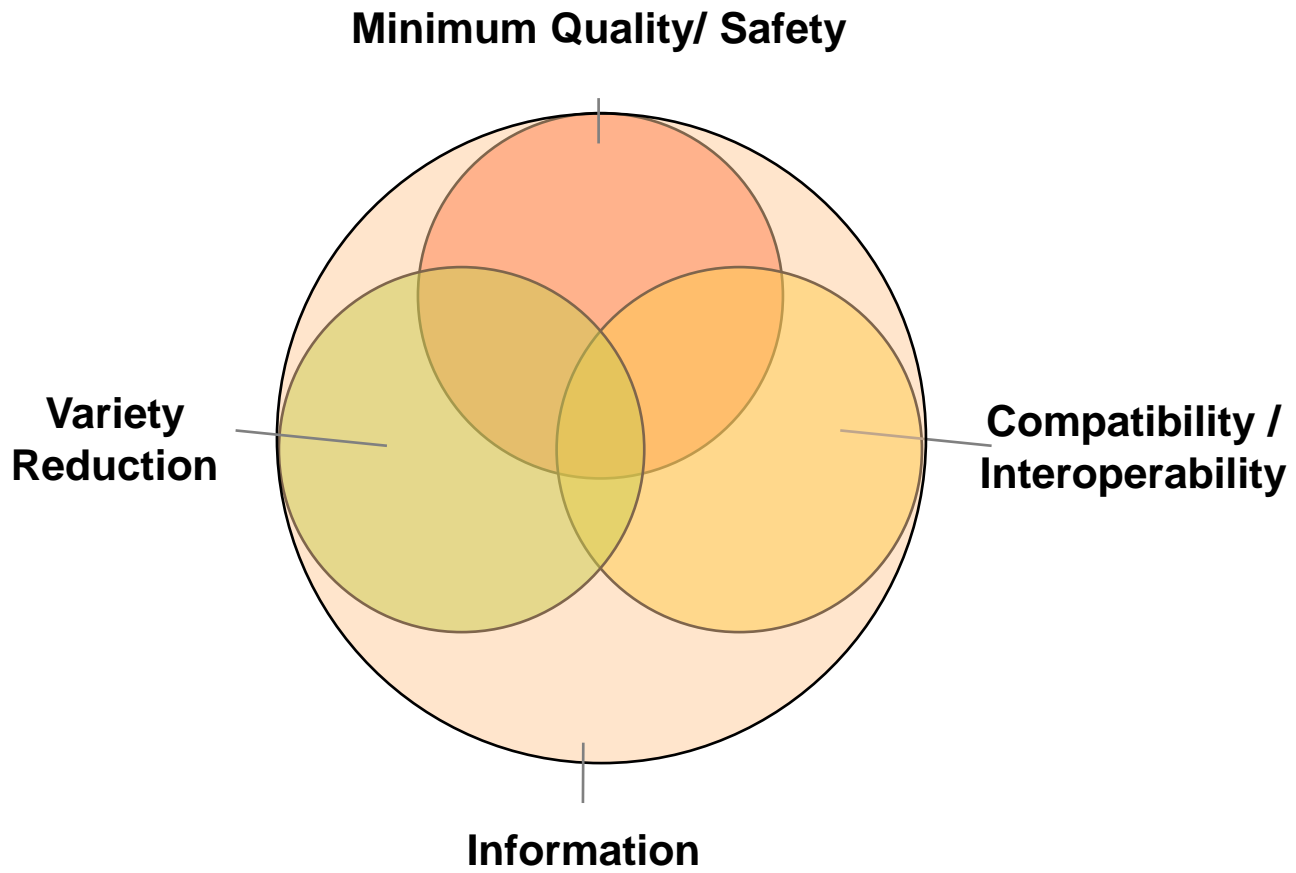


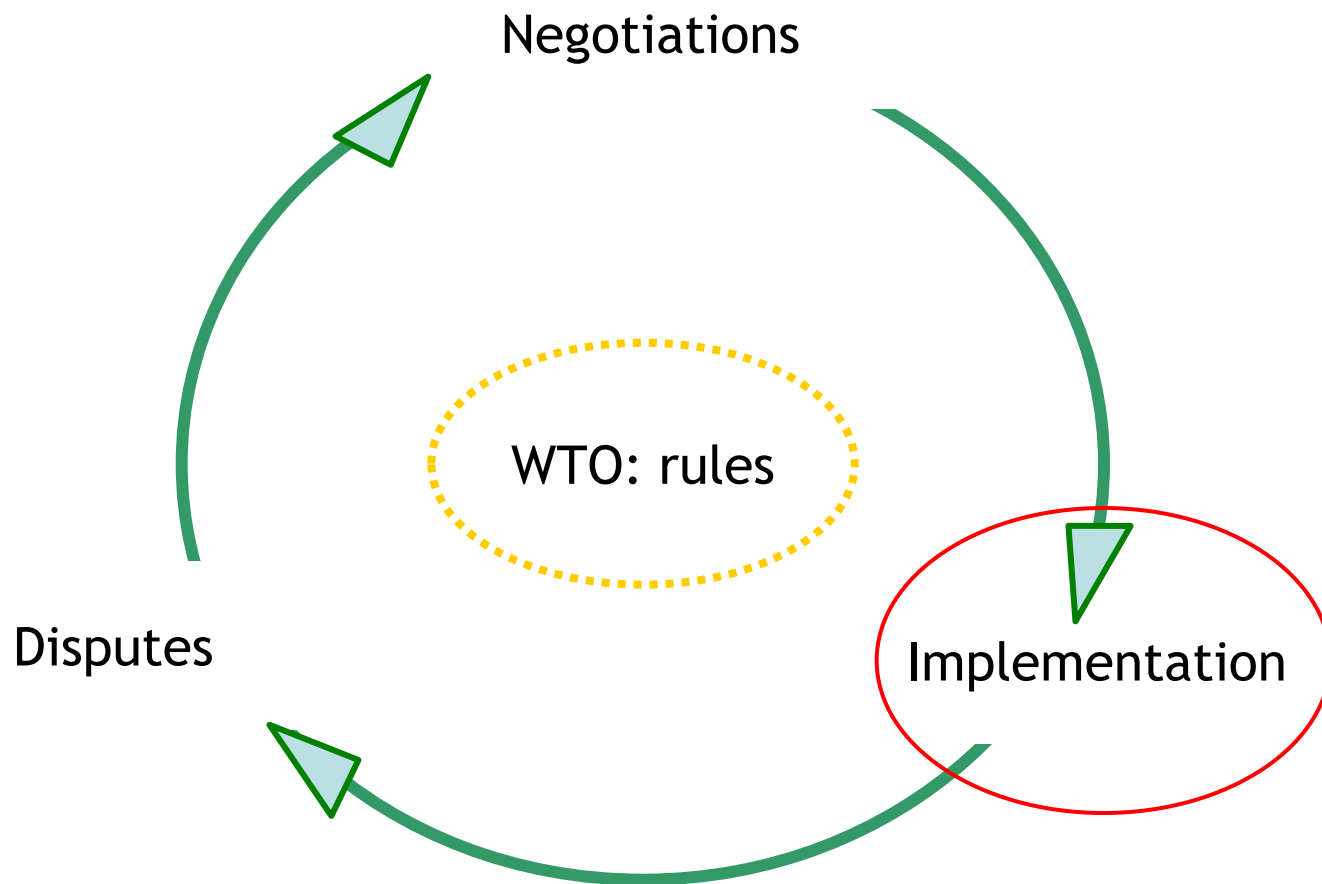


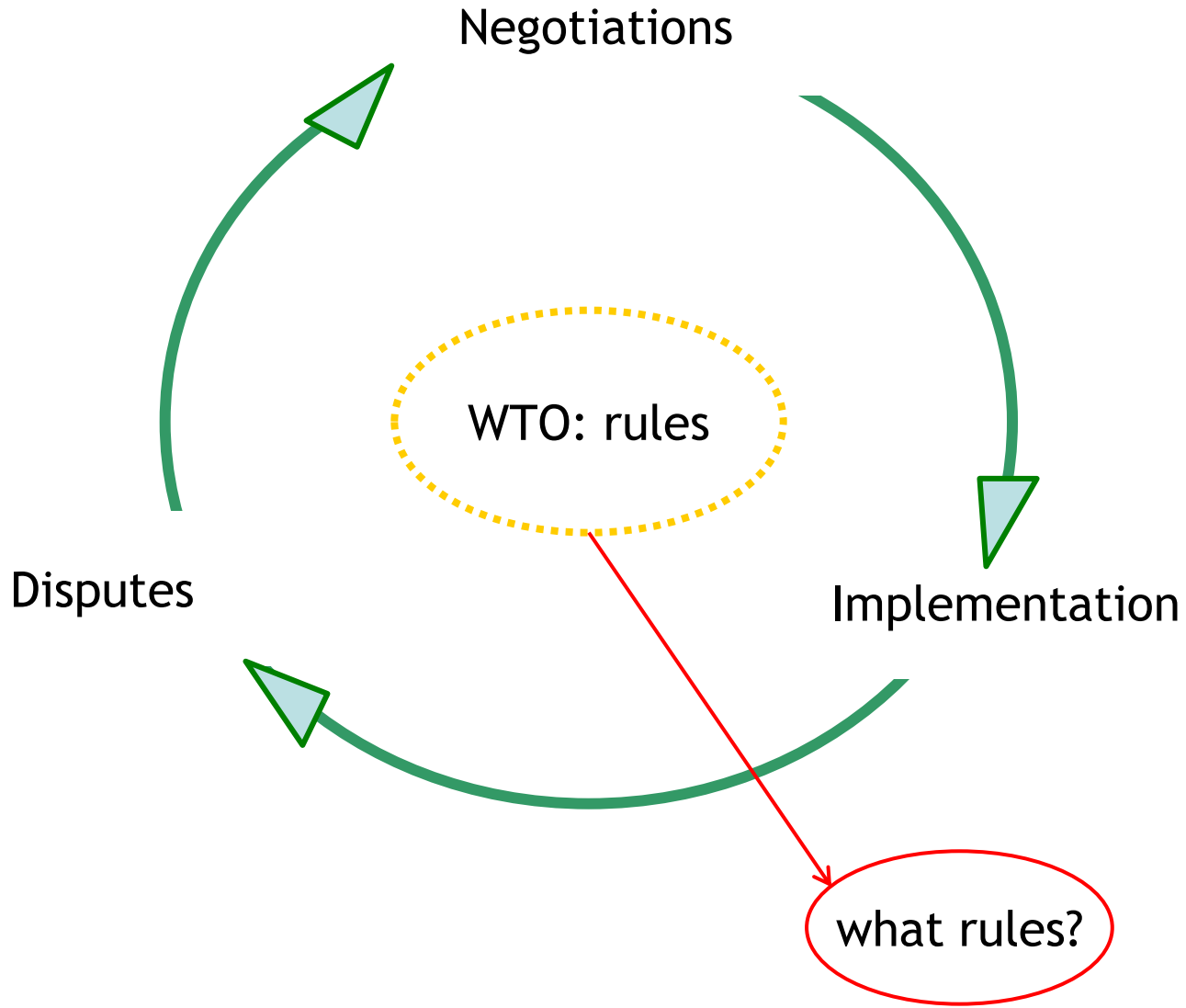
A closer look at:
“international standards”
and the TBT Agreement



Why use standards?









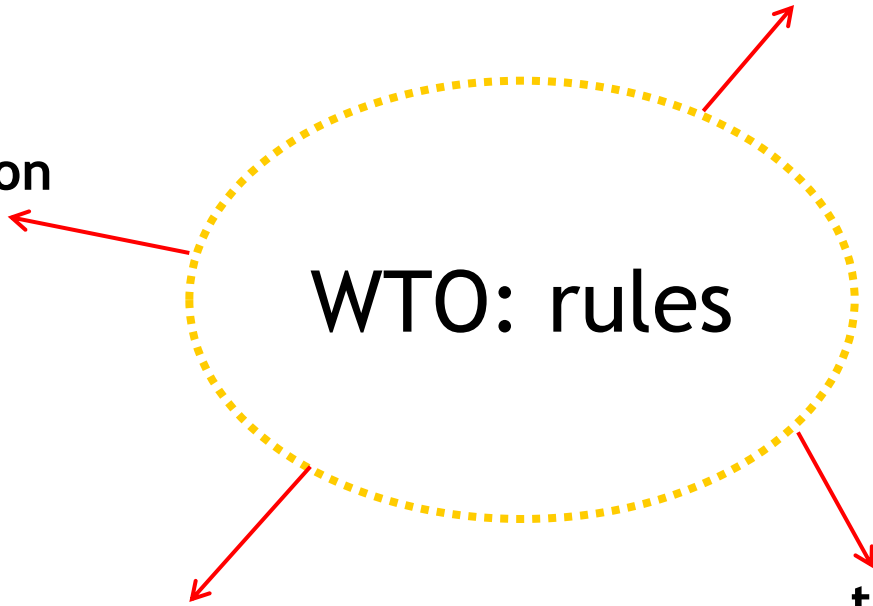
non-discrimination

harmonization

WTO: rules

transparency

**avoiding unnecessary
barriers to trade**





avoiding
unnecessary
obstacles to
international trade

allowing for regulatory
autonomy to protect
legitimate interests



use of international standards



The use of international standards

“harmonization”



Definition of a "standard" (in TBT Agreement)

recognized body

that provides, for common and repeated use

rules, guidelines or characteristics
for products or related processes and production methods

with which compliance is not mandatory

TBT Agreement, Annex 1, para 2



The WTO does not set standards!



On Members

- Members shall use relevant international standards, guides or recommendations as a basis for technical regulations and conformity assessment procedures (TBT 2.4)
- Rebuttable presumption (TBT 2.5)
- Participation in the work of international standardizing bodies (TBT 2.6)



Article 2.4 of the TBT (first sentence)

“Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations ...”



Article 2.5 of the TBT (second sentence)

"... Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.."



Which international standards?

- The TBT Agreement leaves each Member with the choice to decide which international standard is “relevant” in a particular situation,



TBT Agreement contains separate disciplines for “standardizing bodies”. These are set out in the Agreement’s Code of Good Practice (CGP)

(Annex 3 of the TBT Agreement)



Central Government Standardizing bodies

(TBT Agreement, Article 4.1, first sentence)

- "Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). ."



Non-governmental standardizing body

(TBT Agreement, Article 4.1, second sentence)

- "They [Members] shall take such reasonable measures as may be available to them to ensure that local government and **non-governmental standardizing bodies** within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice."



TBTC Decision on International Standards (Nov 2000)

WORLD TRADE ORGANIZATION	G/TBT/9 13 November 2000
	(00-4811)
Committee on Technical Barriers to Trade	

- Improve the quality of international standards
- Ensure the effective application of the Agreement
- Clarify and strengthen the concept of international standards under the Agreement
- Contribute to the advancement of its objectives



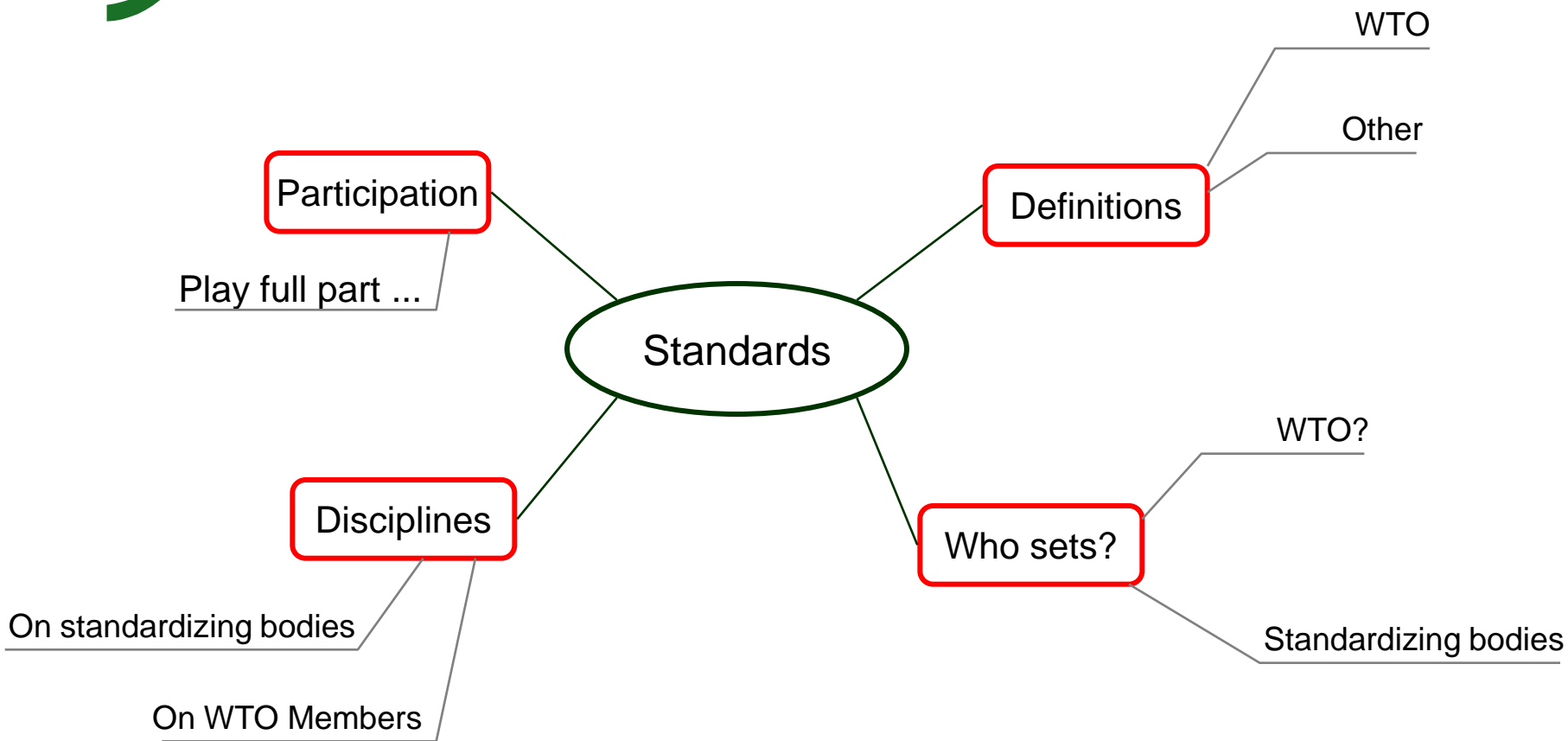
TBTC Decision on International Standards (Nov 2000)

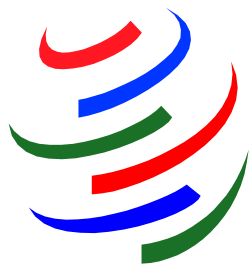
WORLD TRADE ORGANIZATION	G/TBT/9 13 November 2000
	(00-4811)
Committee on Technical Barriers to Trade	

- Principles:
 - transparency
 - openness
 - impartiality and consensus
 - relevance and effectiveness
 - coherence and
 - development dimension



WTO ↔ standards





EC - Sardines (2002)





EC – Sardines (2002)

EC – Trade Description of Sardines (Peru)

(first TBT case
WT/DS231/AB/R
26 September 2002)



Sardina pilchardus Walbaum ("Sardina pilchardus")



“European Sardine”

found mainly:

- around the coasts of the Eastern North Atlantic Ocean
- the Mediterranean Sea
- in the Black Sea



Only products prepared exclusively from fish of the species "Sardina pilchardus Walbaum" may be marketed as preserved sardines in the EC;



Peru

- Peru exports preserved products prepared from *Sardinops sagax sagax* ("*Sardinops sagax*").

"Peruvian Sardine"



- This species is found mainly in the Eastern Pacific Ocean, along the coasts of Peru and Chile.



Sardina Pilchardus



Sardinops Sagax





EC: Sardina pilchardus

... only *Sardina pilchardus* may be marketed as preserved sardines in EC (Article 2)



Peru: *Sardinops sagax*



Is it a “technical regulation”?



Technical Regulation

“Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

TBT Agreement, Annex 1, para 1



Technical Regulation

document
which lays down
product characteristics
or
their related
processes and production methods
with which compliance is mandatory

...

TBT Agreement, Annex 1, para 1 (words)

[Jump to PPM](#)



What did Peru claim?



Article 2.4

“2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations”



Article 2.4

“2.4 Where technical regulations are required and **relevant international standards exist** or their completion is imminent, Members **shall use them**, or the relevant parts of them, **as a basis** for their technical regulations”



Article 2.4

“2.4 ... **except** when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the **legitimate objectives pursued**, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”



The heart of Article 2.4

“the heart of Article 2.4 of the TBT Agreement is a requirement that Members use international standards as a basis for their technical regulations”

(para. 274)



FAO/WHO Food Standards

CODEX alimentarius

- Standard adopted 1978
- For preserved sardines and sardine-type products
- Regulates matters such as presentation, essential composition and quality factors, food additives, hygiene and handling, labelling, sampling, examination and analyses, defects and lot acceptance
- From 21 fish species



Codex Alimentarius Commission

(Section 6)

6. LABELLING

...

6.1 NAME OF THE FOOD

The name of the product shall be:

- 6.1.1 (i) "Sardines" (to be reserved exclusively for *Sardina pilchardus* (Walbaum)); or
- (ii) "X sardines" of a country, a geographic area, the species, or the common name of the species in accordance with the law and custom of the country in which the product is sold, and in a manner not to mislead the consumer.

(Codex Alimentarius (Secretariat of the Joint FAO/WHO Food Standards Programme, 2001), Volume 9A, Fish and Fishery Products, pp. 75–81)



Coverage of Codex Standard (21 fish species)

Sardina pilchardus

Sardinops melanostictus, *S. neopilchardus*, *S. ocellatus*,

S. sagax[,] *S. caeruleus*

Sardinella aurita, *S. brasiliensis*, *S. maderensis*, *S. longiceps*, *S. gibbosa*

Clupea harengus

Sprattus sprattus

Hyperlophus vittatus

Nematalosa vlaminghi

Etrumeus teres

Ethmidium maculatum

Engraulis anchoita, *E. mordax*, *E. ringens*

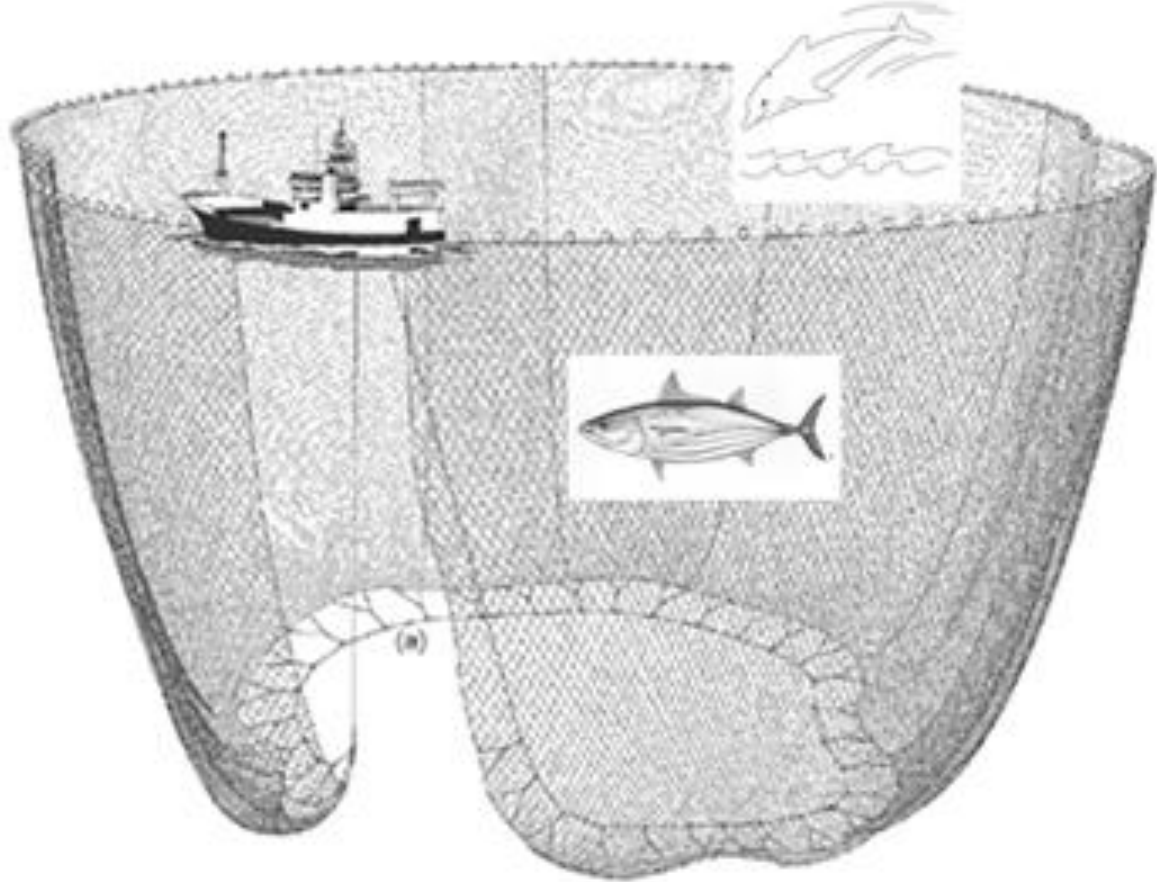
Opisthonema oglinum.



The EC Regulation was found
inconsistent with Article 2.4 of the
TBT Agreement



Lessons?









15%



24%



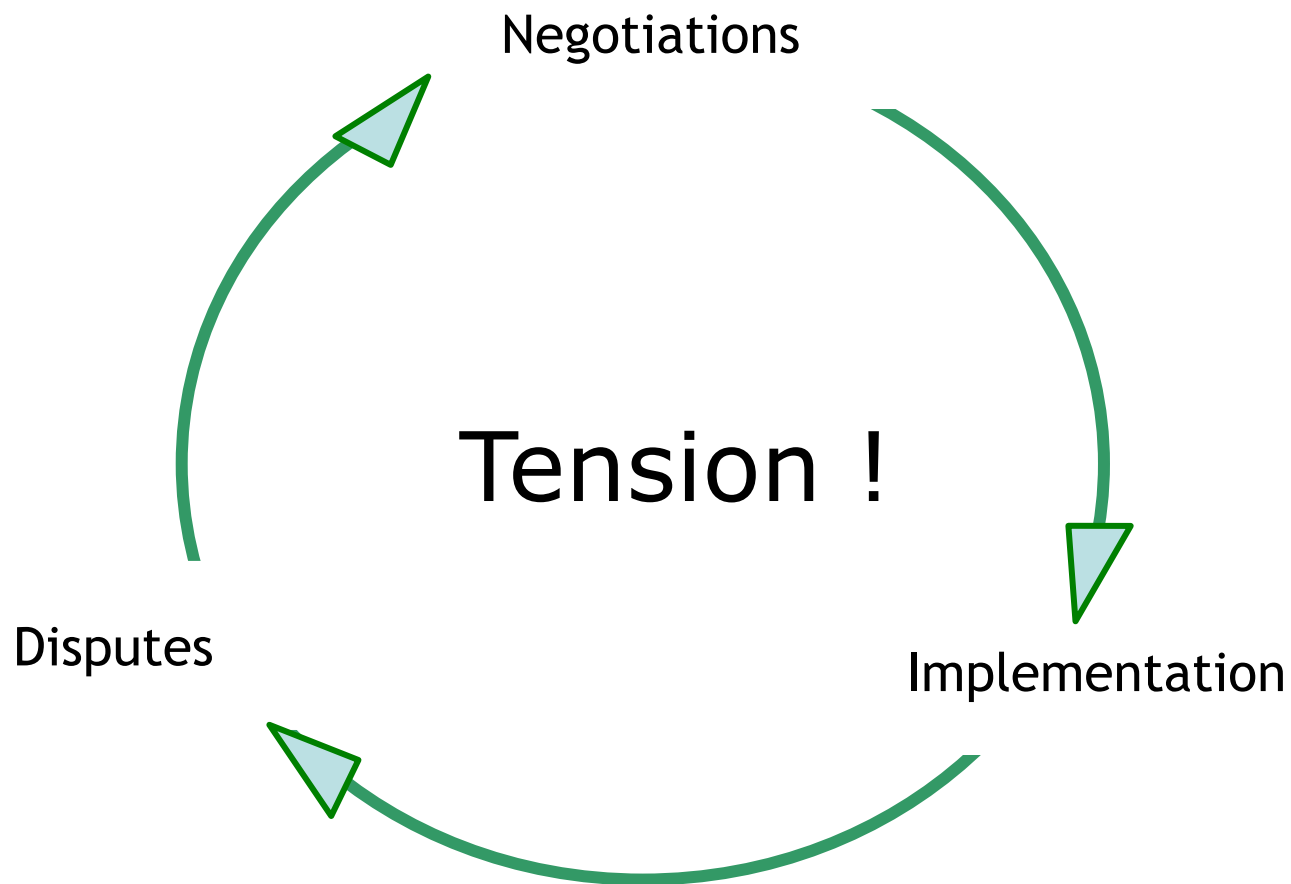
fresh or thawed?

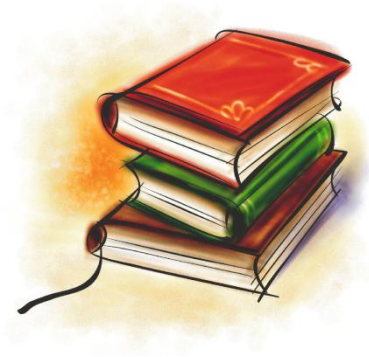






to name or not to name?





Obligation



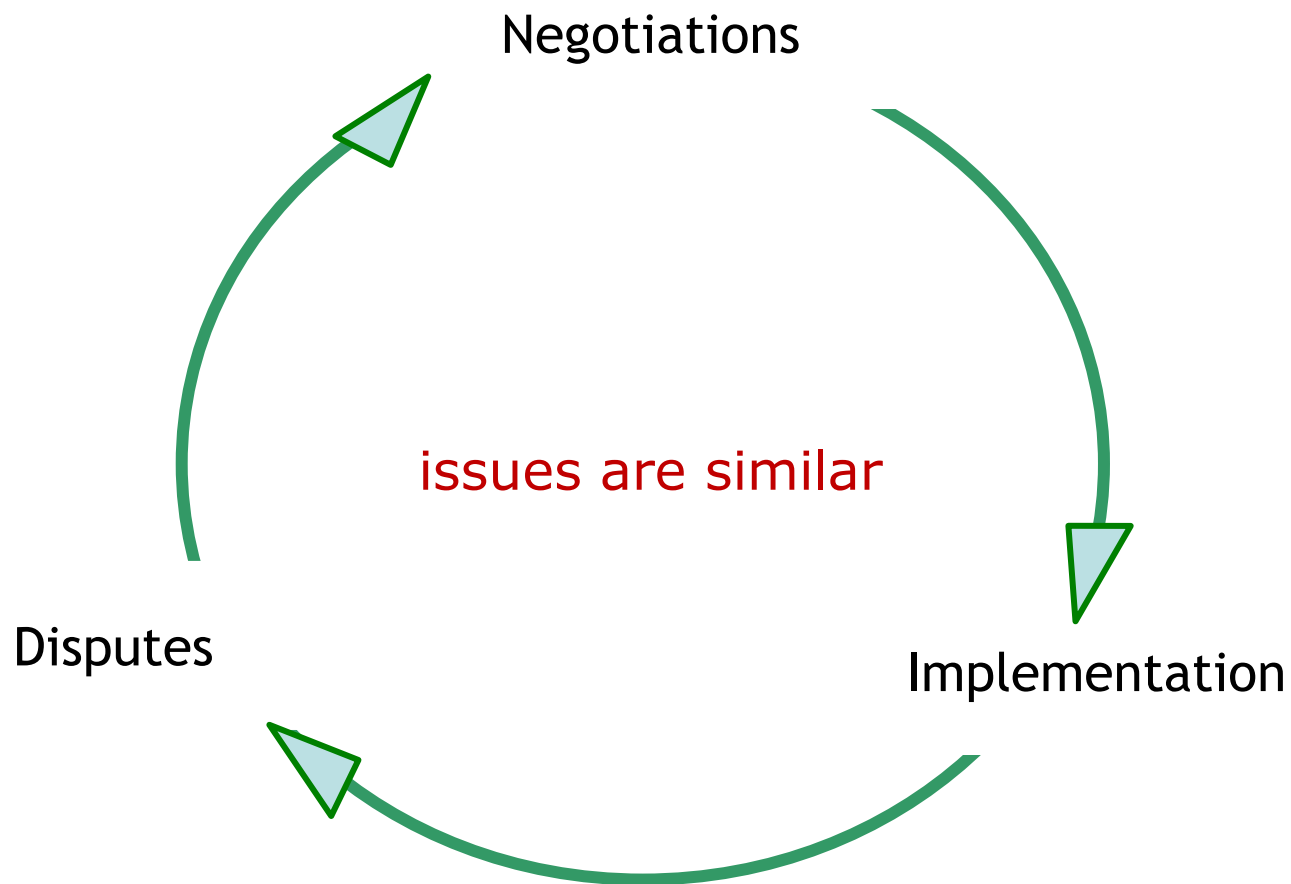
Flexibility



“shall use”
(international standards)



“relevant”, “as a basis”, “appropriate”,
“effective”, special and differential
treatment...





(1) How to use (the standard)
in regulation?



(2) Does it (the standard) achieve the desired regulatory objective?



(3) What if there is no one obvious international “candidate” standard?



(4) new technology – no standard?
(time-lag, need for coherence)