



Key Principles of the **SPS** & **TBT** Agreements



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Principles of the Agreements on Sanitary and Phytosanitary Measures (SPS) Technical Barriers to Trade (TBT)





Card 1: Objective of the TBT Agreement

1a The TBT Agreement strikes a balance between Members' right to regulate to protect legitimate interests, and the need to prevent TBT measures from becoming unnecessary trade obstacles.

OR ?

1b The TBT Agreement safeguards Members' absolute right to impose any regulations they want regardless of the impact on market access.

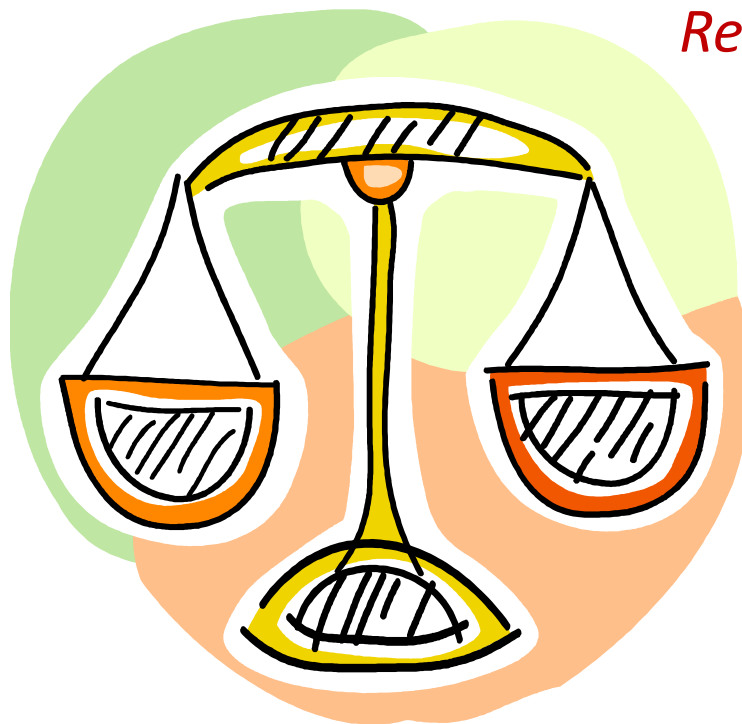


Objectives of the SPS and TBT Agreements

1a

*Pursuit of trade
liberalization to...*

avoid unnecessary
barriers to
international trade



*Recognizing Members'
right to...*

- ❖ protect human, animal, plant life or health
- ❖ fulfill legitimate objectives

at levels they consider
appropriate



Card 2: Products subject to the TBT Agreement

2a The TBT Agreement applies to **all products**, including industrial and agricultural products.

OR ?

2b The TBT Agreement **only applies to industrial products**, as agricultural products are dealt with in the Agriculture Agreement.



Card 2: Products subject to the TBT Agreement *TBT Article 1.3*

2a



The TBT Agreement applies to

ALL PRODUCTS



including industrial and agricultural products

TBT - *type of measure !*

SPS - *its objective !*





Card 3: TBT Policy Objectives

3a Considerations related to national security and prevention of deceptive practices are the key policy objectives that may justify the adoption of a technical regulation.

OR ?

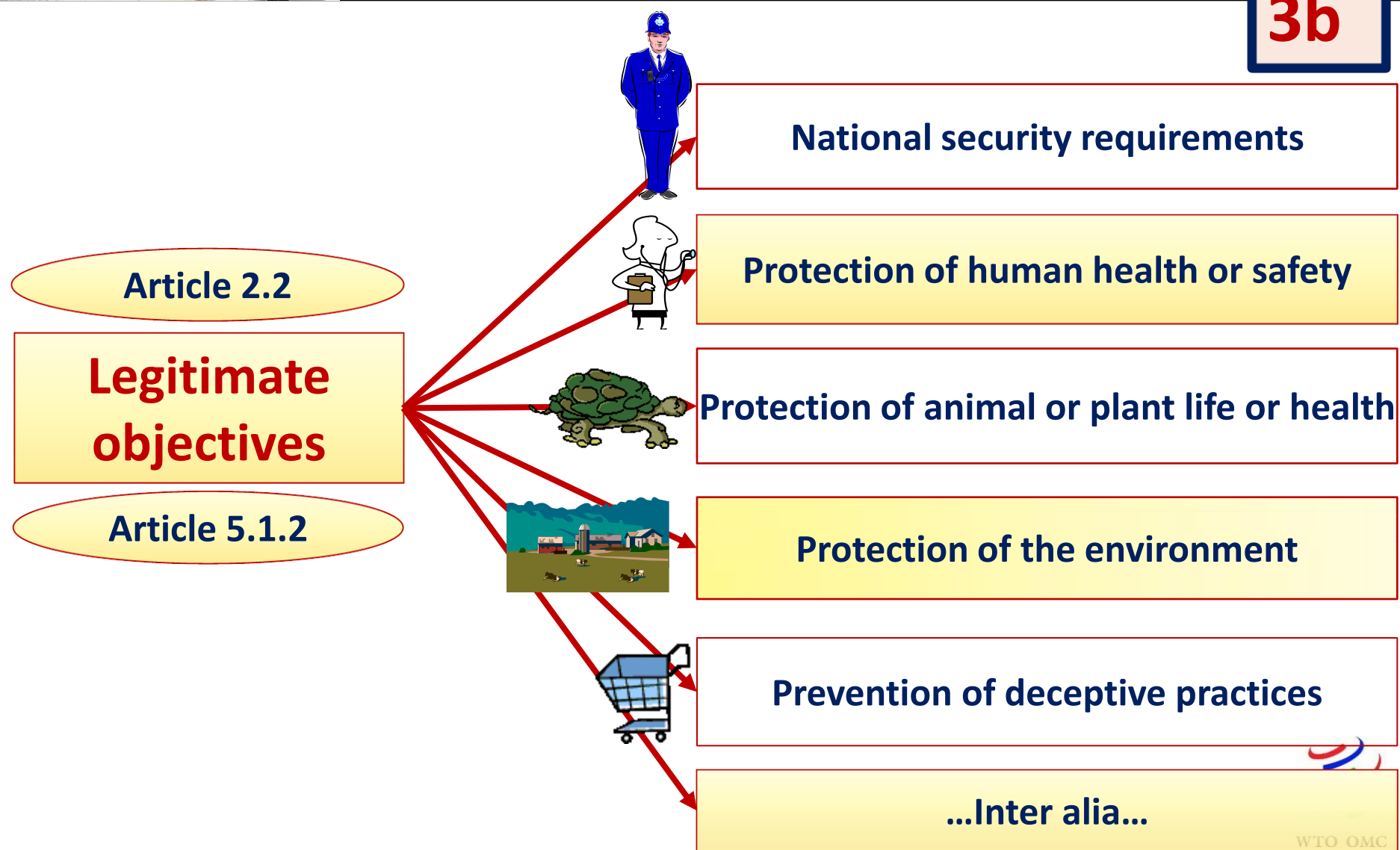
3b Several policy objectives, listed non-exhaustively in the TBT Agreement, may justify the adoption of a technical regulation.



Card 3: TBT Policy Objectives

TBT Article 2.2

3b





A measure taken to protect:

Human or
animal health



risks arising from additives,
contaminants, toxins or disease
organisms in food, drink, feedstuff

Human life



plant- or animal-carried diseases

Animal or
plant life



pests, diseases, disease-causing
organisms

Territory of
Member



other damage caused by entry,
establishment or spread of pests



Card 4: Which type of measures are TBT measures?

4a Technical regulations, standards and conformity assessment procedures are the types of measures which fall under the TBT Agreement.

OR ?

4b Standards do not fall under the TBT Agreement, because they only provide voluntary guidance to exporters.



Card 4: Which type of measures are TBT measures? TBT Annex 1

4A

Technical Regulations



*Lays down product
characteristics or
their related
processes and
production methods*

Standards



*Approved by
a recognized
body*

Conformity Assessment Procedures



*Used to check
compliance with
technical regulations
and standards*



Card 5: Which type of measures are TBT measures?

5a A technical **regulation** is defined as a **mandatory** measure, while a **standard** is defined as a **non-mandatory** measure, and **conformity assessment procedures** are **mandatory or voluntary** measures used to check compliance with technical regulations and standards.

OR ?

5b A **standard** may be a **mandatory or voluntary** measure, while a **technical regulation** is defined as a **mandatory** measure, and **conformity assessment procedures** are **mandatory** measures used to check compliance with technical regulations and standards.



Card 5: Which types of measures are TBT measures? *TBT Annex 1*

5a

Technical
Regulations



Mandatory
compliance

Standards



Not Mandatory

Conformity
Assessment
Procedures



**Mandatory or
Voluntary**



Card 6: SPS or TBT ?

6a The same measure can fall under **both** the TBT and the SPS agreements.

OR ?

6b A measure that falls within the scope of the SPS Agreement **is excluded** from the TBT Agreement.



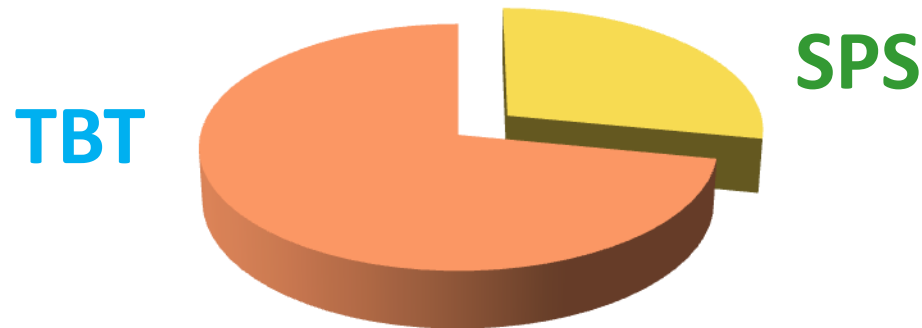
Card 6: TBT Agreement - Coverage

TBT Article 1.5

6b

It applies to all:

- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

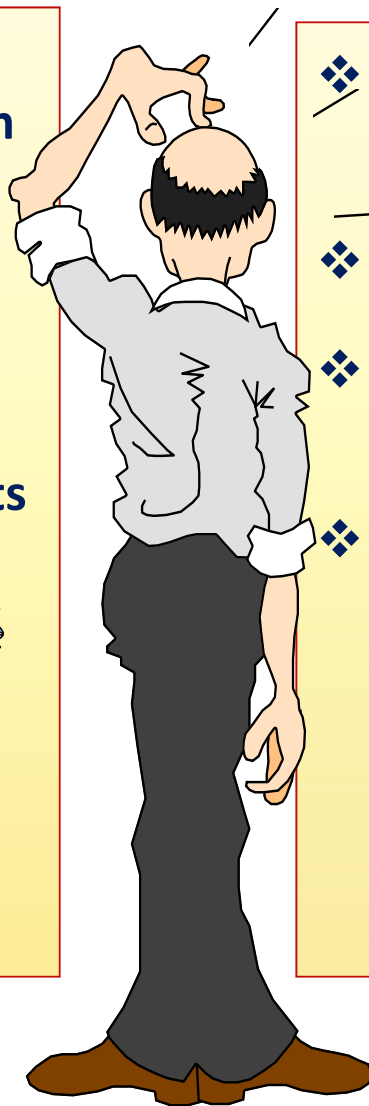


But: its provisions do not apply to SPS measures

SPS or TBT ?

SPS Measures

- ❖ human or animal health from food-borne risks
- ❖ human health from animal- or plant-carried diseases
- ❖ animals and plants from pests or diseases
- ❖ examples:
 - pesticide residues
 - food additives



TBT Measures

- ❖ human disease control (unless it's food safety)
- ❖ nutritional claims
- ❖ food packaging and quality
- ❖ examples:
 - labelling (unless related to food safety)
 - pesticide handling
 - seat belts



SPS or TBT ?

A different case :

A regulation/legislation could consist of **two** components:

- ❖ One falling under the SPS Agreement
- ❖ Another falling under the TBT Agreement



Example:

This regulation defines the quality, safety, packaging and labelling requirements for fresh domestic and imported blackberries for consumption in Costa Rica.



Card 7: Territoriality

7a The **TBT** Agreement stipulates that Members may pursue certain legitimate objectives, but **only within their territory.**

OR ?

7b The **SPS** Agreement stipulates that Members may pursue certain legitimate objectives, but **only within their territory.**



Card 7: Territoriality

7b

The TBT Agreement stipulates that Members may pursue certain legitimate objectives, but it does not lay down a territorial limitation.

The SPS Agreement applies only to measures to protect health **within the territory** of the Member taking the measure.





Card 8: Basis for SPS Measures

8a Governments must base their SPS measures on appropriate **scientific evidence**.

OR ?

8b Governments must base their SPS measures on **economic principles**.



Card 8: Scientific Justification

SPS Article 2.2

8a

Members
shall
ensure
that any
SPS
measure
is:

- **based on scientific principles**
- **applied only to the extent necessary to protect human, animal or plant life or health**
- **not maintained without sufficient scientific evidence**
- **except as provided for in Article 5.7**



Card 9: Like Products

9a The concept of "like products" is not relevant to the TBT Agreement.

OR ?

9b Under the TBT Agreement, imported "like products" must be treated no less favourably than like products of national origin or from any other country

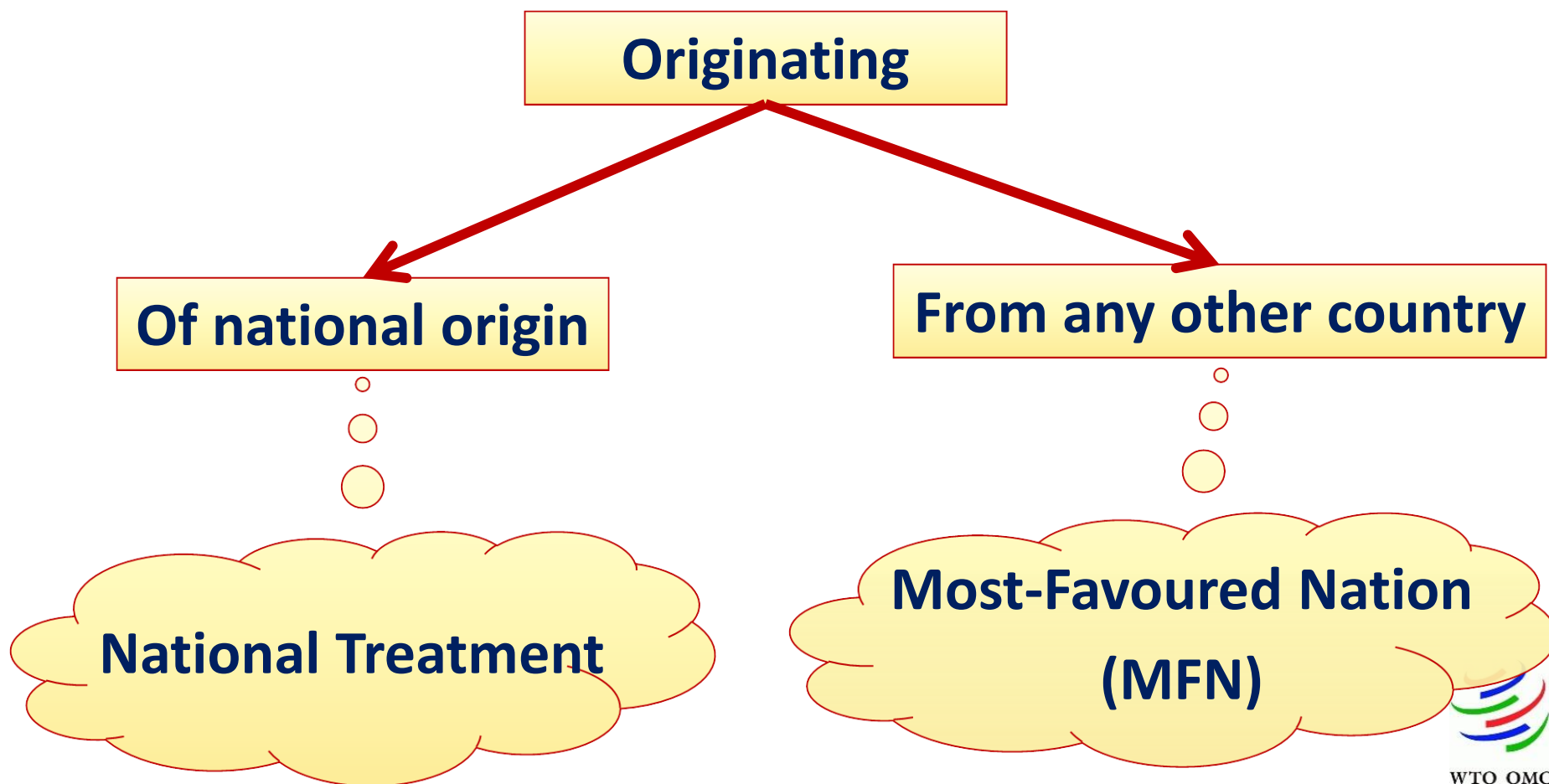


Card 9: Like Products

TBT Article 2.1

9b

Treatment no Less Favourable to Like Products





Card 10: Non-discrimination

10a SPS measures **shall not** differentiate between national and foreign sources of supply.

OR ?

10b Under certain conditions, SPS measures **may differentiate** between national and foreign sources of supply.



Card 10: Non-discrimination

SPS Article 2.3

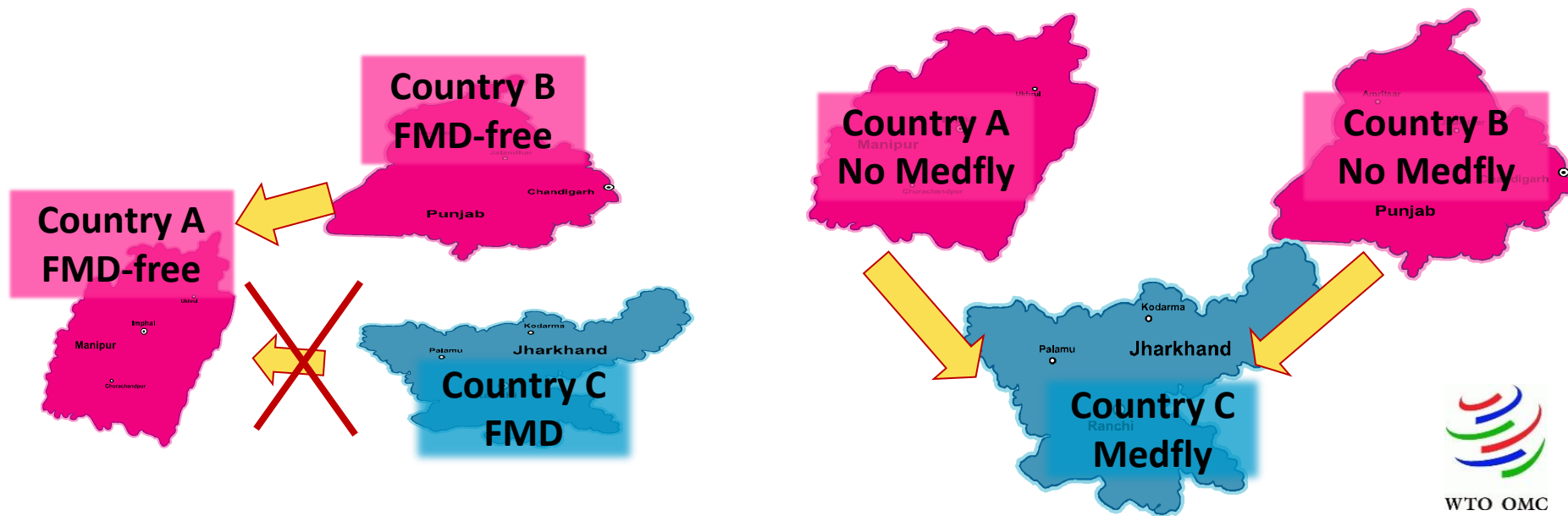
10b

Under **certain** conditions,

SPS measures may differentiate between national and foreign sources of supply.

No **unjustifiable** differentiation between national and foreign sources of supply.

No **unjustifiable** discrimination between Members with similar conditions.





Card 11: Harmonization

11a **Codex, IEC, ISO** and **WHO** develop the international standards explicitly recognized in the TBT Agreement

OR ?

11b **Codex, IPPC**, and **OIE** develop the international standards explicitly recognized in the SPS Agreement



Card 11: Harmonization

SPS Annex A, Para. 3

11b

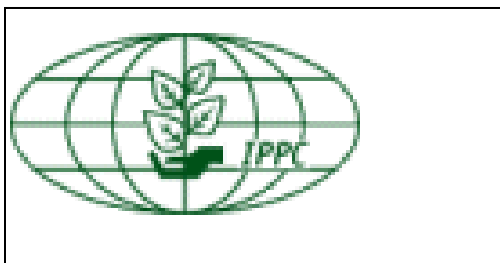
Standard-setting organizations



Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organization for Animal Health
IPPC = International Plant Protection Convention (FAO)



Which standards?



SPS

FAO/WHO Food Standards

CODEX alimentarius



International
Organization for
Standardization

TBT ???





Which standards?

Recognized international TBT standards

- Code of Good Practice for the Preparation, Adoption and Application of Standards (**Annex 3**)
- In November 2000 the TBT Committee adopted a decision on the principles considered important for the development of international standards (**G/TBT/9**).



Card 12: Justification of Measures

12a SPS measures which **conform** to an international standard are **presumed to be consistent** with the SPS Agreement.

OR ?

12b SPS measures which **conform** to an international standard **must be proven to be consistent** with the SPS Agreement.

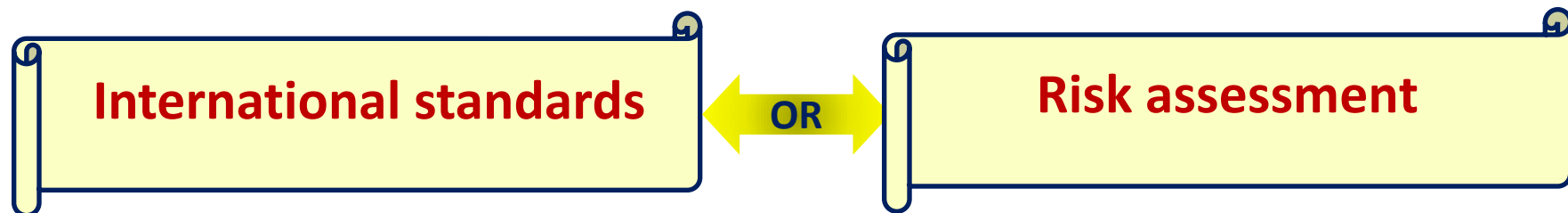


Card 12: Justification of Measures

SPS Article 3.2

12a

SPS measures must be based on:



Article 3.2:

“Measures that conform to international standards **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 ...”



Justification of Measures

SPS Article 3.3

Members **may** take measures with higher level of health protection than international standards

if

they have a **scientific justification** or consequence of health level determined according to **risk assessment procedures**.

→ *still must comply with all other provisions of SPS Agreement!*



Risk Assessment

Definition – SPS Annex A

Food borne risk

- evaluation of the **potential** for adverse effects on human or animal health



Disease or pest risk

- evaluation of **likelihood** of entry, spread, and establishment
- according to the SPS measures which might be applied
- associated biological and economic consequences





Justification – TBT Measures

TBT Article 2.4

“Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations

EXCEPT

when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems..” ...



Justification – TBT Measures

TBT Article 2.5

Whenever a technical regulation applied for one of the legitimate objectives explicitly identified is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to trade



International
Organization for
Standardization





- Encourage use of international standards
 - SPS identifies only Codex, IPPC, OIE
 - TBT does not identify which standard-setting bodies
- Conformity presumption
- Right to be more stringent, but...
 - SPS requires scientific justification *or* risk assessment
 - TBT requires indication that fundamental legitimate objectives cannot be met





Card 13: Appropriate Level of Protection (ALOP)

13a The appropriate level of health protection (ALOP) and the acceptable level of risk are **two different concepts**.

OR ?

13b The appropriate level of health protection (ALOP) **is sometimes called** the acceptable level of risk.



Card 13: ALOP

SPS Article 5.3; Annex A, para.5

13b

“In assessing the risk to animal or plant life or health, Members shall apply measures to achieve **the appropriate level of protection (ALOP)** from such risk, which is sometimes called **the acceptable level of risk.**”



Appropriate Level Of Protection (ALOP)

SPS Annex A, para. 5

The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the "*acceptable level of risk*".





Card 14: Consistency

14a Members should make each decision on what level of SPS risk they are prepared to accept independently, **without consideration of previous decisions.**

OR ?

14b In determining what level of SPS risk is acceptable and what risk mitigation measure to apply, a Member should seek **to be consistent with previous decisions** in comparable situations.



Card 14: Consistency

SPS Art. 5.5

14b

“with the objective of achieving consistency in the application of the concept of” the ALOP

Members shall avoid arbitrary or unjustifiable distinctions in the levels considered to be appropriate in different situations, if the distinction results in discrimination or a disguised restriction on trade



Committee Guidelines: G/SPS/15



Card 15: Least Trade Restrictive

15a In deciding on a risk mitigation measure, Members must select the measure that is the **least restrictive of trade** but still achieves the desired objective, and is technically and economically feasible.

OR ?

15b Members are free to decide which risk mitigation measures they want to use **based on a national cost/benefit analysis**.



Card 15: Least Trade Restrictive

SPS Article 5.6

15a

Once have determined the NEED
for an SPS measure

AND



Have determined the LEVEL of protection needed
must select

Least-trade restrictive measure
(technically and economically feasible)
to achieve level of health protection



TBT Least Trade Restrictive

TBT Art. 2.2

Technical regulations **shall not be more trade-restrictive than necessary to fulfil a legitimate objective**, taking into account the risks of non-fulfilment.

In assessing such risks, consider, *inter alia*, scientific and technical information, related processing technology or intended end-uses of products.





Card 16: Risk Assessment - Exception

16a In the absence of sufficient scientific evidence, Members **may not adopt** trade restricting SPS measures.

OR ?

16b In the absence of sufficient scientific evidence, Members **may adopt provisional** SPS measures based on available information.



Card 16: Risk Assessment - Exception

Provisional Measures, SPS Article 5.7

16b

Members may provisionally adopt SPS measures:

- ✓ when relevant scientific information is insufficient
- ✓ on the basis of available information

In such circumstances, Members shall:

- ✓ seeks to obtain additional information to assess risk
- ✓ review the measure within a reasonable period of time





Card 17: Equivalence

17a Members **are encouraged** to accept foreign technical regulations as "equivalent" to their own, but do not have the obligation to do so.

OR ?

17b A Member **must** accept foreign technical regulations as "equivalent" to its own, if the exporting Member demonstrates that the technical regulations fulfil the objectives sought.



Card 17: Equivalence

TBT Article 2.7

17a

- Positive consideration to accepting as equivalent technical regulations of other Members
- Provided that they adequately fulfil the objectives of their own regulations



Members are **encouraged**, at the **request** of other Members, to be **willing to enter into negotiations** for the **conclusion of agreements** for the mutual recognition of results of each other's conformity assessment procedures. (TBT Article 6.3)



SPS Equivalence

SPS Article 4.1

If the exporting Member **objectively demonstrates** that its measures achieve the ALOP of the importing country

 Members **shall**



**SPS Committee
Guidelines
(G/SPS/19/Rev.2)**



accept SPS measures of other Members as **equivalent**





Equivalence – SPS & TBT

SPS

- Acceptance of equivalent measures
- Condition: meets ALOP of importer
- Exporter to demonstrate
- Access to importer
- Bilateral and multilateral agreements

TBT

- Consider acceptance of equivalent regulations
- Condition: adequately fulfill the objective of the importer
- Mutual recognition agreements / *conformity assessment procedures*





Card 18 - Regionalization

18a To gain recognition of a pest- or disease-free area, an exporting Member has to provide the necessary proof.

OR ?

18b An importing Member shall recognize a pest- or disease-free area unless it has evidence that the area is not really pest- or disease-free.

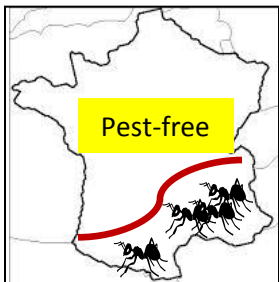


Card 18 - Regionalization

SPS Article 6

18A

- Adapt SPS measures to characteristics of area (all or part of a country, all or parts of several countries) taking into account
 - prevalence of diseases or pests
 - existence of eradication or control programmes
 - criteria/guidelines developed by “sisters”
- Recognize concept of pest- or disease-free areas
- Exporters=>proof (Article 6.3)

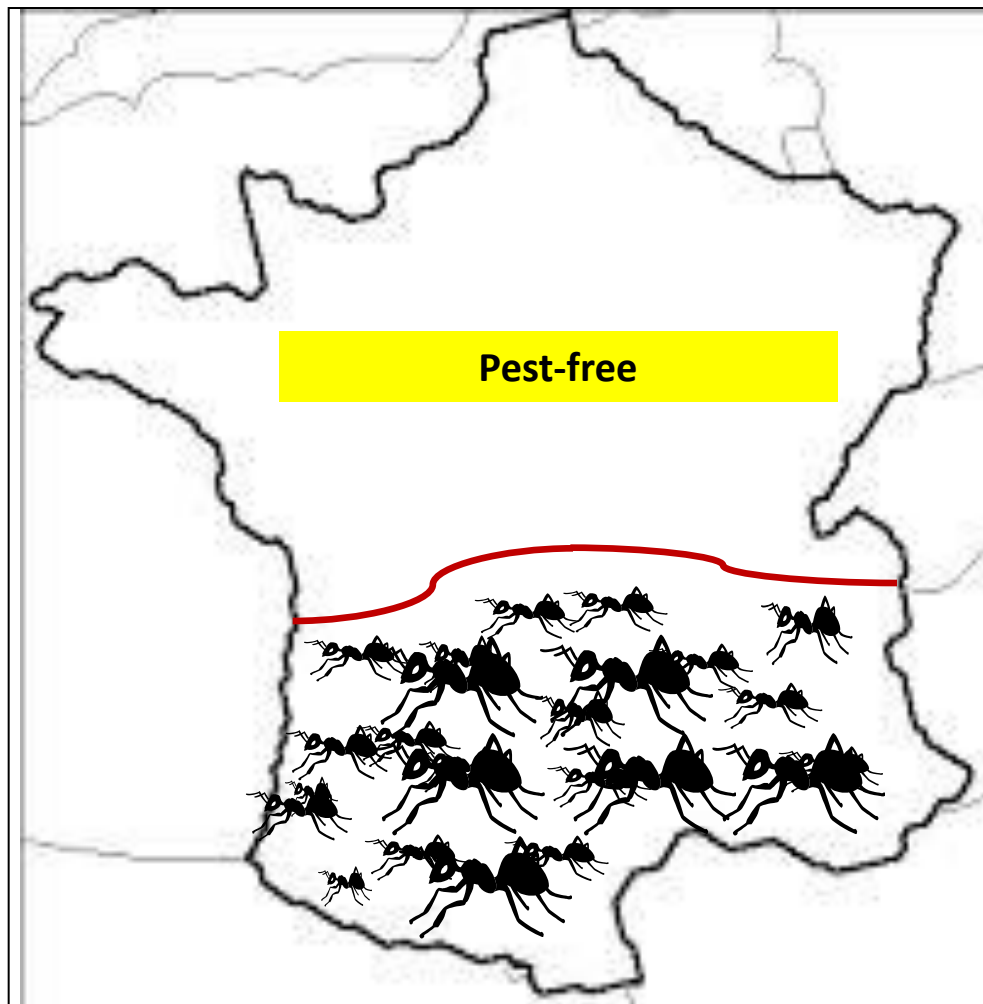




Card 18 - Regionalization

SPS Article 6

Country A



- Should trading partners restrict imports from **all** areas of Country A?
- Should trading partners only restrict imports from the **Southern** part of Country A?
- Should trading partners only restrict imports from the **Northern** part of Country A?

Exports

Trading partners





Card 19: Notification of proposed Measures

19a A proposed SPS or TBT measure, which may affect international trade and which is not based on international standards, **shall be notified at an early draft stage** when changes can still be made.

OR ?

19b A proposed SPS or TBT measure, which may affect international trade and which is not based on an international standards, shall be notified **as soon as it enters into force.**



Card 19: Notification of SPS or TBT measures

19a

A relevant international standard does not exist, or the measure is not in accordance with relevant international standards

If



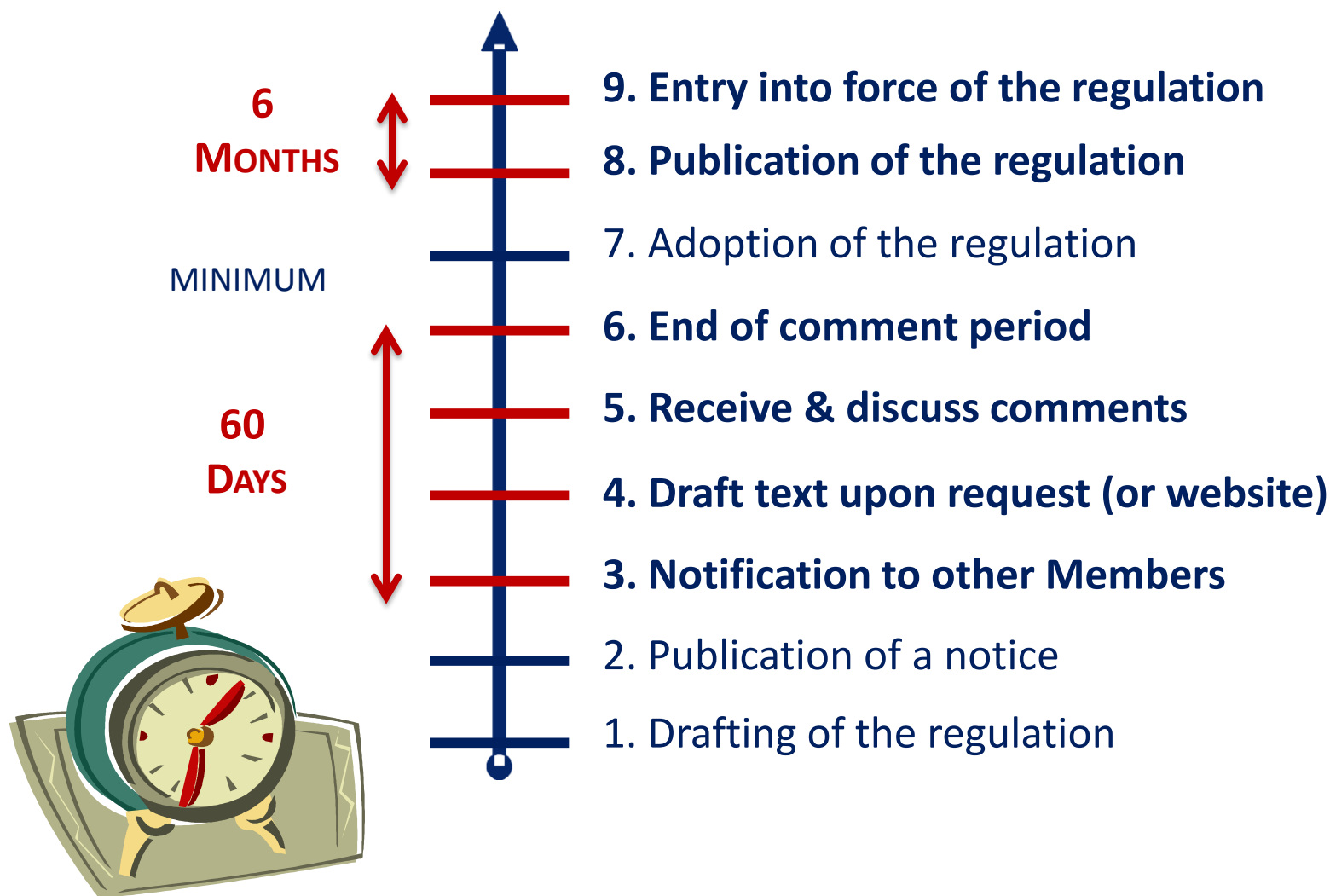
The measure shall be notified

The measure may have a significant effect on trade of other Members



Regulatory Timeline – When to notify?

Except in URGENT Situations





Card 20: Control, Inspection & Approval Procedures

20a Governments can charge **higher fees** for control, inspection and approval procedures of imported products compared to fees for domestic products.

OR ?

20b Governments **cannot charge higher fees** for control, inspection and approval procedures on imported products than for domestic products.



Card 20: Control, Inspection & Approval Procedures

20a

SPS Annex C, para. 1(f):

“Any fees imposed for the procedures on imported products **are equitable** in relation to any fees charged on like domestic products or products originating in any other Member and should be **no higher than the actual cost of the service.**”



Card 20: Control, Inspection & Approval Procedures

TBT para. 5.2.5:

Any fees imposed for assessing the conformity of imported products **are equitable** in relation to any fees chargeable for like domestic products, **taking into account** communication, transportation and other **cost differences**....between location of facilities



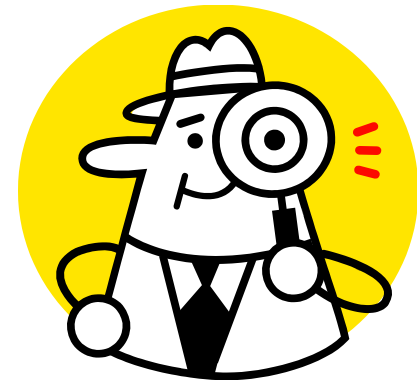
Conformity Assessment – SPS & TBT

SPS

- *Control, inspection and approval procedures*
- Non discriminatory
- Without undue delay
- Fees only to cover costs
- If national approval system for additives/tolerances: use int'l standards

TBT

- *Conformity evaluation procedures*
- Non discriminatory
- Non disguised restriction
- Harmonization





Card 21: Applicability

21a The TBT and SPS Agreements apply in the same manner to all levels of government (central, local etc.), but **do not concern** non-governmental bodies.

OR ?

21b The TBT and SPS Agreements apply fully to central government bodies, and **also concern**, to some extent, local government and non-governmental bodies.



Card 21: Applicability

21b

- **TBT Article 3: Preparation, Adoption and Application of Technical Regulations by *Local Government Bodies and Non-Governmental Bodies***

With respect to their local government and non-governmental bodies within their territories: Members shall take such reasonable measures as may be available to them **to ensure compliance by such bodies** with the provisions of Article 2.

- **TBT Article 4: Preparation, Adoption and Application of Standards**

Members shall [...] ensure that **local government and non-governmental standardizing bodies** within their territories [...] **accept and comply with this Code of Good Practice.**



Card 21: Applicability

21b

SPS Article 13: Implementation

- Members shall formulate and implement positive measures and mechanisms in support of the observance of the SPS Agreement by **other than central government bodies**.
- Members shall take such reasonable measures as may be available to them to ensure that **non-governmental entities** within their territories, as well as regional bodies in which they are members, comply with the relevant provisions of the SPS Agreement.
- Members shall ensure that they **rely on the services of non-governmental entities** for implementing sanitary and phytosanitary measures **only if these entities comply with the provisions of the SPS Agreement**.



THANK YOU !

Questions ?

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WTO OMC

SPS Gateway

<http://www.wto.org/sps>

TBT Gateway

<http://www.wto.org/tbt>