Import weighted tariffs
industrial products

Approximately 40%
<table>
<thead>
<tr>
<th>Year</th>
<th>Place / name</th>
<th>Subjects covered</th>
<th>#</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>23</td>
</tr>
<tr>
<td>1949</td>
<td>Annecy</td>
<td>Tariffs</td>
<td>13</td>
</tr>
<tr>
<td>1951</td>
<td>Torquay</td>
<td>Tariffs</td>
<td>38</td>
</tr>
<tr>
<td>1956</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1960-1961</td>
<td>Dillon Round</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1964-1967</td>
<td>Kennedy Round</td>
<td>Tariffs and anti-dumping measures</td>
<td>62</td>
</tr>
<tr>
<td>1973-1979</td>
<td>Tokyo Round</td>
<td>Tariffs, <strong>NTMs</strong> (SCM, CVA, M-LIC, TBT), GPA and other “plurilateral agreements”</td>
<td>102</td>
</tr>
<tr>
<td>1986-1994</td>
<td>Uruguay Round</td>
<td>Tariffs, NTMs, rules, services, IPR, DSU, textiles, agriculture, creation of WTO</td>
<td>123</td>
</tr>
<tr>
<td>2001 -</td>
<td>Doha Negotiations</td>
<td>AG, NAMA, services, rules, DSU environment, development, +/- ?</td>
<td>159</td>
</tr>
</tbody>
</table>
Non Tariff Measures (NTMs)

WTO Agreements on:

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

Technical Requirements

- Technical Regulations
  - Mandatory

- Standards
  - Voluntary
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
avoidance of unnecessary obstacles to international trade

promotion of international standards

allowing for regulatory autonomy to fulfill legitimate objectives
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 product requirements (TBT) are preferable to design-based or descriptive approaches.
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:

<table>
<thead>
<tr>
<th>Category</th>
<th>Protection From</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human or animal health</td>
<td>risks arising from additives, contaminants, toxins or disease organisms in food, drink, feedstuff</td>
</tr>
<tr>
<td>Human life</td>
<td>plant- or animal-carried diseases</td>
</tr>
<tr>
<td>Animal or plant life</td>
<td>pests, diseases, disease-causing organisms</td>
</tr>
<tr>
<td>A country</td>
<td>other damage caused by entry, establishment or spread of pests</td>
</tr>
</tbody>
</table>
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 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;
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 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 …”
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong></td>
<td><strong>Member to Agreement notifying:</strong> <strong>INDIA</strong>&lt;br&gt;<strong>If applicable, name of local government involved:</strong></td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td><strong>Agency responsible:</strong> Ministry of Health and Family Welfare, Government of India</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td><strong>Products covered</strong> (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</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td><strong>Regions or countries likely to be affected, to the extent relevant or practicable:</strong> All trading partners exporting food items that contains label to India.</td>
</tr>
</tbody>
</table>
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);
**Committee on Sanitary and Phytosanitary Measures**

**Agency responsible:** Ministry of Health and Welfare; Ministry of Agriculture, Forestry and Fishery

**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;
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 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

from

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:*

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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.tbtims.wto.org
Notifications (SPS & TBT)

Total Notifications = about 30,000 (2012)
Specific Trade Concerns (TBT)

- New Concerns
- Previous Concerns

- Specific Trade Concerns (TBT)

- 1995: 4 New, 4 Previous
- 1996: 6 New, 6 Previous
- 1997: 11 New, 11 Previous
- 1998: 16 New, 13 Previous
- 1999: 11 New, 5 Previous
- 2000: 17 New, 13 Previous
- 2001: 22 New, 15 Previous
- 2002: 32 New, 20 Previous
- 2003: 27 New, 12 Previous
- 2004: 27 New, 12 Previous
- 2005: 24 New, 12 Previous
- 2006: 36 New, 12 Previous
- 2007: 46 New, 19 Previous
- 2008: 58 New, 27 Previous
- 2009: 74 New, 46 Previous
- 2010: 61 New, 32 Previous
- 2011: 62 New, 31 Previous

*Data for 2011 is an estimate.
Specific Trade Concerns raised (SPS)
Japan has rejected consignments of tiger prawns from Odisha and West Bengal on the grounds that they have high levels of ethoxyquin.

Odisha and West Bengal export tiger prawns worth Rs. 1,200-1,500 crores to Japan each year.

A major blow not only to exporters but to 50,000 farmers that have taken to aquaculture.

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

There are no international norms fixed for ethoxyquin levels in shrimp. No such requirements in EU or US even Japan permits it up to 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...

<table>
<thead>
<tr>
<th>Category</th>
<th>Notifications</th>
<th>Specific trade concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>India as notifying member</strong></td>
<td><strong>India as member concerned</strong></td>
</tr>
<tr>
<td>SPS</td>
<td>71 (plus 19 corrigenda/addenda)</td>
<td>18 (plus 3 corrigenda/addenda)</td>
</tr>
<tr>
<td>TBT</td>
<td>88 (plus 8 corrigenda/addenda)</td>
<td></td>
</tr>
</tbody>
</table>
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)

NAMA
Any questions or comments??

Professor Sajal Mathur
CWS, IIFT
Email: smathur@iift.ac.in

Thank you for your attention!!