium. In return for these premiums they expect producers to supply them with products of a higher standard than existing GOST milk standards.

There is however no reason why products of high quality should not be supplied on a competitive basis by producers in Georgia. Indeed some producers are already supplying products of higher quality to processing outlets.

To be able to supply products at a premium to processors the overriding proviso is that the customer considers the product to be safe, high quality and produced under the framework of best practice.

Raw material supplies will become subjected to increasing scrutiny and comparison, as processors and customers become more demanding on quality.

The producer needs to establish market confidence in two directions; firstly they must demonstrate to the processors and consumer that raw materials produced at their enterprise are safe and of high quality and secondly that it has been produced under the highest possible standards.

Through their adherence to a Code of Practice producers are able to demonstrate that they share the concerns of their customers. By their compliance to the protocols applied within a Code of Practice, producers exhibit a preparedness to address issues of customer concern.

A Code of Practice is not a comprehensive manual for production. A Code of Practice provides guidelines based upon a general protocol for the production of quality assured crops. It embraces the general principles for the production of quality crops so encouraging producers to adopt the most suitable technical approach to production, often referred to as best practice.

When producing crops within the framework of a Code of Practice, producers are free to use, any technical means and any technology that complies with the current legislative requirements and the ethic of best practice.

A Code of Practice is designed to encourage producers to review their production activities and to consider whether or not all production operations can be considered appropriate in ensuring the production of safe and high quality products.

A Code of Practice sets out to minimize risk in production, it should be remembered however that food safety and protection of human health should always take precedence over quality and environmental controls.

A Code of Practice is not intended to replace or override existing legal instruments or statutes, nor is it intended to usurp the authority of the relevant regulating agencies. A Code of Practice reinforces the need for producers to produce within the statutory legal requirements.

Producers that base production upon a verified code of practice assure their customers that their product has been produced using all possible best practice. It is entirely reasonable therefore to expect that producers receive premiums for their output that will allow them to sustain these high standards of production.

Following a systematic approach will help producers identify and manage the risks involved in production.

Producers should consider using established food safety and quality management systems such as HACCP to ensure their compliance to a code of practice. HACCP follows a systematic approach in identifying the specific risks in all stages of production and the implementation of a HACCP scheme would ensure producer compliance to a Code of Practice.

The first step toward implementing a Code of Practice is the completion of a farm audit, based in the first instance upon a self-assessment questionnaire. Using the self-assessment producers satisfy themselves that they can fulfill the conditions outlined in the Code of Practice. A self-assessment audit form is then submitted to the supplied processor or other appointed agency for verification.

Self-assessment will be followed by a verification visit from an inspector (auditor) appointed by the processor or appointed agency, to confirm that a producer is indeed capable of producing within the guidelines set by the Code of Practice. Once satisfied of producer compliance to lay down conditions, the inspector will recommend that the appointed agency or processor issue an accreditation document confirming that the producer is successfully producing within guidelines laid down by the Code of Practice. An annual verification audit will ensure that producers continue to comply with the standards laid down by the Code of Practice.

A register of all producers who have elected to produce under a verified Code of Practice and assured quality scheme will be maintained within the Ministry of Agriculture and/or local department of Agriculture and it will be the duty of the Ministry and local departments of agriculture to promote those producers complying with a Code of Practice whenever possible.

ANNEX 10 Financial Services to Support Agribusiness Development

10.1 Background

The collapse of central planning left Georgian producers and processors without access to short- and long-term capital and guaranteed markets. Further, financial instruments that are an integral part of a market economy (*e.g.* warehouse receipts, collateral registry, liens and notes, letters of credit, insurance, forward contracts, derivatives, certificates of deposit and even bank drafts) were unknown to Georgian producers and processors. This lack of exposure to market financial mechanisms was complicated by the chaos resulting from privatization and lack of capacity in the nascent banking sector.

Donor efforts to establish capital markets in Georgia, as elsewhere in the FSU, were often misguided, failing to recognize the institutional capital, fiduciary relationships and accounting conventions that underpin developed capital markets and were often inspired by the donors' own respective economic ideologies rather than practical application of capital market principles.[1] Other reforms essential to a well-organized financial sector (*e.g.* the introduction of International Accounting Standards and bank inspection) are intellectually and institutionally complex, they require time to be understood and implemented by both the state and the private sector. Corruption in tax administration, customs, and lack of faith in the lari result in tax avoidance activities by business, cash transactions, dollarization of private reserves,[2] and other responses that are well documented. Over a decade into the transition from central planning, transaction costs – including risk and uncertainty – are still unacceptably high in the financial sector.

While commercial interest costs have declined substantially in the last five years, from 40-60 percent to as low as 20 percent per year, plus fees and charges, opinion is divided as to whether this high rate of interest reflects lender risk or a lack of loanable funds illiquidity, or both. One thing is clear, a banking system capable of supplying the amount of capital and financial services needed by a growing agribusiness sector does not exist. The impact of interest rates, transaction costs and financial administration, as well as mechanisms to improve the supply of capital to agribusiness, either through the formal financial sector, through NGO's, or through project finance and other types of financial engineering is clearly a legitimate target of policy development in which SAVE can play a significant role.

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[1] We recognize that fiduciary relationships and accounting conventions are not always scrupulously respected in some market economies or by some firms. Recent events underscore this shortcoming. Further, some financial instruments, e.g. derivatives are so complex they are not well understood by many financial practitioners. The issue is not adherence to standards by a single firm, but whether the 'expectation' of adherence exists and more importantly, whether the mechanisms exist to identify and enforce is lax.

[2] This is dramatically seen in the money supply data published monthly by the central bank. Of the total money supply (M2 in April 2002), only 15 percent was in demand deposits; the remainder was (lari) cash incirculation. The hard currency deposits in Georgian commercial banks were 5.6 times as large as the lari deposits. In addition to lari in circulation, it is estimated that several hundred millions of dollars of foreign exchange are held "under the mattress" by Georgians who do not trust banks for one reason or another.

10.2 Policy Goals

Banks themselves cannot respond to the needs of Georgian agriculture and agribusiness in the short-run. Alternatives, *e.g.* linking existing small-scale rural credit projects to farmer associations, financial engineering based on sales contracts and international financial instruments, or development of working models for processor-managed finance of agriculture, have important policy requirements and impacts to which SAVE can make a significant contribution. The policy component supports SAVE technical implementation to leverage existing credit projects, facilitate acquisition of financing for SAVE clients, and assist the development of alternative financing mechanisms as the formal financial system evolves to fill the needs of agriculture and agribusiness.

While there are short-term possibilities for meeting agribusiness credit needs (as outlined above), we believe that if Georgia is to build a significant agribusiness sector it must also develop financial institutions that can interact efficiently with those of its major trading partners. This goal is more likely to be achieved if a credible international bank were to be established in Georgia.[3] In the near term, one or more of the better capitalized and managed Georgian commercial banks might forge a durable association with a known international bank to provide services similar to those of an international bank. All the outcomes above should be considered policy goals of the agribusiness sector.

Whatever the final form of the financial sector serving Georgian agribusiness, the policy goals should be that they are based on commercial principles and that both the financial sector and financial mechanisms be competitive. Competitive, commercial financial institutions require an honest tax administration and internalization of the need for good accounting by the business sector. SAVE and its partners can contribute to the achievement goals in the areas outlined by providing stakeholders with credible analyses of the effects of the tax code and its administration, the impact of illiquidity in loanable funds, and facilitating development of alternative financial mechanisms.

Georgia is a dollarized economy. The lari's value is heavily determined by the amount of currency in circulation; commercial bank loans and major purchases are, effectively, in dollars.[4] The dollarization of the Georgian economy has both advantages and disadvantages for agribusiness development.[5] The great potential advantage of dollarization is to reduce or eliminates currency risk for foreign investors. Since Georgia cannot adjust the value of the lari to the ruble or lira to affect its trading balance in the region, the policy goal to promote Georgian agribusiness is one that encourages enterprises to open multiple export opportunities and become more competitive in 'all' markets by producing more efficiently, *e.g.* at lower cost. Increased competitiveness will

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[3] See Section 3.8, above, for a description of the conditions that a foreign bank must observe if it is to establish a presence in Georgia.

[4] Technically, the loans are in lari, but the loan agreements specify that the principal be indexed to the dollar.

[5] The dollar is Georgia's currency of choice because of recent history and because most of Georgia's international trade is with Turkey and Russia, neither of whom has a credible domestic currency and both of whom quote their international prices in dollars. However, both Russia and Turkey are substantial industrial and agricultural economies in which monetary and exchange rate policies can be used as policy instruments to affect international trade, domestic prices and income distribution. There is no comparable capacity to use monetary policy to affect trade in Georgia.

improve the capacity of firms to begin to generate investment funds form their own cash flow. SAVE is in a position to assist in the achievement of these goals.

Providing finance is only one important consideration; recovering the capital is another. Credit repayment from agricultural producers is easier to achieve in the case of seasonal agricultural input credit that is repaid against current crop or livestock sales. Of course, the improvement in efficiency referred to above requires investment in productivity-enhancing capital, long-term capital that is more problematic in a poorly functioning financial system. There are clear policy issues for SAVE in addressing the needs for credit repayment, whether seasonal credit, leasing, or long-term investment credit, *e.g.* collateral registration, appropriate levels of collateral, and mechanisms to secure repayment, including legal enforcement and execution on assets. Below, we describe options for improving and enhancing financial transactions and the policy issues that come from technical support or implementation of these options.

10.3 Transition Arrangements

If Georgian commercial banks are unlikely to become meaningful suppliers of capital to agribusiness in the life of the SAVE Project, what alternatives exist to support the market development and economic growth activities of the project? Purely commercial banking transactions will be hampered until SAVE and other sources of policy support are able to assist Government and business decision makers to deal with the issues of production risk, collateral, execution on pledged assets, and lending rates.[6] In the meantime, arrangements to allow agribusiness – both production and processing – to function based on creative credit, non-traditional credit suppliers, and alternative mechanisms will be required.

Six institutional forms have emerged to finance the agricultural sector:

- On-lending of donor (World Bank, IFC, EC and USAID) funds through commercial banks at concessional rates to small and (mostly to) medium scale businesses, some of which may be agricultural processors;
- Lending to processors on favorable (as low as 18 percent per year) terms by the Agrobusiness Bank, a joint EC-GoG enterprise that is due to be privatized in the near future;
- Lending on favorable (18 percent per year) terms to commercial farmers and some small input supply, processing and marketing firms by ACDI/VOCA-supervised, donor-funded credit associations;
- Finance by foreign buyers who advance funds to their Georgian suppliers to fund the purchase and processing of the harvested crop;
- Rural credit cooperatives funded by a World Bank loan and administered by a special unit attached to the MoAF; and,
- Hybrid credit cooperatives and associations funded and overseen/managed by various humanitarian NGOs.

The experience of international donors in strengthening commercial banks and lending to medium scale enterprises has been mixed but generally positive. These loans are

[6] It is not just the farm sector that faces weather risk. Processors who are unable to acquire raw product due to crop failure are at risk, too.

important because they have supported the policy goal of strengthening the commercial bank sector.

The Agrobusiness Bank has been successful in making and collecting commercial loans to the processing sector, but it may or may not survive the privatization process as an independent institution that lends to processors at favorable interest rates. If it does, it may be able to attract loanable funds through its historic connections with the EC.

The ACDI/VOCA-organized and managed credit associations have been successful in supporting commercial agriculture and some rural, non-farm enterprises. Loanable funds and operating expenses have been funded by USAID, USDA and revenues from the sales of US wheat. The ACDI/VOCA model is strictly commercial in its concern for timely credit repayment and its collateral requirements. This model is capable of growth if it can attract increased amounts of loanable funds, can adjust its management system to expansion without compromising its loan recovery rate and if it can remain free from political interference.

The credit cooperatives initiated by World Bank funding have, largely, failed. Originally intended as an experiment, the program to build a cooperative credit sector that would be substantially funded from member deposits, was politicized. Only a few of about 150 originally chartered cooperatives continue to exist. As a consequence of the failure of these credit cooperatives, the likelihood of successfully instituting a viable cooperative credit system in Georgia has been substantially diminished. The hybrid credit cooperatives/associations that have been instituted by various international humanitarian NGOs suffer from the stigma of being associated with humanitarian assistance. It is easy for a borrower to rationalize default on the grounds that a loan was meant as humanitarian assistance. Humanitarian organizations are also loath to seize collateral and take defaulters to court. Humanitarian values are not inherently consistent with disciplined credit for commercial, internationally competitive agribusiness.

We believe that the assistance SAVE will provide to agricultural processors in improving their product, finding markets and reducing their costs will both enable them to pay higher interest rates that will be required until financial efficiency improves and make them better credit risks for established lenders. Given the volume of credit that may be needed in the processing and marketing sub-sectors, we believe that a renewal of funding for on-lending through commercial banks – including the Agrobusiness Bank if it remains viable after privatization – is a valid policy goal. On-lending can be expanded and perhaps improved, by evaluating the policy and operational potential of public-private investment partnerships. All of the mechanisms identified above have opportunities for expansion or further development, especially when tied to the export development and cost efficiency resulting from other parts of the SAVE Project. They also open the prospect for important 'new sources' of capital for agriculture, something the institutions and mechanisms above cannot do alone. These are important and critical policy areas to which SAVE will contribute and lead in creating awareness among policy makers.

Support for the farm sector will always be more difficult than support for the processing sector. The credit association model has proven successful, but the potential rate of expansion is probably limited. Expansion of these credit associations is a valid policy goal, but it is not clear that enough investment funds can be advanced as credit to support a rapid expansion of the agribusiness sector without the addition of new financial

mechanisms noted above. Furthermore, unless the humanitarian NGOs can find more successful means of making and collecting loans in the peasant sector, or an alternative means of organizing the peasants becomes prevalent, peasants are at risk of being left behind.

SAVE's direct involvement in financing of the agribusiness sector will be limited by resources. Key areas of operational emphasis that require policy support will include assisting client/partner enterprises to qualify for commercial credit, assistance in identifying market partners who might also provide credit, facilitating financial engineering based on international transactions and contracts, assisting firms by providing introductions to foreign partners, encouraging new lenders/participants to enter the market as a result of creative financial engineering and policy support and studies of how to reduce transactions costs everywhere in the product-market chain.

Current Agricultural Credit Facilities and Financial Instruments

ACDI/VOCA Credit System

In 1996 ACDI/VOCA launched a rural credit association in Gori. With $160,000 provided by USDA, an office was established and loans were made to commercial wheat growers. The following year, the success of the credit system test led to the opening of credit associations in Kobuleti and Telavi with an additional $300,000 of USDA funding.

The results of these three associations in 1997-98 were carefully scrutinized and highly evaluated. Subsequently, USAID provided additional funding in 1999. Loan capital was increased by $1,000,000 and operational funds were provided to open additional credit associations and to support the operational needs of the three initial offices.

Today, there are six credit associations funded by the US government in Gori, Telavi, Tsnori, Bolnisi, Zestaphoni and Kobuleti. ACDI/VOCA envisions that these six offices will form the backbone of an urgently needed National Rural Credit System (NRCS). The main goal of the NRCS is to build capacity for an effective and transparent credit system anchored by a well managed and financially skilled regional and district staff committed to their local communities.

ACDI/VOCA's credit system issued 473 loans, totaling GEL 2,727,130 in 2001. What is especially significant is that, unlike the few others involved providing agricultural credit, the majority of the system's loans have consistently been made to local farmers who have far less access to credit than agro-processors.

So far ACDI/VOCA's credit system has issued few loans to Cooperatives and Associations. However, if the SAVE Project is successful establishing new credible organizations, lending to cooperatives could lower the system's transaction costs considerably.

AGRO-BUSINESS BANK OF GEORGIA (ABG)

Agro-business Bank was founded February 21, 2000 based on a Memorandum of Understanding signed between the Government of Georgia and the European Commission.

Provision of credit to the agricultural sector is the most important activity of the bank. The Bank provides working capital facilities, normally by way of overdrafts, reviewed over a twelve-month period and fixed asset finance over a period of up to three years. In comparison with other Georgian Banks the interest rates of the ABG are low, usually between 18% and 22% per annum. Activities of the Bank cover all agricultural sectors. It has to be recognized that 39.2% of all loans given in agricultural sector comes to the ABG.

The Bank financed the following sectors:

Farmers/Producers; Cereals, Poultry, Garden crops (potatoes, vegetables). Viticulture, Fish Farms, Tea (Zemo Eceri Wine factory – export to Russia and Mongolia); Honey Production, Fruit, Horticulture, Livestock (cattle, pigs, sheep), Dairy Farming and Tobacco.

Processors; Fruit (Gorkoni, Samegobro), Flourmills, Wine/alcoholic beverages (DK, Savane), Bakeries, Timber Processing, Dairy Processing;

Trade/Retailers; Nuts/Spices Exportation, Fruit Exportation, Mineral Water Exportation, Food Importation, Medicinal Plant Exportation.

Although specific figures were not forthcoming, very few farmers received credit. A limited number of agro-processors processors did obtain loans but the vast majority of credit is allocated to traders.

Micro-finance Bank (meeting agreed with Giorgi Nadareishvili, Board Member, Batumi Branch Director and MFB Agricultural Director)

[Meeting not completed]

ALDAGI – AGRO INSURANCE

ALDAGI is the first company to introduce agricultural financial instruments in the Georgian insurance market.

ALDAGI insures mainly against risks of hail and fire for vineyards and hail and excessive rain for seed crops.

Essentially, ALDAGI activities are in the Kakheti region, where 80% of its clients are local farmers, though the company has large clients, such as GWS and Telavi Vineyards.

Although the major agricultural product for the company is insuring vineyards, it has increasing queries from producers of potatoes, tomatoes and cabbage. As a first response, ALDAGI is planning to start a new project in South Georgia for potato insurance.

Any farmer has the right to use this type of insurance and apply for coverage. Most of them do not even begin to understand the concept. In 2001, ALDAGI paid out $60,000 in agricultural crop insurance coverage.

ANNEX 11 Demand Driven Farmers' Associations[7]

SAVE Project welcomes an approach that includes involvement with existing value-adding associations and the establishment and the encouragement of new value-adding associations, to assist in the improvement of production and marketing of products or product clusters.

Many Georgian farms are too small to be efficient in production and marketing. By forming associations, groups of farmers may be able to exploit economies of scale in purchasing inputs, in land preparation, irrigation, weed and pest control, harvesting, storage and marketing. In the area of marketing, associations have the potential to increase the quantity and quality of products at one place in order to interest processors. Many small farms have already come together to form informal "associations" that improve their technical efficiency. Such informal arrangements are potential springboards for expanded associations and other forms of cooperation. However, informal producers' associations, by themselves, are unlikely to be able to achieve international standards. Therefore, it is a SAVE priority to work with associations that add value by exploiting economies of scale in production, marketing and quality improvement. Policy evaluation and legal support of all forms of formal and informal cooperation, including development of managed multi-service associations will be considered.

Associations have the potential to address the following value-adding, risk-reducing opportunities.

- Reduced input costs through group purchases;
- Reduced risk to producers and processors by replacing cash markets with credible contracts for delivery of – and payment for – products of specified quality at specified times and locations;
- Improved information about what markets want in terms of quantity, quality and timing; and[8],
- Pest control, water and drainage system management and maintenance.

Where the scope exists for an association of producers, or even agribusiness processors, to reduce transaction or production costs, improve volume or marketing efficiency, or increase access to markets by collective action, SAVE will provide advice and training on how to form and manage the association.

In its dealings with associations, SAVE will require that candidate associations meet criteria comparable with those required of enterprises with whom we work. In addition, SAVE will assess its involvement with an association based on categories of characteristics in the box below.

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[7] If registered under the appropriate provision of the Georgian Law on Entrepreneurs, the legal requirements for establishing a farmers association will be met. See Annex 3 for "A Guide to Registering Associations Under the Law on Entrepreneurs".

[8] The Russian Ministry of Agriculture maintains a market information system that is now connected to many of the wholesale markets across the country as well as to regional agriculture centers.

Association Assessment Categories

Organizational Development:
- Legal status, articles of association
- Organizational structure, staffing
- Strategic planning process
- Member support program activities

Financial Viability:
- Budgeting
- Expense control process
- Revenue sources
- Plant/equipment inventory

Marketing:
- Marketing planning
- Customer relations
- Promotional activities

Services:
- Technology transfer
- Market Information
- Advocacy
- Training

ANNEX 12 Public Education, Outreach and Training

SAVE's first public education priority will be to support the case for our proposed policy agenda. We propose to do this by bringing international experts to explain to policy-makers and agribusiness leaders why issues like HACCP are important to developing international markets and competitiveness. Next, SAVE will work with policy-makers and business leaders to transform the policy agenda into an appropriate legal and regulatory framework. Finally, SAVE will develop a training agenda for those who, in the final analysis, will implement the new laws and regulations.

A professional Training Needs Assessment (TNA) will be conducted prior to final design of SAVE Phase II. Although the TNA must anticipate the final form of laws and regulations it will be informed by the results of Phase I pilot projects. Below is a preliminary matrix of policy themes and clients that summarizes SAVE's current thinking about where to insert critical policy reform agenda items into the stakeholder framework. Elements of Georgia's institutions of higher education have not been listed as specific elements of the target groups. They will be included under the heading of GoG when and if potentially productive linkages are identified.

Preliminary List of Priority Training Needs to Promote SAVE Objectives

Area of Training	Target Group				
	Farmers	Processors	Freight Forwarders	GOG	Traders
Standards and Certification		X		X	X
Role of Labeling, Packaging, Standards and Food Safety in Competitive Marketing		X		X	X
Proper use of Pesticides and Post Harvest Handling – The Marketing Impact of Farmers' and Processors' Actions, and the Role of Standards and Education	X	X	X	X	
HACCP and Quality Assurance Programs – The Ethical Obligations and Marketing	X	X	X	X	X
Importance of Contracts, Policy Stability, and Rule of Law in Agribusiness – Policies to Growth, Export Development and Foreign Investment	X	X	X	X	X
Capital Markets and Taxation Policies – Impacts on Agribusiness Investment in Improved Technologies	X	X	X	X	X
Understanding the WTO – Impacts and Implications for Agribusiness	X	X	X	X	X

ANNEX 13 Identifying and Working with the Wider Stakeholder Community

By definition a stakeholder is an individual or group who has an interest or position to defend in a particular proceeding or process. The SAVE project acknowledges three categories of stakeholders based on the kinds of positions that are important to them and to SAVE:

- Friendly stakeholders, allies and free riders (*e.g*. the business community in general, including those who will benefit by greater business activity, more even-handed tax administration, rule of law reformers in Parliament, donors, *etc*.);
- Partner stakeholders (*e.g.* the enterprises and suppliers of products and product clusters that are chosen as pilot cases); and,
- Hostile stakeholders whose interests are inimical to transparent, value-added economic activity (*e.g*. rent-collecting elements like the traffic police, grabbing-hand bureaucrats which are sometime found in local and national governmental positions, corrupt tax collectors and criminal elements).

SAVE feels it would not be productive at this time to assign each of the stakeholder group to one of the three categories above. However, we expect to structure our public education, outreach and operational activities with a careful assessment of how the thrust of SAVE activities impinges on the vital interests of different stakeholders. SAVE expects to encounter situations in which elements of a ministry are allies and parts are hostile. Where possible, SAVE will try to work around hostile stakeholders, but will ask USAID, allies and partners for assistance, where necessary.