

WTO Framework

Marlynne Hopper

**Trade Facilitation Workshop: Sanitary / Phytosanitary and
Technical Barriers to Trade**

South Asia Subregional Economic Cooperation (SASEC)

Bangkok, 1-3 December 2014



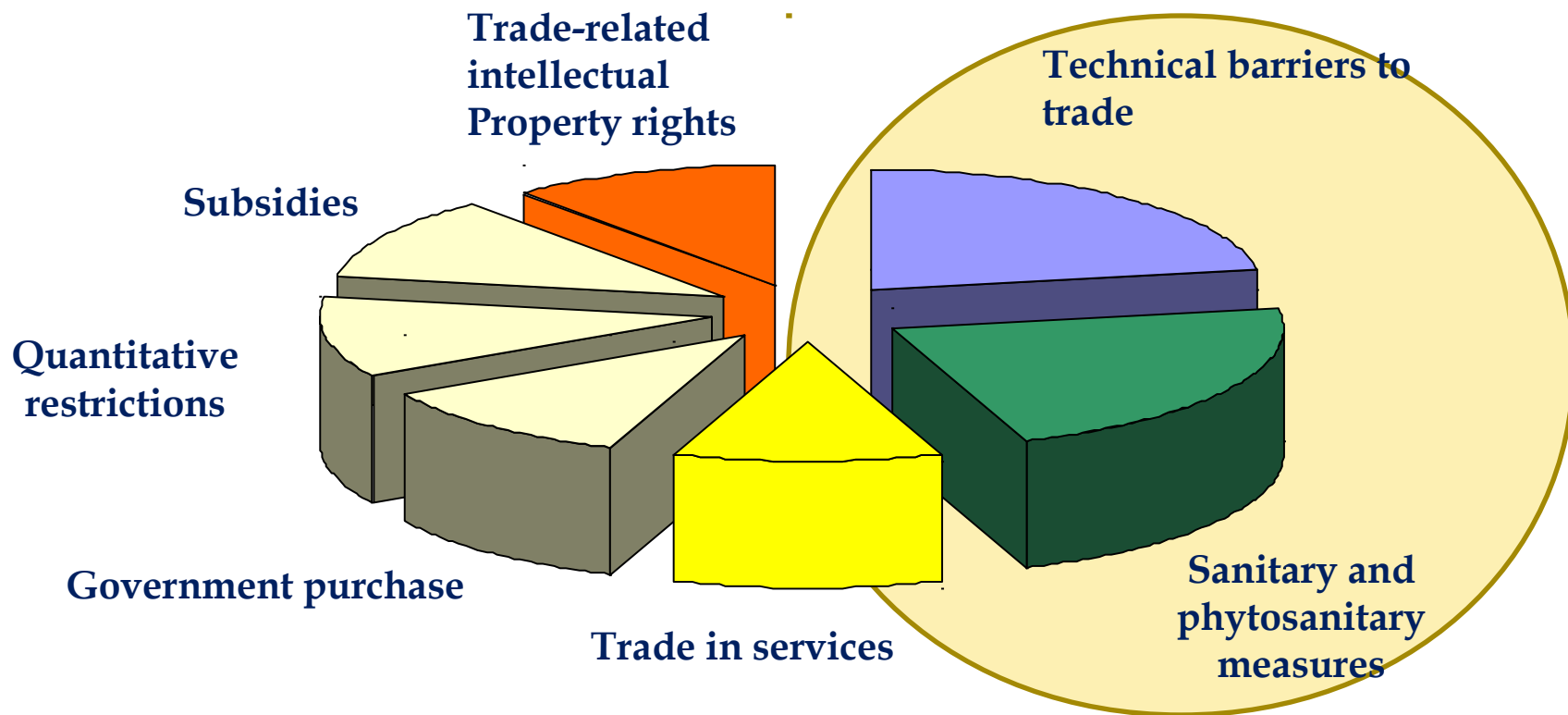


Outline

- Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements
 - Scope, selected key principles and important differences
 - International standards
 - Implementation (notifications, specific trade concerns, institutional frameworks, capacity building, etc.)
- Trade Facilitation Agreement (TFA)
 - Scope and linkages to the SPS Agreement (SPS-Plus)



Non-tariff measures





Purpose of the SPS Agreement

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



Avoiding
unnecessary
barriers to
trade

Multilateral framework of rules and disciplines to guide the development, adoption and enforcement of SPS measures which may (directly or indirectly) affect international trade



SPS measures include:



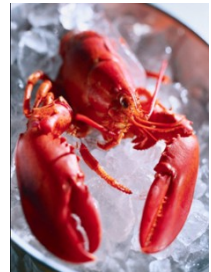
- ✓ product criteria
- ✓ quarantine measures
- ✓ processing methods
- ✓ certification
- ✓ inspection
- ✓ testing
- ✓ packaging, labelling (food safety)

*It's not the type of measure that counts,
or the products involved, but its objective!*



Some examples of SPS measures

- ✓ Limits of aflatoxin residues in nuts
- ✓ Limits of residues in fish and shellfish
- ✓ BSE-related measures
- ✓ Measure to prevent introduction of fruit flies
- ✓ Measure to prevent introduction of zebra mussels through ballast water of ships
- ✓ Seed regulation to avoid introduction of exotic weeds





TBT Agreement has a wider scope

Applies to all:

- Technical regulations (*mandatory*)
- Standards (*voluntary*)
- Conformity assessment procedures
(*mandatory or voluntary measures*)

*Applies to all products
(industrial and agricultural)*



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



Objective of TBT Agreement

to strike a balance between trade liberalization
and the right to regulate

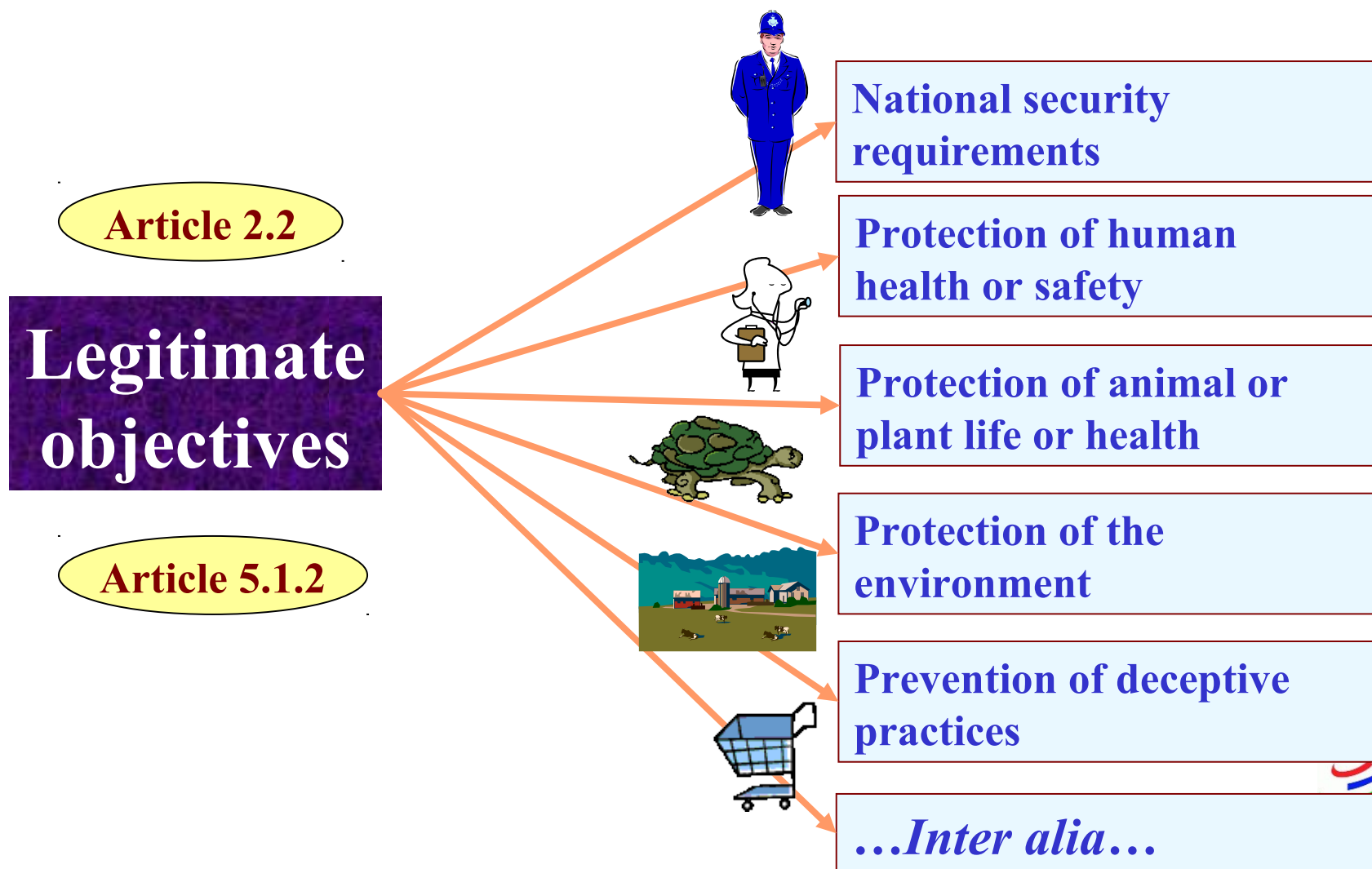
Recognizing
the right to
regulate to
protect
legitimate
interests



Avoiding
unnecessary
barriers to
trade






TBT Agreement: Legitimate objectives



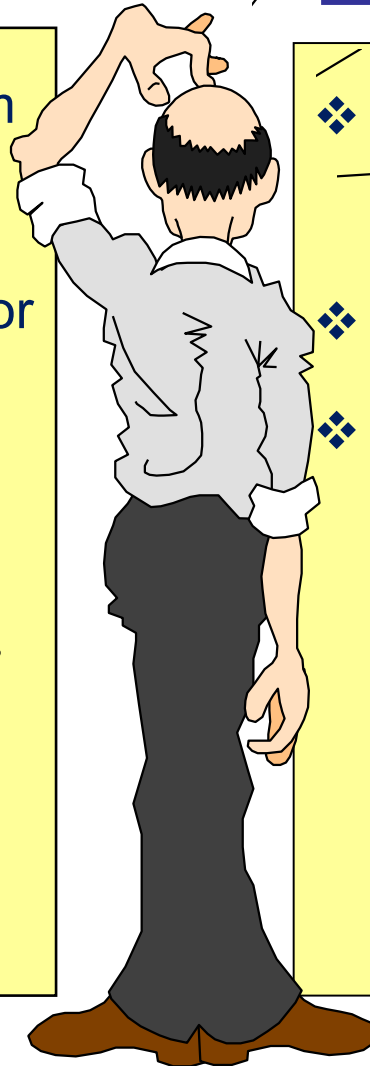
SPS or TBT ?

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





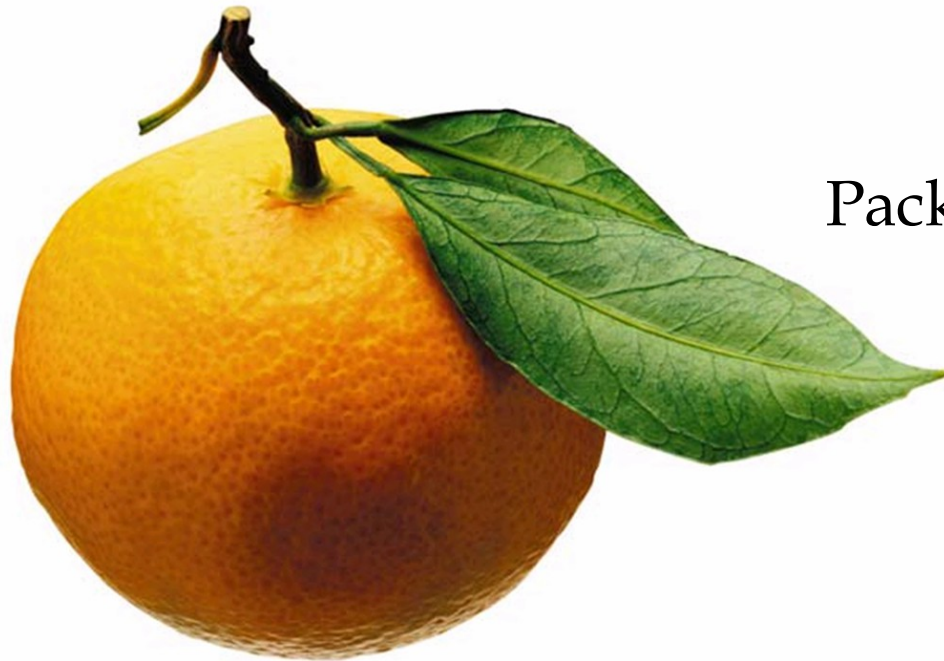
A measure may have more than one objective, so:

- parts of the regulation (i.e. some provisions) could fall under the **SPS Agreement**; and
- other parts of the regulation (i.e. some provisions) could fall under the **TBT Agreement**.

E.g. A regulation which defines the quality, safety, packaging and labelling requirements for fresh domestic and imported oranges for consumption

SPS or TBT?

Minimum size of fruit ?



Packaging ?

Use of anti-pest
sprays ?

Key provisions of SPS and TBT Agreements and trade facilitation





SPS vs. TBT Agreement

SPS

- **Right to restrict trade to protect health**
- **Measures based on science**
- **Non-discriminatory**
- **No disguised restrictions**
- **Transparency**

TBT

- **Right to restrict trade based on legitimate objective (+illustrative list)**
- **Technical regulations take into consideration *inter alia* available scientific and technical information**
- **Non-discriminatory**
- **No disguised restrictions**
- **Transparency**



Non-Discrimination

**Treatment no Less Favourable to
*Like Products***

Originating

Of national origin

From any other country

National Treatment

**Most-Favoured
Nation (MFN)**



SPS Agreement, Scientific Justification, Article 2.2

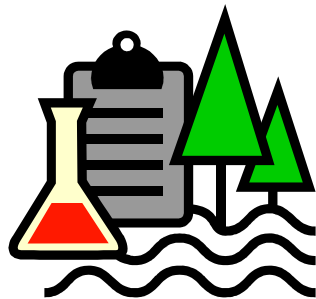
Members
shall
ensure
that any
SPS
measure
is:

based on scientific principles

applied only to the extent
necessary to protect human,
animal or plant life or health
(least trade restrictive)

not maintained without
sufficient scientific evidence

except as provided for in Article 5.7





SPS Agreement: Scientific justification Articles 3 & 5

Measures must be based on:

International standards

OR

Risk assessment



FAO/WHO Food Standards

CODEX alimentarius



TBT: Which standards?

No “recommended” list of standards



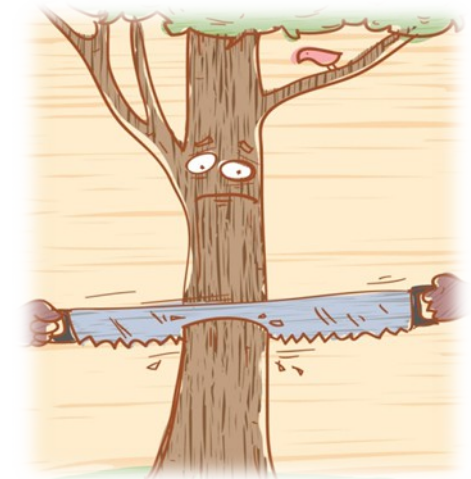
Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3)

- Guidance on how central government standardizing bodies should set standards
- Accepted by standardizing bodies in **Bangladesh, India, Sri Lanka**



SPS: Least trade-restrictive Article 5.6

- **SPS measures not to be more trade restrictive than required to achieve the appropriate level of protection**
- **Alternative measure...**
 - reasonably available
 - technically and economically feasible
 - significantly less trade restrictive



OR





SPS Agreement: Control, Inspection and Approval Procedures (Art. 8 and Annex C)

Procedures to check and ensure fulfilment of SPS measures, including sampling, testing and certification

- No undue delays
- Information requirements limited to what is necessary
- No less favourable treatment for imports:
 - Fees: no discrimination, only to cover costs
 - Non-discrimination in siting of facilities, selection of samples
- Procedure to review complaints, take corrective action



**Transparency is a key
provision of
both the SPS and TBT
Agreements**



SPS and TBT: What to notify?

- New or modified regulation
- **No existing international standard**
or different than international standard
- **Significant impact on trade**
(restricting or facilitating)



SPS / TBT Information Management Systems

<http://spsims.wto.org/>

<http://tbtdims.wto.org/>



Enquiry Point and Notification Authority

WTO Member	Has Notified SPS:		Has Notified TBT:
	Enquiry Point	National Notification Authority	National Enquiry Point
Bangladesh	✓	✓	✓
India	✓	✓	✓
Maldives	✓	✓	✓
Myanmar	✓	✓	✓
Nepal	✓	✓	✓
Sri Lanka	✓	✓	✓





SPS/TBT Notifications

WTO Member	Has Notified TBT Measures:		Has notified SPS Measures:		
	Regular Notifications	Other notifications	Regular Notifications	Emergency Notifications	Other documents
Bangladesh	0	0	0	0	1
India	106	0	85	7	11
Maldives	0	0	0	0	1
Myanmar	1	0	0	0	0
Nepal	4	0	19	1	1
Sri Lanka	47	0	34	2	5



Specific Trade Concerns (STC)

WTO Member	SPS STC			TBT STC	
	Raised by	Supported by	Maintained by	Maintained by	Concerned by
Bangladesh	0	0	0	0	0
India	19	8	11	21	11
Maldives	0	0	0	0	0
Myanmar	0	0	0	0	0
Nepal	0	0	0	0	0
Sri Lanka	1	2	0	0	0



What are the implications of different types of measures?

- Voluntary (TBT standards) vs mandatory (SPS measures, TBT technical regulations)?

Opportunities to improve implementation of SPS and TBT Agreement to facilitate trade?

- More active Notification Authority, Enquiry Point?
- Better public-public, public-private dialogue?
- More transparency on SPS / TBT measures?
- Less paperwork?
- More use of equivalence, mutual recognition agreements?
- More effective participation in WTO Committees?
- Other?



Trade Facilitation Agreement



WTO OMC



WTO Trade Facilitation Agreement

Trade Facilitation Agreement = simplification of trade procedures in order to move goods in cross-border trade more efficiently

It concern all border agencies – not just customs authorities !

Agreement structure:

Section I → sets out the substantive obligations on *facilitating customs and other border procedures*

Section II → contains *special and differential treatment* provisions for developing and least-developed country Members



Linkages between SPS and TF Agreements



Trade Facilitation Agreement seeks to
reduce trade-related transactions costs



Implementation of SPS measures
may result in trade-related transaction costs
justified by *need to protect human,
animal or plant life and health*



SPS Agreement: Control, Inspection and Approval Procedures



Procedures to check and ensure fulfilment of SPS measures include sampling, testing and certification...

- *no undue delays*; no less favourable manner for imported products than for like domestic products
- information requirements limited to what is *necessary*

Annex C closely linked to TF

SPS Agreement: Control, Inspection and Approval Procedures



- **non-discriminatory fees**
not higher than actual cost of service (*link to TFA Article 6*)
- non-discrimination in siting of facilities and selection of samples
- procedure to review complaints, take corrective action (*link to TFA Article 4.1*)

Annex C closely linked to TF



Some specific trade concerns (STCs) *in the SPS Committee already address TF issues, e.g.*



- **Indonesia's port closures** – *raised by China, NZ, EU, US*
- **EU, Greece** - *Inspection and testing procedures for imported wheat - raised by Canada*
- **Japan** - *Pesticide maximum residue level (MRL) enforcement system - raised by China, US*



Linkages between SPS and TF Agreements



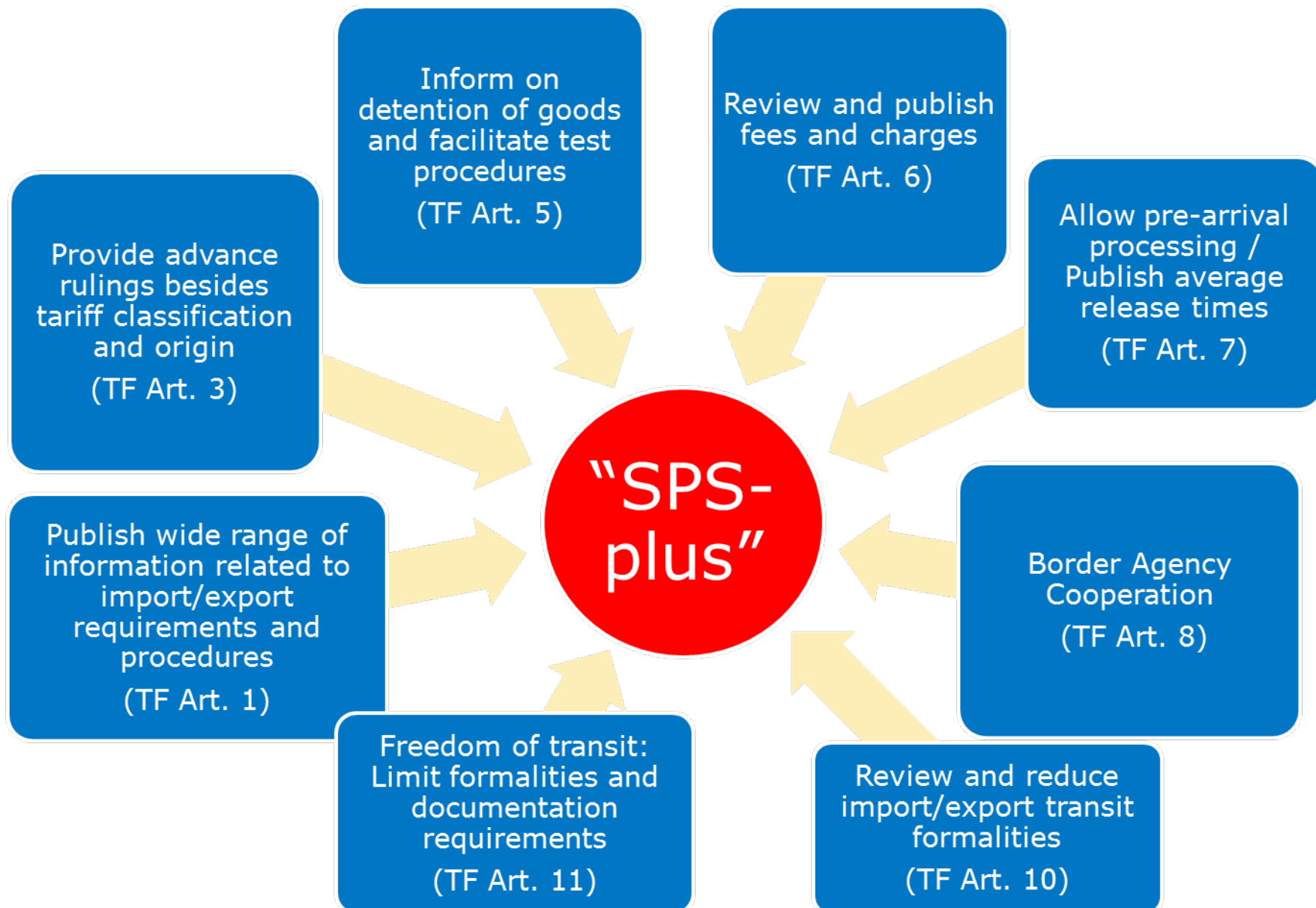
“nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the TBT and SPS Agreements.”

Final provisions, para. 6 TF

BUT.....

Some of the provisions in the TF Agreement may be considered as "**SPS-plus**" possibly resulting in obligations going beyond those contained in the SPS Agreement





Going forward in SASEC: Key questions



- Opportunities to improve implementation of the SPS and TBT Agreements to facilitate trade?
- Options to make better use of *existing* SPS / TBT transparency tools and coordination mechanisms?
- How to encourage equivalence, recognition of each other's conformity assessment procedures?
- Opportunities to promote good regulatory practice, e.g.
 - consult the private sector
 - engage ISSOs (including to validate regional standards)
 - consider the economic aspects of regulations
 - review and appeals mechanism

Encouraging SPS-TBT-TF Linkages



- **Scope to increase SPS-TBT-Customs dialogue, collaboration and coordinated approaches / systems**
 - Is there a common understanding of rights / obligations under different WTO Agreements?
 - What are the implications of the new TF Agreement?
 - Are SPS/TBT officials engaged in TF needs assessments?
 - Do national SPS/TBT and TF committees/bodies talk to each other?
 - **Opportunities to leverage additional resources for SPS capacity building from new TF funding mechanisms?**



Thank you. For more information, see the WTO website:

Technical Barriers to Trade

http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

<http://tbtdims.wto.org/Default.aspx?Lang=0>

Sanitary and Phytosanitary Measures

http://www.wto.org/english/tratop_e/sps_e/sps_e.htm

<http://spsims.wto.org/Default.aspx?Lang=0>

Trade Facilitation

http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm