



**WTO/IDB-INTAL WORKSHOP**  
**WTO AGREEMENT ON SPS MEASURES FOR**  
**CARIBBEAN COUNTRIES**  
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**REGIONAL CHALLENGES IN THE**  
**APPLICATION OF THE SPS AGREEMENT**

**A CARICOM PERSPECTIVE**

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# OUTLINE

This presentation attempts to:

- ☀ Give an idea of the general concept of the SPS Agreement;
- ☀ Identify **some relevant** obligations of signatories; and
- ☀ Discuss CARICOM's Perspective on its implementation.



# THE SPS AGREEMENT

- ☀ Lays down provisions that should guide Members in their development and application of all SPS measures directly or indirectly affecting international trade.
- ☀ intended to ensure that the measures are not applied in a manner which constitutes an arbitrary or unjustifiable discrimination between WTO Members (where the same conditions prevail) or a disguised restriction to international trade.



# The SPS Agreement - scope

The SPS Agreement, pursuant to its Annex A, applies to all measures which within the territory of a Member – used for the purpose of protecting:

human or animal life or health from food-borne risks (risks arising from additives, contaminants, toxins or disease-causing organisms in their food);

human life or health from animal or plant-carried diseases;

animal and plant life or health from pests, diseases or disease-causing organisms;

the territory of a WTO Member from damage caused by the entry, establishment or spread of pests

includes measures taken to protect the health of fish and wild fauna, forests and wild flora.



# SPS Measures

The SPS Agreement covers measures applied to final products and/or to related processes and production methods. Annex A states that:

• **SPS measures include all relevant:**

- ☀ Laws;
- ☀ Decrees;
- ☀ Regulations;
- ☀ Requirements;
- ☀ Procedures.



**measures related to, *inter alia*:**

- ☀ end product criteria;
- ☀ processes and production methods;
- ☀ testing, inspection, certification and approval procedures;
- ☀ quarantine treatments including relevant requirements assc with the transport of animals /plants/ materials;
- ☀ Prov -relevant stats methods, sampling procedures +methods of risk assessment; and
- ☀ packaging and labelling requirements directly related to food safety.



# The SPS Agreement scope

Many SPS measures are related to processes and production methods (PPMs), as it helps to ensure the safety of a final product by requiring that it be produced and processed appropriately.

e.g: in the value chain - abattoirs, requires hygienic measures to be taken at a number of points in the processing chain.

Many countries also require the application of a Hazard Analysis and HACCP system:

- ✱ which is science-based and systematic, and identifies specific hazards and measures for their control at critical points in the food chain, from primary production to final consumption, in order to ensure food safety.
- ✱ HACCP systems focus on prevention rather than relying mainly on end-product testing. A number of the Codex standards recommend the use of HACCP-based systems to secure the safety of food.



# BASIC OBLIGATIONS

**The right to adopt SPS measures to achieve a given appropriate level of protection provided the measures:**

- are applied only to the extent necessary to protect life or health;
- are based on scientific principles and not maintained without sufficient scientific evidence; and
- do not unjustifiably discriminate between national and foreign, or among foreign sources of supply, where identical or similar conditions prevail.



# TWO OPTIONS

- ✚ To show that their measures are based on Science - Members may either:
  - ☀ base their measures on international standards; or
  - ☀ base their measures on scientific risk assessments.



# Obligations of the SPS Agreement

Are related to:

- ☀ Harmonization (Article 3);
- ☀ Equivalence (Article 4);
- ☀ Scientific evidence (Risk Assessment) (Article 5);
- ☀ Regionalization (Article 6);
- ☀ Transparency (Article 7);
- ☀ Technical Assistance, and Special and Differential Treatment to Developing Members (Articles 9 and 10).



# A3 - HARMONIZATION

Articulated Into Rights And Obligations For WTO Members:

Their two main obligations are that:

- ☀ WTO Members shall base their SPS measures on international standards, guidelines or recommendations; and
- ☀ WTO Members shall participate in the development and periodic review of international standards, guidelines and recommendations prepared by international standard-setting bodies, in particular the "three sisters".



# Harmonisation

Members may comply with the obligation to base SPS measures on science by basing them on international standards.

- ✱ In the context of SPS measures, harmonization effort takes place when WTO Members base their SPS measures on the relevant international standards
- ✱ Consider that harmonization in general: as the establishment, recognition and application of common measures by different countries where previously each country might have had its own set of requirements.



## SUMMARY OF MEMBER'S RIGHTS AND OBLIGATIONS CONCERNING HARMONIZATION:

- ☀ Use of international standards:
  - ☀ Presumption of Necessity & Consistent
  - ☀ *When the measure is only based on the international standard, it does not enjoy such a presumption.*
- ☀ Right to adopt a "stricter" SPS measure, with scientific justification.
- ☀ Participation in international standard-setting bodies' activities.



# Equivalence

Article 4 of the SPS Agreement recognizes that more than one SPS measure may be equally effective in satisfying a country's appropriate level of protection. Therefore:

- ✿ Importing Members shall seek to accept as equivalent the SPS measures of an exporting Member (even if these measures are different from the importer's) if the exporter objectively demonstrates that its measures achieve the importer's appropriate level of protection.
- ✿ That is, the exporting Member must prove its case to the importing Member, by providing appropriate science-based and technical information in support of its request.
- ✿ In order to facilitate the evaluation of equivalence, exporting Members are required to grant reasonable access to the importer for inspection, testing, and other relevant procedures.
- ✿ Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sps measures.



# Equivalence

- ☀️ Obligation of Members to accept SPS measures of other Members as equivalent, under certain circumstances.
- ☀️ If MS creates a new SPS measure - or revises one which is already in place - it should start its task by verifying if an international standard exists for the product and/or measure in question.
- ☀️ If it exists, the Member has the obligation to base its SPS measure on it, unless there is a scientific justification for not using it, or the relevant international standard does not achieve the level of protection aimed by the Member (Article 3.3).



# A 5 Risk Assessment

Members have two options to show that their measures are based on science. They may either:

- ☀ base their measures on international standards; OR
  - ☀ base their measures on scientific risk assessment.
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- ☀ Members shall ensure that their SPS measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.
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- ☀ There are two types of risk assessment as defined by Annex A.4 of the SPS Agreement:
    - ☀ Two types of Risks arising from pests or diseases: the evaluation (qualitative or quantitative) of the **likelihood of entry**, establishment or spread of a pest or disease within the territory of an importing Member according to the SPS measures which might be applied, and of the associated potential biological and economic consequences; or
    - ☀ Food-borne risks: the evaluation of **the potential for adverse effects** on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.
    - ☀ Sister organisations have developed guidelines for risk assessments



# Article 6 - Regionalization

- ☀ Aims to promote recognition of pest or disease-free areas and areas of low prevalence of pest or diseases. If importing countries adapt their SPS measures to the conditions prevailing in the region of origin of the product, this may greatly improve market access possibilities, and avoid unnecessary import bans.
- ☀ Article 6.1 Members shall ensure that their sps measures are adapted to the sps characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined.
- ☀ In assessing the sps characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.
- ☀ Pest – or disease-free area – An area whether all of a country part of a country or all or parts of several countries as identified by the competent authorities in which a specific pest or disease does not occur.



# Article 6 - Regionalization

- ☀ Note: A pest – or disease-free area **may surround be surrounded by or be adjacent to an area** – whether within part of a country or in a geographic region which includes parts of or all of several countries – in which a specific pest or disease is known to occur but **is subject to regional control measures such as the establishment of protection surveillance and buffer zones** which will confine or eradicate the pest or disease in question.
- ☀ Area of low pest or disease prevalence – An area whether all of a country part of a country or all or parts of several countries as identified by the competent authorities in which **a specific pest or disease occurs at low levels and which is subject to effective surveillance control or eradication measures**. OIE IPPC guidelines
- ☀ Obligation Article 6.3 provides that an exporting Member that **claims** that areas within its territory are pest - or disease-free or have low pest or disease prevalence must **provide the necessary evidence** of this fact to the importing Member.



# Article 7 - Transparency

Transparency - the aim to achieve a greater **degree of clarity, predictability and information exchange about trade policies, rules and regulations** of WTO Members. WTO Members use notifications as the main instrument to implement transparency.

- ☀ Each WTO Member is required to:
  - ☀ **notify draft and adopted SPS measures under certain circumstances, and**
  - ☀ **to identify a single central government notification authority to be responsible for the notification requirements of the SPS Agreement;**
  - ☀ **publish all SPS measures; and**
  - ☀ **establish an enquiry point responsible for answering queries from other WTO Members about its SPS measures and related issues.**



# Article 8 & Annex C Obligations

- ☀ The SPS Agreement provide **disciplines for control, inspection and approval procedures**, which are used by governments to check and ensure the fulfilment of SPS measures.
- ☀ The basic requirement is that any such procedures shall be no less favourable for imported products than they are for like domestic goods, and shall be no more than that which is necessary to ensure compliance with regulations. This applies for time delays, information requirements, fees, sampling procedures, location of facilities, etc.

basic obligation of non-discrimination as related to four area:

- ☀ TIMING
- ☀ TRANSPARENCY
- ☀ INFO TO BE SUBMITTED
- ☀ NON DISCRIMINATION AND AVOIDANCE OF UNNECESSARY OBSTACLES TO TRADE.



# Article 8 & Annex C Obligations

## ☀ Timing

- ☀ such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products.

## ☀ Transparency

- ☀ Publication (or, upon request, communication) of the standard processing period of each procedure;
- ☀ Prompt examination of the completeness of the application by the competent body and request of missing documents in a precise and complete manner;
- ☀ Expeditious transmission of precise and complete results of the procedure by the competent body;
- ☀ Continuation of the procedure as far as practicable even in case of deficiencies of an application, if the applicant so requests; and
- ☀ If requested by the applicant, timely information about the stage of the procedure.



# Article 8 & Annex C Obligations

☀ information to be submitted:

☀ There are two types of information requirements set forth in Annex C: one related to the information to be submitted by the applicant – paragraph 1(c) - and one to the treatment of the information received by the Member imposing the procedure – paragraph 1(d):and

☀ non-discrimination and avoidance of unnecessary obstacles to trade. Requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary:

☀ Fees imposed for the procedures on imported products are equitable in relation to those imposed on like domestic products or products originating in any other Member and should not be higher than the actual cost of the service;



# Obligations

- ☀ The same criteria should be used in *the location of facilities used and the selection of samples* of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;
- ☀ When *specifications of a product change*, the control procedure for the modified product must be limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and
- ☀ A *review procedure exists for complaints* concerning the operation of control regulations, so that corrective action may be taken when a complaint is justified.



# Notification

- ☀ Pursuant to Annex B, paragraph 10, of the SPS Agreement, WTO Members shall designate a single central government authority as responsible for the implementation, at the national level, of provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of that Annex.



# notification

- ☀ The notification authority is responsible for:
  - ☀ ensuring proposed SPS regulations are published early, to allow for comments;
  - ☀ notifying other WTO Members, through the WTO Secretariat, of proposed regulations, using the appropriate notification forms;
  - ☀ providing copies of proposed regulations on request; and
  - ☀ ensuring that comments are handled correctly.



# Enquiry point

- ☀ Members must establish one enquiry point - responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:
  - ☀ Sps regs; control and inspection procedure...adopted or proposed
  - ☀ Risk assessment procedures...
  - ☀ Membership in bodies, organisations and systems..
- ☀ Enquiry Points should supply copies (translations) of requested documents to WTO Members and interested parties of WTO Members at an equitable price



# Participation

- ☀ Article 3.4 establishes that Members shall play a full part in the work of the three sisters to promote within these organizations the development and periodic review of standards guidelines and recommendations with a view to harmonizing SPS measures.



# CHALLENGES

- ☀ INSTITUTIONAL: NATIONAL AND REGIONAL COORDINATION AND MANAGEMENT –
  - ☀ NAHFSAs & CAHFSA: functioning of enquiry points and notification authorities etc
  
- ☀ HARMONISATION –
  - ☀ Adoption of international standards...and development of new
  
- ☀ EQUIVALENCE – regional initiatives – assessments
  
- ☀ REGIONALISATION: assessing the sps characteristics of the region – embryonic pest list development – do not know extent, training – id and diagnostics..
  
- ☀ TRANSPARENCY –
  - ☀ Sub committee on trade facilitation, ntms



# CHALLENGES

- ☀️ LEGISLATIVE: LAWS AND REGULATIONS – FAO/IICA/PAHO/CCS/LAC
- ☀️ PHYSICAL INFRASTRUCTURE – Tools of OIE, IICA, labs, abattoirs, packing houses (Labs – STDF and EDF)
- ☀️ RISK ASSESSMENTS - Regional initiatives, CVOs & Legal and OIE
  - ☀️ CaribVET Snat
- ☀️ PARTICIPATION IN STANDARD SETTING AND REGIONAL REPRESENTATION – coordination (IICA, USDA/APHIS CVOs and CPHDs) – NATIONAL CONSULTATIONS MUST FEED INTO REGIONAL..
- ☀️ HUMAN RESOURCES – NOTIFICATION AND ENQUIRY POINTS – overall staffing, expertise
- ☀️ ASSISTANCE FROM PARTNERS IN TRADE – limited (EU, USDA)
- ☀️ POLITICAL WILL



# THANK YOU

