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INDUSTRIAL DEVELOPMENT ORGANIZATION

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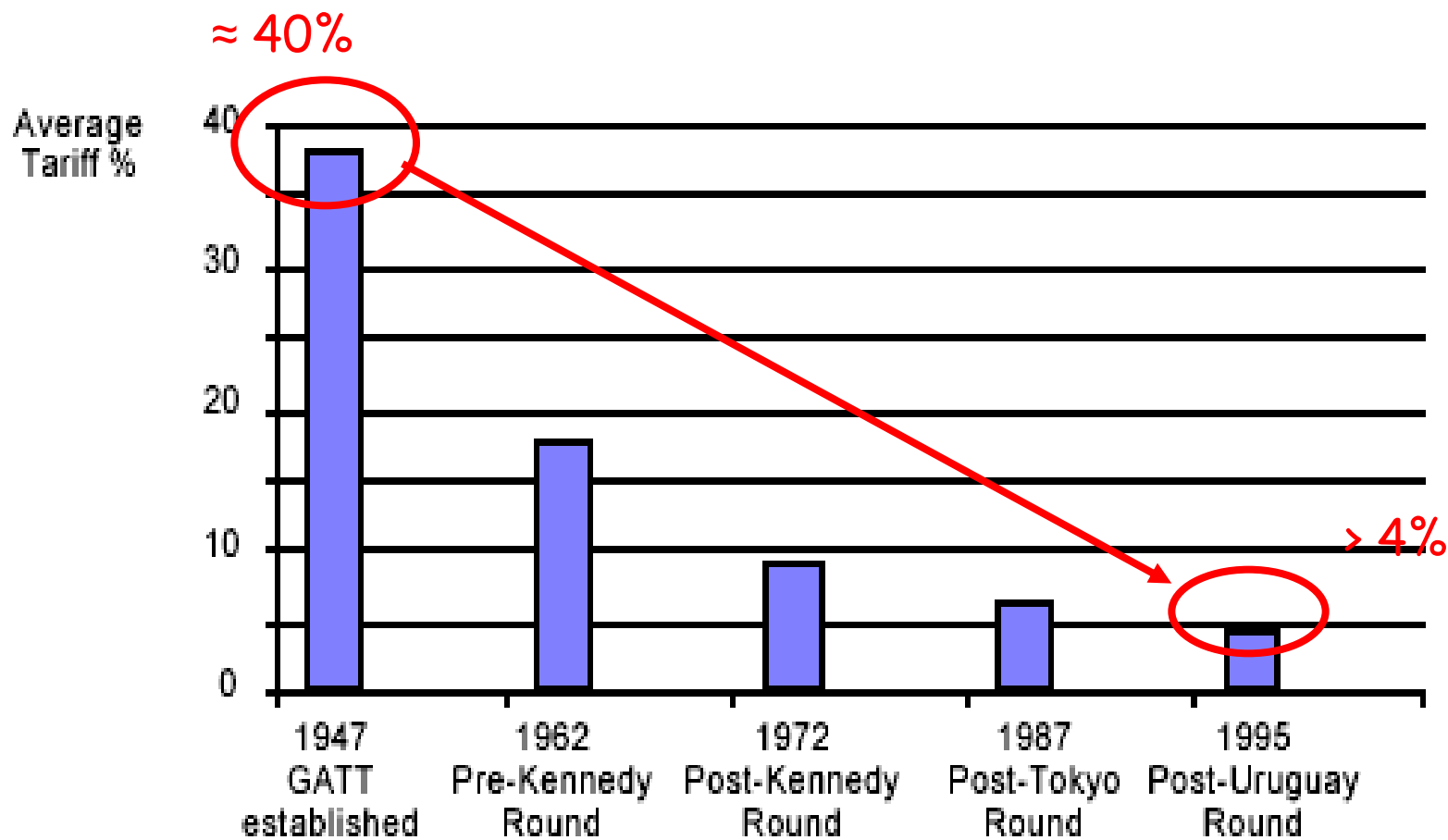
# WTO TBT & SPS AGREEMENTS

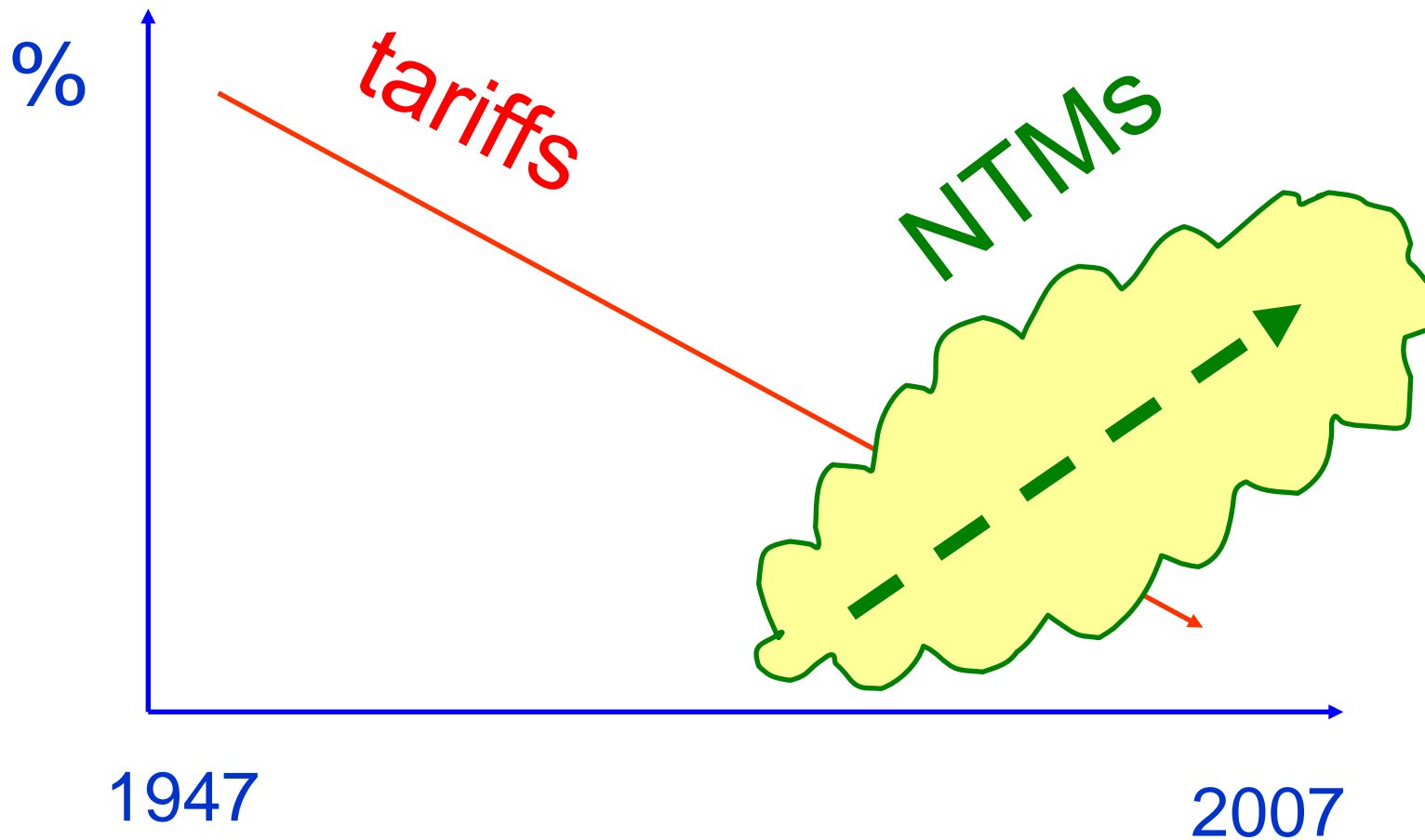
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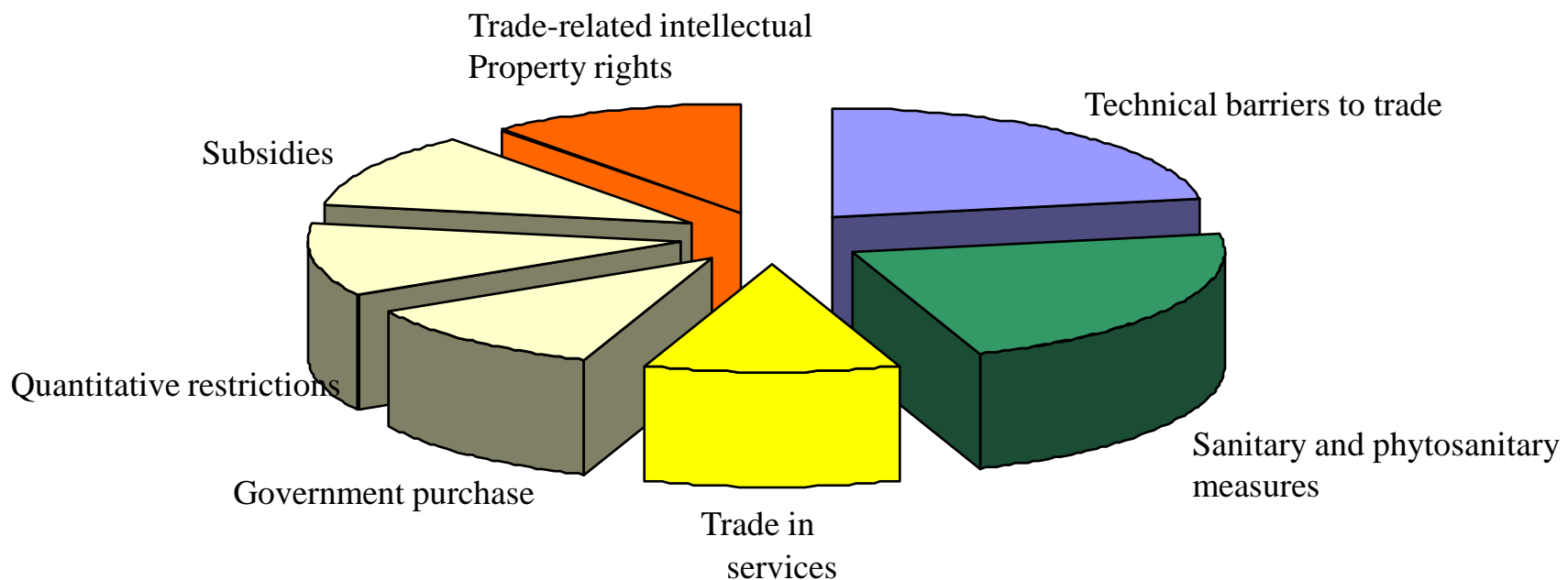
## Overall, import weighted tariff on industrial products







# Non-tariff measures





# STANDARDS & TRADE

- Standards permeate all business activities and even the day-to-day life of the man on the street.
- Standards are indispensable for the international marketing of products as they convey consistent and understandable information to the buyer.
- Government agencies at the national, State and local levels lay down thousands of regulatory standards to
  - protect the health and ensure the safety of the population,
  - conserve the environment.
- Standards can become barriers to trade if they differ widely from country to country.
- The solution to these problems lies in:
  - harmonizing standards at the international level
  - developing guidelines for determining conformity to standards.



# Some NTMs affecting the EAC

NO	NTB Summary description	Affected countries	NTB Source & Ministry/ Department/ Department/ Agency for action
1	Ugandan ban on beef & beef products from Kenya	Kenya	Uganda Departments of Veterinary Services; Ministries of livestock development and Agriculture
2	Uganda's certification procedures on exports of milk from Kenya.	Kenya	Uganda dairy board
3	Holding, retesting milk and milk products bearing Uganda National Bureau of Standards quality marks and imposition of import quotas.	Uganda and Tanzania	Kenya's Ministry of Fisheries and Livestock Development, Kenya Dairy Board and Kenya Bureau of Standards
4	Kenyan ban on Ugandan day old chicks	Uganda	Ministries of Livestock Development and Agriculture
5	Cumbersome testing procedures for food exports and imports into Tanzania	Kenya	Tanzania Food and Drug Authority (TFDA)
7	Non recognition by Kenya for SPS Certificates issued by Uganda for tea destined for Mombasa auction	Uganda	Ministry of Agriculture Kenya



# GATT - TBT - SPS

**GATT Article XX: General Exceptions**  
measures e.g. necessary to protect human,  
animal or plant life or health

**TBT Agreement**

**SPS Agreement**



# Agreement on Technical Barriers to Trade

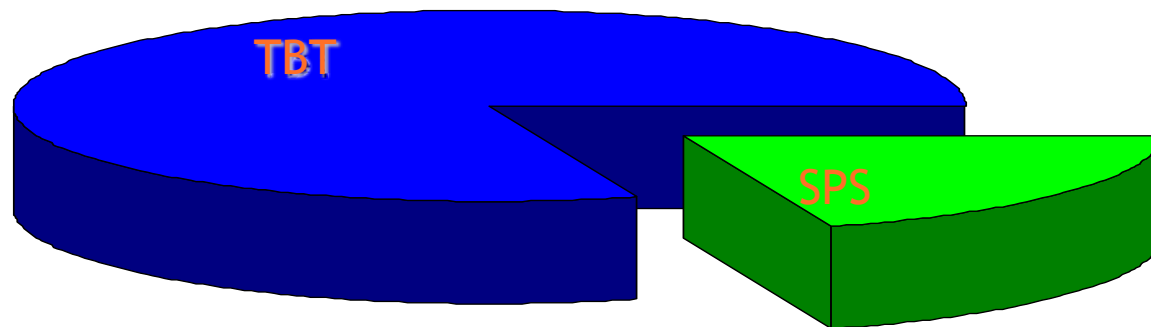
- Countries often require imported products to conform to the mandatory standards they have adopted
  - for the protection of the health and safety of their people, or
  - for the preservation of their environment.
- The Agreement on Technical Barriers to Trade (TBT) provides that such mandatory product standards
  - should not be so applied by countries as to cause unnecessary obstacles to international trade.
  - should be based on scientific information and evidence.



# The TBT Agreement

It applies to all

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



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



# TBT: Main Principles

- Non-discrimination
  - MFN & National treatment
- No unnecessary obstacles to trade
  - Legitimate objectives
- Harmonization
- Equivalence
- Mutual Recognition
- Transparency



# TBT Agreement

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

*Inter alia !*



# TBT Agreement

## *Definitions*

- The term ‘**technical regulation**’ is used to cover standards with which compliance is **mandatory**.
- The term ‘**standard**’ is used to cover standards used on a **voluntary basis**.
- The term “**Conformity Assessment**” is used to cover any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are **fulfilled**.



# TBT Agreement

## General Principle

- The basic aim of the Agreement is to ensure that:
  - Technical regulations and standards including packaging, marking and labeling requirements, and
  - Procedures used for assessing conformity with such regulations, requirements and standards
- are not formulated and applied so as to create unnecessary barriers to trade.
- **Use of international standards, guidelines and recommendations- Art. 2.4**



# TBT Agreement

## Circumstances permitting deviations from international standards and guidelines

- Art. 2.4: Countries are free to develop their own national standards where
  - international standards or guidelines are considered ineffective or inappropriate for the achievement of national objectives or
  - international standards do not exist
  - If the technical content of conformity assessment guidelines is not suitable for the achievement of the specific objective of the proposed national system.
- Art 2.9: Where such proposed measures are expected to have a significant effect on trade countries under obligation *to*:
  - Publish in draft form the proposed technical regulations, standards and the conformity assessment systems;
  - Give reasonable opportunity to other interested parties to comment on these drafts;
  - Take into account these comments in finalizing the drafts.



# TBT Agreement

## ***Technical regulations and standards***

- Regulatory agencies should ensure that technical regulations and standards:
  - Are applied so as not to discriminate among imported products by origin (MFN principle)- Art 2.1;
  - Do not extend to imported products treatment that is less favourable than that extended to domestically produced products (national treatment principle)-Art 2.1;
  - Are, where relevant, based on scientific and technical information;
  - Are not formulated or applied in a manner as to cause “unnecessary obstacles to international trade”- Art 2.2.



# TBT Agreement

## ***Conformity Assessment procedures (Art. 5)***

- Systems adopted for assessing conformity to technical regulations should not be formulated or applied so as to create barriers to trade:
- Member countries should accept, where possible, the results of conformity assessment tests carried out in exporting countries.
- Member Countries should show willingness to accept the certificates issued by regulatory authorities in exporting countries, even when the procedures “differ from their own” provided they are satisfied that these are “equivalent” to their own procedures.
- The Agreement further encourages arrangements for the “mutual recognition” of member countries’ conformity assessment procedures.



# ***TBT Agreement: Role of Government***

## **Regulatory Activities:**

- Regulating the local markets through TR by regulatory authorities (Parliament, Ministries, Institutions etc.)

## **•Harmonisation activities**

- Notification procedures (defined system)
- Enquiry point (identified organisation)
- Participation in International Standards development (standards institution)
- Local systems for consultation (transparency in preparation, adoption and application of TR)

## **•Enforcement mechanisms for conformity assessment**

- Standardization
- Accreditation

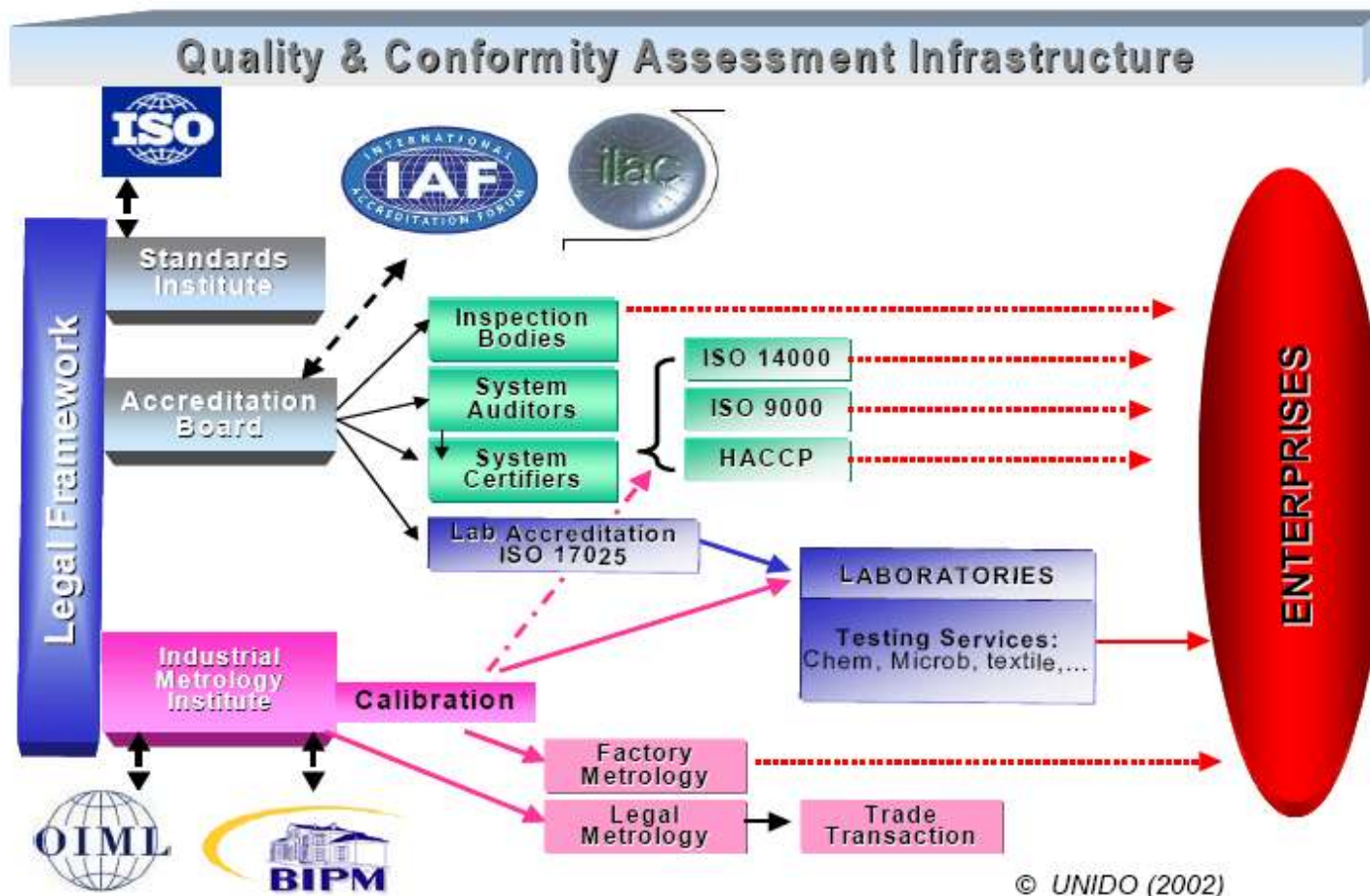


# *TBT Agreement: Responsibility of private sector*

- **Conformity Assessment Systems**
  1. Certification
  2. Inspection bodies
  3. Laboratories



# UNIDO's Model on Institutional Environment for Compliance





# International Organizations

- Although no mention is made of International Organizations in the TBT agreement, standards from the following organizations set standards
- International standards measurement and accreditation bodies—International Organization for Standardization (ISO),
- International Laboratory Accreditation Cooperation (ILAC),
- International Accreditation Forum (IAF), International Bureau of Weights and Measures (BIPM),
- International Organization of Legal Metrology (OIML).



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



# Uruguay Round Negotiations on Agriculture

- Objectives to eliminate quantitative import restrictions
- Eliminate other non-tariff barriers (variable levies)
- Reduce tariffs
- Reduce domestic production subsidies
- + Agreement on sanitary and phytosanitary measures



# Beef

- USA / Canada – use of growth-promoting hormones in cattle
- Argentina / Uruguay – foot-and-mouth disease





# Wine

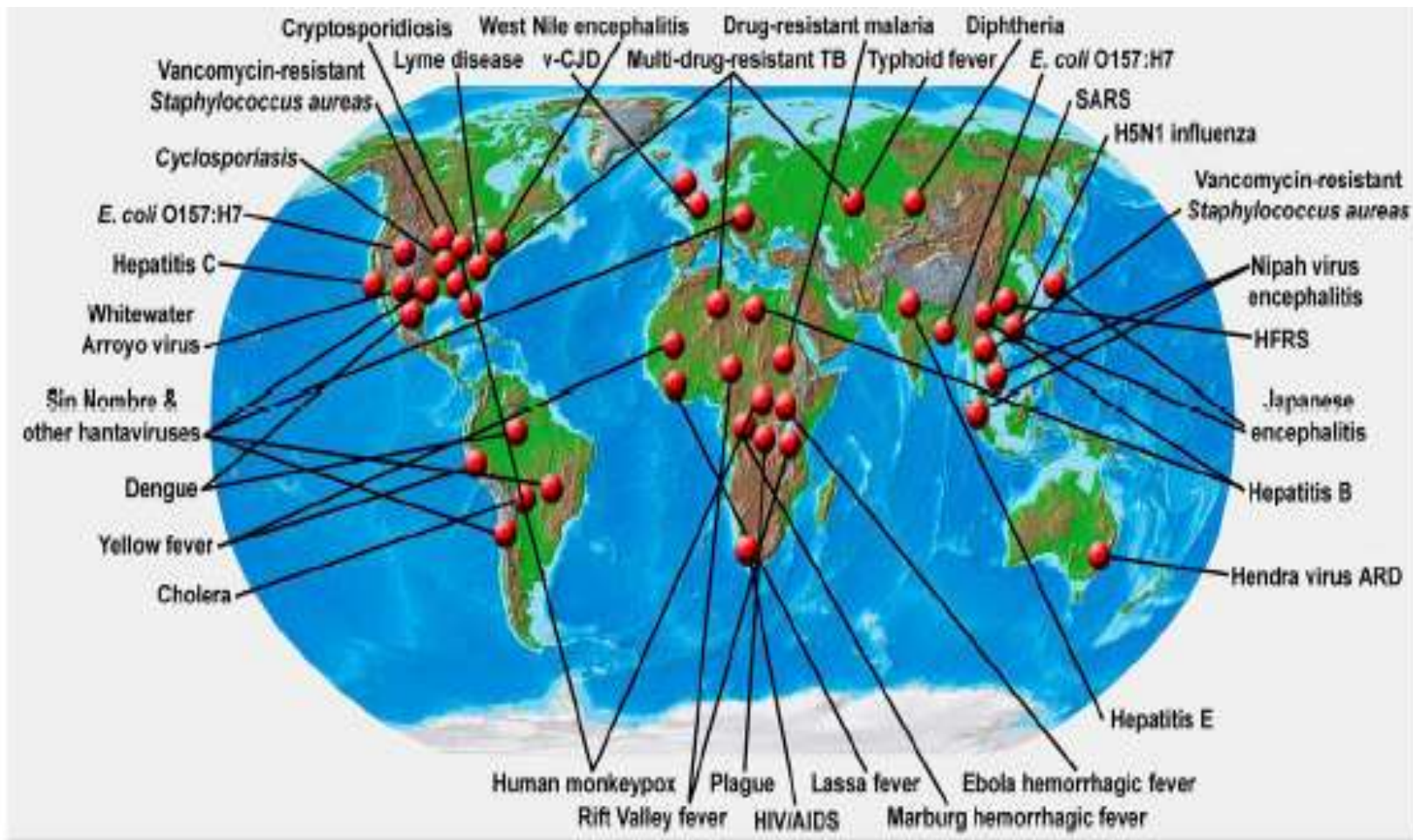
US restrictions on residues of procymidon in European wine

Codex standards





# SPS-related Challenges





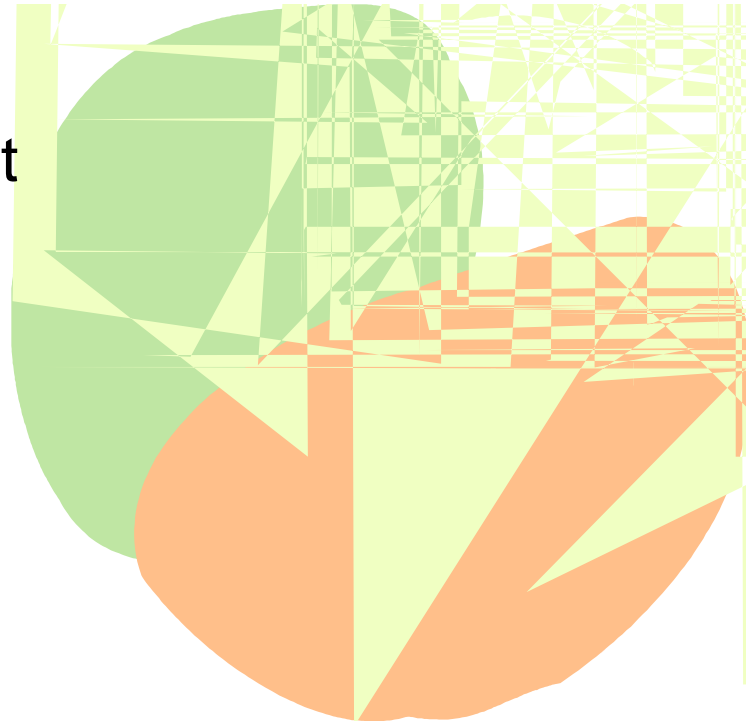
# SPS Agreement

- Countries require the compliance of imported agricultural products with their national **sanitary and phytosanitary** regulations.
- The primary aim of these regulations is to protect **human, animal or plant** life or health from pests and diseases that may be brought in by imported agricultural products.



# Why an SPS Agreement?

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



Avoiding unnecessary barriers to trade



# SPS Agreement - Basic Right

## Article 2.1

“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”



# SPS Agreement - Basic Right

## Article 2.1

“Members have the right to take  
**sanitary and phytosanitary measures**  
necessary for the protection of human,  
animal or plant life or health, provided  
that such measures are not inconsistent  
with the provisions of this Agreement”

**Definition?**



# SPS Measures - Examples

## Definition - Annex A

*A measure taken to protect:*

Human or  
animal health

from

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

limits on  
residues  
in fish &  
shellfish



limits on  
aflatoxin  
residues  
in nuts



HACCP to  
limit risks  
from  
salmonella



## SPS Measures - Examples

### Definition - Annex A

*A measure taken to protect:*

Human life

from

plant- or animal-carried diseases



requirement that  
susceptible animals  
be vaccinated  
against rabies



avian influenza  
measures





## SPS Measures - Examples

### Definition - Annex A

*A measure taken to protect:*

Animal or



## SPS Measures - Examples

### Definition - Annex A

*A measure taken to protect:*

A country

from

other damage caused by entry,  
establishment or spread of pests



measure to  
prevent  
introduction  
of zebra mussels  
through ballast  
water of ships



seed  
regulation  
to avoid  
introduction  
of exotic  
weeds





# SPS Measures

## Definition - Annex A

*A measure taken to protect:*

Human or  
animal health

*from*

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

Human life

*from*

plant- or animal-carried diseases

Animal or  
plant life

*from*

pests, diseases, disease-causing  
organisms

A country

*from*

other damage caused by entry,  
establishment or spread of pests



# 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, but its objective!*



# Approach to the SPS Agreement

## The SPS Agreement requires member countries:

- To base their SPS measures on international standards, guidelines or recommendations developed by the:
  - Codex Alimentarius Commission (CODEX);
  - International Office of Epizootics (OIE);
  - Relevant international and regional organizations operating within the framework of the International Plant Protection Convention; or
  - Any other international organization that may be designated by the WTO Committee on SPS.
- To play a full part in the activities of international standard setting organizations, in order to promote the harmonization of SPS measures
- To provide an opportunity to interested parties in other countries to comment on draft standards.
- To accept the SPS measures of exporting countries as equivalent if they achieve the same level of SPS protection and to enter into, where possible, arrangements for the mutual recognition of the equivalence of specified SPS measures.



# Key Provisions of the SPS Agreement

1. **Non-discrimination**
2. **Scientific justification**
  - harmonization
  - risk assessment
  - consistency
  - least trade-restrictiveness
3. **Equivalence**
4. **Regionalization**
5. **Transparency**
6. **Technical assistance/special treatment**
7. **Control, inspection and approval procedures**





# Main differences between the SPS and the TBT Agreements

- **Importance attached to scientific evidence in formulating regulations**
- **The MFN Principle**
- **Conditions under which it may be possible for countries to deviate from international standards.**
- **Precautionary Measures**



# Provisions Common to both Agreements

- **Level of obligations**

- The Agreements on TBT and SPS impose binding obligations on member countries to require the bodies controlled by them to abide by the discipline of the Agreements.

- **Special and differential treatment of developing countries**

- The two Agreements contain provisions for the extension of special and differential treatment to developing countries.

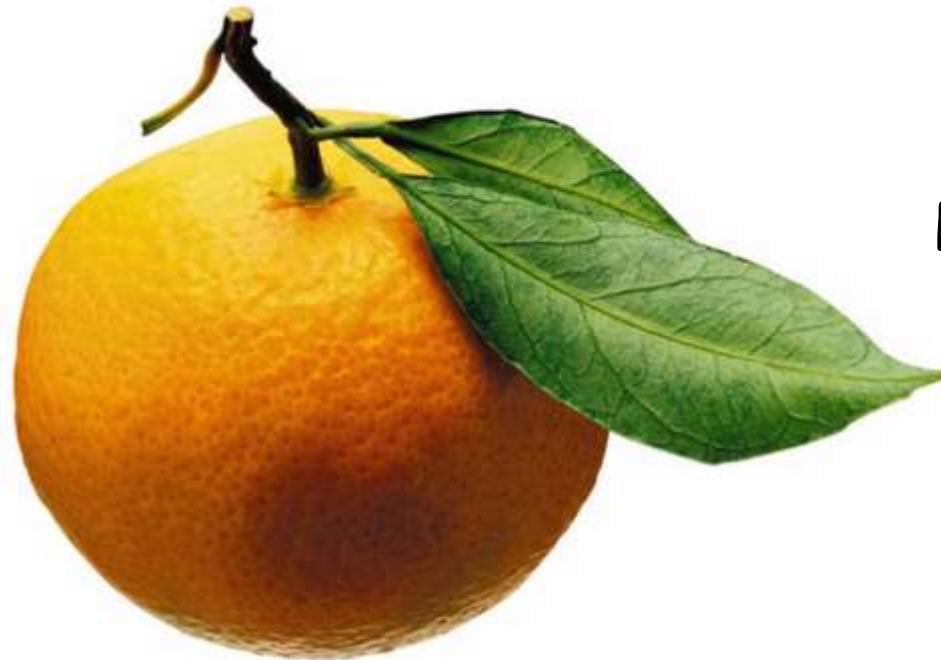
- **Enquiry Points**

- To help enterprises obtain such information, the two Agreements require each member country to establish *enquiry points from which information can be obtained* by the governments of other countries and by interested business firms on:



Minimum size of fruit ?

Use of anti-pest sprays ?



Packaging ?



Use of non-toxic materials  
for manufacture of bottle?

Shape ?



Nutritional  
values (mineral  
content)?



# EAC Legal Frameworks for TBT

- Chapter 13 Article 81 of EAC Treaty: Co-operation in Standardization, Quality Assurance, Metrology and Testing (SQMT)
- SQMT Act, 2006:
  - The SQMT Act commenced on 1<sup>st</sup> August 2007.
  - Provides for ensuring standardization, quality assurance, metrology and testing of products produced or traded in the Community in order to facilitate industrial development and trade;
  - makes provision for ensuring the protection of health and safety of society and environment in the community; and
  - establishes the East African Standards Committee and the East African Accreditation Board and also provides for related matters.



# EAC TBT Institutional Framework

- There are three administrative structures established at community level by the said Act.
  1. **East African Standards Committee (EASC),**
  2. **Liaison Office** and
  3. **East African Accreditation Board (EAAB).**



# EAC SPS Legal Frameworks

## EAC SPS Law:

- EAC Treaty Article 151: EAC Partner States have undertaken to conclude such Protocols as may be necessary in each area of co-operation.
- EAC SPS Protocol: Has not been ratified
- EAC Harmonized SPS measures
- WTO SPS Agreement



# DRAFT EAC SPS PROTOCOL

- In conformity with WTO SPS Agreement, and is meant to aid in the implementation of the SPS Agreement
- Sectoral council for Legal and Judicial Affairs (SCLJA)
- Will be more meaningful if enacted into EAC SPS Act??



# EAC SPS STANDARDS

## Standard-setting organizations



Codex = Joint FAO/WHO Codex Alimentarius Commission  
OIE = World Organization for Animal Health  
IPPC = International Plant Protection Convention (FAO)



# EAC SPS Regulatory Frameworks (SPS Measures)



## Plant Health

- Harmonized Phytosanitary Measures



## Animal Health

- Harmonized Zoo-sanitary Measures (Mammals, Birds, Bees)
- Harmonized Zoo-Sanitary Measures (Fisheries)



## Food Safety

- Harmonized Food safety Measures (Still under Development)



# EAC SPS Institutional Frameworks

- National Notification Authorities (Ministry of Trade)
- National Enquiry Points (MoPHS, DVS, MoFD, KEPHIS)
- Competent Authorities (MoPHS, DVS, MoFD, KEPHIS, Plus etc)



# EAC SPS Coordination Mechanisms

- EAC SPS Committee
- National SPS Committee
- National SPS/TBT Committee



# New Challenge

- EAC-COMESA-SADC Free Trade Area



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