



# International Standards and the WTO Agreements

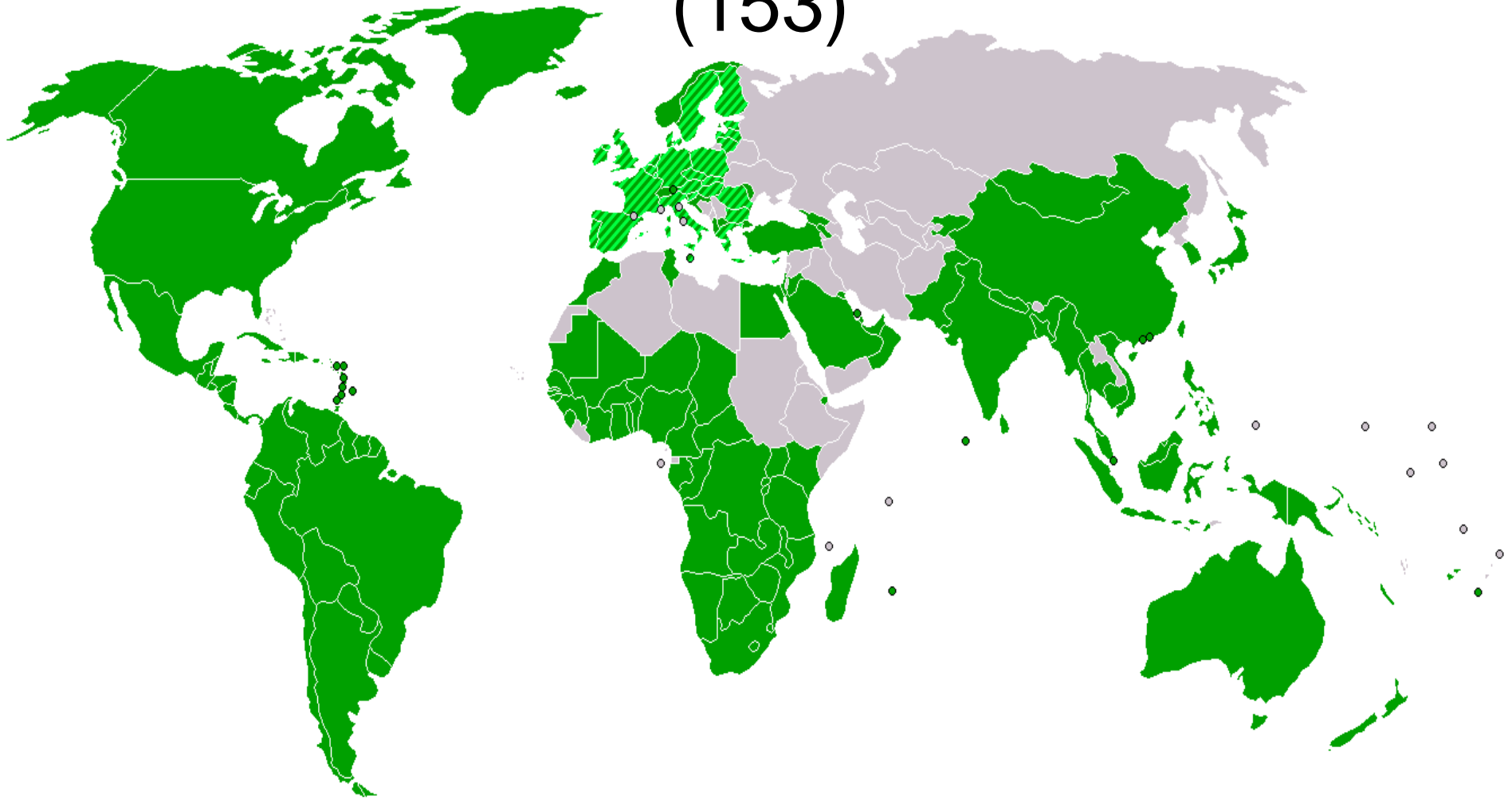
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# What is the World Trade Organization?



- **Established 1 January 1995**
- **Succeeded GATT (1948 - 94)**
- **Current Membership is 153**
- **In Geneva, Switzerland**
- **Secretariat ~ 650**
- **Budget < 100 mil. Euros**

# WTO Members 2008 (153)



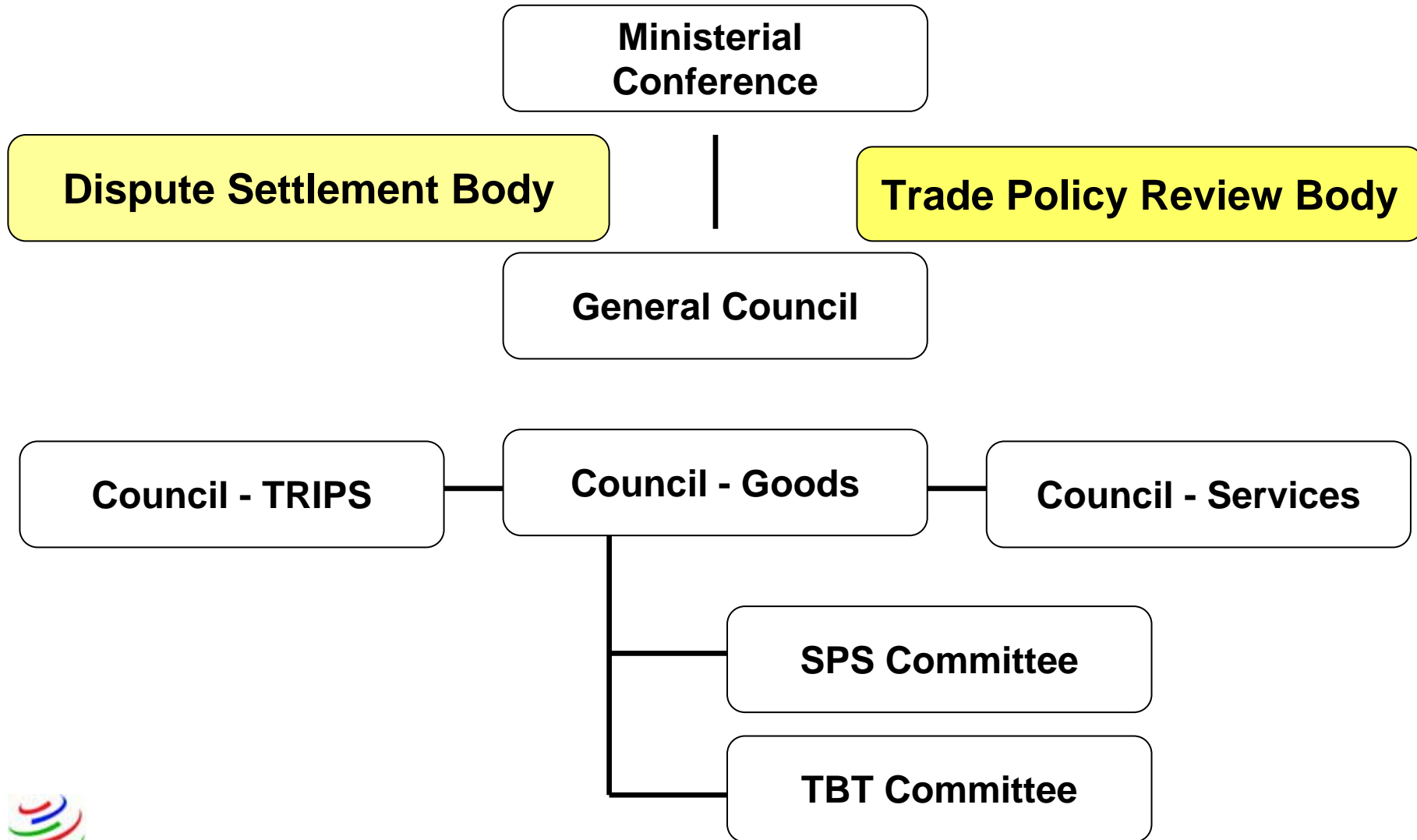


# The WTO Agreements



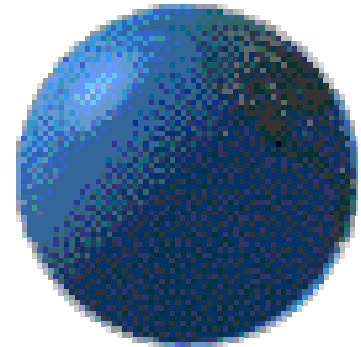
- **30 negotiated agreements**
- **Decisions by consensus**
- **Status of international treaties**
- **WTO rules have priority: Members must change trade policies to conform with their WTO obligations**
- **Dispute settlement**

# WTO Structure



# Principles of international trade

- **Avoid trade discrimination**
  - Most favoured nation treatment (MFN)
  - National treatment
- **Support trade liberalization**
- **Increase predictability**
- **Encourage fair trade**
- **Stimulate economic reform and development**



Agreement on the Application  
of Sanitary and Phytosanitary  
Measures (SPS Agreement)

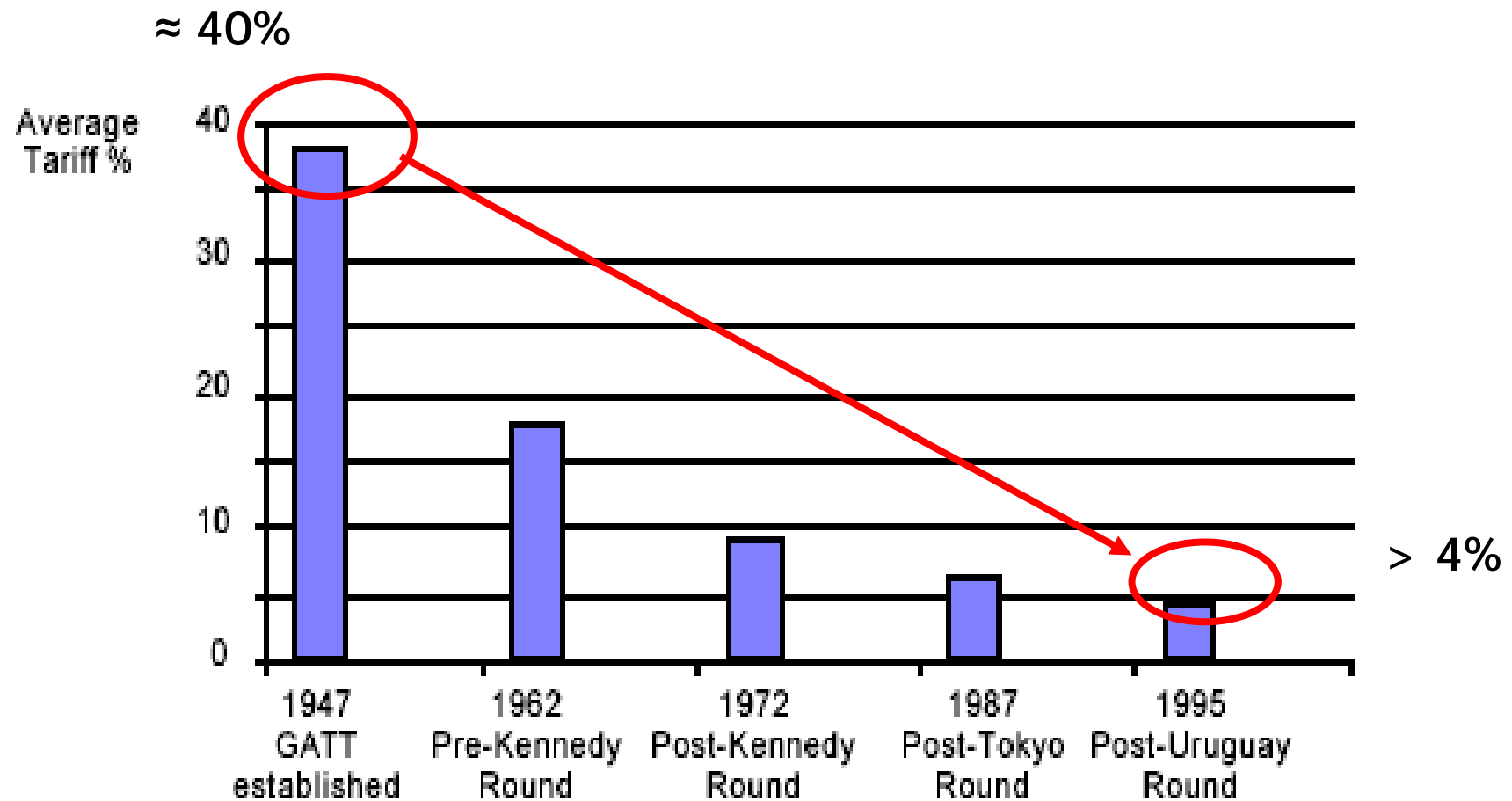
*and*

Agreement on Technical  
Barriers to Trade  
(TBT Agreement)



**Differences and similarities**

# Weighted average import tariff









WTO OMC



# SPS and TBT Agreements

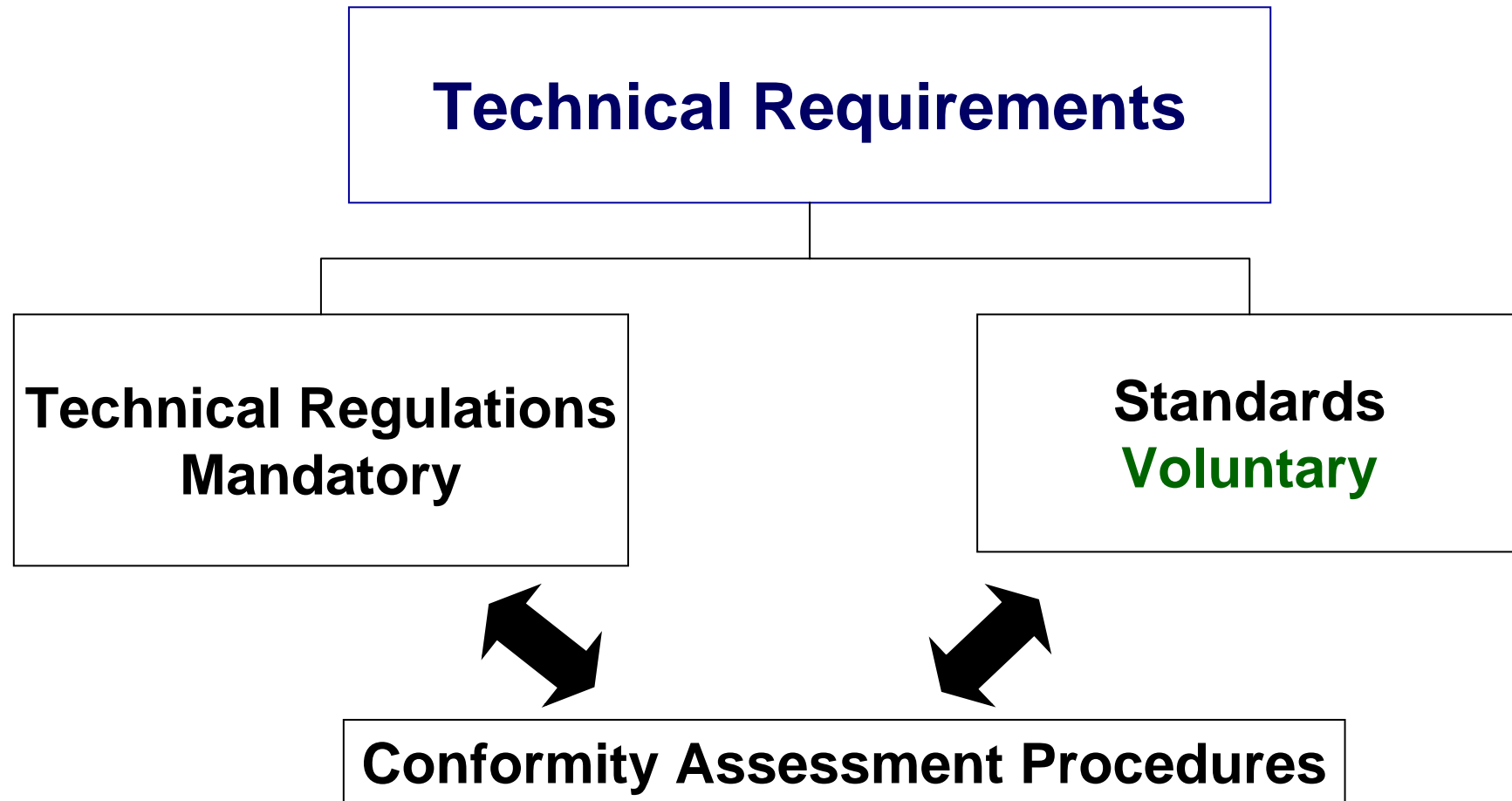
**The right to :**

- **impose regulations or standards for legitimate objectives**
- **Protect human, animal or plant life or health**



**Avoiding unnecessary barriers to trade**

# TBT Agreement - scope



# The TBT Agreement has a wider scope

- **It applies to all**
  - **technical regulations (mandatory)**
  - **standards (voluntary)**
  - **conformity assessment procedures**

**but...**

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



# TBT objectives

***“inter alia”***

- **National security requirements**
- **Prevent deceptive practices**
- **Protect human health and safety**
- **Protect animal and plant health**
- **Protect the environment**





# SPS Objectives

protect

from

**Human or  
animal health**

**risks arising from additives,  
contaminants, toxins or disease  
organisms in food, drink, feedstuff**

**Human life**

**plant- or animal-carried diseases**

**Animal or plant life**

**pests, diseases, disease-causing  
organisms**

**A country**

**other damage caused by entry,  
establishment or spread of pests**

# **SPS measures: laws, decrees, regulations... including:**

- **End product criteria**
- **processes and production methods**
- **testing, inspection, certification approval procedures, etc.**
- **quarantine treatments**
- **animal transport**
- **packaging and labelling requirements directly related to food safety**

# Other measures...

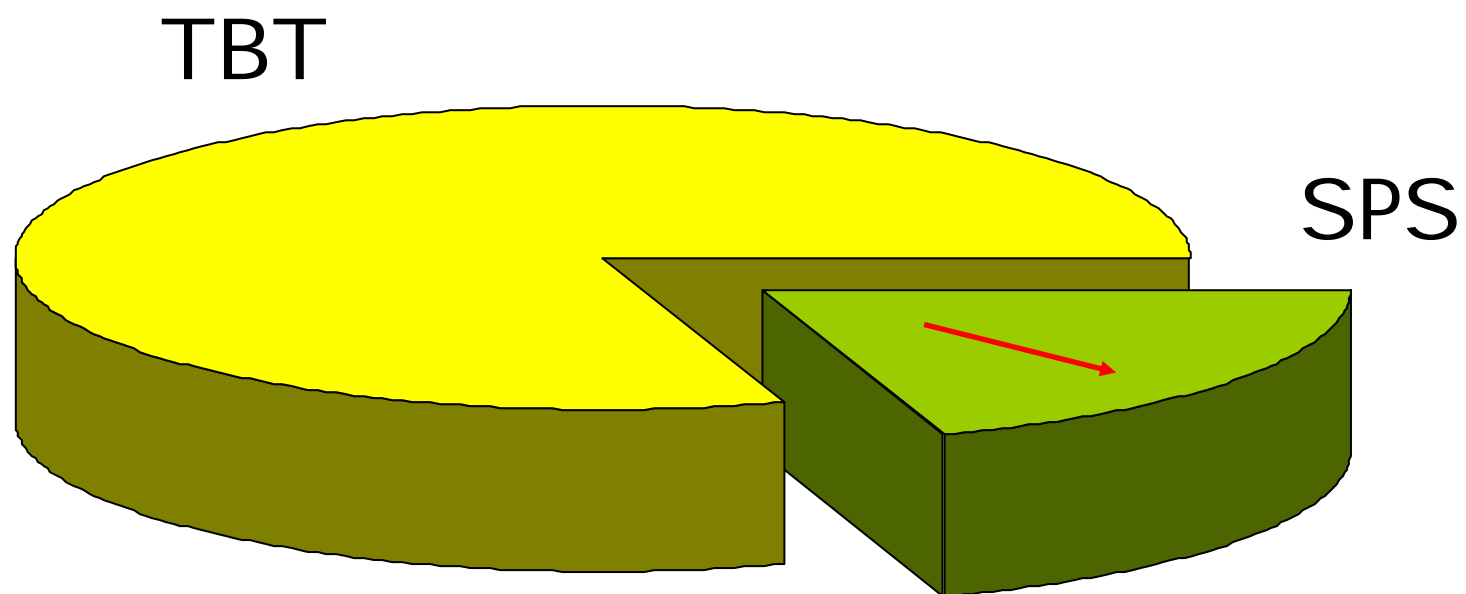
- Environment protection *per se*
- Consumer interests other than health related
- Nutrition
- Animal welfare



**Are not covered by the  
SPS Agreement...**

**...but often by the TBT  
Agreement**

# Since January 1995



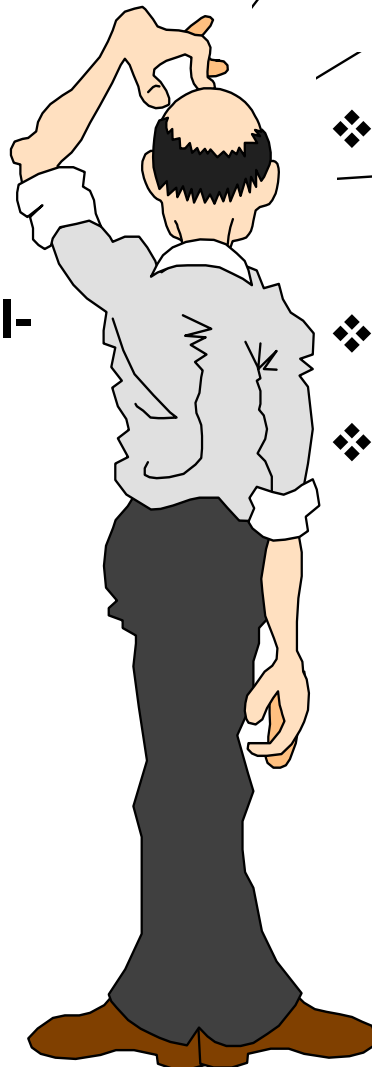
# SPS or TBT ?

## 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



# SPS or TBT?

**Regulation requiring  
that all milk  
products, with the  
exception of cheese,  
be pasteurized.**

**SPS**

**Regulation  
specifying what  
milk products can  
be called.**

**TBT**



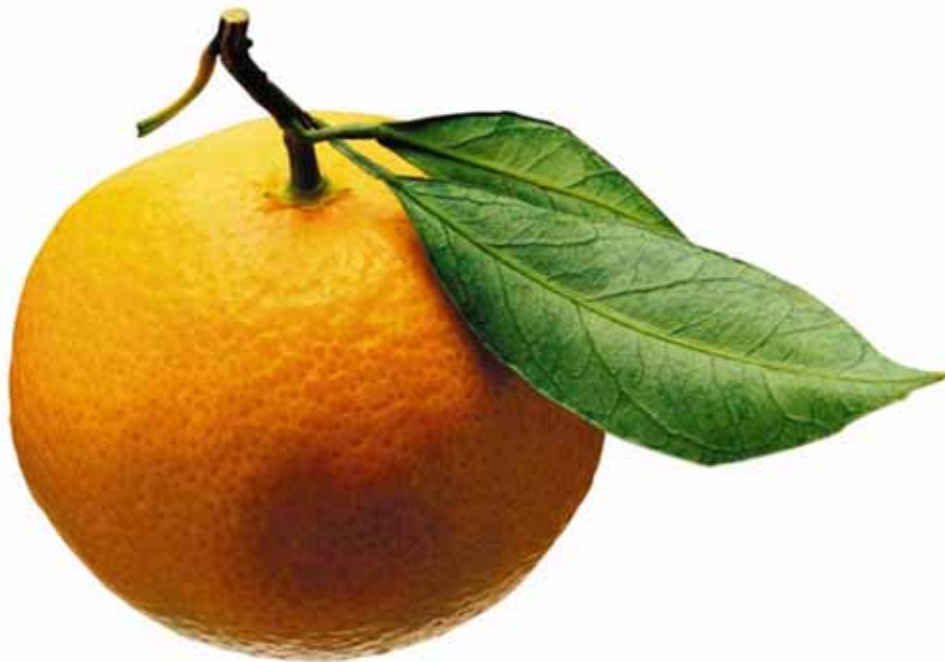


# **TBT**

**Minimum size of fruit**

**Maturity of fruit**

**Packaging**



# **SPS**

**Pesticide residues**

**Citrus canker**



# **TBT**

**Volume of bottle**

**Shape of bottle**

**Nutritional value  
(mineral content)**

# **SPS**

**Use of material that does not  
contaminate water**

# Basic Rights and Obligations

## SPS

- Right to restrain trade to protect health
- Measures based on scientific principles and risk assessment



## TBT

- Right to restrain trade when legitimate objective (*+illustrative list*)
- Technical regulations take into consideration *inter alia* available scientific and technical information

# Basic Rights and Obligations

## **SPS**

- **No unjustified discrimination**
- **No disguised restriction of trade**
- **Conformity with WTO presumed**

## **TBT**

- **Non-discriminatory**
- **No disguised restriction of trade**
- **No conformity presumption**



# Non discrimination

- (a) Are we comparing similar products?
- (b) If yes, are requirements different for domestic suppliers than for foreign suppliers?  
Or different for different foreign suppliers?
- (c) Under SPS: are the SPS conditions // risks different?



# Basic Rights and Obligations

## SPS

- No more trade restrictive than necessary to protect health
- Based on assessment of health risks
- Not maintained without sufficient scientific evidence



## TBT

- No more trade restrictive than necessary
  - Based on risks of non-fulfilment
- Not applied if circumstances changed
- *Based on product requirements not design or descriptive characteristics*



# **International Harmonization SPS & TBT**

- **Encouragement to use international standards**
- **Conformity with agreement presumed**
- **Right to be more stringent, but...**
  - **TBT requires that fundamental legitimate objectives cannot be met**
  - **SPS requires scientific justification *or* risk assessment**

# International Harmonization

- **SPS**

## **TBT**

- **Food safety**

FAO/WHO Food Standards

**CODEX** alimentarius

- CODEX

- **Animal health**

- OIE



- **Plant protection**

- IPPC



- **Relevant international standards**

# TBT Risk Assessment

**Risk of non-fulfilment due to “for instance”**

- Fundamental climatic or geographic factors**
- Fundamental technological problems**



# SPS - Risk Management

**Appropriate measure**

**Consistency**

**Minimize negative trade effects**

**Not more trade-restrictive than required**

**Technical and economic feasibility**

# SPS Risk Assessment

**Scientific methodology**

- Scientific evidence
- Production methods
- Inspection methods, etc.

**Economic factors (animals/plants)**

# Equivalence

## SPS

- Acceptance of equivalent measures
- Condition: achieve the appropriate level of health protection of importer
- Exporter to demonstrate
- Access to importer
- Bilateral and multilateral agreements

## TBT

- Acceptance of equivalent regulations
- Condition: adequately fulfill the objective of the importer
- Mutual recognition agreements
  - conformity *assessment procedures*



# SPS - Regionalization

**Adaptation of measures to risk profile**



**Pest- or disease-free areas**

**FMD, BSE, AI, ....**

**Exporter: burden of proof  
(...*reasonable access*)**

# Control, inspection and approval - Conformity evaluation procedures

## SPS

- **Non discriminatory**
- **Without undue delay**
- **If operate national system for approval of additives/tolerances: encourage interim use of international standards**

## TBT

- **Non discriminatory**
- **Non disguised restriction**
- **Harmonization – use internationally developed procedures**



# TBT -Transparency - SPS

Members shall



Establish an Enquiry Point  
AND  
Designate a Notification Authority

Notify other Members of new or changed  
regulations when



no international standard exists  
OR  
the new regulation is different  
than the international standard

AND

regulation may  
have significant  
effect on trade



# Special and differential treatment

## TBT & SPS

- Take into account special needs of LDC
- Specified, time-limited exceptions upon request
- Facilitate active participation LDC in international organizations

**TBT** → Flexibility international standards

**SPS** → { No flexibility international standards  
Delayed application

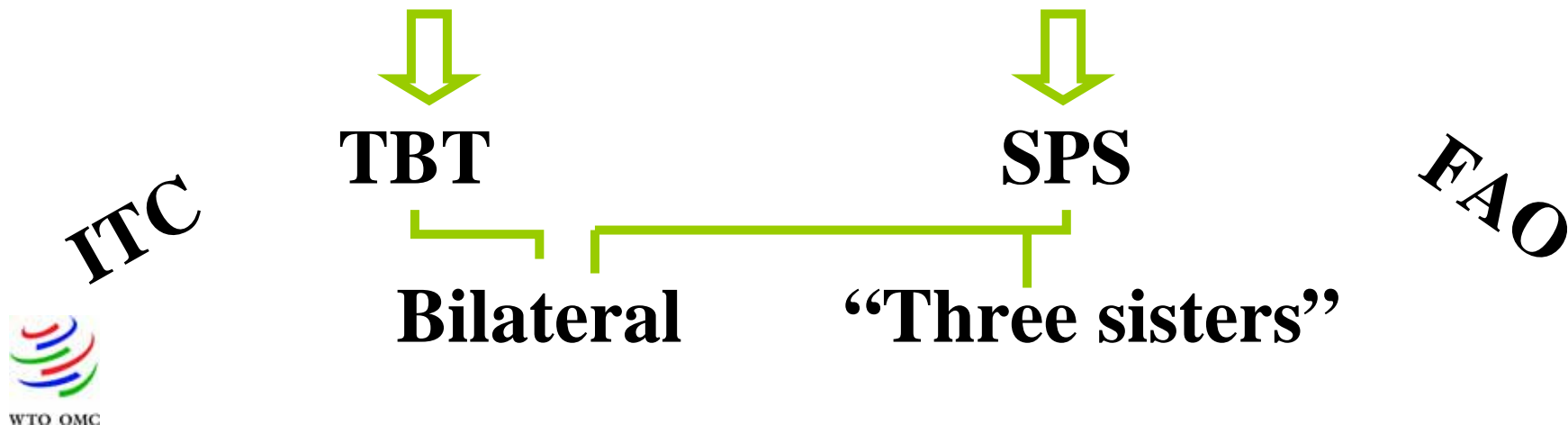


# Technical assistance

**Reinforcement services**

**Establishment regulatory bodies**

**Advice, credits, donations, grants**



# **TBT - Committee - SPS**

## **Implementation of the Agreement**

### **Information by Members**

#### **Trade problems**

#### **Discussion of notifications**

#### **Technical Assistance**

#### **Review Agreement**

### **SPS**

**Monitoring  
Consistency**

### **TBT**

#### **Standards**

**Technical regulations  
Conformity assessment**

# **STANDARDS AND TRADE DEVELOPMENT FACILITY (STDF)**

**Joint initiative of FAO, OIE, World Bank, WHO  
and WTO**

**Objective of STDF - assist developing  
countries enhance capacity to implement  
international SPS standards**

.... thus improve human, animal health and plant  
protection enable new or maintain access to  
markets





# STDF – Financing available

- Grants for preparation of projects (US\$ 20,000)
- Grants for projects (US\$ 300,000 to 600,000)
- Least developed and other low income countries – 10% contribution
- Other developing countries – 30% contribution
- Projects focussed on collaboration, innovation, best practices

Web site: [www.standardsfacility.org](http://www.standardsfacility.org)



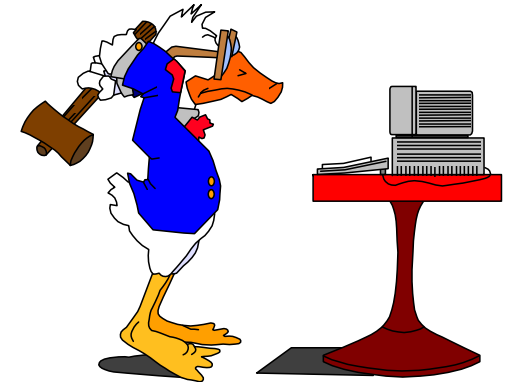
**STDF Secretariat: [STDFSecretariat@wto.org](mailto:STDFSecretariat@wto.org)**

# Role of Codex in WTO

- Develops relevant international standards (explicitly under SPS, by implication under TBT)
- Develops risk assessment techniques (SPS)
- Exhortations for WTO Members to participate
- Coordinate re: monitoring use of international standards (SPS)
- Identifies relevant scientific experts for WTO dispute cases (especially SPS)
- Secretariat – to – Secretariat relationship
- Coordination in technical assistance

# WTO Dispute settlement

- **WTO unified dispute settlement procedures**
  - GATT XXII: Consultation
  - GATT XXIII: Nullification or impairment
  - Memorandum of understanding
- **Possibility technical experts (group)**
- **SPS: right to resort to dispute settlement mechanisms of other IO**

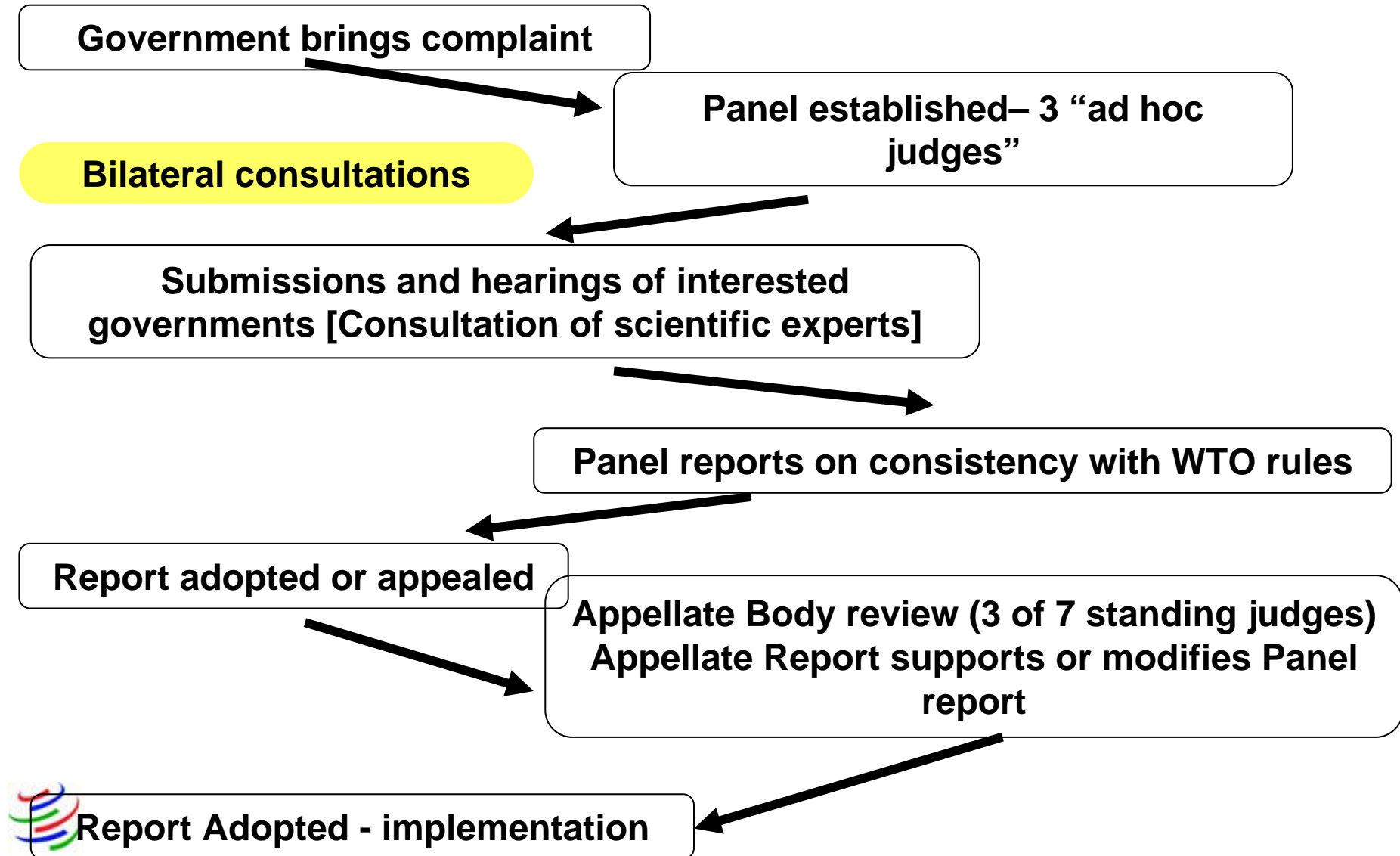


# WTO Dispute Settlement



- **Coverage: goods, services and intellectual property**
- **Procedures: strict time limits**
- **Adoption of reports by the Panel: inverted consensus**
- **Examination by the Appellate Body**
- **Non-compliance with recommendations**

# WTO Dispute Settlement



# Codex in WTO Disputes

- **US/ Canada case against EC ban on hormone-treated meat (SPS)**
- **Peru case against EC designation of “sardines” (TBT)**
- **US / Canada / Argentina case against EC on GMOs (SPS)**

# SPS Disputes



- **Food safety:**
  - US/Canada vs. EC - Hormones (WT/DS26, 48)
  - US/Canada/Argentina vs. EC - Biotech (WT/DS291, 292, 293)
  - EC vs. US/ Canada - Retaliation on Hormones (WT/DS320, 321)
- **Animal health:**
  - Canada / US vs. Australia - Salmon (WT/DS18, 21)
- **Plant Protection:**
  - US vs Japan - Variety Testing (WT/DS76)
  - US vs. Japan – Fire blight (WT/DS245)
  - Philippines vs. Australia - Tropical Fruit (WT/DS270)
  - New Zealand vs. Australia - Apples (WT/DS367)



# Hormones dispute - SPS

Codex standards existed for 5 of 6 hormones

EC failed to justify not basing its measure  
(prohibition) on Codex standards

– because failed to demonstrate that measure  
was based on an appropriate risk assessment



# Sardines dispute - TBT

Codex standard for what species could be called “sardines”

EC failed to justify not basing its labeling requirements on Codex

– because could not demonstrate that Codex standard would not meet EC’s “legitimate objectives”





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