

Private food law

- standards, audits, certification

Food safety governance with civil law instruments

29 March 2017, Bernd van der Meulen



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Overview

- Materials
- Developments
- The food chain
- Requirements for the food chain
- Checking compliance
- The legal mechanism
- The content
- Q&A



Materials:

Private food law

Governing food chains through contract law, self-regulation, private standards, audits and certification schemes

- As eBook available for free at:
- <http://www.wageningenacademic.com/eifl>

edited by
Bernd van der Meulen

Multinational business

- Wants uniform product globally
- Complying with the law in every country
- Which law would it apply to itself?



FrieslandCampina 

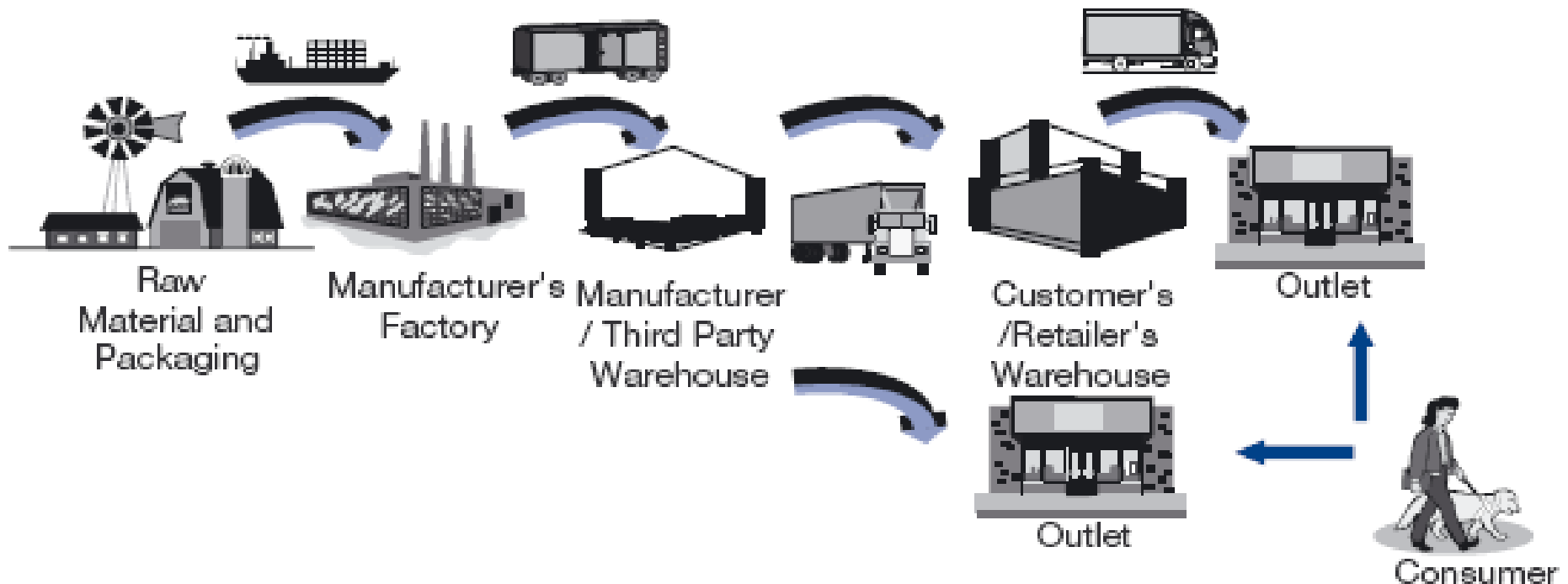
Concurring developments

- Increase in retail brands
 - Private labels
- Food safety crises
 - BSE
- Art. 17 GFL
 - Increase in business responsibility
 - Due diligence defence



Food supply chain

Moving goods along the supply chain



If I (retailer) want the product to be:

- Organic
- Halal
- Animal friendly
- Free of pesticide residues
- Conforming to all food safety requirements
- Fair in social terms
 - Fair payment
 - No child labour
- How can I achieve this?



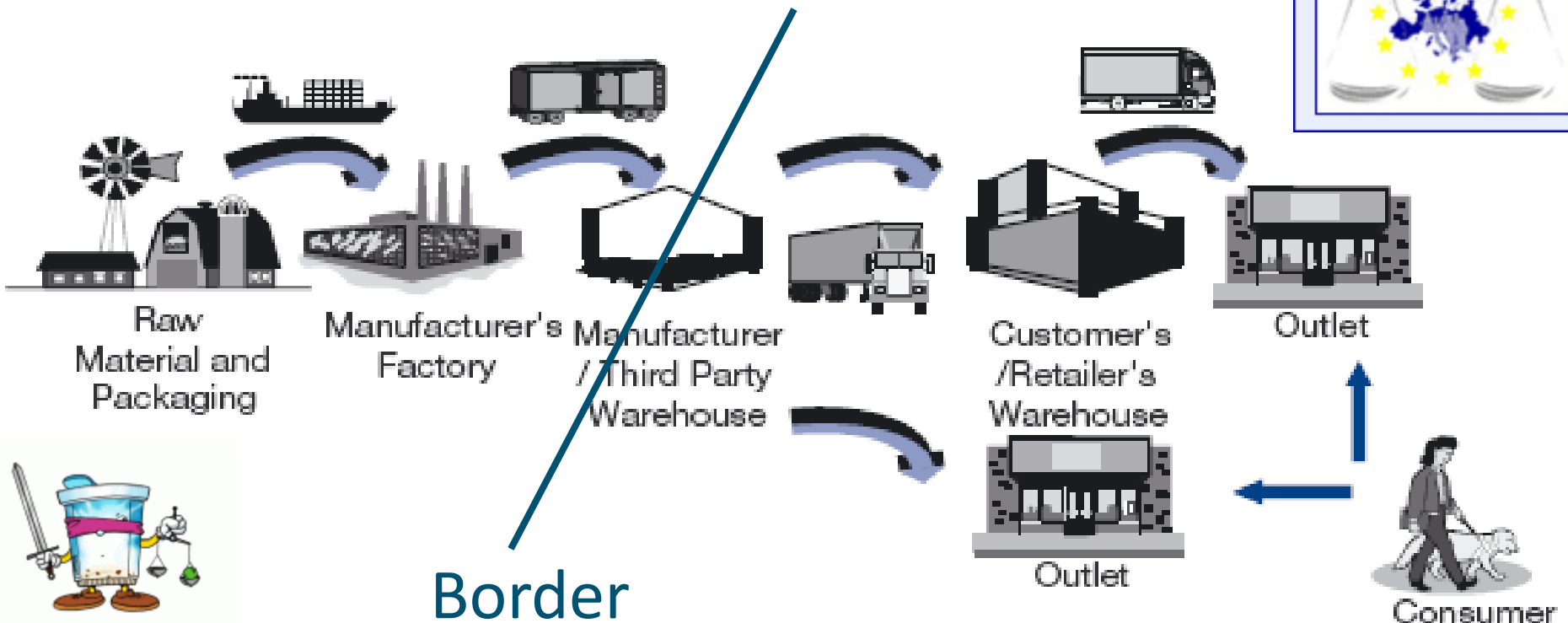
If I (farmer / producer) want the retailer to know my product is:

- Organic
- Halal
- Animal friendly
- Free of pesticide residues
- Conforming to all food safety requirements
- Fair in social terms
 - Fair payment
 - No child labour
- How can I achieve this?



Global supply chains

Moving goods along the supply chain



Examples



FAIRTRADE



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More examples



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Standard

- Text explaining who should do what
- Looks like legislation
 - Articles
 - Paragraphs
 - Expressing obligations
- Are they legally obligations?
- (How) can they become legal obligations?
- “Private Voluntary Standards”



Consequences?

- What if you infringe upon the private standard?
- Part of contract?
 - Contractual consequences
 - Liability
 - Contractual fines
 - Termination of contract
 - No new contract ('delisting')



How will we know if you follow the standard?

- Should we come and look?
- Ask someone we trust to look and report back to us
- Audit
- Certification
- Accreditation



Certification

- Certified business can use certification mark for communication purpose

Textbox 3.1. SQF on use of certification trade mark.

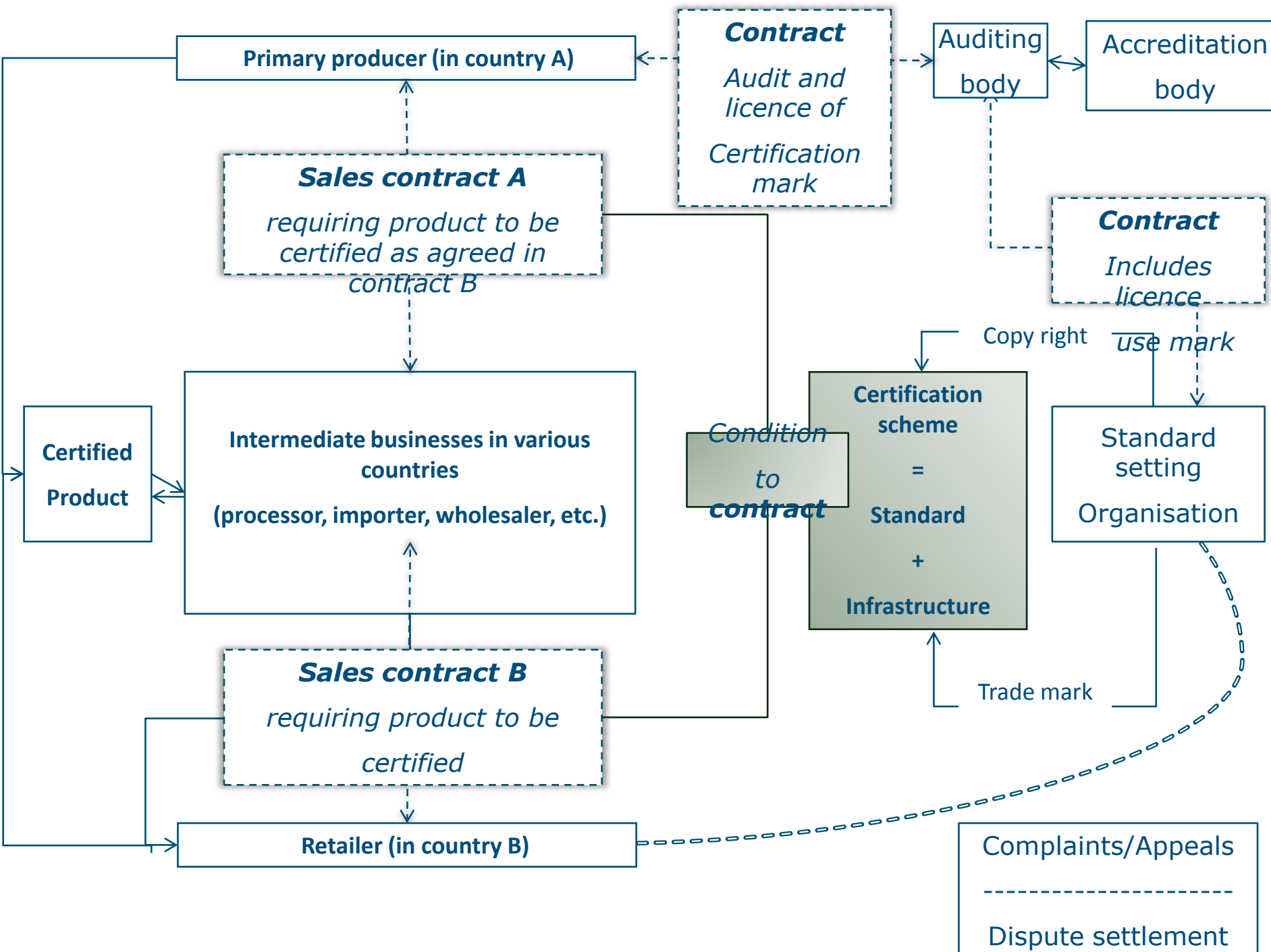
3 Conditions for using the SQF 2000 Certification Trade Mark

- 3.1 A producer shall, for the duration of its certification, prove to the satisfaction of SQFI¹ or the LCB² that its quality system satisfies the requirements set forth in the current edition of the SQF 2000 Code; and
- 3.2 A producer must only use the SQF 2000 Certification Trade Mark in accordance with its Certificate of Registration and these rules.

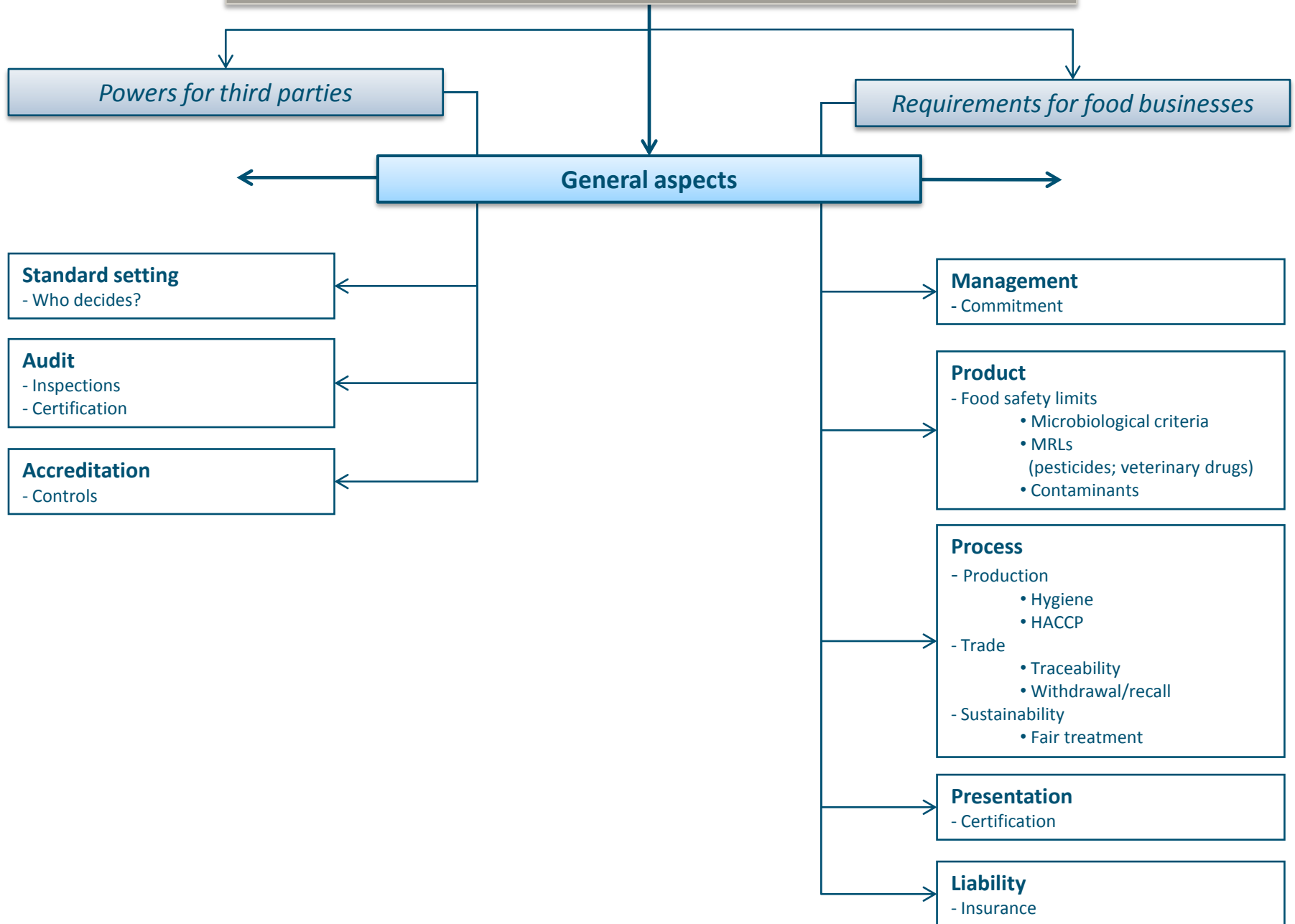
¹ SQF Institute (footnote added).

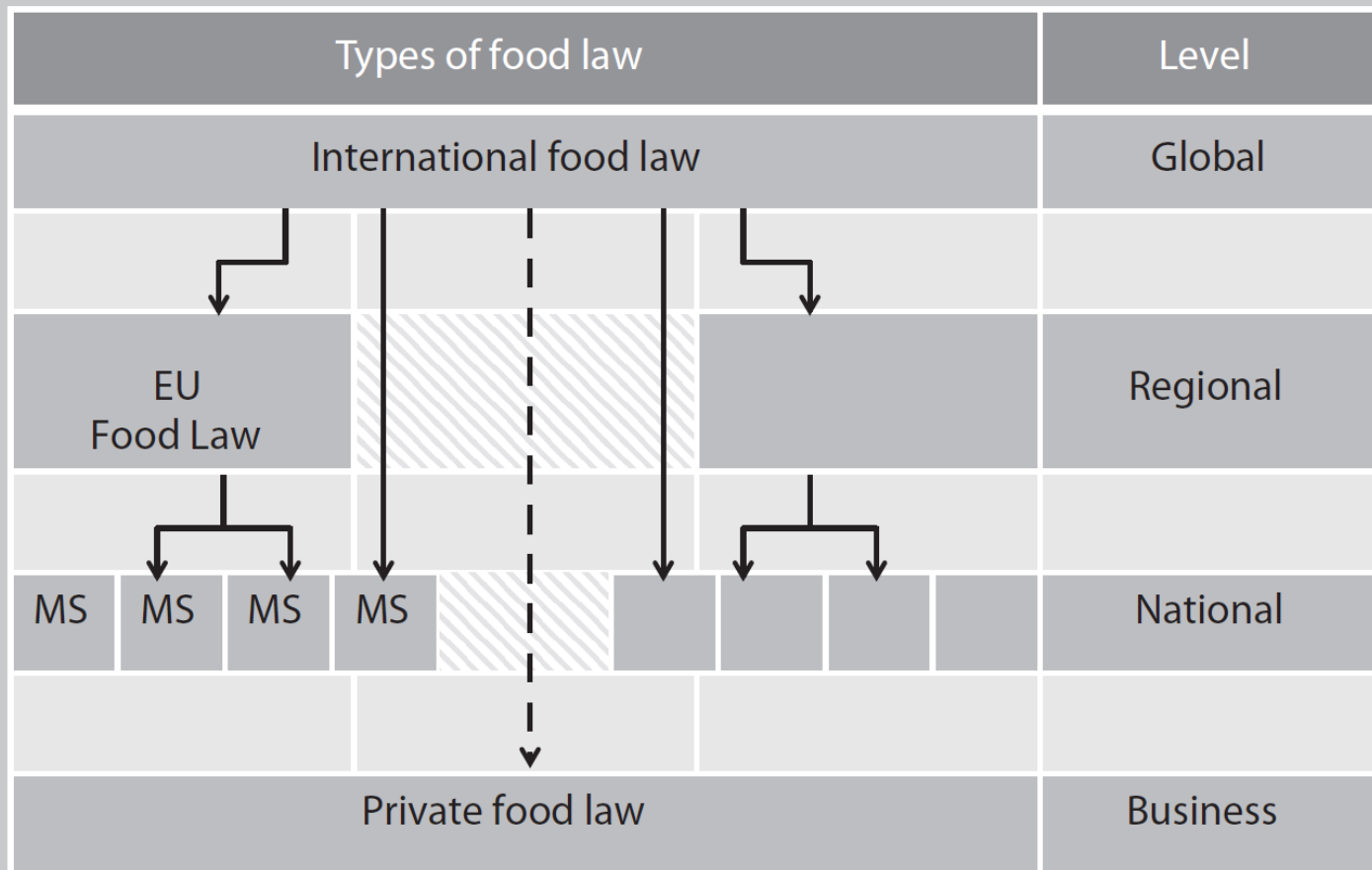
² Licensed certification Body (footnote added).





Framework of analysis for Private Food Law





—————> Model, obligation and limitation
 - - - - -> Model
 MS Member state

Figure 1.3. Multi-layered food law.

Why include the law?

- Often standards include legal requirements (HACCP)
- Often they go beyond to law
 - Example HACCP for primary sector
 - Internal traceability
- Why include what is already legal obligation?
 - To make it part of our relation
 - To submit it to our instruments
 - To export them beyond the jurisdictions



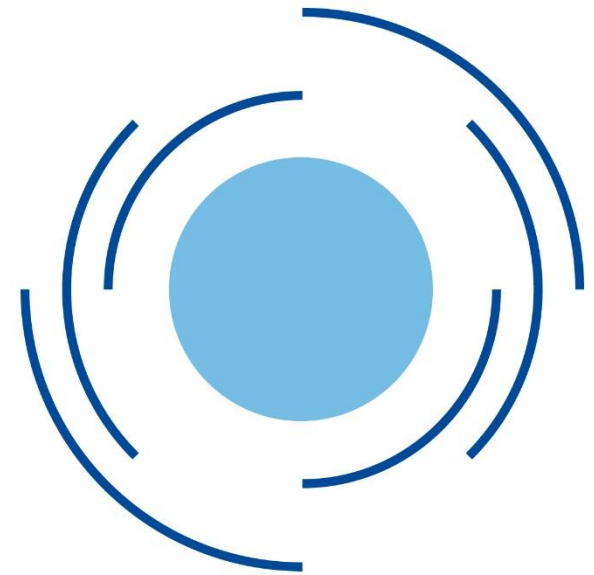
Food Safety Standards

- BRC
- IFS
- SQF
- FSSC 22000
- GlobalG.A.P.
- And many more
- What about ChinaGAP?



Harmonisation of private food law

- Benchmark
- Minimum requirements
- Certified once, welcome everywhere



GFSi

**Global Food
Safety Initiative**



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Law
Law

Private & public food law

- 
- Questions in China:
 - Should authorities enforce?
 - Should the government draft?
 - Question in Europe: should authorities take into account?
 - Risk based controls
 - Do private schemes lead to better compliance?
 - Reduction in number of official controls



Are they trade barriers?

WTO & private standards?; SPS Article 13

- (...) 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 relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or **non-governmental entities**, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. (...)



Message from Luis Gonzalez Vaque chairman of the China-EU Food Law Working Party to Renmin Food Law students

- You are welcome to join the "China.European Union Food Law Working Party":
<https://www.linkedin.com/groups/7426408> in Linkedin
- You are welcome to suscribe the Newsletter of the group sending your e.mail to:
[<chinaeufoodlawworkingparty@outlook.com>](mailto:chinaeufoodlawworkingparty@outlook.com)



Thank you for
your kind
attention

Q&A

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