



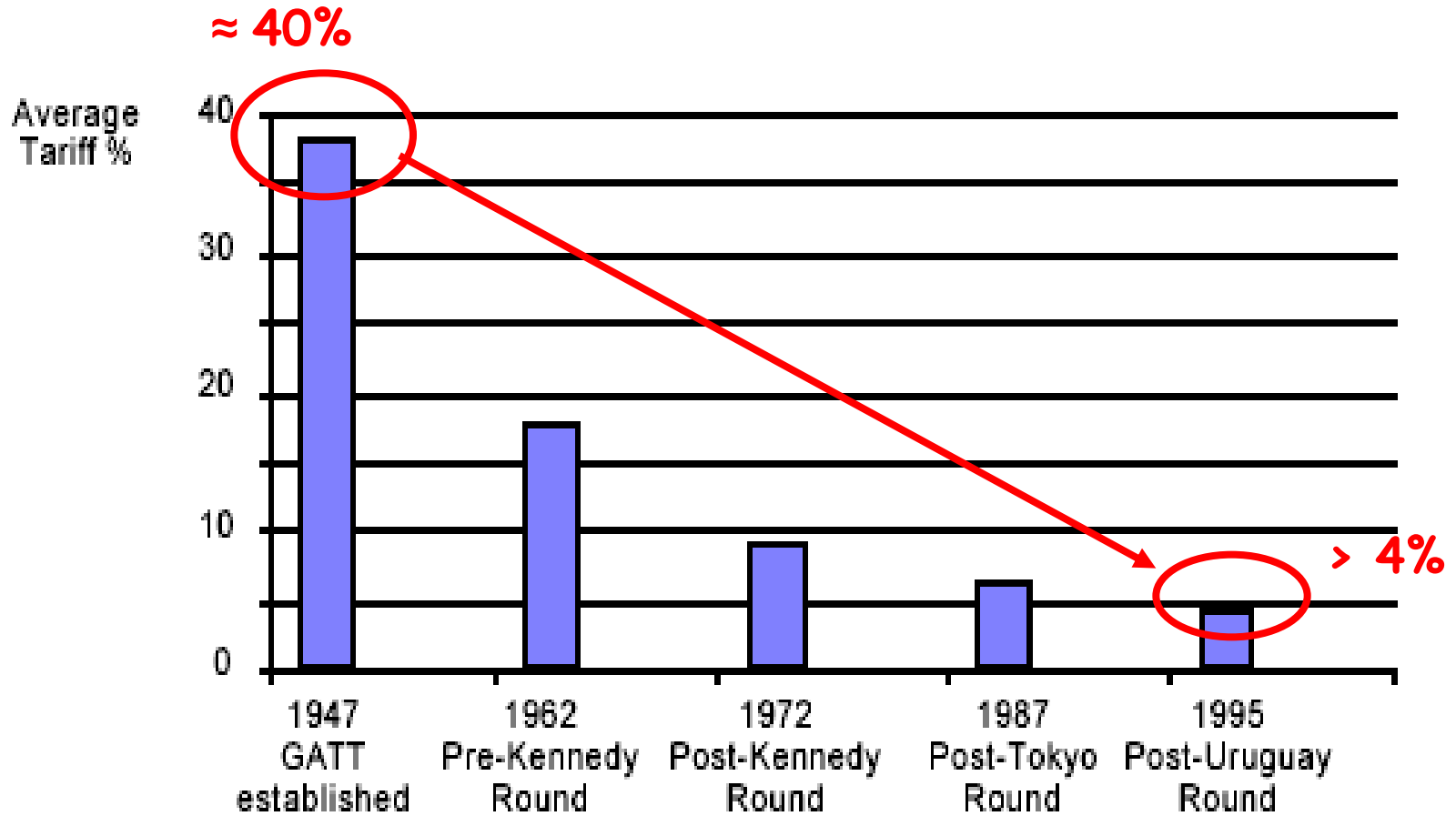
Non-Tariff Measures: Agreements on SPS and TBT

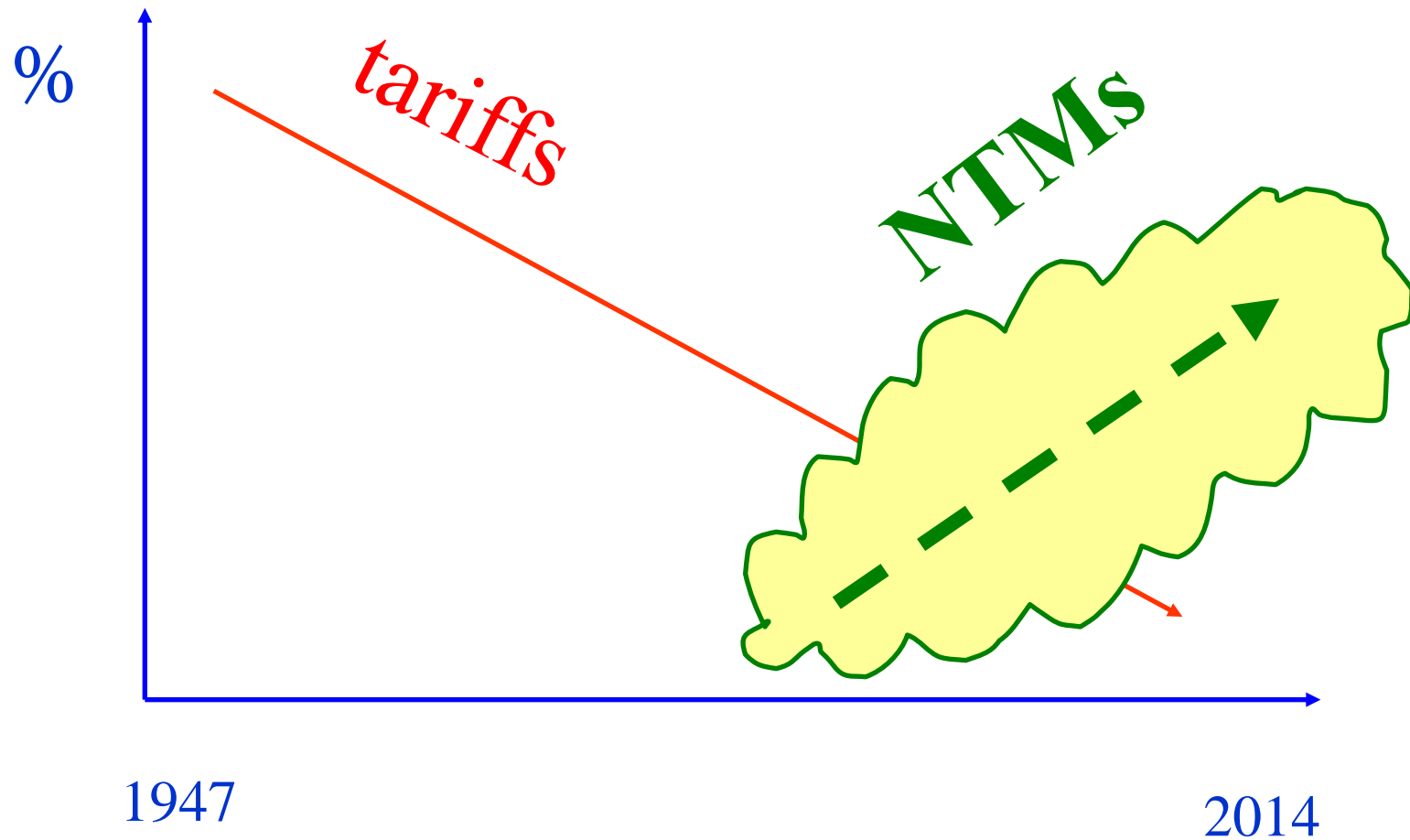
Prof. Sajal Mathur

CWS, IIFT, New Delhi

19-21 May 2014

Import weighted tariffs industrial products





Trade Rounds

| <i>Year</i> | <i>Place / name</i> | <i>Subjects covered</i> | <i>#</i> |
|-------------|---------------------|--|----------|
| 1947 | Geneva | Tariffs | 23 |
| 1949 | Annecy | Tariffs | 13 |
| 1951 | Torquay | Tariffs | 38 |
| 1956 | Geneva | Tariffs | 26 |
| 1960-1961 | Dillon Round | Tariffs | 26 |
| 1964-1967 | Kennedy Round | Tariffs and anti-dumping measures | 62 |
| 1973-1979 | Tokyo Round | Tariffs, NTMs (SCM, CVA, M-LIC, TBT), GPA and other "plurilateral agreements" | 102 |
| 1986-1994 | Uruguay Round | Tariffs, NTMs, rules, services, IPR, DSU, textiles, agriculture, creation of WTO | 123 |
| 2001 - | Doha Negotiations | AG, NAMA, services, rules, DSU environment, development, +/- ? | 159 |



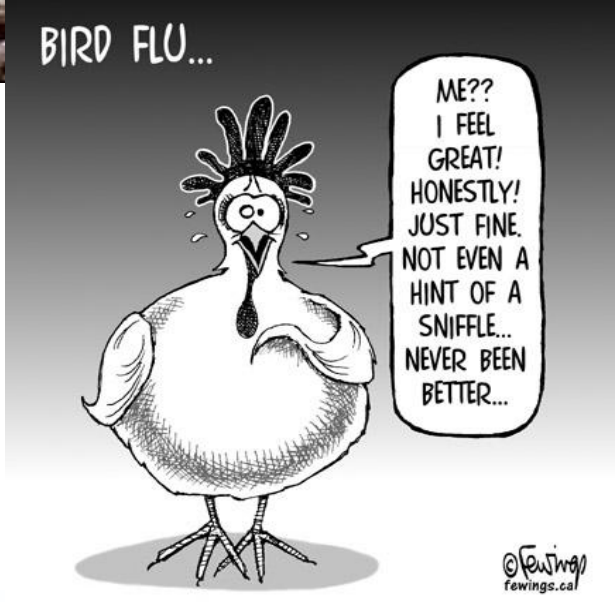
BSE



Bird Flu



Plant Pests



BIRD FLU...



Swine flu



MRL



POLICE NOTICE
FOOT & MOUTH
DISEASE
Keep Out

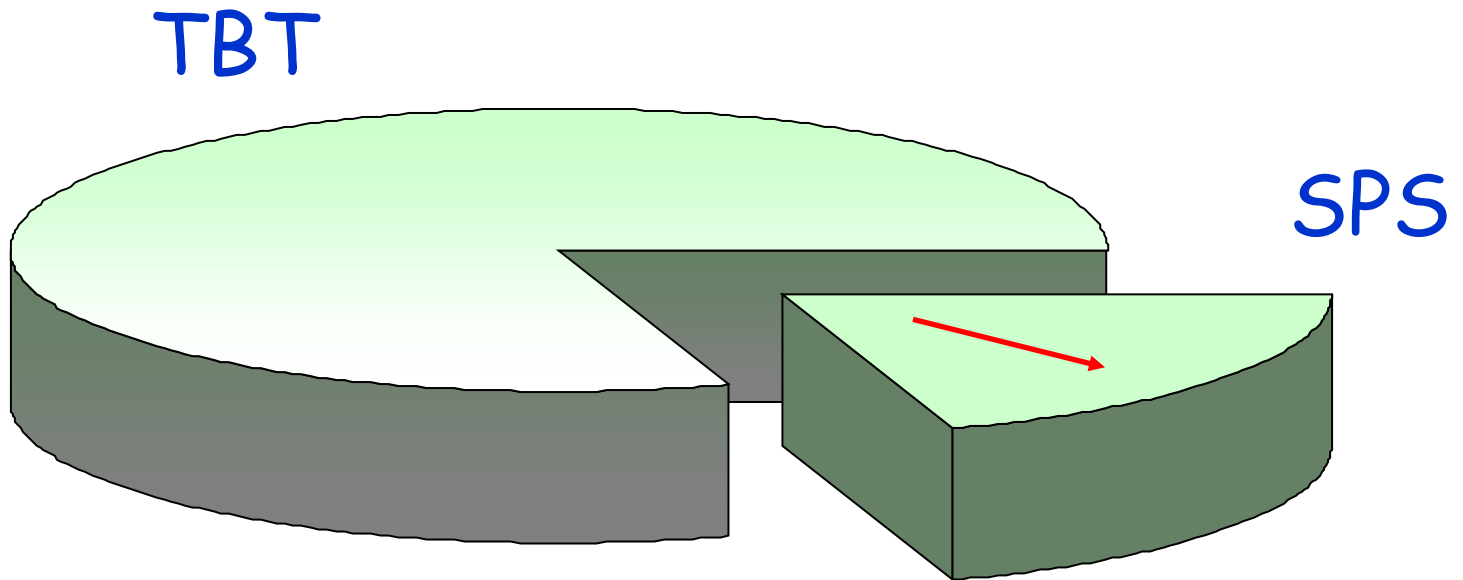
Non Tariff Measures (NTMs)

WTO Agreements on:

- Technical Barriers to Trade (TBT)
- Sanitary and Phytosanitary Measures (SPS)

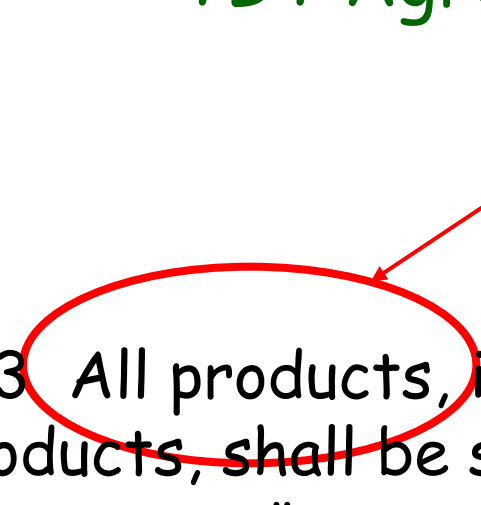


WTO SPS and TBT Agreements



TBT Agreement is applicable to:

"1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement."

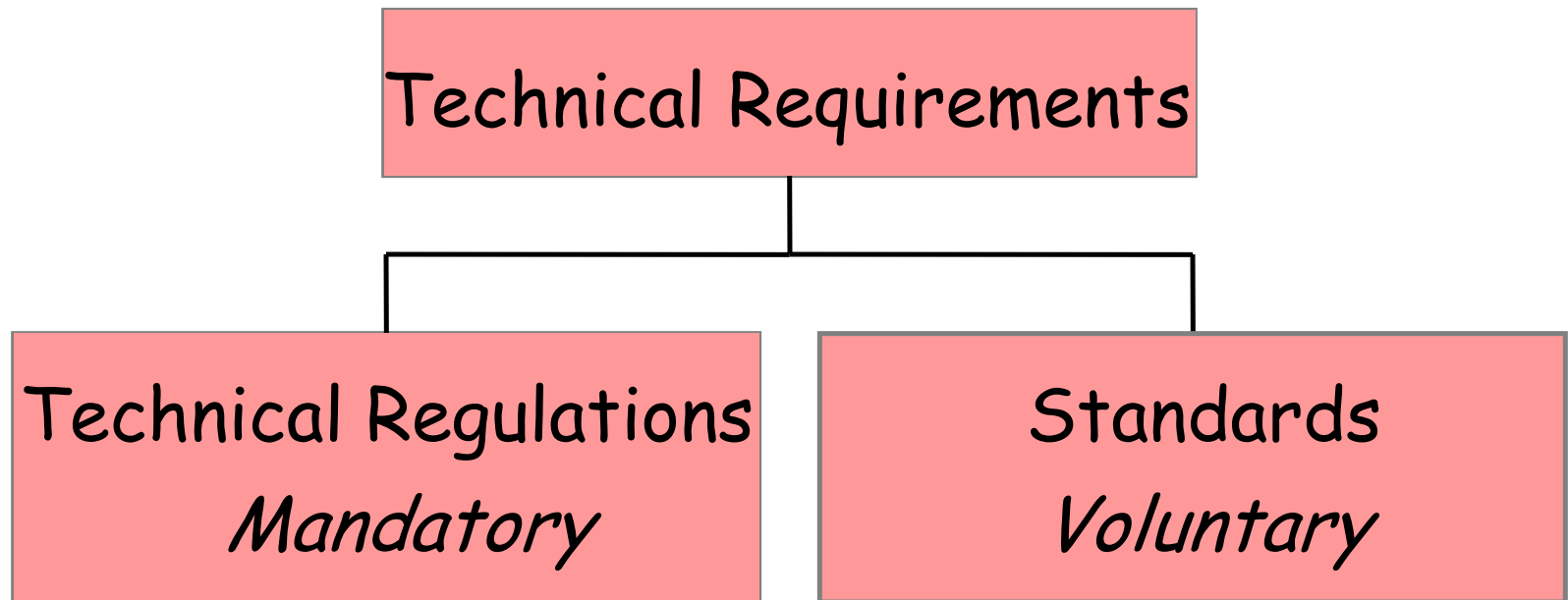


TBT Measures: Definitions

- Technical regulations and standards
- Difference: Technical regulation - Standard?
- Conformity Assessment Procedures

TBT: Definitions

Annex 1



What is conformity assessment?

- Measures taken by manufacturers, their customers, regulatory authorities, and independent third parties to assess compliance with standards and technical regulations.

TBT: Basis

- WTO Members **have the right to adopt** technical regulations, standards and conformity assessment procedures....
- BUT: they must not constitute **unnecessary** obstacles to trade

TBT Agreement

avoidance of
unnecessary obstacles to
international trade



allowing for regulatory
autonomy to fulfill
legitimate objectives

promotion of **international standards**

TBT: Legitimate objectives

- National security
- Prevention of deceptive practices
- Human health or safety
- Animal and plant life or health
- Environment

TBT: unnecessary obstacles to trade

Three steps:

- Legitimate objective?
- Can this objective be achieved with an alternative measure that is less trade-restrictive?
- What are the risks of non-fulfillment of the originally proposed measure?

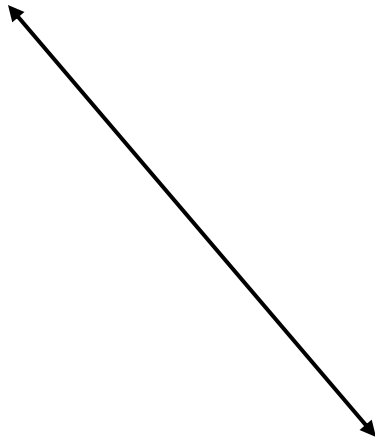
Consequently, where possible

Performance-based

preferable to

design-based or descriptive

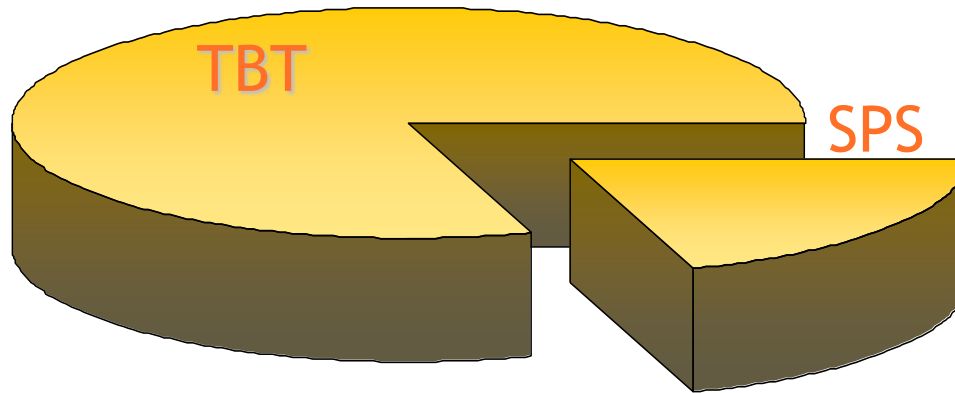
product requirements (TBT)



The TBT Agreement

It applies to all

- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures



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

SPS Agreement

The right to protect human, animal or plant life or health



Avoiding unnecessary barriers to trade

Science –based/Risk Assessment
International standards (Codex/IPPC/OIE)

SPS: Basis

- Members have the **right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal and plant life or health...
- BUT: - no unjustifiable discrimination
 - no disguised restrictions on international trade
 - Science-based / International Standards

SPS Measures

Definition - Annex A

A measure taken to protect:

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

All types of measures with these purposes, including:

- ✓ product criteria
- ✓ quarantine measures
- ✓ processing requirements
- ✓ certification
- ✓ inspection
- ✓ testing
- ✓ health-related labeling

*It is not the type of measure that counts,
nor the products involved, but rather its objective!*

The difference
between
SPS and TBT measures

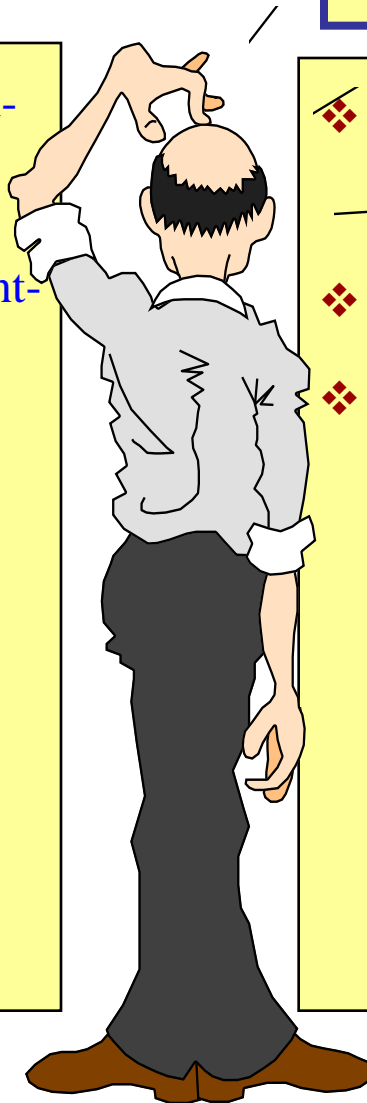
SPS or TBT ?

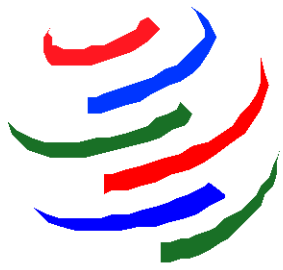
SPS Measures

- ❖ 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





Article 1.5 of the **TBT** Agreement:
(Article 1 - General Provisions)

“The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.”



Article 1.4 of the SPS Agreement:

(Article 1 - General Provisions)

“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. ”

The definition of an
SPS measure

Definition of an SPS Measure

to protect:

human or animal
life

human life

animal or plant life

a country

from:

risks arising from additives,
contaminants, toxins or disease-causing
organisms in their food, beverages,
feedstuffs;

plant- or animal-carried diseases
(zoonoses);

pests, diseases, or disease-causing
organisms;

damage caused by the entry,
establishment or spread of pests

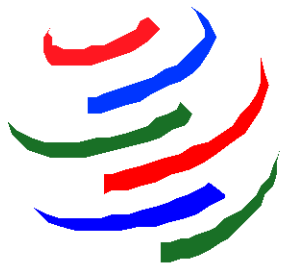
Definition of an SPS measure (1:4) (food safety)

to protect:

human or animal
life

from:

risks arising from additives,
contaminants, toxins or disease-
causing organisms in their food,
beverages, feedstuffs;



WORLD TRADE ORGANIZATION

G/SPS/N/COL/1

21 April 1997

(97-1707)

Committee on Sanitary and Phytosanitary Measures

NOTIFICATION

1. **Member to Agreement notifying:** **COLOMBIA**
If applicable, name of local government involved:
2. **Agency responsible:** National Council for Standards and Quality
3. **Products covered (tariff item number(s) as specified in national schedules deposited with the WTO. ICS numbers may be provided in addition, where applicable):** **Utensils with a non-stick coating**
4. **Title and number of pages of the notified document:** Draft Request to Give Mandatory Force to Colombian Technical Standard 2169 (Articles for Domestic Use. Utensils with a Non-Stick Coating for Cooking, Frying and Baking) (Fourth Update) in Respect of Requirements Concerning Coating and Base Materials; Lead and Cadmium Content; Adhesion of the Paint and Non-Stick Surface to the Base Material; Strength of Handles, Holders and Fastenings; Nominal Capacity; Temperature of Handles, Holders and Knobs (31 pages)

FOOD SAFETY

- “Utensils with a non-stick coating”
- “... lead and cadmium content ...
adhesion of the paint ... temperature
...”



WORLD TRADE ORGANIZATION

G/SPS/N/IND/56
27 August 2008

(08-3983)

Committee on Sanitary and Phytosanitary Measures

Original: English

NOTIFICATION

- 1. Member to Agreement notifying:** INDIA
If applicable, name of local government involved:
- 2. Agency responsible:** Ministry of Health and Family Welfare, Government of India
- 3. Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers should be provided in addition, where applicable):** Maximum Residues Limits (MRLs) of different pesticides in carbonated water
- 4. Regions or countries likely to be affected, to the extent relevant or practicable:** All trading partners exporting food items that contains label to India.

FOOD SAFETY

- “carbonated water” (pepsi, coca cola etc.)
- “... Maximum residue limits (MRLs) ... pesticides in carbonated water...”

Definition of an SPS measure (2:4)

to protect:

human life

from:

plant- or animal-carried diseases
(zoonoses);



WORLD TRADE ORGANIZATION

G/SPS/N/JPN/46
30 July 1999

(99-3225)

Committee on Sanitary and Phytosanitary Measures

Original: English

NOTIFICATION

1. Member to Agreement notifying: **JAPAN**
If applicable, name of local government involved:
2. Agency responsible: **Ministry of Health and Welfare; Ministry of Agriculture, Forestry and Fishery**
3. Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers may be provided in addition, where applicable). Regions or countries likely to be affected, to the extent relevant or practicable: **Non-human primates. All countries exporting non-human primates to Japan**

PROTECT HUMAN LIFE FROM PLANT OR ANIMAL CARRIED DISEASES

- “Non-human primates. All countries exporting non-human primates to Japan”
- “... prevent invasion Ebola or Marbug virus into Japan”

Definition of an SPS measure (3:4)

to protect:

animal or plant
life

from:

pests, diseases, or disease-causing
organisms;



WORLD TRADE ORGANIZATION

G/SPS/N/SGP/5
4 June 1999

(99-2257)

Committee on Sanitary and Phytosanitary Measures

Original: English

NOTIFICATION OF EMERGENCY MEASURES

1. Member to Agreement notifying: **SINGAPORE**
If applicable, name of local government involved:
2. Agency responsible: **Primary Production Department, Ministry of National Development**
3. Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers may be provided in addition, where applicable). Regions or countries likely to be affected, to the extent relevant or practicable: **Horses for racing, polo and equestrian**

PROTECT ... ANIMAL HEALTH

- “Horses for racing, polo and equestrian”
- “... each horse imported [has to have] a equine passport or equivalent, ... freedom from Hendra, Hendra-like (Nipah) virus infection, African Horse Sickness, and”

Definition of an SPS measure (4:4)

to protect:

a country

from:

damage caused by the entry,
establishment or spread of pests

Examples

A measure to protect:

The territory of
a country



other damage from
entry or spread of pests



Prevent entry
of Zebra
mussels via
ballast
water



regulate
seeds to
avoid entry
of weeds



Important footnote:



- “animals” include fish and wild fauna
- “plants” include forests and wild flora
- “pests” include weeds
- “contaminants” include residues of pesticides and veterinary drugs, as well as extraneous matter

SPS Measures

Definition - Annex A

A measure taken to protect:

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

How to tell which Agreement applies?

- First: check if it is an SPS measure...

Example 1: SPS or TBT?

- Bottled water:
 - safety for human consumption
 - taste
 - bottle size and shape
 - bottle material:
 - breaking
 - toxic substances contaminating water



Example 2: SPS or TBT?

- Pesticides
 - safe handling instructions
 - quality
 - residue limits in food

SPS & TBT: main provisions

SPS

- scientific justification
- harmonization
- least trade-restrictive
- equivalence
- regional conditions
- transparency
- technical assistance, special and differential treatment

TBT

- legitimate objective
- harmonization
- least trade-restrictive
- equivalence and mutual recognition
- transparency
- technical assistance, special and differential treatment

SPS & TBT

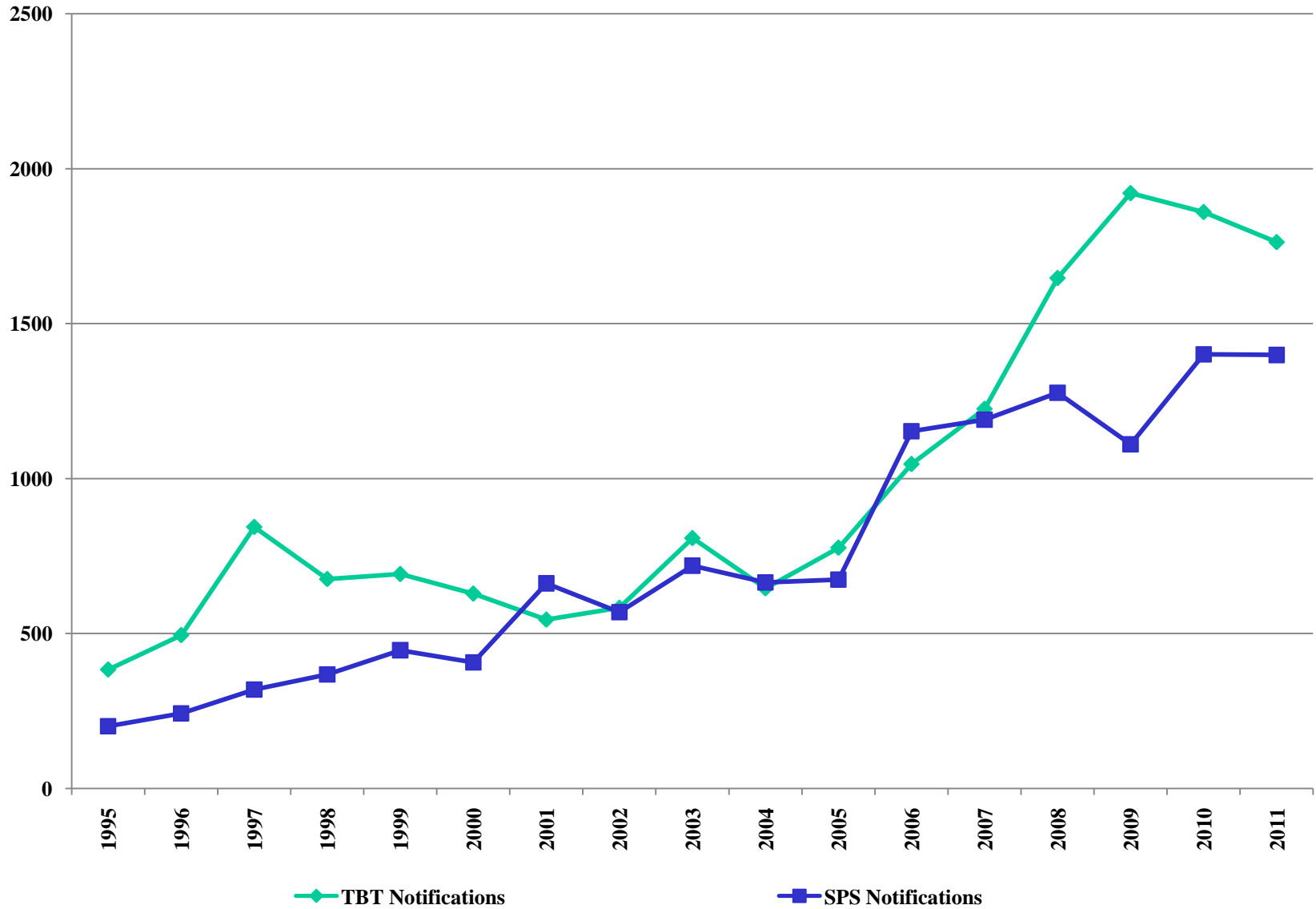
- Notifications
 - Enquiry Points
- Specific trade concerns (STCs)
 - Proposed draft measures
 - Existing measures (implementation)
- Resolution of disputes



WTO SPS and TBT Information Management Systems

www.spsims.wto.org and www.tbttims.wto.org

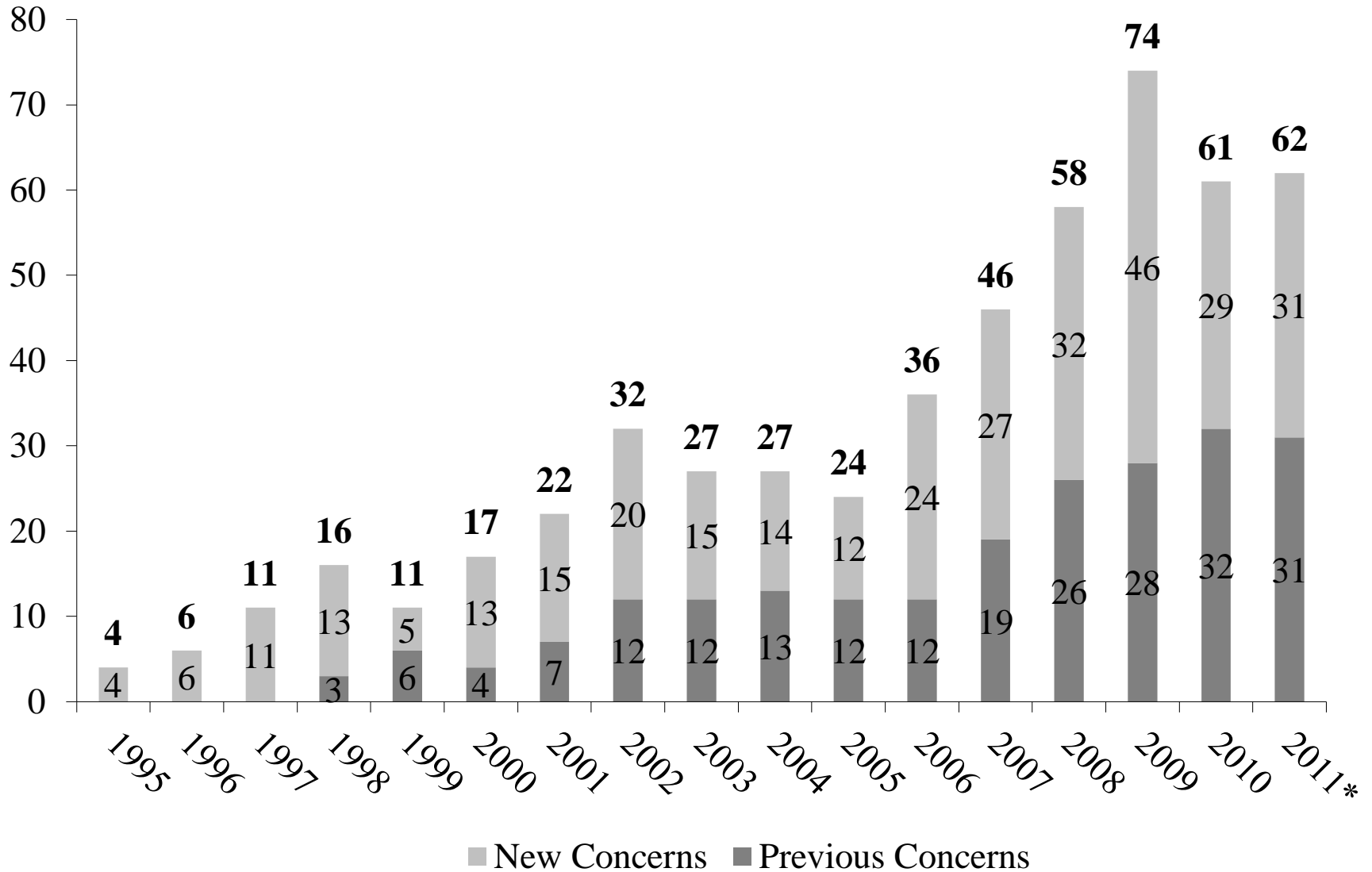
Notifications (SPS & TBT)



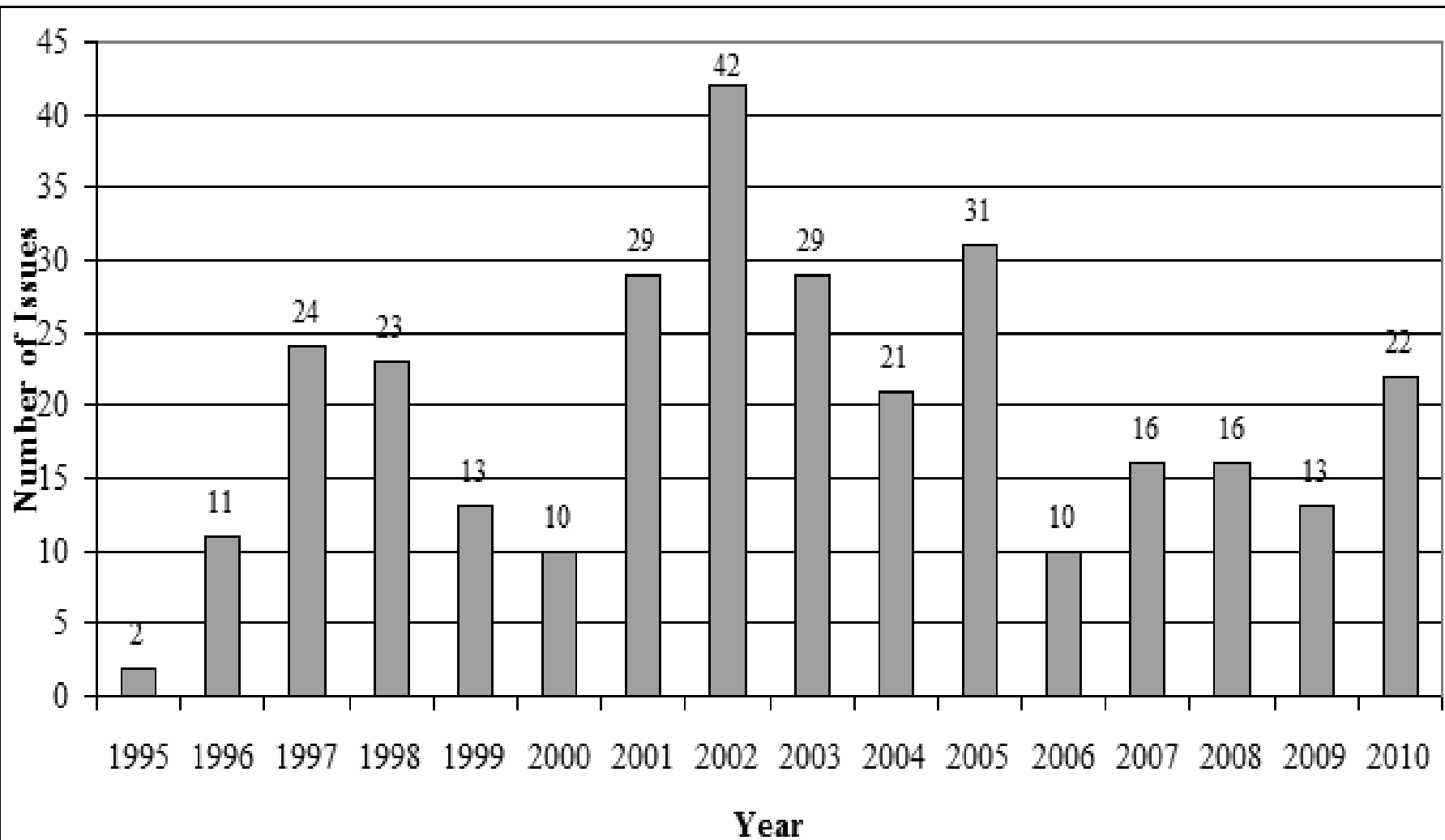
Total Notifications = about 30,000 (2012)



Specific Trade Concerns (TBT)



Specific Trade Concerns raised (SPS)



conomic Times
(October 2012)

an has rejected
nsignments of tiger
wns from Odisha
d West Bengal... on
grounds that they
ve high levels of
oxyquin..

isha and West
ngal export tiger
wns worth Rs.
00-1500 crores to
an each year....

major blow not only to
porters but to
000 farmers that
ve taken to
uaculture....

The Economic Times 3 Oct 2012

Mamata Seeks Bailout for Seafood Exporters from Commerce Min

SUTANUKA GHOSAL
KOLKATA

West Bengal chief minister Mamata Banerjee has written to the Union commerce and industry minister Anand Sharma to bail out the seafood exporters who have sent black tiger shrimp consignments to Japan.

The importing nation has rejected the consignments on the ground that they have high levels of ethoxyquin. Banerjee wants the Centre to immediately negotiate with the Japanese authorities so that exporters, who are largely from West Bengal and Odisha, don't suffer a huge loss this year.

The two eastern states together export tiger prawns worth ₹1,200-₹1,500 crore annually to Japan. But the Asian nation has suddenly reduced the ethoxyquin content in shrimps to 0.01 parts per million (ppm) without informing the Indian government or the exporters. It has not only come as a major blow to exporters but to 50,000 farmers who have taken to aquaculture. It is learnt that 200 containers of shrimp have been rejected over the past few weeks by Japan on the detection of ethoxyquin.

Taj Mohammed, regional president (West Bengal) of Sea Food Exporters Association of India (SEAI), said: "Anand Sharma has taken up the issue with his Japanese counterpart. We are hoping that the Japanese authorities will amend their regulation."

The commerce ministry has rushed a delegation led by the chairman of Marine Products

Bailout Needed

JAPAN HAS REJECTED the fish consignments on the ground that they have high levels of ethoxyquin

BANERJEE WANTS GOVT to negotiate with Japan so that exporters don't suffer huge losses this year

ODISHA & WB TOGETHER export tiger prawns worth ₹1,200 crore- ₹1,500 crore annually to Japan

Export Development Authority (MPEDA) and comprising the director of Export Inspection Council and the resident director-designate of MPEDA in Japan. G Mohanty, regional president (Odisha) of SEAI, said: "There are no international norms fixed for ethoxyquin levels in shrimps by authorities in America or the European Union, for instance. And, even Japan permits it up to a certain level in fish."

Fishmeal forms an important component of feed for shrimps. To avoid rancidity in fishmeal, a large range of anti-oxidants are used. Ethoxyquin is one of the most popular and effective anti-oxidants used worldwide, M K Ram Mohan, deputy director, MPEDA said. Mohanty added that Japanese importers are requesting the Indian exporters to take back the consignments.

...the ethoxyquin content suddenly reduced to 0.01 ppm without informing the Indian government or exporters....

There are no intrl. norms fixed for ethoxyquin levels in shrimp.. no such requirements in EU or US even Japan permits it upto a certain level in fish

Tariffs are being reduced or eliminated with FTAs and trade negotiations but NTMs....????

India: An active member (TBT)

- **STC First raised:** November 2010
- **Measure:** Compulsory labeling requirement
- **Products:** Textile, leather and footwear products
- **Member maintaining measure:** EU (Italy)
- **Member concerned:** India
- **Issue(s):** PPM, unnecessary barrier to trade, unwarranted linking of trade to labor/environment
- **Status:** Not reported. Raised in TBT Committee and being followed-up in bilateral consultations.
- **Related documents:** G/TBT/N/ITA/16, G/TBT/M/52

India: An active member (SPS)

- **STC First raised:** 2001
- **Member maintaining measure:** EU
- **Members raising concern:** India, US, Chile, Canada
- **Issue:** EU's BSE risk assessment process was different from the OIE risk assessment process
- **Solution:** EU adopted new OIE risk assessment system
- **Status:** Resolved
- **Related document:** G/SPS/R/22, paras. 22-26

India: An active member (SPS)

- **STC First raised:** June 2004
- **Member maintaining measure:** India
- **Members raising concern:** Australia, EU, New Zealand, US
- **Issue:** Non-notification of SPS measures
- **Status:** Not reported.
- **Action taken:** India set up 3 separate enquiry points with clearly delineated responsibilities. Increase in notifications to the SPS Committee.
- **Related Document:** G/SPS/R/34, paras. 52-54

India: An active member...

| Category | Notifications | | Specific trade concerns | |
|------------|---|--|---------------------------------|---------------------------------|
| | India as notifying member | India as member concerned | India as member maintaining STC | India as member raising concern |
| SPS | 71 (plus 19 corrigenda/ addenda) | 18 (plus 3 corrigenda/ addenda) | 8 | 6 |
| TBT | 88 (plus 8 corrigenda/ addenda) | | 16 | 8 |

Why does it matter which Agreement applies?

- Similar **but** Different rules apply to SPS & TBT
- Jurisprudence.....
- SPS: disputes
 - hormone-treated beef (US, Canada - EC)
 - salmon (Canada - Australia)
- TBT: disputes
 - Plain packaging requirements for tobacco products (Australia – Honduras, Indonesia, Ukraine)
 - COOL: Country of Origin Labeling (US – Canada)

The process of multilateral review



Notifications

(May) Request clarification from Enquiry Point

Bilateral consultations



STCs

Raised in SPS/TBT Committee(s)

Request formal consultations



Dispute(s)



Any questions or comments??

Professor Sajal Mathur

CWS, IIFT

Email: smathur@iift.ac.in

Thank you for your attention!!