

**CAREC REGIONAL WORKSHOP ON MODERNIZING SANITARY  
AND PHYTOSANITARY MEASURES**

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**SPS legal framework and institutional mechanism**

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## Plan of Presentation

- I. Brief recap on the World Trade Organization (WTO)
- II. Key features of the WTO Agreement on the Application of SPS Measures
- III Implementing normative frameworks for plant health, animal health and food safety at national level
- IV. Institutions to implement national legal frameworks – competent authorities

# I. World Trade Organisation

- Came into being on 1 January 1995 as a global trade issue forum, succeeding the General Agreement on Tariffs and Trade (GATT) that sought to lessen trade barriers
- WTO aims to liberalise world trade, provide equal access to all
- Abolishing trade barriers
  - *Tariff– import taxes, duties, subsidies, quotas*
  - *Non-tariff measures (NTMs)*
    - Conformity with standards
    - Product safety criteria in design and manufacturing
    - Food composition, nutritional quality
    - Absence of harmful agents from manufacturing, processing, transport or commerce
    - Administrative or procedural measures on imports – forms, customs clearance
- WTO rules ensure that tariff or non-tariff measures do not become tariff barriers or non-tariff barriers (NTBs)
- Removing administrative and procedural barriers (e.g. excessive paperwork, lengthy wait for permits) becomes a matter for **Trade Facilitation**

## II. WTO Agreement on the Application of SPS Measures

- Covers measures\* to protect human, animal and plant life from harmful ORGANISMS and harmful SUBSTANCES (“contaminants”) in imported goods
- Text of *SPS Agreement* available at:

[https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm) (English)

[https://www.hse.ru/data/2018/01/24/1163174522/ГАТТ-47%20и%20Результаты%20Уругвайского%20Раунда%20\(неофиц.%20перевод\).pdf](https://www.hse.ru/data/2018/01/24/1163174522/ГАТТ-47%20и%20Результаты%20Уругвайского%20Раунда%20(неофиц.%20перевод).pdf) p.100  
(Russian)

- Use of Codex Alimentarius and other international organisations for standards (Article 3.1)
- Food and other standards themselves should be based on risk analysis (Article 2 and 5)
- Domestically produced goods and imported goods should be treated alike (non-discrimination)
- Any concessions given to one country must be given to all (Most Favoured Nation Principle)

\* Measures are any restrictions, prohibitions or other conditions or treatments required. Includes legislation, decisions, administrative and enforcement actions

## **SPS and standards**

### **SPS Agreement Article 3 – Harmonisation**

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.
2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994 shall not be inconsistent with any other provision of this Agreement.

## SPS and standards (continued)

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, ... Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provisions of this agreement.

## Misconceptions about standards in SPS

- Voluntary standards under standards laws are used as basis for mandatory Technical Regulations under TBT Agreement covering e.g. food composition, nutritional value, packaging and labelling
- Standards adopted in SPS (e.g. MRLs) **are** SPS measures in themselves, implemented officially – being ‘voluntary’ or ‘mandatory’ is irrelevant
- SPS standards should be implemented by competent authorities for SPS, not by national standards institutions – referred to later
- Technical Regulations (as in GOST) and SPS measures are mutually exclusive
- Confusion still exists because Russia insisted on *Technical Regulations for SPS Measures* when it joined WTO
- With remaining legacy of the GOST for descriptive food requirements, mandatory national TRs for food may comprise these requirements (TBT) as well as food-safety related elements (with latter not necessarily risk-related)
- But international phytosanitary certificates, certificates of veterinary health, etc. must not be used for conformity assurance with GOST standards or requirements

## SPS and risk assessment

- Article 2 provides for all SPS measures to be justified scientifically as a means of protecting human, animal and plant life and health
- This requires 'scientific evidence' to support measures, to avoid measures being regarded as undue restrictions on trade (unless based on international standards)
- Article 5 provides risk assessment as means of providing scientific evidence to support the justification of SPS measures
- Article 5.7 provides for temporary precautionary measures if full scientific evidence not yet available



## Other important aspects of SPS Agreement

- Article 4 - Equivalence
- Article 7/Annex B – Transparency
  - *(SPS) National Notification Authority*
  - *(SPS) Enquiry Point*
- Article 8/Annex C – Control Inspection and Approval Procedures
  - **➔** *Trade Facilitation*

### **III. Implementing normative frameworks for plant health, animal health and food safety at national level**

- Plant health – International Plant Protection Convention and International Standards for Phytosanitary Measures (ISPMs)
- Animal health - Codes (Terrestrial and Aquatic) of OIE
- Food safety – Codex Alimentarius standards and guidelines
  
- Delegates were provided with a questionnaire to record (a) current state of legislative compliance with these normative frameworks and (b) adoption of key standards and other measures
- Responses will be used in developing national work plans (Session 6)

## IV. Institutions to implement national legal frameworks – competent authorities

- Annexes of SPS Agreement refer to ‘competent body’
- European union (EU) – ‘competent authority’ (CA) means those organizations recognised by each Party as responsible for developing, implementing and administering the SPS measures within its territory
- Identifying the CA in laws for the three SPS sectors may be difficult for several reasons:
  - *Framework for primary law-may assign responsibility to several bodies without indicating where overall responsibility lies. New bodies may emerge by Decree contradicting or conflicting with the primary law*
  - *Might trade facilitation initiatives leading to integration of border inspection services weaken policy base? →*

*(Illustrated with reference to plant health but applicable to other SPS sectors.)*

  - *For plant health, traditional split between plant quarantine and plant protection and chemical pest control →*

# Impact of trade facilitation initiatives on border inspections

## 1. Article 8/Annex C → new Agreement on Trade Facilitation

Documentary requirements, procedures and fees consistent with Article 8/Annex C

## 2. Evolution of SPS border controls with trade facilitation

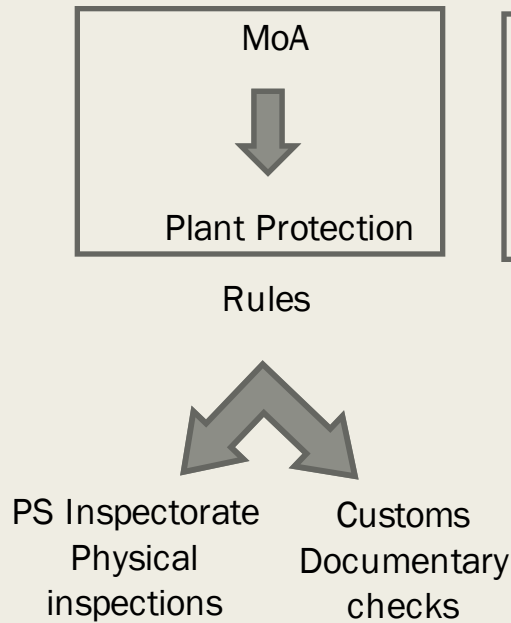


## 3. Trade facilitation and integration of border inspections

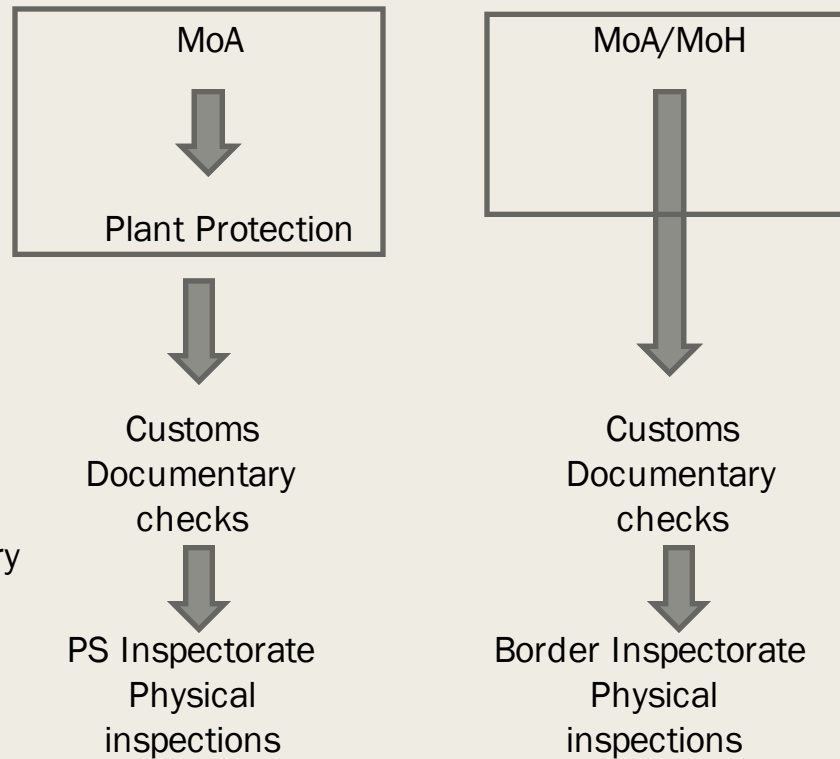
- I. Ultimate 'rationalisation' of trade facilitation is to empower Customs as regulatory authority and border inspection agency
- II. However, there is a danger that the importance of SPS measures will be underestimated, particularly with weakening of role of ministries responsible for agriculture, food and health whose expertise equips them to be 'competent authorities'
- III. Trade facilitation initiatives to improve the performance of customs remains a focus, it is only one of the many agencies involved in border processing and, frequently, most targeted for investment and modernization. In many countries, customs agencies already use ICT systems to process declarations and use some form of risk management in guiding controls.

# 'Evolution' of border inspection services with trade facilitation

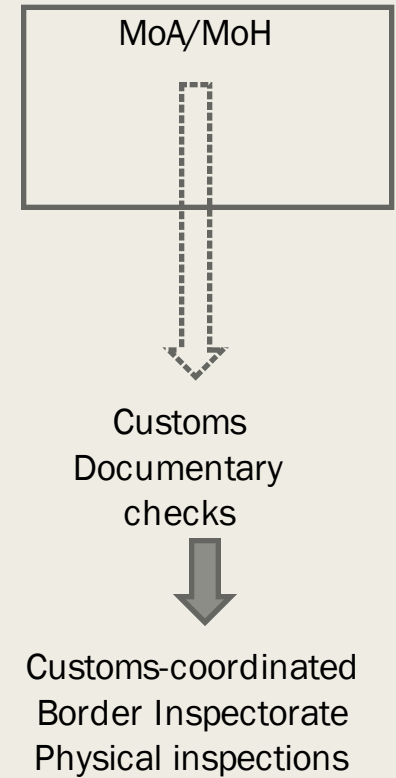
## Traditional approaches



## Integrated border inspections



## Trade facilitation Ultimate 'rationalisation'



## Article IV of IPPC – Official national plant protection organisation (NPPO)

2. The responsibilities of an official national plant protection organization shall include the following:

- (a) the issuance of certificates relating to the phytosanitary regulations of the importing contracting party for consignments of plants, plant products and other regulated articles;
- (b) the surveillance of growing plants...
- (c) the inspection of consignments of plants and plant products moving in international traffic ...
- (d) the disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic ...
- (e) the protection of endangered areas and the designation, maintenance and surveillance of pest free areas and areas of low pest prevalence;
- (f) the conduct of pest risk analyses;

...

3. Each contracting party shall make provision, to the best of its ability, for the following:

- (a) the distribution of information within the territory of the contracting party regarding regulated pests and the means of their prevention and control;
- (b) research and investigation in the field of plant protection;
- (c) the issuance of phytosanitary regulations; and
- (d) the performance of such other functions as may be required for the implementation of this Convention.

# Legislative and institutional arrangements for plant health

## 1. Plant protection and quarantine

- Plant quarantine activities takes place inland (surveillance, containment and eradication of quarantine pests) as well as at borders
- Requires same technical basis and resources as plant protection
- Split between plant quarantine as official action and (internal) plant protection wasteful of resources
- All qualified staff should have legal authority to take enforcement action against pest

## 2. Agrochemicals

- Responsibility for regulation and use of pesticides and other agrochemicals is preferably assigned to an independent body separate from Ministry of Agriculture

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## Policy, rule-making and inspections across SPS sectors

- Should there be separation (legal firewall) between central body for policy and rule making (under primary law) and Inspectorate?

## Institutional arrangements for food safety and veterinary controls

- Traditionally, **food safety** in strict sense has been covered by Ministry of Health under 'sanitary epidemiological surveillance' with SanPins as border controls
- But SanPins operating in a dual system with GOST for market access
- In some countries in CAREC region, the national standards institution has been (or may still be) the *de facto* Competent Authority because of the dominance of the GOST and the requirements for end-product conformity assessment
- The primary need is for descriptive end-product food criteria to be removed from import requirements
- Need for effective controls of pesticides and antibiotics must not be ignored (*slide 15*)
- **Veterinary border controls** on live animals and fresh food of animal origin generally is the responsibility of the veterinary department/division/inspectorate of the Ministry for Agriculture – as is appropriate
- There may be overlap or duplication between Ministry of Health and veterinary authority for fresh meat and offal, especially for supervision of abattoirs and markets
  - *But this jurisdictional problem is found all over the world!*
- Where responsibility for food inspections is assigned to an independent inspectorate (*slide 12*), there remains a clear Competent Authority



- Thanks for your attention!
- Thanks to the Manila-based CAREC SPS team for helpful advice and suggestions
- Questions and discussion after next presentation.