

# The SPS Agreement: maximising the benefits

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# How can the SPS Agreement help agriculture and trade?

- Improving organisation and administration to ensure food safety and biosecurity
- Systematic SPS capacity-building
- Improving export market access for agricultural exports
- Managing bilateral SPS-related trade problems

# 1. Improving organisation and administration to ensure food safety and biosecurity

- Accession/Membership encourages government attention to national SPS organisation and administrative arrangements
  - and empowers governments to follow good principles in SPS administration.
- WTO Accession/Membership requires alignment with best international practice
  - clarification of agency roles and responsibilities
  - legislation
  - use of international standards
  - risk-based approach
  - transparency
  - education of interested parties

# Clarification of agency roles

- In many countries there is overlap and duplication of functions between Ministries/agencies responsible for food safety and biosecurity
  - and often significant gaps in coverage as well.
- Activities tend to concentrate where there is the possibility of raising revenues
  - legal and “informal”
- Agencies cannot administer SPS responsibilities efficiently unless roles and responsibilities are clear and non-duplicative
  - ideally under a national plan
- The task of clarifying existing roles and responsibilities can be large
  - and negotiation of better arrangements can be extremely difficult.

# Legislation

- Many countries take the opportunity of accession to the WTO to modernise and reinforce their legislation on food safety and biosecurity
  - often with help from international organisations (FAO, WHO, OIE, etc.)
  - conformity of legislation with WTO obligations is a key focus in working parties on accession.
- Problems may include:
  - use of inappropriate templates
  - excessively ambitious legislation that cannot be implemented
  - legislation aimed at increasing revenue potential and/or the scope of Ministry mandates

# International standards

- Former Soviet-bloc countries and other centrally-directed economies often have far too many standards, especially for foods
  - and a regulatory regime that (in theory) enforces very detailed control on businesses.
- A switch to the standards specified in the SPS Agreement not only conforms with WTO obligations but simultaneously permits a modern approach to regulation of relevant activities (e.g. food production) in an open mixed economy, as well as enhancing trade opportunities.

# Risk-based approach

- SPS managers have to know what risks their country is facing so that they can allocate resources to reduce ***aggregate risk*** as much as possible.
- Resources (people, money, laboratory analytical capacity, etc.) are allocated by means of ***programs***
  - e.g. border inspection of imports of animal and plant products
  - e.g. monitoring and surveillance of foods on sale in shops and markets

- ***SPS management*** means using available resources to achieve **the best possible results** in the fields of biosecurity and food safety.
- ***Best results*** are achieved when **risks** are minimised.
- ***Risk*** is the probable amount of **damage** that will be caused by hazards to human, animal or plant life or health.

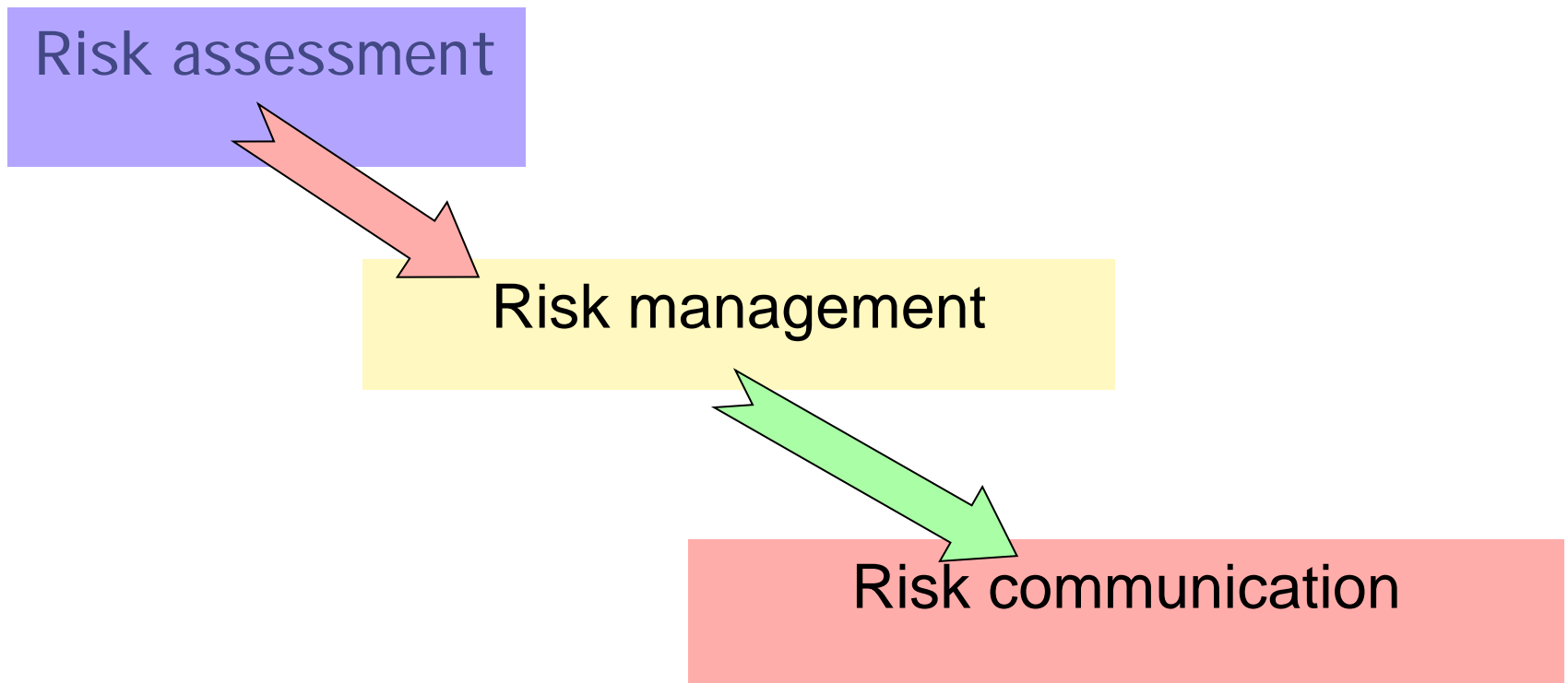


- ***Damage*** can be in many different forms:
  - human illness caused by food-borne pathogens
  - loss of export markets because of entry of an exotic plant pest
  - deaths of poultry caused by HPAI
  - etc.

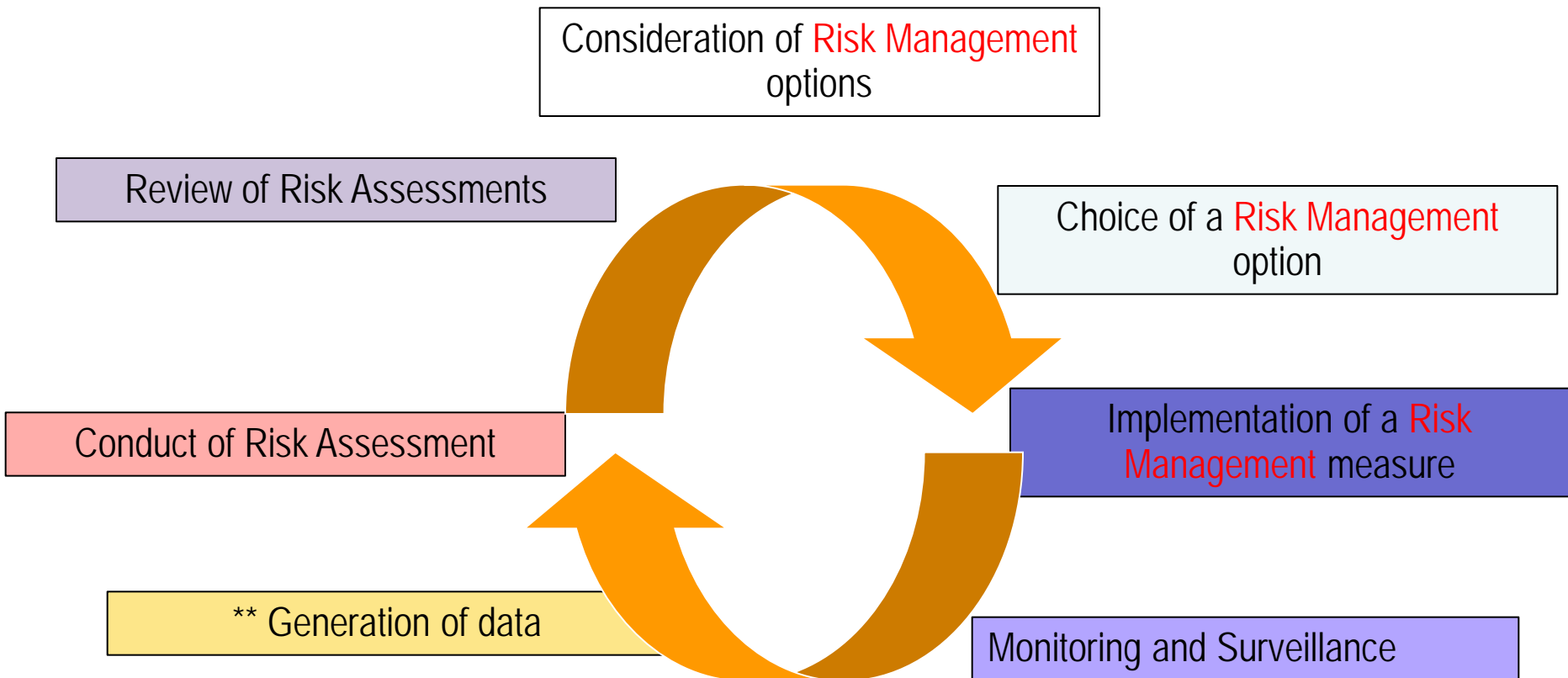
# Risk management and the SPS Agreement

- The principle of allocating resources according to risk is also reflected in the SPS Agreement
  - which says that SPS measures that are not based on an international standard must be based on a risk assessment appropriate to the circumstances
  - and that WTO Members must take a consistent approach to the management of different risks.

# Risk analysis for food safety and biosecurity



# Project cycle of risk analysis



# Assessment of risk

- Risk assessment can be conducted using formal methodologies, and can be extremely complex and resource-intensive.
- Most risks have to be evaluated on the basis of experience and expert judgment, using limited data.
- SPS managers have to learn to judge risks and to manage accordingly.

# Qualitative risk analysis matrix

Severity \ Likelihood	Low	Medium	High	Extreme
Extreme	medium	high	extreme	extreme
High	low	medium	high	extreme
Medium	very low	low	medium	high
Low	very low	very low	low	medium

# Some issues for SPS risk management in CAREC countries

- Is enough known about the SPS risks that CAREC countries face?
  - How can the knowledge base be strengthened?
- Are there significant SPS risks that are not being addressed adequately?
  - Is this only because of the lack of resources?
- Are there plans to build up risk assessment capacity in SPS agencies?

# Risk-based programs in CAREC countries







- Are inspection and testing programs based on risk?
  - concentrating regulatory resources on higher risks, and applying less intensive inspection to lower risks
- Do inspection/testing frequency respond to performance?
  - so that businesses or products that show lower levels of non-compliance get lower intensity of examination.
- How can the capacity of SPS managers to implement risk-based management be improved?



# For example ...

- A risk-based inspection program for **imported food** would identify **high, medium and low risk** categories of food.
- Then all consignments would get document checks, but only high risk consignments would get 100% physical checks of cargoes;
  - <sup>a</sup> for medium risk consignments, the physical inspection rate could be 10%
  - <sup>a</sup> for low risk the physical checks might be limited to 5% of consignments.
- And the rate of checking could be lowered or raised for foods from a particular source if they perform well or badly when checked.

# [continued]

Category of risk	List of items	Type of checks	Rate of checking	Switching rules		Exceptions
				Down	Up	
high	[15 food items, say]	documents + physical check/testing	100% + 100%	To medium risk after 5 clear 		No physical check if accompanied by recognised health certification
medium	No list	documents + physical check/testing	100% + 10%	To low risk after 5 clear 	To high risk after one violative 	ditto
low	No list	documents + physical check/testing	100% + 5%		To medium after one violative 	ditto

# Transparency

- Obligations under the SPS Agreement to ensure transparency often lead WTO Member countries to establish national systems for coordination of information flows
  - with a central coordinating unit on SPS matters within the ministry of trade/commerce.
- The requirement to invite comments on planned SPS measures can assist the improvement of measures while avoiding bilateral tensions arising from the implementation of new restrictions on trade.
- Transparency obligations can be met with relatively small resources.

## **2. Systematic SPS capacity-building**

The “SPS capacity” of a country is its ability to maintain and enhance human, animal and plant life and health by identifying, evaluating and controlling pest and disease risks and ensuring the safety of the food supply by means of sanitary and phytosanitary measures

# Elements of SPS capacity

Two perspectives on SPS capacity:

- infrastructure
  - the legal, administrative, technical, financial, human and other resources and mechanisms needed to achieve SPS objectives
- processes
  - the activities that must be carried out to achieve and improve sanitary and phytosanitary control

# The elements of SPS capacity

- national policies, strategies and action plans
- primary and subordinate legislation
- institutional framework
- standards and technical requirements
- risk analysis capability
- systems and methods for inspection and certification
- monitoring and surveillance systems
- laboratory capacity
- quarantine and treatment facilities
- auditing and compliance systems
- trained staff and competent management
- research capability
- funding mechanisms
- stakeholder consultation mechanisms
- engagement with relevant international organizations

# Significance of SPS capacity(1/2)

National SPS capacity is crucial in

- sustaining public health
- maintaining agricultural productivity
- enhancing export opportunities
- protecting the environment
- underpinning international tourism

# Significance of SPS capacity(2/2)

- SPS issues cut across
  - Ø many economic activities (agriculture; food processing, storage, distribution, handling and retailing; exporting and importing; tourism)
  - Ø significant government responsibilities for public goods such as public health and environmental protection
- Many government portfolios and agencies are necessarily involved in SPS issues
- The mandate of each agency in respect of SPS matters must be clearly defined and, so far as possible, distinct from the mandate of all other agencies that are involved



# Assessing SPS capacity

Tools for systematically assessing capacity have been developed and implemented

- for plant health (by IPPC's Commission on Phytosanitary Measures)
- for food safety (by FAO/Codex)
- for animal health (by OIE).

# Advantages of capacity assessment

- When **needs** have been identified, **priorities** can be determined.
- When **priorities** have been determined, a **plan** can be made for systematic enhancement of national SPS capacity.
- The elements of the plan can be detailed as **specific projects** for funding.
- Donors are seeking **good projects** to fund.

# Prioritisation

- Priorities should be determined at the national level, and then within the agencies responsible for sanitary/phytosanitary control.
- Priority should go to projects with the best ratio of benefits to costs.
- Benefits and costs need to be considered within a suitable time frame
  - ∅ neither too short nor too long.

# Projects

- Priorities have to be implemented by means of projects.
- Well-designed projects are more likely to attract international funding.
- Project designs should include:
  - Ø linkage to the national plan
  - Ø clear objectives and description of activities
  - Ø detailed, credible costing
  - Ø milestones and progress reports
  - Ø post-implementation evaluation.

# Examples from other countries

- The World Bank has prepared action plans for SPS capacity-building for Vietnam and Lao PDR, for example.
- There is a related study for CIS countries #
- Many developing countries have informed other WTO Members of their specific needs for SPS capacity-building.

# *Food Safety and Agricultural Health Management in CIS Countries: Completing the Transition*; World Bank, 2007

# STDF

- The Standards and Trade Development Facility (STDF) was an initiative of World Bank/WTO/FAO/WHO/OIE heads at the Doha meeting
  - WTO Secretariat is responsible for administration of STDF, with oversight by inter-agency Working Group
  - funding is from the World Bank and countries
- Aim is to channel and leverage technical assistance to SPS capacity building in developing countries
- [www.standards facility.org](http://www.standardsfacility.org) is the web-site of STDF

# Issues for discussion

- Have SPS capacity-building needs been assessed in your area of responsibility?
- If not, could this be made the subject of a project put forward for funding?
- What funding sources are available:
  - Ø national budgetary resources?
  - Ø bilateral donors?
  - Ø multilateral donors?
  - Ø STDF?
- How should relevant agencies coordinate with each other to initiate development of a national plan?

# **3. Improving export market access for agricultural exports**



# Elements of a market access strategy (1/2)

- Identify impediments to exports caused by technical requirements applied by importing countries
- Classify barriers as to whether SPS or TBT measures
- Clarify the issues with the authorities of the importing countries
- Make a priority list of barriers to be addressed

## **Elements of a market access strategy (2/2)**

- Design a program of activities to achieve better market access, starting with the highest priority items
- Implement the program by stages, starting with bilateral initiatives
- Commence multilateral initiatives when appropriate
- Monitor progress and re-design the strategy/program if necessary

## Identifying impediments to exports (1/2)

- Exports may be limited by technical barriers in various ways:
  - Ø bans on trade in some products
  - Ø restrictions on other products
  - Ø threats of additional restrictions
  - Ø no basis established for imports of new products
- The SPS Agreement requires WTO Members to respond to a request to explain the basis of their restrictions on imports:
  - Ø Article 5.8, Article 7/Annex B

## Identifying impediments to exports (2/2)

- Government agencies and businesses (exporters and intending exporters) should co-operate in identifying the most important barriers to trade:
  - Ø some countries develop and publish lists of the countries which restrict imports of their products, and they up-date the list regularly

## **Classifying barriers (SPS or TBT)**

- The rights and obligations set out in the SPS and TBT Agreements are similar in principle, but there are important differences in the detail
- For full exercise of rights as a WTO Member, and for developing the market access strategy, it is essential to decide which WTO Agreement is applicable to each specific technical barrier to trade

## Clarifying the issues

- Market access strategy must be based on a clear understanding of the nature of and rationale for each technical barrier
- The main channel for clarifying why barriers are imposed (and what is required to change the situation) is dialogue between the corresponding government agencies in the exporting and importing countries
- Parallel business-to-business contacts may also help

## Making a priority list (1/2)

- Considerations relevant to priority-setting include:
  - is it likely that a barrier can be removed by development and submission of a technical case?
  - will negotiation be enough or will formal dispute settlement action be needed?
  - will success result in a significant increase in beneficial export trade?
  - should preference be given to short-term or long-term gains?

## Making a priority list (2/2)

- Resources available to government agencies and business to pursue better market access are limited:
  - how do the costs compare with the potential benefits?
  - what is the best allocation of resources?
- Prioritisation requires the input of government agencies and the businesses that wish to export more



# Designing a program

- An appropriate institutional structure is needed to develop and implement the market access agenda
  - allowing both government agencies and business representatives to contribute
- The program for implementing the market access strategy should assign roles to both government agencies and business
- The program should allocate resources according to the agreed priorities

# Market Access Strategy using the SPS Agreement (1/2)

- Development of market access case based on advice from importing countries of their (legitimate) information needs
- Dialogue with the importing country on agency-to-agency basis
  - to obtain priority for consideration of access request
  - and to minimise processing delays

## **Market Access Strategy using the SPS Agreement (2/2)**

- Discussion in margins of SPS Committee
- Raise as matter of specific trade interest in SPS Committee
- “Good offices”
- Formal consultations
- WTO dispute settlement

# Monitoring/re-designing

- Progress of strategy implementation should be reviewed regularly
  - Ø to note developments
  - Ø to revise priorities
  - Ø to set new goals
  - Ø to change tactics
  - Ø to report to stakeholders

# Who can help?

- ‘Good offices’ of-
  - Ø the WTO secretariat, and
  - Ø the international standard-setting organisations (Codex, OIE, IPPC)
- Trading partners
- Technical assistance
  - Ø capacity building
  - Ø specific studies

# 4. Managing bilateral SPS-related trade problems

- Many countries experience significant SPS barriers to exports of their agricultural commodities.
- Barriers may be motivated by genuine concerns of the importing countries to manage sanitary/phytosanitary risk
  - or they may be put in place or maintained by importing countries to restrict import competition against domestic industries.
- The SPS Agreement should help to minimise such problems.
- If not, WTO dispute settlement procedures are available.

# Informal approaches to problem-solving

- The SPS Committee provides a forum for raising and discussing SPS barriers to trade.
- SPS Committee meets in Geneva three times per year.
- A standing item on the agenda concerns matters of specific trade concern
  - many hundreds of matters have been raised.
- Bilateral problems can be discussed “in the margins” or in the formal Committee meeting.
- Objective of a complaining country is to make the country complained against reconcile its practices with its obligations under the SPS Agreement.

# SPS Committee





# Formal dispute settlement

- The WTO Dispute Settlement Procedure applies to issues arising under the SPS Agreement.
- The Procedure has been used successfully in SPS disputes:
  - by USA and Canada against the EU on trade in meat from hormone-treated animals
  - by Canada and USA against Australia on salmon import prohibition
  - by USA against Japan concerning restrictions on apple imports
  - by New Zealand against Australia concerning a ban on apple imports
- Many other cases have been settled without “trial”.

# Formal dispute settlement (2)

- But formal dispute settlement proceedings are
  - long
  - complicated
  - expensive
  - polarising (encouraging defendants to take extremely defensive posture)
- So far formal SPS disputes have mostly involved major developed countries that are significant exporters and importers of agricultural products
  - developing countries use informal methods of resolving bilateral trade problems.

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