

# WTO Agreement on the Application of SPS Measures

## Background & coverage

Hanna Vitikkala

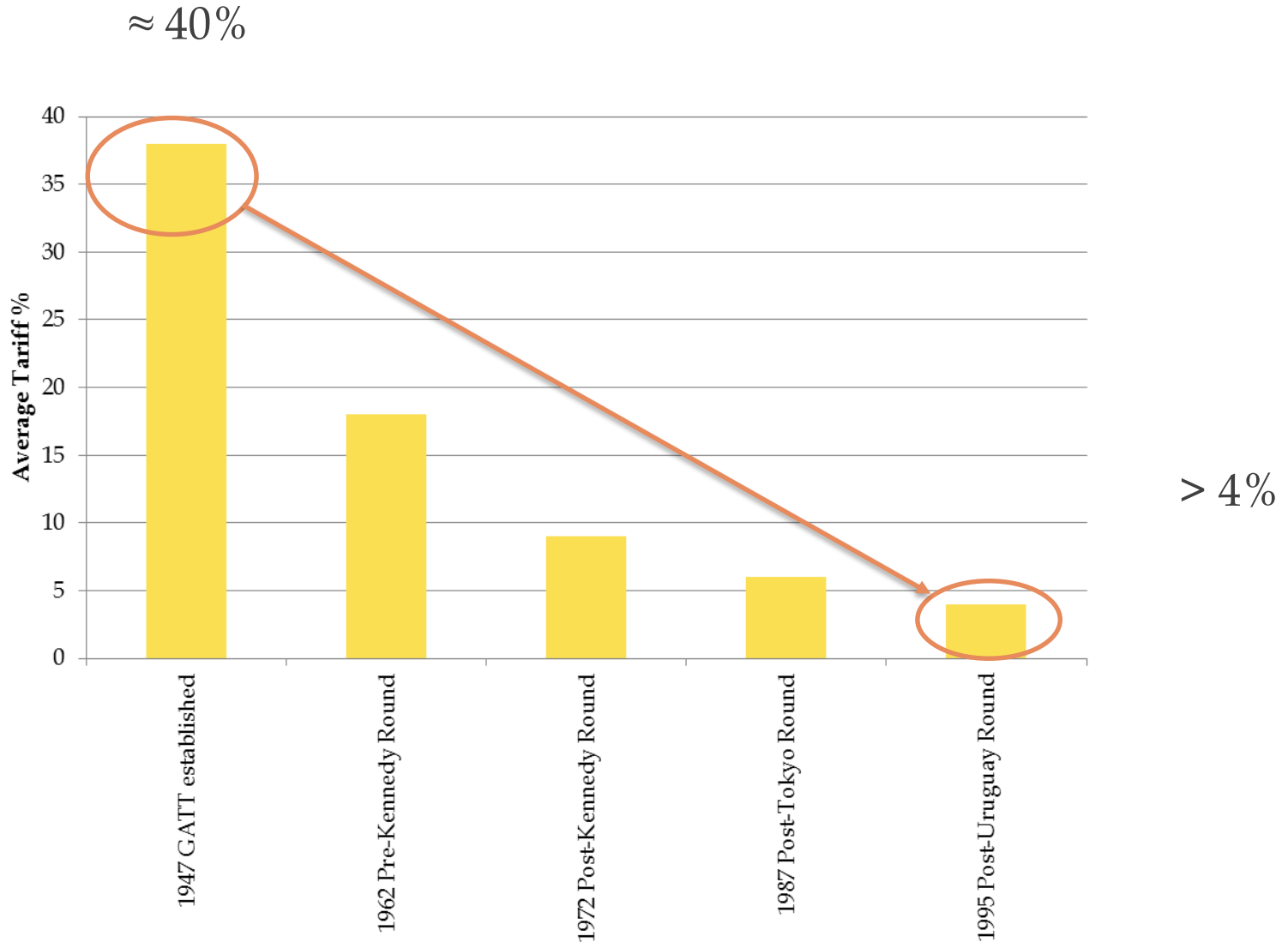
[Hanna.Vitikkala@wto.org](mailto:Hanna.Vitikkala@wto.org)

# Negotiating Trade Rounds

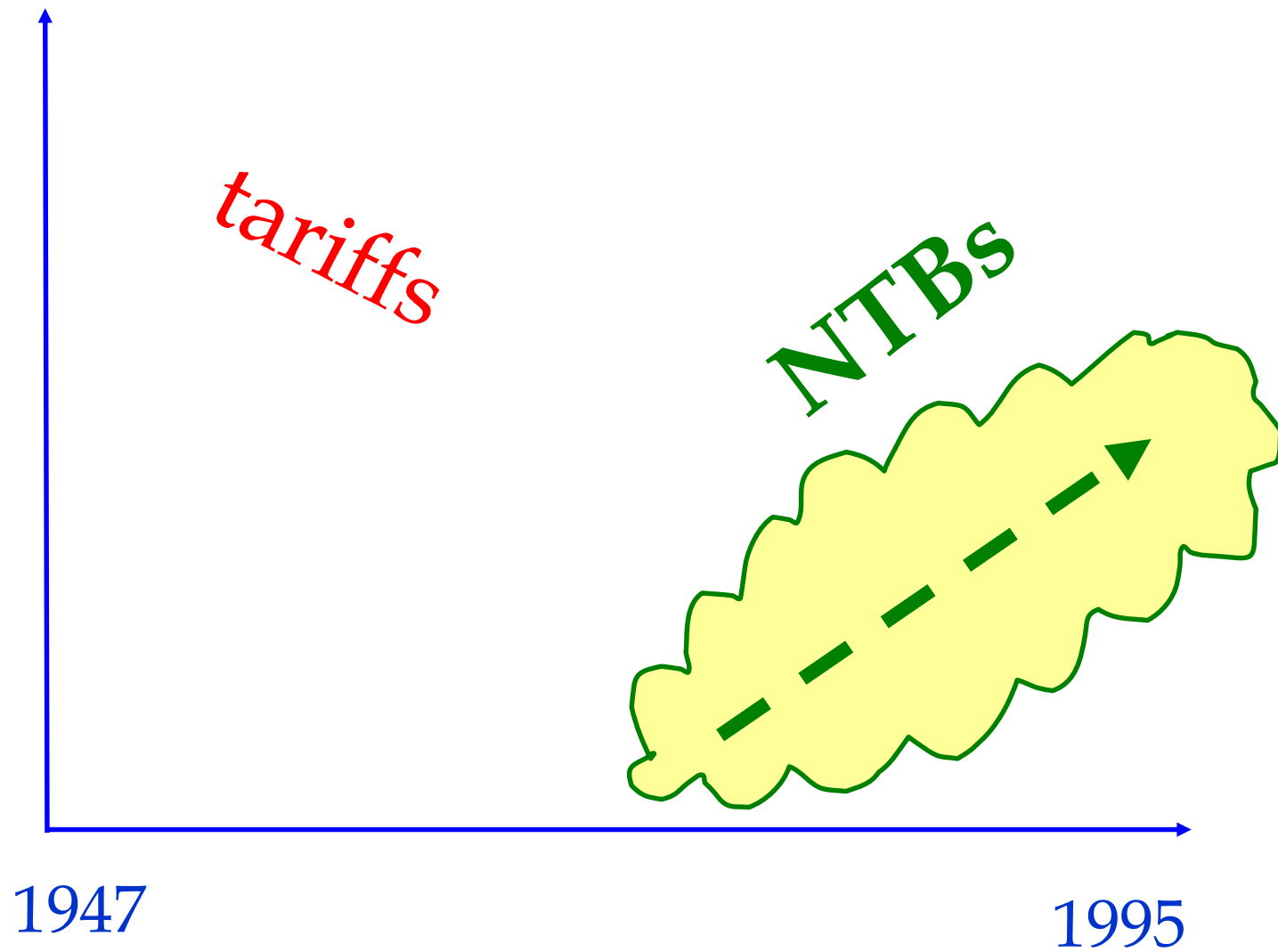
<i>Year</i>	<i>Place / name</i>	<i>Subjects covered</i>	<i>#</i>
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva (Dillon Round)	Tariffs	26
1964-1967	Geneva (Kennedy Round)	Tariffs and anti-dumping measures	62
1973-1979	Geneva (Tokyo Round)	Tariffs, NTBs, “framework agreements”	102
1986-1994	Geneva (Uruguay Round)	Tariffs, NTBs, rules, services, IP, DSU, textiles, agriculture, creation of WTO, etc.	123
2001 -	Geneva (DDA)	(the above) + environment, + ?	153

Source: WTO

# Overall tariff on industrial products



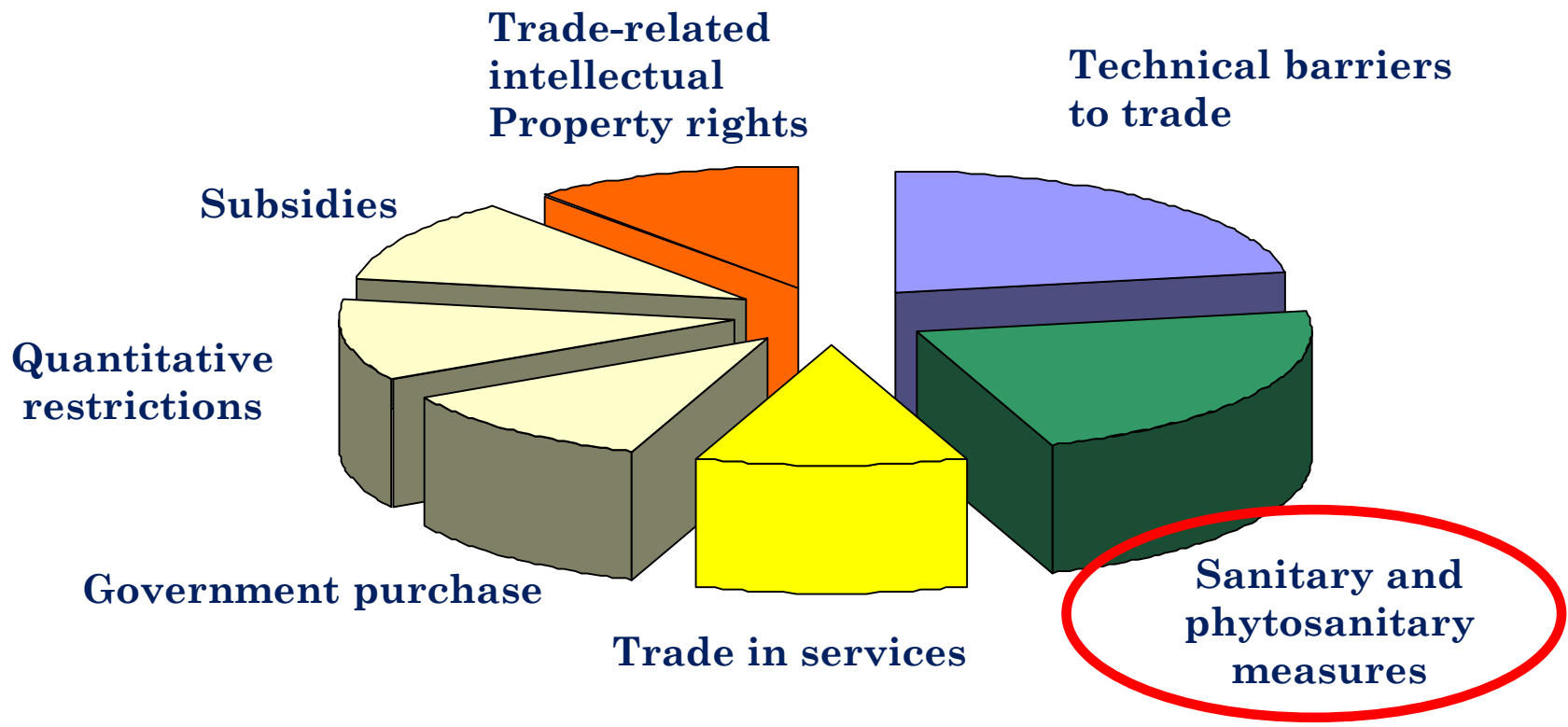
# Use of non-tariff measures?



# Negotiating Trade Rounds

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Source: WTO



The SPS Agreement is one of the WTO's Multilateral Agreements on trade in goods, contained in Annex 1A of the WTO Agreement.

The basic structure of the WTO Agreements			
Umbrella	The Agreement Establishing the WTO		
Multilateral Trade Agreements	Goods (Annex 1A)	Services (Annex 1B)	Trade-related aspects of Intellectual Property Rights (Annex 1C)
Apply to all Members			
Agreements	GATT 1994	GATS	TRIPS

Dispute Settlement	Dispute Settlement Understanding - DSU (Annex 2)
Transparency	Trade Policy Review Mechanism - TPRM (Annex 3)
Plurilateral Commitments	Plurilateral Trade Agreements (Annex 4)

# Why an Agreement on SPS?



World food and agriculture trade:

- In 2014, **US\$ 1765 billion** of agricultural products traded
- **US\$ 1486 billion** food traded (2014)



**But, on the other hand...**



# Bird Flu



# BSE



BIRD FLU...



# SARS



- Loss of confidence between trading partners
- Trade bans, more severe import controls ...
- Heavy economic losses for producers and exporters
- Loss of consumers' confidence!!!

## Video “Trading Safely” by STDF



# What is the objective of the SPS Agreement?




Recognizing  
the right to protect human,  
animal, plant life or health

Avoiding  
unnecessary barriers  
to trade


# What are SPS Measures?


## Definition - Annex A

*A measure taken to protect:*

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

Human life  from plant- or animal-carried diseases

Animal or plant life  from pests, diseases, disease-causing organisms

Territory of Member  from other damage caused by entry, establishment or spread of pests

# Card 13: *Scope, Annex a, para. 1*

Additives, contaminants, etc. in food or feed

Animal-carried diseases



Humans



Animals



Plants

Pests, diseases



Territory



1. Humans

limits on  
residues  
in fish &  
shellfish



limits on  
aflatoxin  
residues  
in nuts





## 2. Animals

measure to  
prevent  
introduction  
of FMD







### 3. Plants

measure to  
prevent  
introduction  
of fruit flies



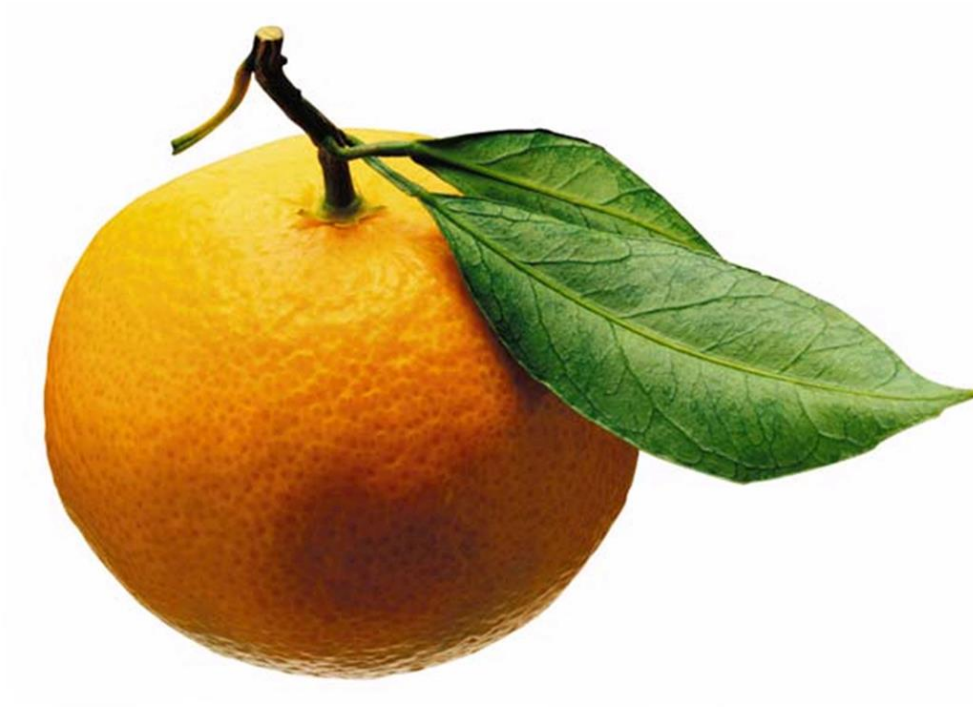


#### 4. Territory

measure to  
prevent  
introduction  
of zebra mussels  
through ballast  
water of ships



Minimum size of fruit ?



Packaging ?

Use of anti-pest sprays ?

# Questions?

## Exercise

- Each group receives a set of 20 cards
- Each card has a **recto** and a **verso** side containing two options referring to a provision referenced in the SPS Agreement
- Each group must discuss and choose which side of the card it believes contains the correct provision as referenced in the SPS Agreement
- Please choose the “correct side” of the card, i.e the right SPS provision for all 20 cards.
- Refer to the specific Article of the SPS Agreement (where applicable)

Review:

*Basic Provisions of the SPS Agreement*

# Card 1 : What is the objective of the SPS Agreement

- 1a** Under certain conditions Members may implement measures which restrict trade in food products.
- 1b** Members shall not implement measures which restrict trade in food products.

# What is the objective of the SPS Agreement?

**Recognizing  
the right to protect  
human, animal,  
plant life or health**



**Avoiding  
unnecessary  
barriers to trade**

## SPS Agreement – Coverage *(Article 2.1)*

“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”



# Card 1 : SPS Agreement - Coverage

## Article 2.1

1A

“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”



## Card 2: Scientific Justification

**2a** Governments must base their SPS measures on appropriate **scientific evidence**.

**2b** Governments must base their SPS measures on **economic principles**.

Card 2 :

*Scientific justification, Article 2.2*

2A

**Based on** scientific principles

**Not maintained** without sufficient scientific evidence

**One exception** – provisional measures



## Card 3: Non-discrimination

- 3a** SPS measures **shall not differentiate** between national and foreign sources of supply.
- 3b** **Under certain conditions**, SPS measures may differentiate between national and foreign sources of supply.

# Card 3: *Non-discrimination, Article 2.3*



*Non-discrimination, Article 2.3*

**3B**

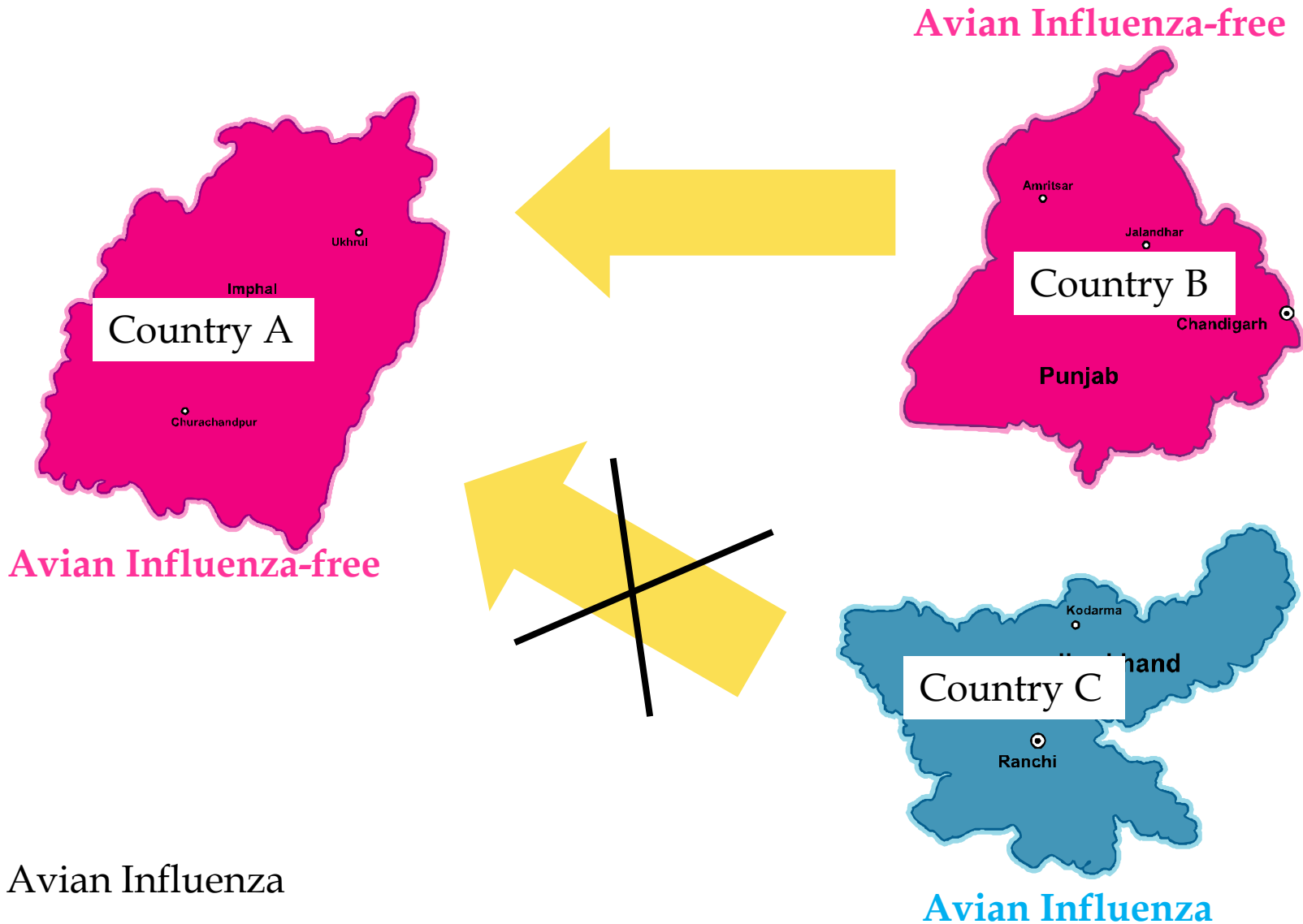
No **unjustifiable** differentiation

– between national and foreign  
sources of supply

## Card 4: Non-discrimination

- 4a SPS measures **shall not differentiate** between different foreign sources of supply.
- 4b **Under certain conditions**, SPS measures may differentiate between different foreign sources of supply.

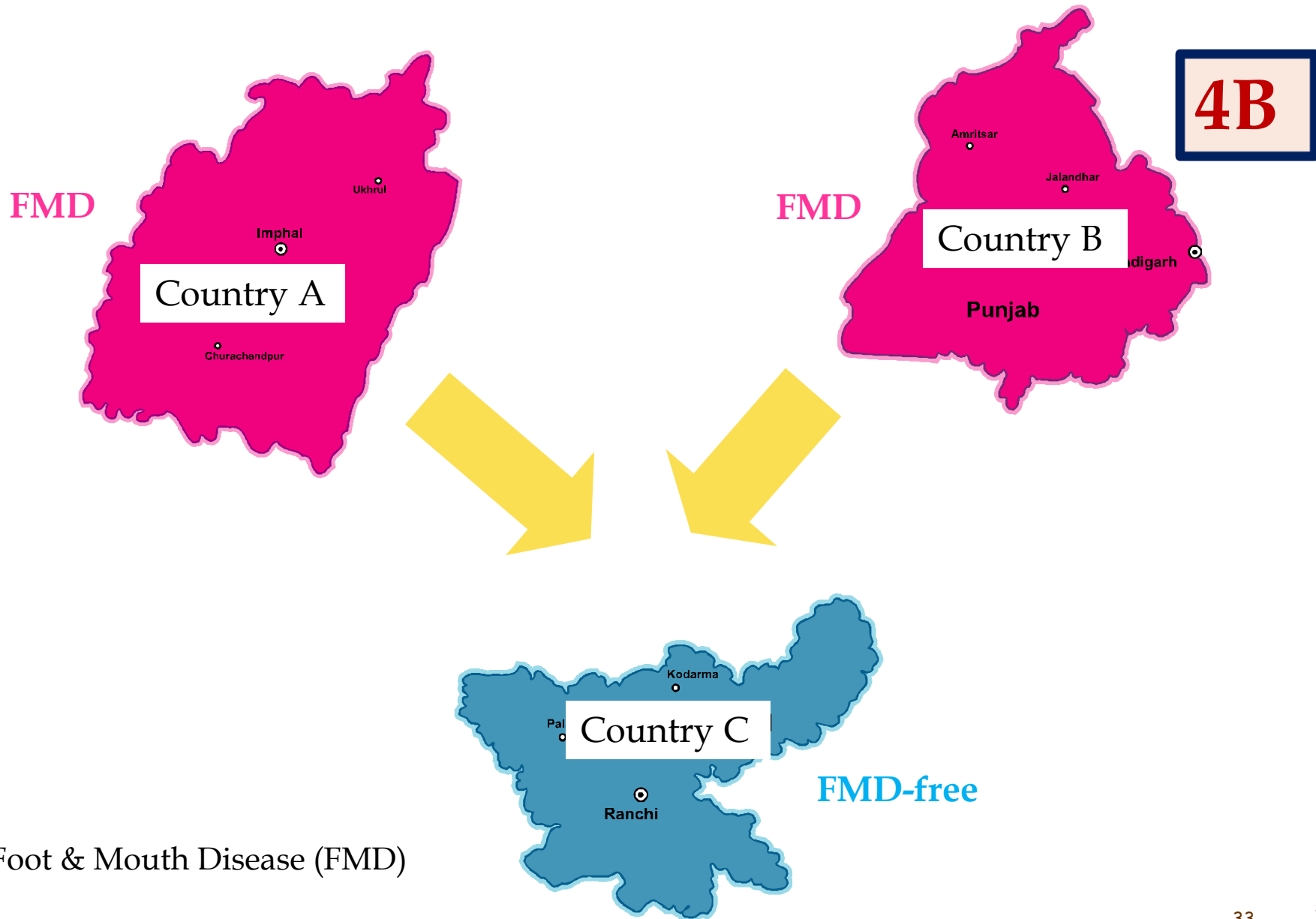
# Card 4: Non-discrimination



e.g. Avian Influenza



# Card 4: Non-discrimination



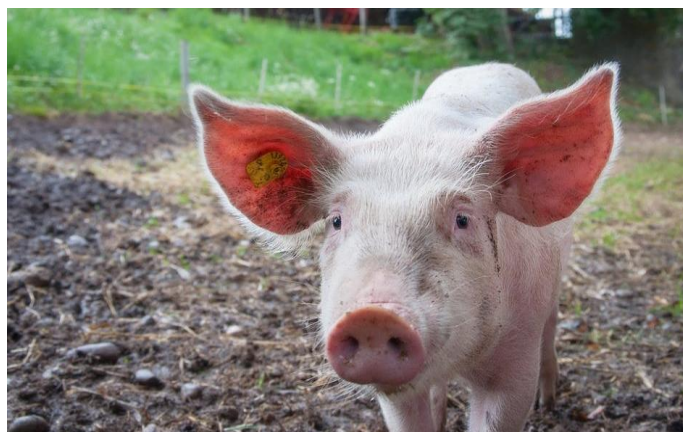
e.g. Foot & Mouth Disease (FMD)

# Card 5: Harmonization

- 5a **Codex, IPPC, OIE, WHO and ISO** develop the international standards explicitly recognized in the SPS Agreement.
  
- 5b **Codex, IPPC, and OIE** develop the international standards explicitly recognized in the SPS Agreement.

Card 5 :  
*Harmonization, Annex A, para. 3*

5B



*animal health*  
**OIE**



*food safety*  
**CODEX**



*plant health*  
**IPPC**

# Card 6: Scientific Justification

**6a** SPS measures which conform to an international standard are **presumed to be** consistent with the SPS Agreement.

**6b** SPS measures which conform to an international standard **must be proven to be** consistent with the SPS Agreement.

Card 6:  
*Harmonization, Article 3.2*

6A



## Card 7: Equivalence

- 7a** An importing Member shall accept an exporting Member's measure as equivalent **if it achieves the importer's ALOP.**
- 7b** An importing Member shall accept an exporting Member's measure as equivalent **only if it is the same as the importer's measure.**

Card 7:  
*Equivalence, Article 4*

7A

$$\frac{1}{2} = \frac{2}{4}$$

“More than one way to kill a fruit fly”

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

Upcoming workshop

## Card 8 - Risk assessment

- 8a** Economic and biological consequences must be considered for risk assessments relating to **food safety, and risks to animal or plant life or health.**
- 8b** Economic and biological consequences must only be considered for risk assessments relating to **risks to animal or plant life or health.**



Card 8:

*Risk assessment, Annex A, para. 4*

**8B**



“No price tag on human health”

## Card 9 - ALOP

- 9a** The appropriate level of protection (ALOP) and the acceptable level of risk **are two different concepts.**
- 9b** The appropriate level of protection (ALOP) is **sometimes called** the acceptable level of risk.

Card 9:

*Appropriate level of protection, Annex A, para. 5*

**9B**



Note after Annex A.5

# Card 10: Risk assessment - exception

**10a** In the absence of sufficient scientific evidence, Members **may not** adopt trade restricting SPS measures.

**10b** In the absence of sufficient scientific evidence, Members **may adopt provisional SPS measures** based on available information.

*Provisional measures, Article 5.7*

10B

Members may provisionally adopt SPS measures:

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

In such circumstances, Members shall:

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



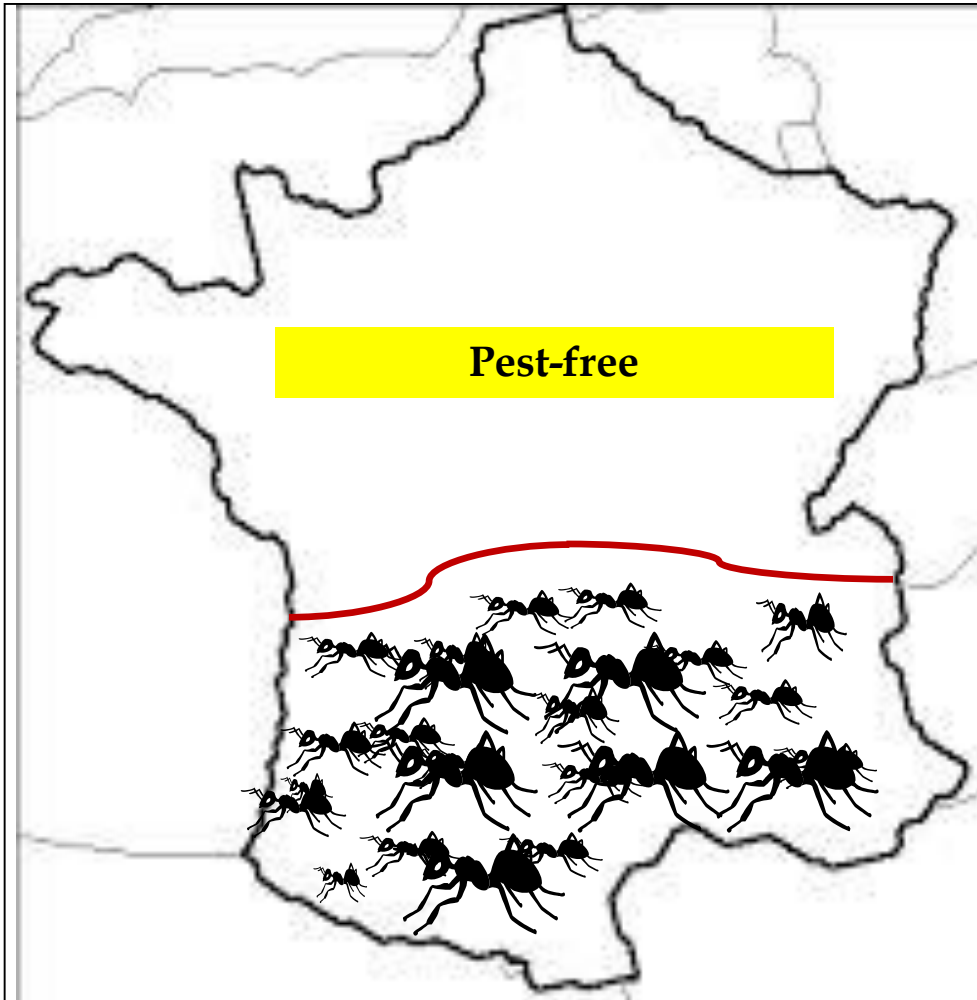
# Card 11 - Regionalization

- 11a** To gain recognition of a pest- or disease-free area, **an exporting Member** has to provide the necessary proof.
- 11b** 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 11: *Regionalization, Article 6*

11A

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?

## Card 12: When to Notify?

**12a** A proposed SPS regulation, which will affect international trade, shall be notified **when changes can still be made.**

**12b** A proposed SPS regulation, which will affect international trade, shall be notified **as soon as it enters into force.**



Card 12:  
*Transparency, Article 7 and Annex B*

**12A**



Recommended Transparency Procedures  
G/SPS/7/Rev.3

**Allow a 60-day comment period**

# Card 13: TBT Agreement – Coverage

**13a** Most food labelling requirements and quality regulations are subject to the **SPS Agreement**.

**13b** Most food labelling requirements and quality regulations are subject to the **TBT Agreement**.

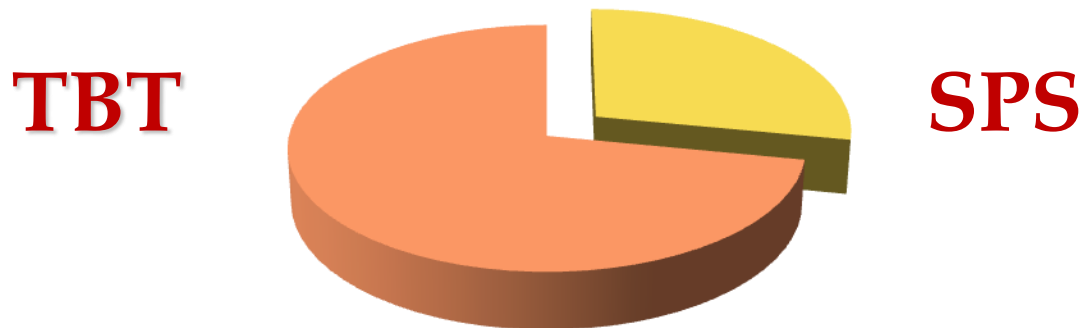
# Card 13: TBT Agreement – Coverage

Annex A, para.1

13B

**It applies to all:**



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



But: its provisions do **not** apply to SPS measures

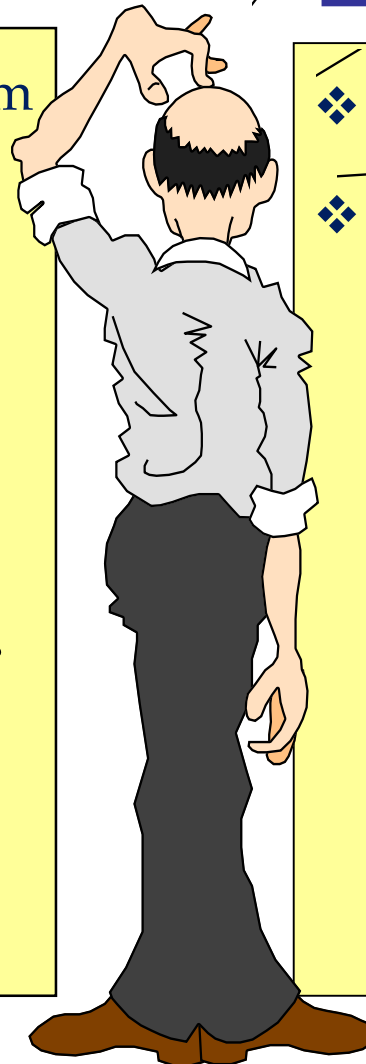
# SPS or TBT ?

## 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

- ❖ Nutritional claims
- ❖ Food packaging and quality
  - ❖ Examples: Minimum size of fruit, labelling ...



# Card 13: *Scope, Annex a, para. 1*

Additives, contaminants, etc. in food or feed

Animal-carried diseases



Humans



Animals



Plants

Pests, diseases



Territory

# Card 14: Translations of Notified Regulations?

- 14a** **All Members** must provide summaries of notified regulations in English, French or Spanish upon request.
- 14b** **Developed country Members** must provide summaries of notified regulations in English, French or Spanish upon request.

Card 14:  
*Transparency, Article 7 and Annex B*  
*Developing countries*

14B



Upon request, developed countries to provide regulation or its summary in  
**English, French, or Spanish**

Members encouraged to share unofficial translations with each other –  
supplement format

## Card 15: Transparency

**15a** Members' SPS Enquiry Points shall answer all reasonable questions concerning **SPS regulations currently in force only**.

**15b** Members' SPS Enquiry Points shall answer all reasonable questions concerning **proposed or adopted SPS regulations**.



Card 15:  
*Transparency, Article 7 and Annex B  
Enquiry Points*

**15B**



**Article 7 & Annex B, para.3(a)**  
**National Enquiry Point (NEP)**

Provides answers and documentation to all reasonable questions from interested Members regarding **any SPS regulation adopted or proposed within its territory.**

# Card 16: Control, Inspection & Approval Procedures

- 16a** Governments **can** charge fees for control, inspection and approval procedures as long as these are not higher than the actual costs of the service.
- 16b** Governments **cannot** charge any fees for control, inspection and approval procedures on imported products.

# Card 16:

## *Control, inspection and approval, Article 8 and Annex C*

16A



Article 8 & 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 17: Technical Assistance

**17a** Members **agree to facilitate** the provision of technical assistance to other Members.

**17b** Members **are not required** to consider requests for technical assistance from developing countries.

# Card 17:

## *Technical assistance – Article 9*

**17A**



**“Members agree to facilitate provision of TA...”**

help countries comply with SPS measures  
technology, research, infrastructure  
advice, credits, donations, grants  
technical expertise, training, equipment  
help countries maintain and expand market access



# Card 18: Decision-making in the SPS Committee

**18a** The SPS Committee makes its decisions by **two-thirds majority** of the vote.

**18b** The SPS Committee makes its decisions by **consensus**.

# Card 18: *The SPS Committee – Article 12*

**18B**



No Member voices an objection at the meeting



# Card 19: SPS Committee Decisions

- 19a** The SPS Committee has developed guidance for the implementation of provisions relating to: **equivalence, risk assessment, least trade restrictive measures and transparency.**
- 19b** The SPS Committee has developed guidance for the implementation of provisions relating to: **equivalence, consistency in the level of protection, recognition of pest- or disease-free areas and transparency.**

# Card 19: *The SPS Committee – Article 12*

**19B**



# Card 20: Decisions & Guidelines of the SPS Committee

- 20a** The decisions and guidelines adopted by the SPS Committee are **legally binding** and **must be followed** by governments.
- 20b** The decisions and guidelines adopted by the SPS Committee **cannot add to or detract** from the legal obligations of WTO Members.

# Card 20: *Committee Decisions, Guidelines ...*

**20B**



# Key Provisions

1. Non-discrimination
2. Scientific justification
  - harmonization
  - risk assessment
  - consistency
  - least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. Technical assistance/special treatment
7. Control, inspection and approval procedures



Thank you!

Hanna Vitikkala  
[Hanna.Vitikkala@wto.org](mailto:Hanna.Vitikkala@wto.org)

