



TBT PROGRAMME
OVERCOMING TECHNICAL BARRIERS TO TRADE



ACP-EU TBT Programme

Strengthening the Quality Infrastructure Institutions of Ethiopia

*Addis Ababa, Ethiopia
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The WTO and the Agreement on Technical Barriers to Trade

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Outline

- The WTO
- Non-tariff Trade Barriers
- History of the TBT Agreement
- Coverage of the Agreement
- Main Principles of the Agreement
- Main Disciplines and the Relevant Provisions

The World Trade Organization



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WTO Establishment

- Location: Geneva
- Established: 1 January 1995
- Created by: Uruguay Round Negotiation (1986-94)
- Predecessor: GATT (since 1948)
- Membership: 164 economies
- Secretariat staff: around 550

WTO Rules

- The only international body dealing with rules of trade between nations
- WTO agreements provide the legal ground-rules for international commerce
- They bind governments to keep their trade policies within agreed limits

WTO Goals

- Help producers of goods and services, exporters and importers conduct their business
- Help trade flow as freely as possible (e.g. by removing obstacles, providing confidence, transparency and predictability)

WTO Functions

- Administering WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
- Cooperation with other international organizations

WTO Coverage

- Trade in goods (GATT)
- Trade in services (GATS)
- Trade inventions, creations and designs intellectual property (TRIPS)
- Wide range of activities: agriculture, textiles, banking, telecommunication, government purchases, standards and regulations ...

WTO Principles

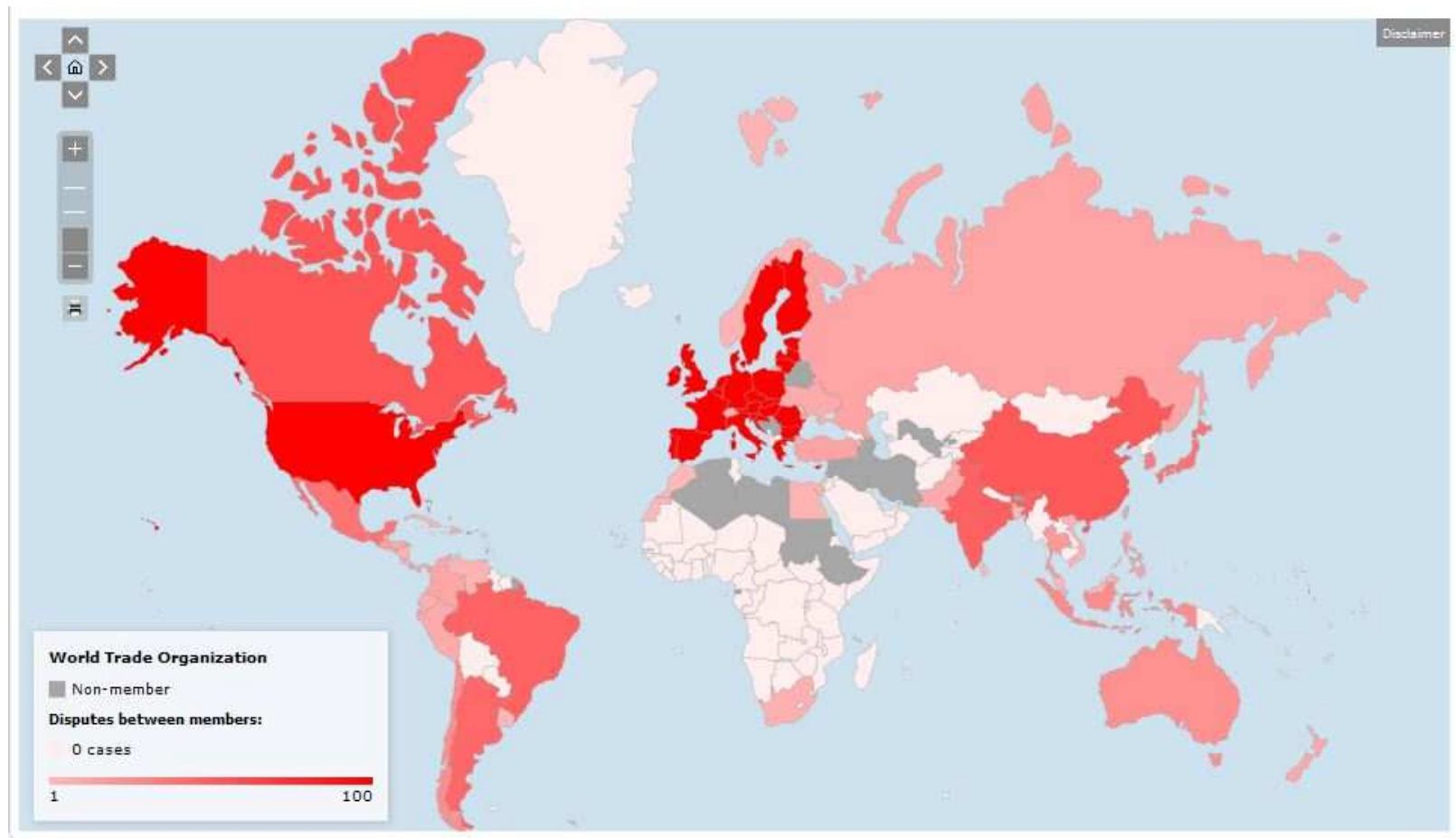
- Non-discrimination
- Freer tariff rates and non-tariff barriers
- Predictable and stable rules
- Transparency – national trade policies reviewed and specific measures and laws notified
- Discourages “unfair” trade, e.g. dumping and subsidies

WTO – Dispute Settlement

The WTO itself is not a policeman !

- Disputes: handled by Members in ...Dispute Settlement Mechanism
- Cases are brought by governments ...based on 'broken promises' - i.e. agreements or commitments violated
- Aim: consult, settle 'out of court'
- e.g. Dispute starts with 'request for consultations'

Disputes by nation (source:WTO)



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Non-tariff trade barriers



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Trade Barriers in general – what are they ?

Anything that deliberately prevents or discourages trade between countries, e.g:

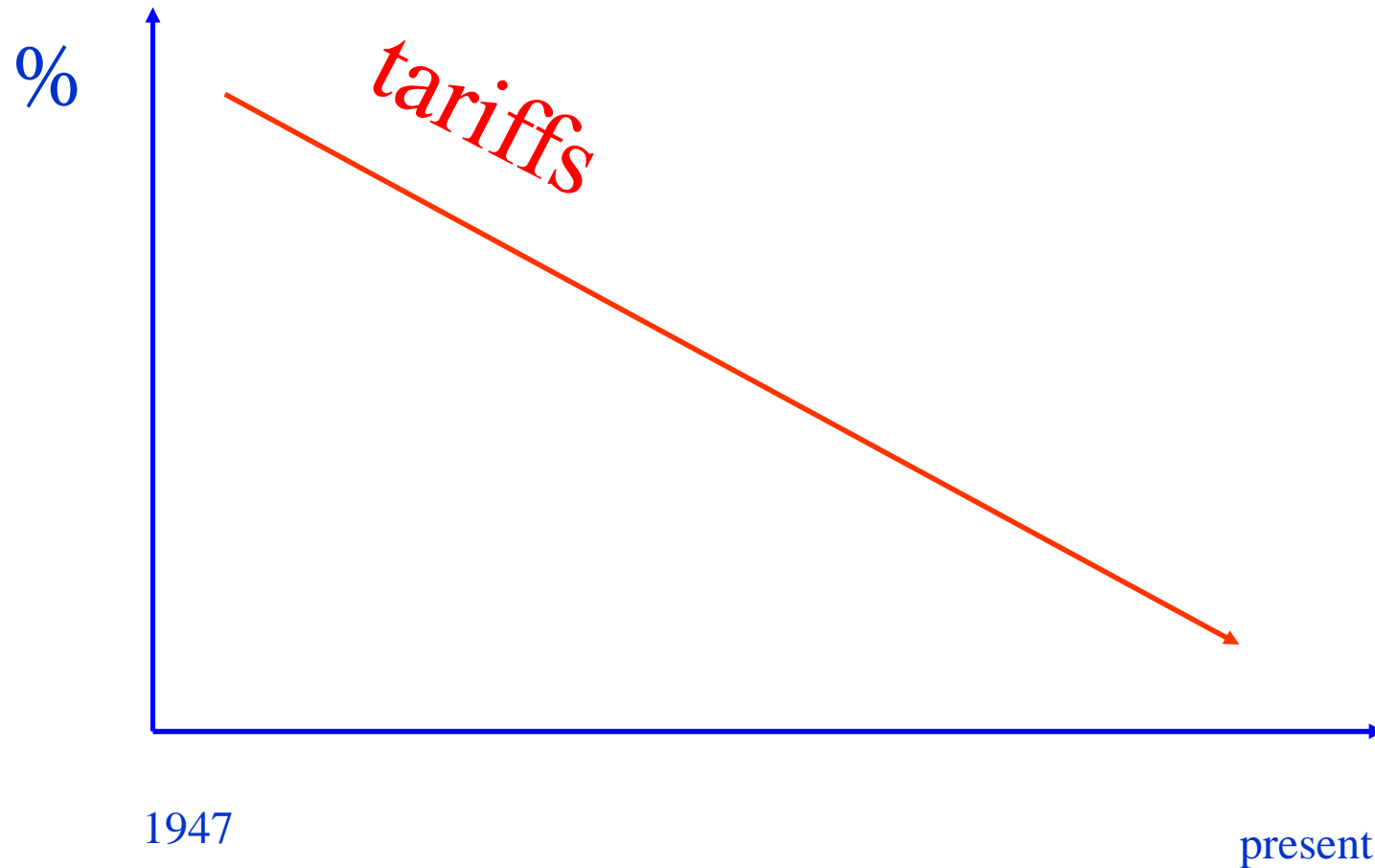
- Complete bans or prohibitions on trade with country “X”
- Bans on trade in specific products
- Subsidies for home country industries, making it pointless to try to import competing products
- Putting high duties (tariffs) on imported products to protect own industries

BUT: Not all trade barriers are bad – some are very necessary !

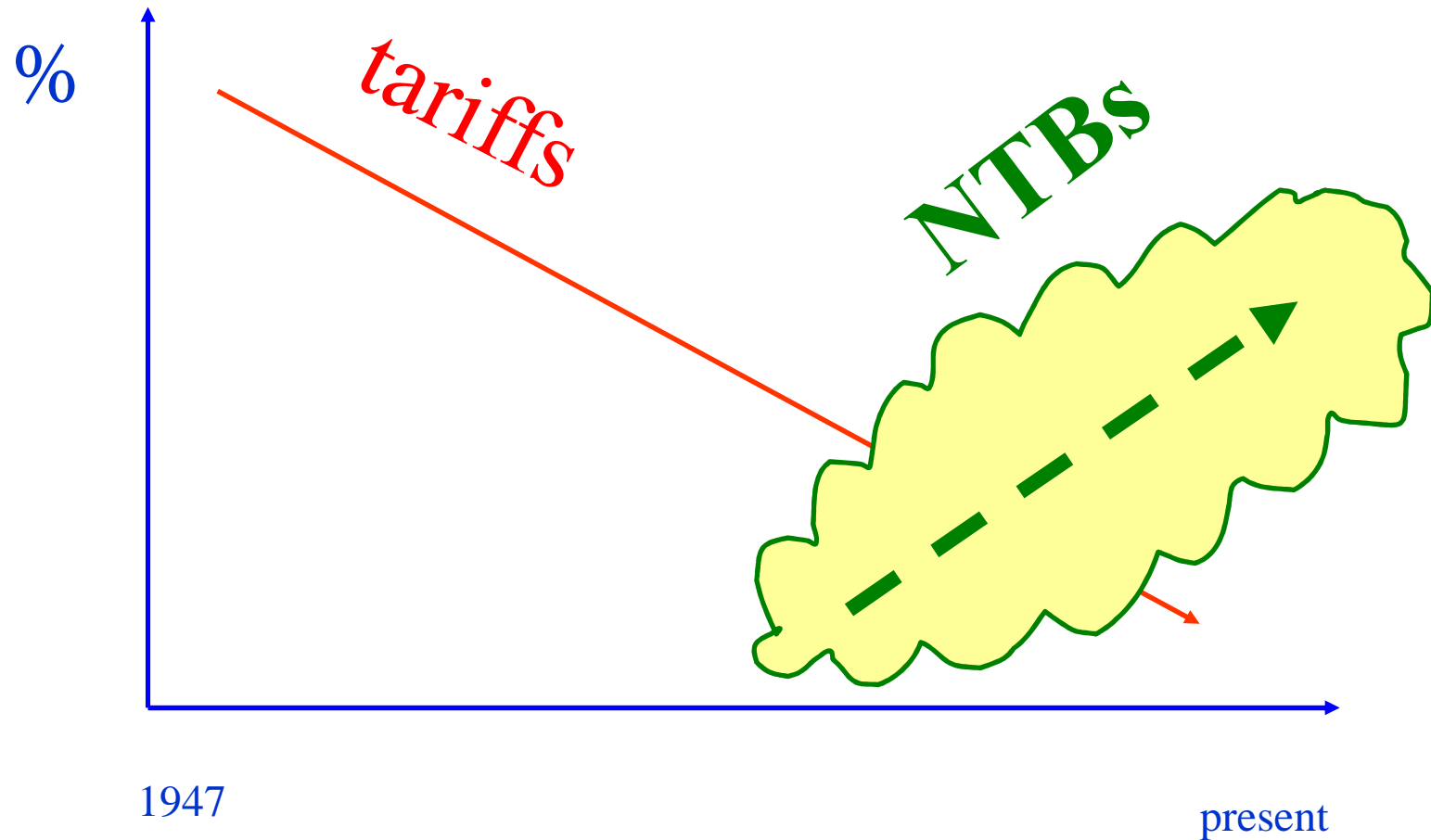
Non-tariff Trade Barriers

- Technical measures (e.g. in standards)
- Internal taxes or charges
- Customs rules and procedures
- Quantitative import restrictions
- Public procurement practices
- Subsidies and related government supports
- Investment restrictions or requirements
- Transport regulations or costs ...

Non-tariff Trade Barriers



Non-tariff Trade Barriers



The “Multilateral Trading System”

avoids
unnecessary
obstacles to
international
trade ...



but still allows
for regulatory
authorities to
protect
legitimate
interests



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A brief history of the TBT Agreement



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Agreement on Technical Barriers to Trade

GATT existed since 1947: so why did members negotiate the TBT Agreement ?

Need for clearer and more detailed disciplines on technical trade measures:

- Technical regulations
- Standards
- Conformity assessment procedures

Agreement on Technical Barriers to Trade

The Agreement safeguards against:

- The use of technical requirements as disguised restrictions on trade
- The development of inefficient technical requirements and procedures

Agreement on Technical Barriers to Trade

The Agreement acts as an instrument to

- Encourage Members to use less-trade restrictive approaches to meet regulatory objectives
- Harmonize through the use of relevant international standards
- Provide transparency
- Avoid and resolve trade disputes related to standards matters



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What does the TBT Agreement cover ?



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TBT Agreement applies to:

Article 1.3

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

- Technical requirements related to **product characteristics, terminology, packaging, marking or labelling** requirements... (TRs, STs, CAPs)
- Their preparation, adoption and application

Who is affected by the TBT Agreement ?

- Central governments
- Local government bodies (e.g. provinces)
- Non-governmental bodies
- International and regional bodies, and
- Annex 3 “*The Code of Good Practice for Standards Bodies*” applies to national and other standardising bodies, once they notify that they have accepted it

Exemptions from the TBT Agreement

TBT does not apply to:

**Sanitary and
phytosanitary
(SPS) measures**

Note that the central government
is the largest purchaser of goods
and services in most countries –
and these do not fall under the
TBT Agreement

**Purchasing
specifications prepared
by governments**



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Is it TBT or SPS ?



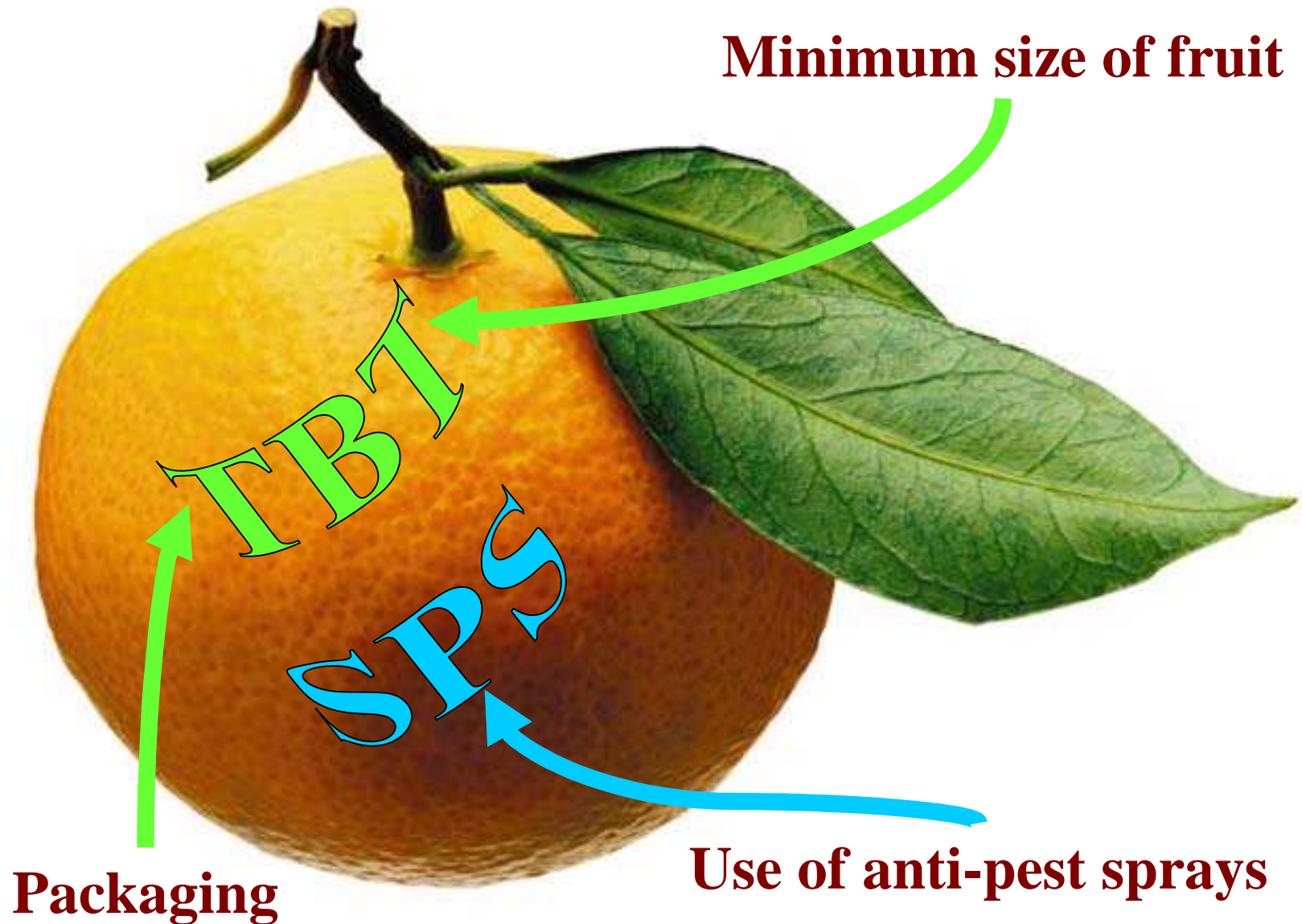
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What falls under the SPS Agreement ?

Any measure applied to protect: 	From: 
Human or animal life	risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs;
Human life	plant- or animal-carried diseases (zoonoses);
Animal or plant life	pests, diseases, or disease-causing organisms;
The whole country (or a part of it)	damage caused by the entry, establishment or spread of pests

What falls under TBT or SPS ?



TBT or SPS ?

**Use of non-toxic materials
for manufacture of bottle?**



Shape ?

Principles contained in the TBT Agreement



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The TBT Agreement:

- Acknowledges the rights of WTO Members to take measures to protect human, animal or plant life or health, the environment and consumers...
- but ensures that these measures are not used to discriminate against imported products and that unnecessary obstacles to trade are not created



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The Main Principles:

- **Non-discrimination**
- **Avoidance** of unnecessary barriers to trade
- **Harmonization** through the use of international standards, guides and recommendations
- **Transparency** (notifications and enquiry points)
- Concepts of **equivalence** of technical regulations and **mutual recognition** of results of conformity assessment procedures

Non-discrimination (Article 2.1)

- Must be observed throughout all stages
- Members may not adopt a technical regulation covering an imported product, unless they also enforce it on a domestically produced like product
- A member cannot enforce a technical regulation on one of its trading partners, but not the others

Non-discrimination and Conformity Assessment (Articles 5.1-5.2)

Conformity assessment procedures (designed to determine that relevant requirements in TR and standards are fulfilled):

- Shall not be prepared, adopted or applied discriminatorily - examples:
 - degrees of stringency, information
 - location of testing facilities

Avoidance of Unnecessary Obstacles to Trade (Article 2.2)

Main objective of the Agreement:

- Neither standards nor technical regulations are “prepared, adopted or applied with a view to (**or with the effect of**) creating unnecessary obstacles to trade”
- “Technical regulations shall be no more trade restrictive than necessary to fulfill a legitimate objective, taking into account the risks that non-fulfilment would create”

Avoidance of Unnecessary Obstacles to Trade (Article 2.2)

Measures (in Technical Regulations):

- Shall be designed to meet legitimate objectives (to protect human health, life, the environment or to guard against deceptive practices)
- Should be the least trade-restrictive option available ...
- ...taking into account the risks of non-fulfilment (i.e. not having a regulation)

Avoidance of Unnecessary Obstacles to Trade (Article 2.8)

- Technical regulations or standards shall be based on product performance rather than design or descriptive characteristic requirements

(This is intended to provide producers greater leeway to fulfill the legitimate objectives and not hamper innovation)

Avoidance of Unnecessary Obstacles to Trade (Article 2.3)

- Members should withdraw technical regulations when
 - the objectives that had given rise to their adoption no longer exist, or
 - if changed circumstances or objectives can be addressed in a less trade-restrictive manner
- Undertake regular reviews of old regulations

Avoidance of Unnecessary Obstacles to Trade (Articles 5.1-5.2)

Requires that

- “Conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Members **adequate confidence** that products conform to the applicable technical regulations or standards...”, and that
- They are undertaken as expeditiously as possible, that information requirements are limited to whatever is necessary ...

Harmonization

(Articles 2.4-2.6, 5.4-5.5)

- Members recognize that international standards can promote efficient production, facilitate trade and transfer technology
- Members are encouraged to harmonize their Technical Regulations, Standards and Conformity Assessment Procedures to relevant **International Standards** (ISO, IEC, Codex etc) to avoid the promulgation of different national standards
- Members are encouraged to participate, within the limits of their resources, in the preparation of International Standards for the products for which they adopt Technical Regulations

Harmonization (Article 2.4)

- The Agreement provides Members the flexibility to avoid having to use inappropriate, ineffective or irrelevant International Standards
- Members may decide NOT to use them if there are fundamental geographic differences, or if the technology required is not appropriate for domestic situation
- However, Members have to provide justifications if challenged by other Members

Transparency

(Articles 2.9-2.10, 5.6-5.7, 10.1-10.2, 10.9-11, and Annex 3)

The transparency provisions are there to

- Prevent TBTs before they arise;
- facilitate trade by providing information to industry;
- notify drafts prior to their adoption to provide opportunities for comments, and to take these comments into consideration when finalizing the drafts; and
- establish National Enquiry Points to enable all relevant reasonable enquiries to be answered

Equivalence (Article 2.7)

“Members shall consider accepting other Members’ Technical Regulations as equivalent, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.”

Mutual Recognition (Article 6)

- Members are **encouraged** (not obliged) to accept the results of each other's Conformity Assessment Procedures, provided they are confident that the same level of assurance can be obtained
- The Agreement recognizes that prior consultation is needed, and **encourages** Members to be willing to enter into negotiation for the conclusion of MRAs (**Mutual Recognition Agreements**)

International and Regional Systems (Article 9)

- While MRAs are usually negotiated on a bilateral or multilateral basis to cover a defined product ...
- The Agreement also encourages Members, multilaterally, to formulate and adopt international systems for conformity assessment
- Recognizes their contribution to facilitate international trade

Technical Assistance to Developing Countries (Articles 11 and 12)

- Members are encouraged to extend technical assistance to developing and least developed countries
- The Agreement calls for their **Special and Differential** treatment
- In practice, this also means that there are some relaxations for developing countries (e.g. time limits)

Code of Good Practice (Annex 3 to TBT):

- Covers best practices in developing and adopting standards, that meet the TBT requirements
- Forms the basis of national operating procedures for standards

So how does all this affect a National Standards Body ?



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The TBT agreement

- Requires that standards, technical regulations and conformity assessment systems do not create unnecessary obstacles to trade
- Recognizes the right of a government to protect:
 - human health and safety
 - animal or plant life or health
 - the environment
 - national security interest
 - the quality of exports, and
 - to prevent deceptive practices

TBT agreement cont ...

- Technical regulations are required to be:
 - Transparent
 - Based on demonstrable scientific fact
 - Non-discriminatory between domestic and foreign products (equivalence of treatment)
 - Based preferably on international standards
 - Such that conformity assessment regimes are fair, open and equitable

The TBT agreement and standards

- Aim is to prevent the creation of unnecessary barriers to trade
- Therefore it is implicit that some barriers to trade can be thought of as necessary
- Members are free to impose restrictions where necessary to prevent a range of undesirable consequences

The TBT agreement and standards cont

- Products originating in another WTO member country shall be treated no less favourably than equivalent national products or equivalent products from any other country
- Standards shall not be prepared, adopted or applied with the intention (or effect) of creating unnecessary obstacles to international trade

The TBT agreement and standards cont

- Where international standards exist already, or their completion is imminent:
 - The standards body SHALL use them as a basis for its standards, except where
 - This would be ineffective or inappropriate e.g. because of climatic or geographical factors, or where the level of protection would be insufficient.

The TBT agreement and standards cont

- If a standards body expects to adopt an international standard in a certain field it **shall play a full part in the preparation** of the international standard **subject to resource limitations**
- National, regional and international standardization efforts **should not overlap**, and every effort shall be made to develop national standards on a **consensus** basis

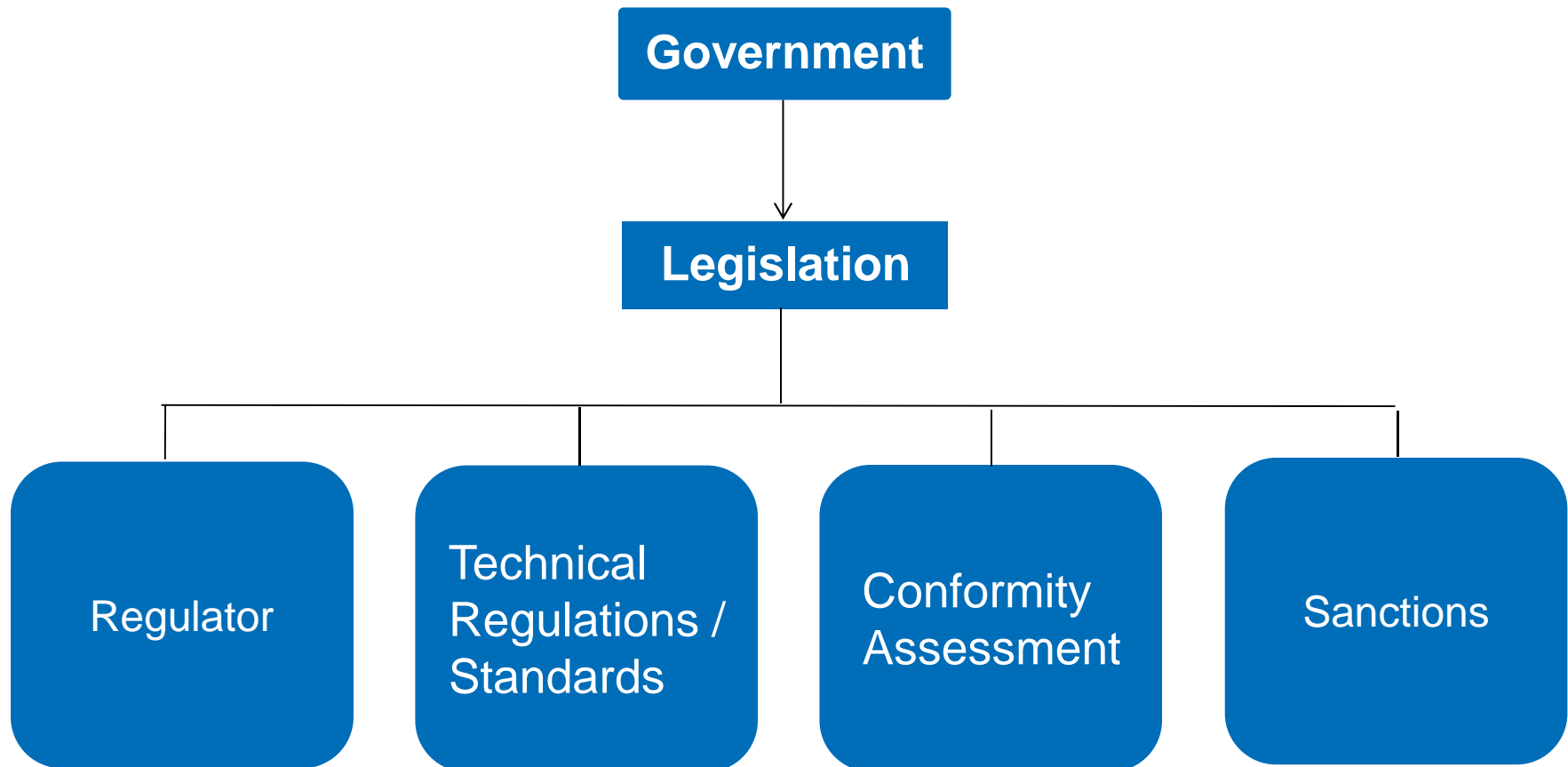
The TBT agreement and standards cont

- Wherever appropriate, product standards shall be based on **performance criteria** rather than design or descriptive characteristics
- Each **standards body shall publish its** work programme at least every 6 months
- After a national TC has reached **consensus**, a 60 day period shall be allowed for comments on the draft standard
- The 60 day period may be reduced where urgent problems of safety, health or environment arise or threaten to arise

The TBT agreement and conformity assessment

- Conformity assessment based on international guidelines
- Mutual recognition of equivalent procedures applied in other countries (MRA's)
- Accreditation

A Technical Regulatory System



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Regulatory Best Practice

- No perfect solution for all countries
- Different levels of governmental control, consumer pressure, conformity assessment
- WTO Compliance - OECD Recommendations:
 - Transparent
 - Accountable
 - Proportionate to risk
 - Consistent
 - Targeted only where action is needed

Technical regulation options

- Direct legislation by technical Ministries
- Compulsory standards under trade Ministry
- Indirect regulation – e.g. by reference to a voluntary standard or part of it
- Two parts to a regulation:
 - Technical solution
 - Administrative provisions

The regulator's dilemma

- Need for a technically sound solution to the problem
- Therefore need technical expertise
- Need to be able to measure, inspect, etc
- Therefore need accredited or competent CA providers
- Solution must be based on scientific fact and be proportional to the risk
- Sanctions must be at an appropriate level to deter offenders without stifling legal trade



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END

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