

*Strengthening Knowledge and Capacities for the Design
and Implementations of FTAs Involving CAREC Countries*



**Regional Training of Trainers
on how to design, negotiate, and implement FTAs**

Session 3:

**Non-Tariff Measures and Trade Remedies: Sanitary and Phytosanitary
Issues**

Sequance of the presentation

- Fundamental Objectives
- Background
- Key Provisions
- CAREC SPS/e-SPS readiness
- Conclusion and recommendations

Fundamental Objectives

- Introduction to the history of SPS as a trade policy and negotiating issue.
- Scope and application of the WTO SPS Agreement and FTA SPS chapters.
- The main substantive obligations of the WTO SPS Agreement and FTA SPS chapters.
- SPS in CAREC
- Negotiating issues and strategic considerations.

Background

- Sanitary and phytosanitary (SPS) measures are applied to agriculture, fishery, food, or forestry products to protect humans, animals, and plants from pests, disease, or contaminants.
- These measures are implemented in three sectors – food safety, animal health and plant health – which are governed by international standard-setting bodies, namely, Codex Alimentarius Commission ('Codex'), World Organization for Animal Health (OIE), and the Secretariat of the International Plant Protection Convention (IPPC).
- SPS measures may be applied at international borders or inland freight terminals where goods entering a country are released.

Background

- The World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) provides the normative framework for border trade, emphasizing that these should not result in unnecessary barriers to trade.
- In this context, the CAREC Ministers endorsed in 2015, the ***Common Agenda for the Modernization of Sanitary and Phytosanitary Measures for Trade*** .
- The ***CAREC Integrated Trade Agenda 2030***, identified interventions include the study of a potential mutual recognition of SPS certificates to facilitate trade.

Background

- Since then, CAREC has implemented initiatives to modernize SPS to ensure protection while facilitating trade.
- This includes the need for a comprehensive approach based on effective information-sharing, streamlining of procedures, and genuine collaboration among all trade-related agencies including customs and SPS agencies at the borders.
- This remains relevant and consistent with the WTO's Trade Facilitation Agreement which provides for use of international standards, single window and uniform documentation requirements (Article 10 on formalities connected with importation, exportation and transit).
- A central feature of documentation for goods subjected to SPS measures is the certificate giving assurance that the goods comply with the appropriate SPS requirements.

Background

- At the inaugural meeting of the CAREC SPS Regional Working Group in Tashkent on 24-25 June 2019
 - participants underscored policy coordination and improved cooperation, especially in the area of interoperability with the national single window and risk assessment and management.
 - The meeting also discussed the potential for digitalizing SPS certificates
- Suggestions included the assessment of business process analysis and cost-benefit of these proposed initiatives, leveraging on existing global initiatives.
- For instance, Codex, OIE and IPPC each prescribe an international format for certificates of food safety, animal health, and plant health, respectively.

Background

- In terms of digitalization, the e-Phyto project of the WTO Standards and Trade Development Facility (STDF) provides a simple generic system for the production, sending, and receipt of electronic phytosanitary certificates and a harmonized exchange tool to facilitate electronic exchange.
- The CAREC Institute, in collaboration with ADB, undertook a survey research that explored certification for plant and plant products only, leveraging on e-Phyto solutions by the IPPC.

Background

- Sanitary and phytosanitary (SPS) measures are applied to agriculture, fishery, food, or forestry products to protect humans, animals, and plants from pests, disease, or contaminants.
- The World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) provides the normative framework for border trade, emphasizing that these should not result in unnecessary barriers to trade.
- In this context, the CAREC Ministers endorsed in 2015, the ***Common Agenda for the Modernization of Sanitary and Phytosanitary Measures for Trade*** .
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Key Provisions

1. General Provision
2. Basic rights and obligations
 - Scientific Justification
3. Risk Assessments
4. Harmonization
5. Equivalence
6. Adaptation to regional conditions
 - Disease-free areas
7. Technical Assistance
8. Special and Differential Treatment
9. Administration, dispute settlement, and implementation

General Provisions

- “This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement”
- “Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement”.

Basic rights and obligations: Scientific Justification

1. Article 2.2 - Basic Rule
 - “applied only to the extent necessary to protect life or health” • “based on scientific principles”
 - “not maintained without sufficient scientific evidence”
 - except provisional measures
2. How to justify your measure?
 - Own scientific evidence (Risk Assessment)
 - International Standards (Harmonization)

Risk Assessment

1. “Members shall ensure that their sanitary or phytosanitary 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”.
2. “In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment”.
3. Economic factors

Harmonization

- “To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations”
- Measures that conform to international standards
 - presumption of consistency with SPS (3.2)
- Measures beyond international standards
 - Harmonization plus:
 - scientific justification
 - risk assessment

Provisional measures

- May be adopted
 - if relevant scientific evidence is insufficient
 - on the basis of available information
- However, Members:
 - shall seek to obtain the additional information
 - review measure within a reasonable period of time

Equivalence

1. “Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level of sanitary or phytosanitary protection.”
2. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures”.
3. accept other Members’ measures as equivalent
4. reasonable access for inspection/testing
5. exporter: objectively demonstrate
 - not sameness

Adaptation to regional conditions: Disease-free areas

1. “Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary 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”.
2. adapt SPS measures to area:
 - all or part of a country, all or parts of several countries
 - prevalence of diseases or pests
existence of eradication or control programs
 - recognize pest- or disease-free areas
3. exporters → proof
(reasonable access for inspection/testing)

Technical Assistance

1. “Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations”
 - areas of processing technologies,
 - research and infrastructure,
 - including in the establishment of national regulatory bodies,
 - and may take the form of advice,
 - credits, donations and grants, etc.

Special and Differential Treatment

1. “In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members”.
 - phased introduction of new sanitary or phytosanitary measures,
 - longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

Administration, Dispute settlement, and Implementation

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations
2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute.
 - establish an advisory technical experts group, or consult the relevant international organizations,
3. Members are fully responsible under this Agreement for the observance of all obligations set forth.

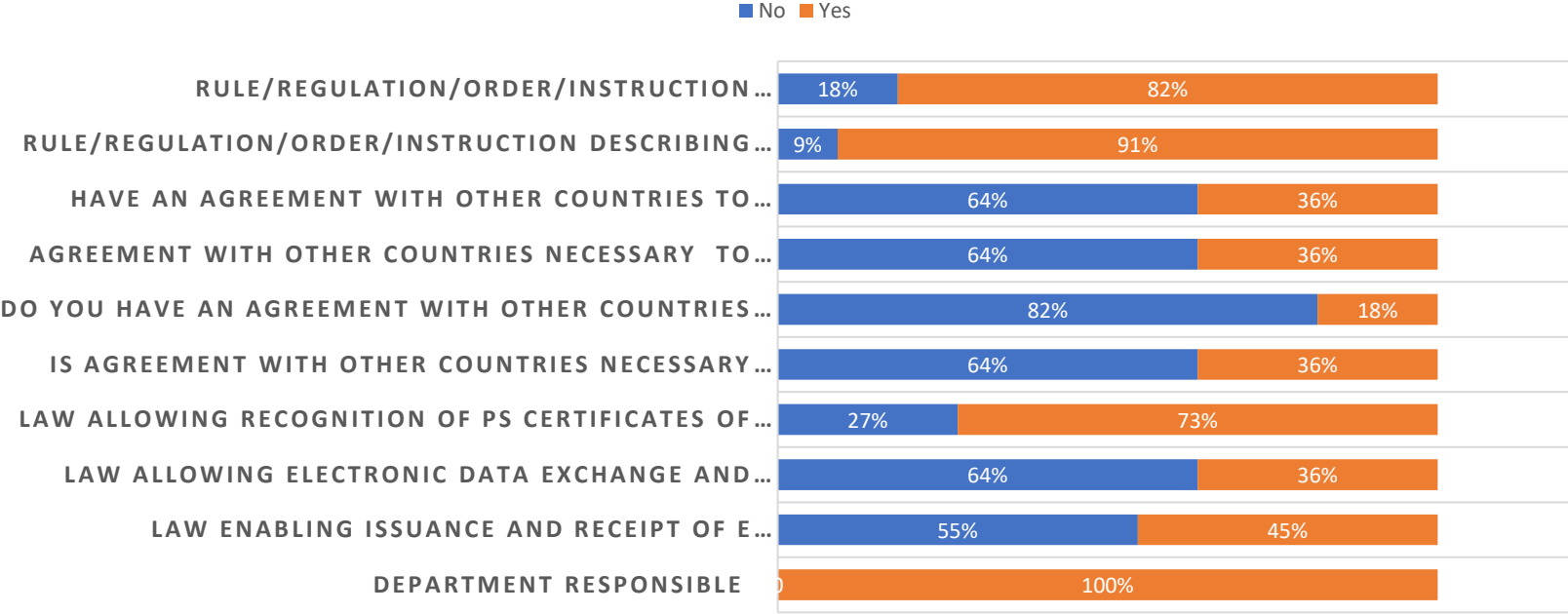
CAREC Readiness for e-Phyto: Current State

Country	Average time required for the following steps involved and the department involved						
	Application Filed by Trader (online/ paper) along with	Application reviewed for compliance	Inspection	Samples for Testing	In case of treatment, conducted at	Payment for inspection & PS certificate at	PS Certificate issued by
Afghanistan	10 min		20 min to 1 hr.				
Azerbaijan	10 min	1-3 Days	2-3 Days	2-3 Days	1-7 Days	15 min	1-3 Days
PRC	10 min	10 min	10 min	0.5 Day	0.5 Day	10 min	10 min
Georgia	15 min	15 min	30 min	3-5 Days	1-5 Days	15 min	15 min
Kazakhstan							
Kyrgyz Republic	25 min)	25 min	160 min	3-72 hrs.	24-168 hrs.	40 min	
Mongolia	4 hrs.	2 hrs.	3 hrs.				
Pakistan	1 hr.- 7 Days	Max. 1 hour	Hours-Days	3-10 Days	1-14 Days	Max. 1 hr.	Max 1 hr.
Tajikistan	5 min			30 min	24-72 hrs.	10 minutes	3 hrs.- 3 Days
Turkmenistan	3 hrs.- 3 Days	3 hrs.- 3 Days	Up to 3 hrs.	Up to 4 hrs.	Up to 3 hrs.	Up to 3 hrs.	3 hrs.- 3 Days
Uzbekistan							Within 5 working days

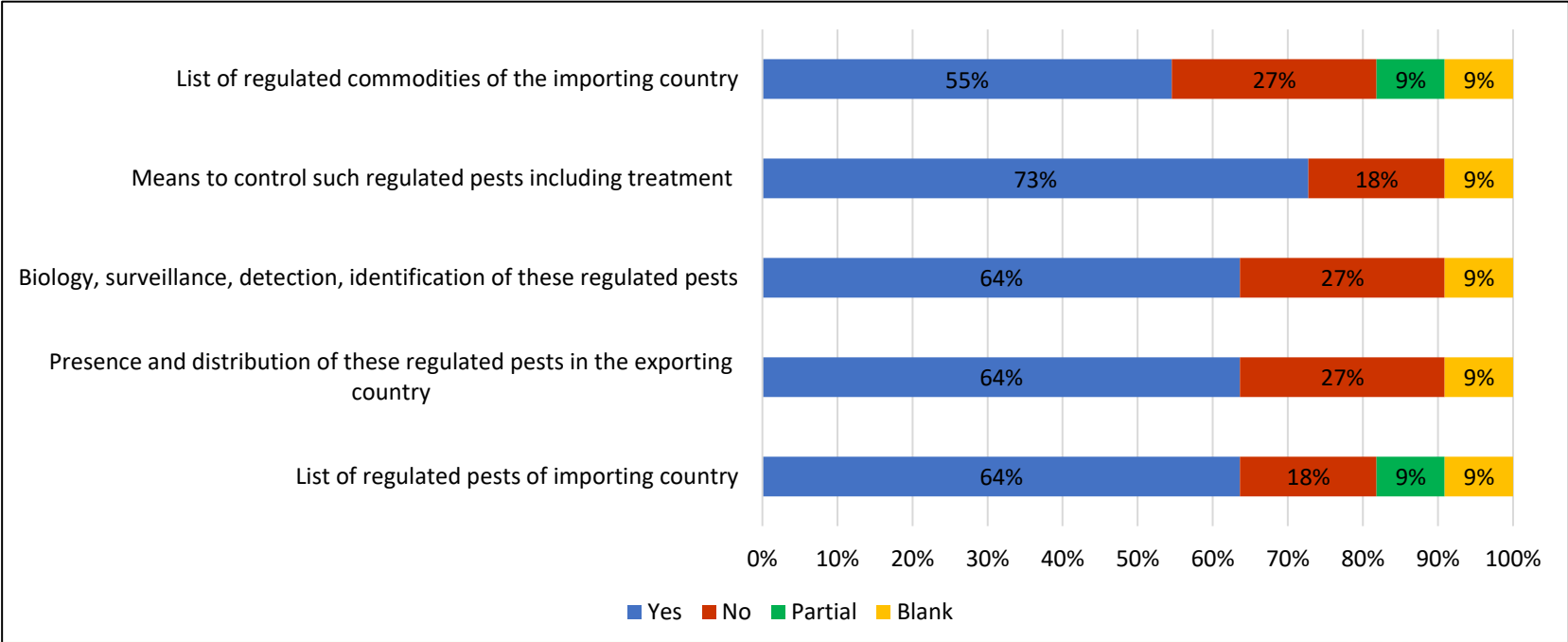
Mode of Transmission and Validity of Phytocertificate

Country	Mode of transmission of PS certificates to other users like Customs and other countries	Validity/ duration of PS certificates after issuance and prior to export	Fee for PS certificate	Number of PS certificates issued per year
Afghanistan	Hard Copy	-	100Af (1.28 US \$) per sheet	-
Azerbaijan	Hard Copy	14 Days	10 AZN (5.88 US\$)	40,000
People's Republic of China	Hard as well as Electronic (where countries can transmit/ receive)	Fresh Goods-14 Days Other Plant Products-21 Days In North Region (during Winter)-35 Days	Free	0.69 Million (690,000/)
Georgia	Hard Copy	15 Days	25-50 GEL (8.67- 17.33 US \$)	3428 (Border by Georgia Revenue Service) 10,333 (National Food Agency)
Kazakhstan	Hard Copy	30 Days (from the date of issuance)	Free to Individuals and Legal Entities	Around 0.3 Million
Kyrgyz Republic	Hard Copy	Requirements of the importing country	200 SOM (2.86 US \$)	40,000
Mongolia	Hard Copy; Via the media and the website; By e-mail	5 Days to 1 month depending upon commodities	10000 MNT (10 thousand tugrik) 3.69 US \$	10,000
Pakistan	Hard Copy	90 Days	PKR 50-300 (0.32- 1.94 US \$)	Around 0.15 Million
Tajikistan	Letter or application to legal entities and individuals	30 Days	Based on estimates and volume of products	Depending on the volume of the shipment of goods
Turkmenistan	Hard copy as well as through email (where required)	30 Days	Based on tariffs approved by Ministry of Finance and Economy of Turkmenistan	Depends on the number of contracts awarded
Uzbekistan	Electronically	Unlimited until the delivery to the importer's country	up to 10 kg - 0.15 MRZP(MPЗП); up to 100 kg - 0.18 MRZP(MPЗП); up to 500 kg - 0.20 MRZP(MPЗП); up to 1000 kg - 0.25 MRZP(MPЗП);	0.25 Million

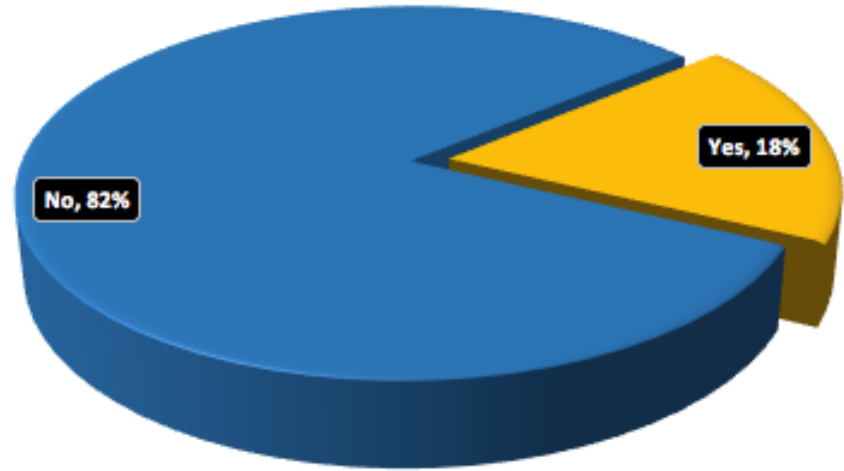
Legislature for Phytosanitary Certification in CAREC Countries



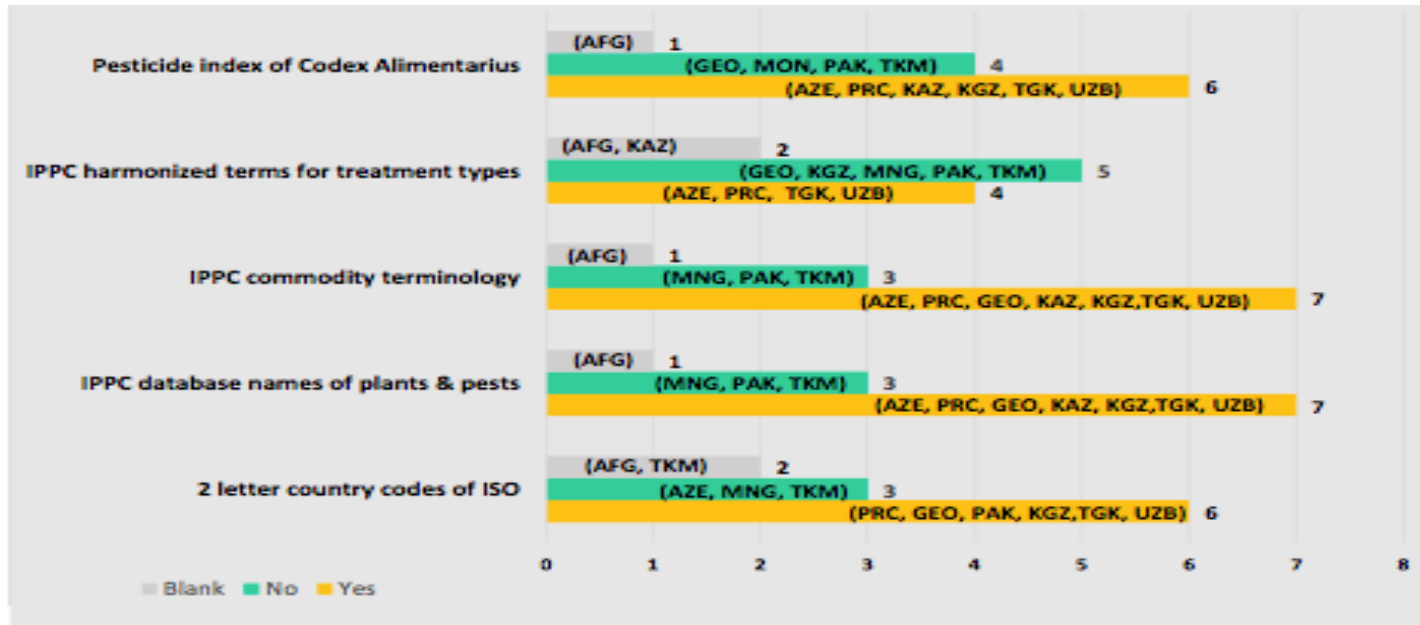
Phytosanitary Import Requirements with PS Certificate Issue Agency



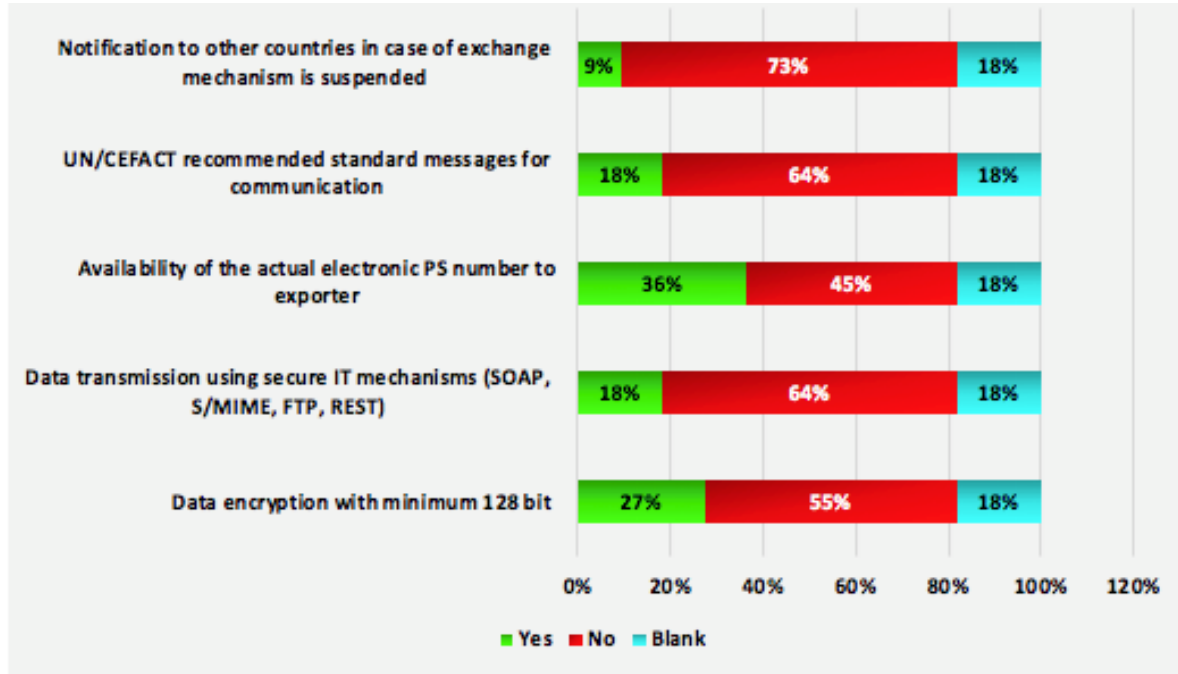
XML language for Electronic Exchange



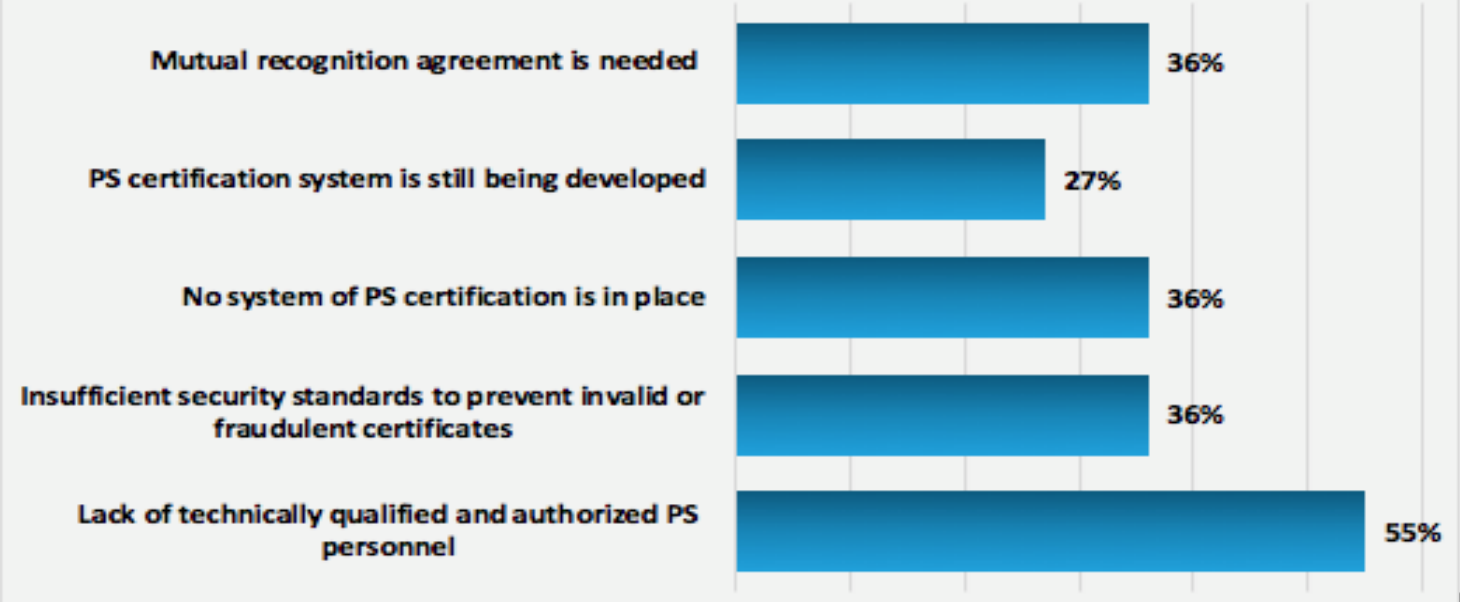
Standardized Terms and Codes Used by System of CAREC Countries



Secure Data Exchange for e-Phyto in CAREC Countries



Reasons for Not Mutual Recognition of PS Certificates



Conclusion

- Most CAREC countries have a legal basis for the recognition of phytosanitary certificates and exchange of electronic certificates.
- Therefore systems are already in place for migrating from the paper-based certification system to the ePhyto system.
- The PRC is using its national ePhyto system to integrate with the HUB, and is an example of best practice for a functioning ePhyto system.
- For the rest, there is no indication of digital capacities to recognize ePhyto certificates using the HUB, in which case they may opt for the GeNS web-based system to produce, receive and exchange ePhytos through this HUB.

Recommendations

- Agriculture is an important sector in the CAREC economies, which makes effective SPS measures a priority.
- Modernization of SPS is in the CAREC program agenda, and countries are transitioning towards modernization but the adoption of the global standards varies in the CAREC region.
- It is extremely important to adopt e-certification (Covid-19 and shocks).
- Regional cooperation is highly essential.

Recommendations

- Policy Level
 - A comprehensive national strategy for the formulation and implementation of legislative reforms must be developed, including capacity building measures for technical staff.
- Technology Level
 - The use of information management systems must be encouraged and supported among specialists and inspectors.
 - Data exchange protocols must be regulated as a priority for risk management and assessment.

Thanks