



The SPS and TBT Agreements and Public Health

**Training Course on the Public Health Implications of
Multilateral Trade Agreements**

University of Lausanne (UNIL), 14-18 June 2004

WTO rules governing technical barriers to trade applied for human health protection are covered by:

SPS Agreement:

- Negotiated in parallel to UR negotiations (1986-94) on AoA
- Concern countries might turn to the use of NTBs to protect domestic agricultural sectors that would negate benefits from reducing tariffs and subsidies

TBT Agreement:

- TBT first addressed in Tokyo Round negotiations (1973-79) “Standards Code” (1980)–Plurilateral Agreement- 46 countries adhered
- New TBT Agreement binding on all Members and contains more stringent obligations

Health is considered a legitimate objective for restricting trade but both Agreements require that such measures do not unnecessarily restrict trade

SPS Agreement: a carefully crafted balance

Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health.....
(Article 2.1)



Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal and plant life or health
(Article 2.2)

Science provides the balance

TBT Agreement: Creation of a Framework for the use of technical regulations & standards

- Increasing number of technical regulations and standards
- Proliferation of conformity assessment procedures
- Evolution in consumer demand
- Impact on trade

Balance between legitimate political imperatives and trade facilitation

Rights and Obligations:

SPS Agreement:

- Right to restrain trade to protect health
- Measures based on scientific principles
- Non-discriminatory
- No disguised restrictions

TBT Agreement:

- Right to restrain trade when legitimate objective (*+illustrative list*)
- Technical regulations take into consideration *inter alia* available scientific and technical information
- Non-discriminatory
- No disguised restrictions

Definition of an SPS Measure:

To Protect

human or
animal life or
health

human life or
health

animal or plant life
or health

a country

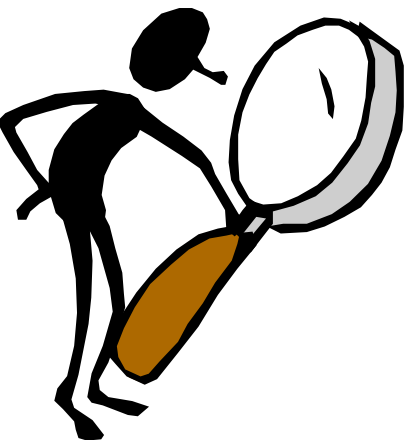
From

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;

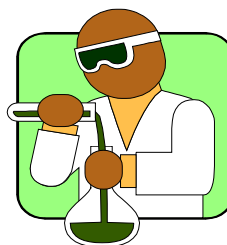
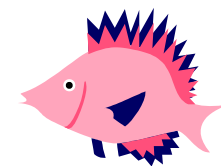
damage caused by the entry,
establishment or spread of pests



Important Footnote:



- “animal” includes wild fauna and fish
- “plants” include forests and wild flora
- “parasites” includes weeds
- “contaminants” include pesticide residues, veterinary drug residues and extraneous matter



SPS measures: laws, decrees, regulations... including:

- end product criteria
- processes and production methods
- testing, inspection, certification approval procedures, etc.
- quarantine treatments
- animal transport
- packaging and labelling requirements directly related to food safety

Legitimate Objectives under the TBT Agreement:

- Protection of human health or safety
- The protection of animal or plant life or health
- The protection of the environment
- National security interests
- Prevention of deceptive practices
- Etc...

The TBT Agreement has a wider scope

- It applies to all:
 - **technical regulations**
 - **standards**
 - **conformity assessment procedures**

but...

- **its provisions do not apply to SPS measures**

TBT Agreement some definitions:

Technical Regulation

- "Document which lays down product characteristics or their related processes and production methods...with which compliance is mandatory."

Standard

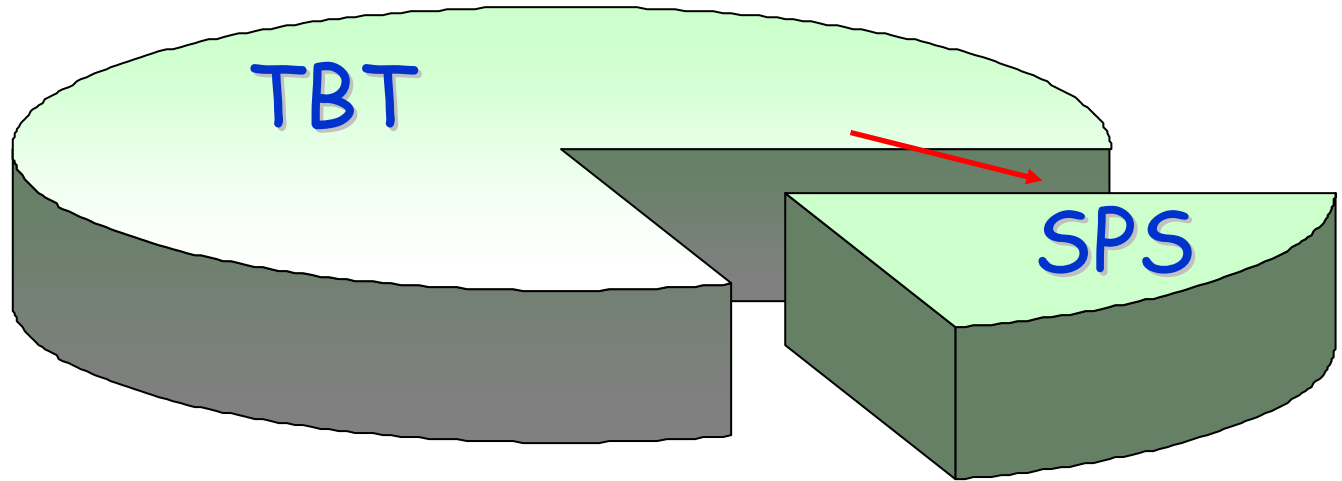
- Document, approved by a **recognized body** that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory

Conformity assessment procedure

- Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled

TECHNICAL BARRIERS TO TRADE (TBT)

TBT Applies To:
All Industrial And Agricultural Products



SANITARY AND PHYTOSANITARY MEASURES (SPS) SPS does not Apply only To Agricultural products but may also apply to industrial products

TBT Does Not Apply To:
SPS Measures

Health protection measures

- **Cigarette package labelling signalling health risks:**

- **SPS Measure?**

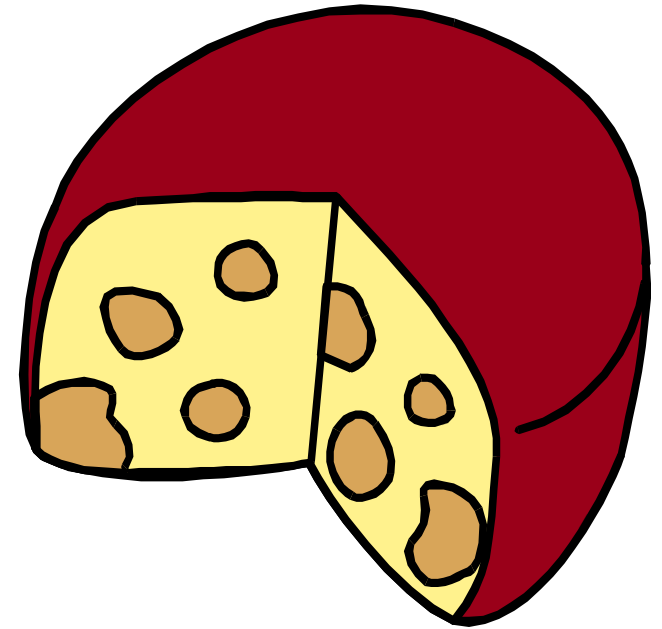
- **No! TBT Measure!**



Health protection measures

- Regulation requiring that all milk products, with the exception of cheese, be pasteurized.
- TBT Measure?

No! SPS measure!



Methods of production & inspection - Codex Code of Hygiene for meat (SPS)

Packaging in direct contact with the meat (SPS)

Product description Codex standards (TBT)

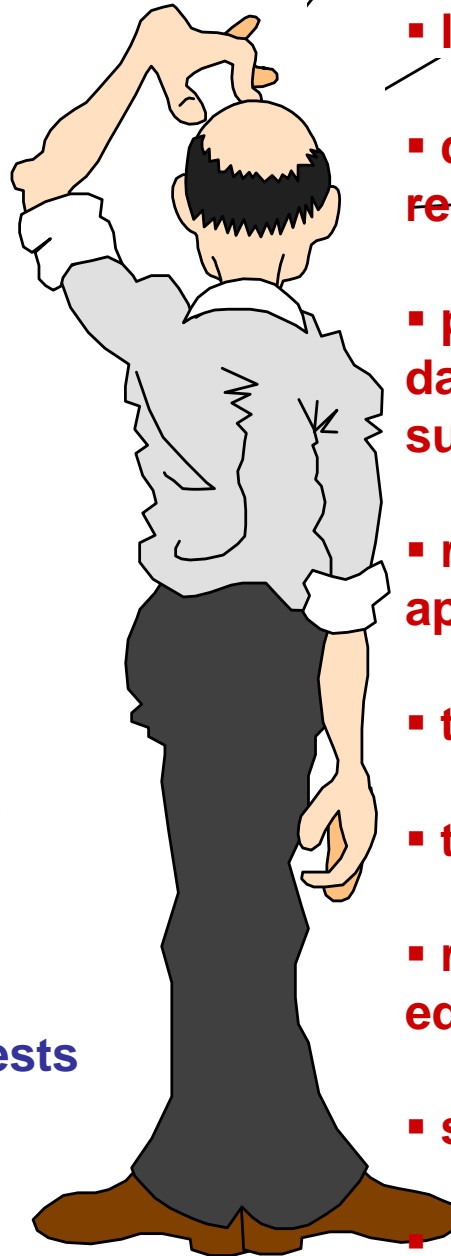
NOT CONTAMINATED BY BSE

Contaminants - Codex standards for:
-pesticides residues
-veterinary medicines
-contaminants (SPS)

Quality specifications (age, % fat, colour, species) (TBT)

SPS or TBT?

- additives, contaminants or poisonous substances in food or drink
- residues of veterinary drugs or pesticides in food or drink
- certification: food safety, animal or plant health
- processing methods with implications for food safety
- labelling requirements directly related to food safety
- plant/animal quarantine
- declaring areas free from pests or disease
- etc ...



- labelling of food, drink & drugs
- quality & packaging requirements for fresh food
- packaging & labelling for dangerous chemicals and toxic substances
- regulations for electrical appliances
- textiles & garments labelling
- testing vehicles & accessories
- regulations for ships & ship equipment
- safety regulations for toys
- etc...

Other types of measures...

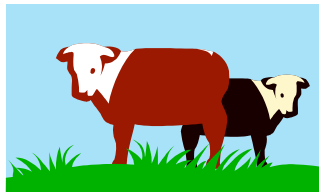
➤ Protection of the environment per se



➤ Consumer interests other than health



➤ Animal welfare



➤ are not covered by the SPS Agreement...

➤ ... but may be TBT measures

Key Principles of the SPS and TBT Agreements:

1. Scientific Justification
2. Harmonization
3. Consistency
4. Equivalence
5. Disease-free areas-
Regionalization
6. Transparency
7. Technical Assistance
8. S&D Treatment
9. Dispute Settlement

-  Harmonization
-  Equivalence/MRAs
-  Transparency
-  Recognition of CAPs
- Technical Assistance
- S&D Treatment
- Dispute Settlement

Scientific Justification of SPS measures

Measures conform to
international standards
(Art. 3)

Measures based on
a risk assessment
(Art. 5 and Art. 2)

Scientific Justification

SPS measures must be based

•Art.5

- Risk assessment (Advanced work by 3 sister organizations)

Scientific
methodology

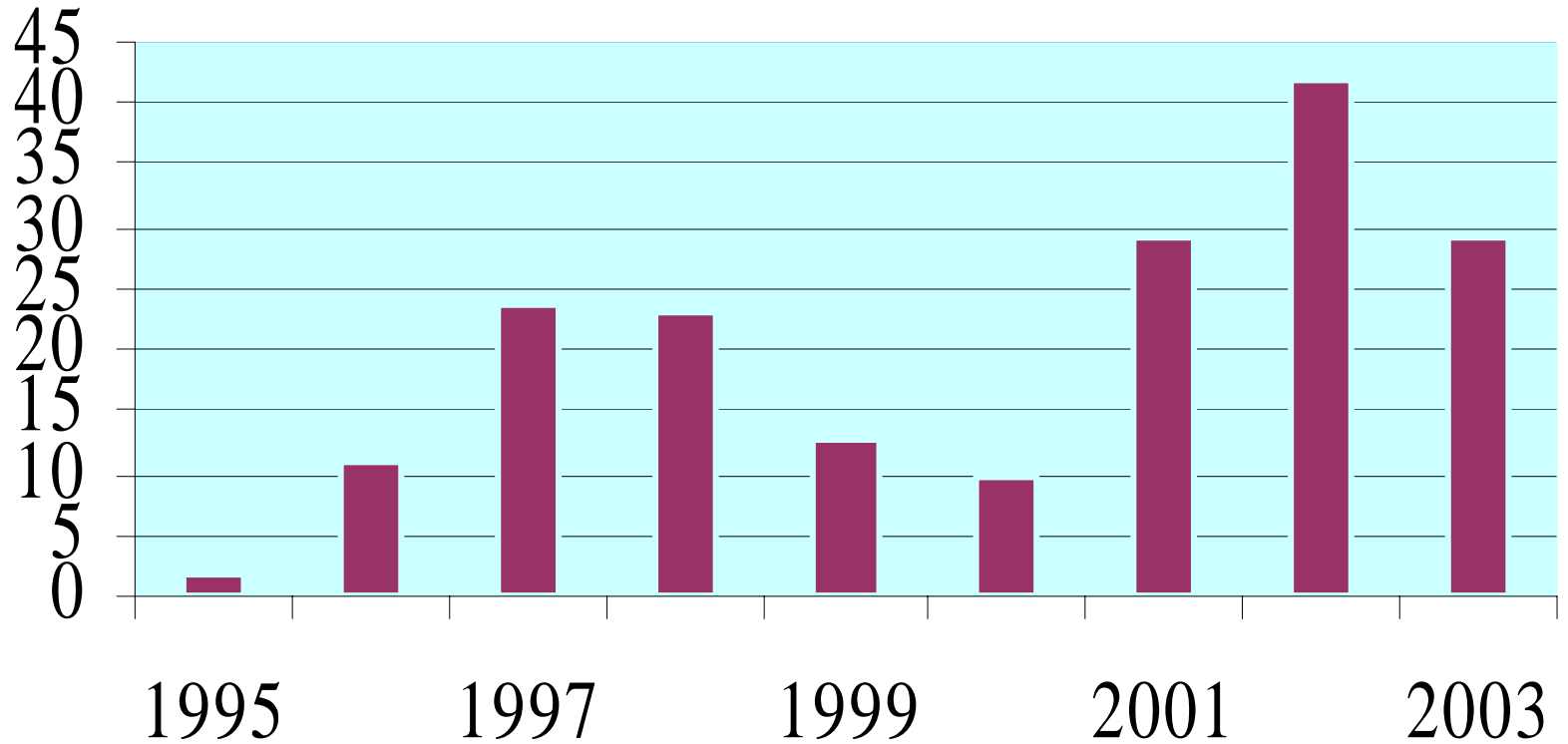
Available scientific evidence;
Processes & production methods;
Inspection, sampling & testing methods
etc.

- Economic factors (in assessing risk to animal or plant life or health & determining measure to be applied)

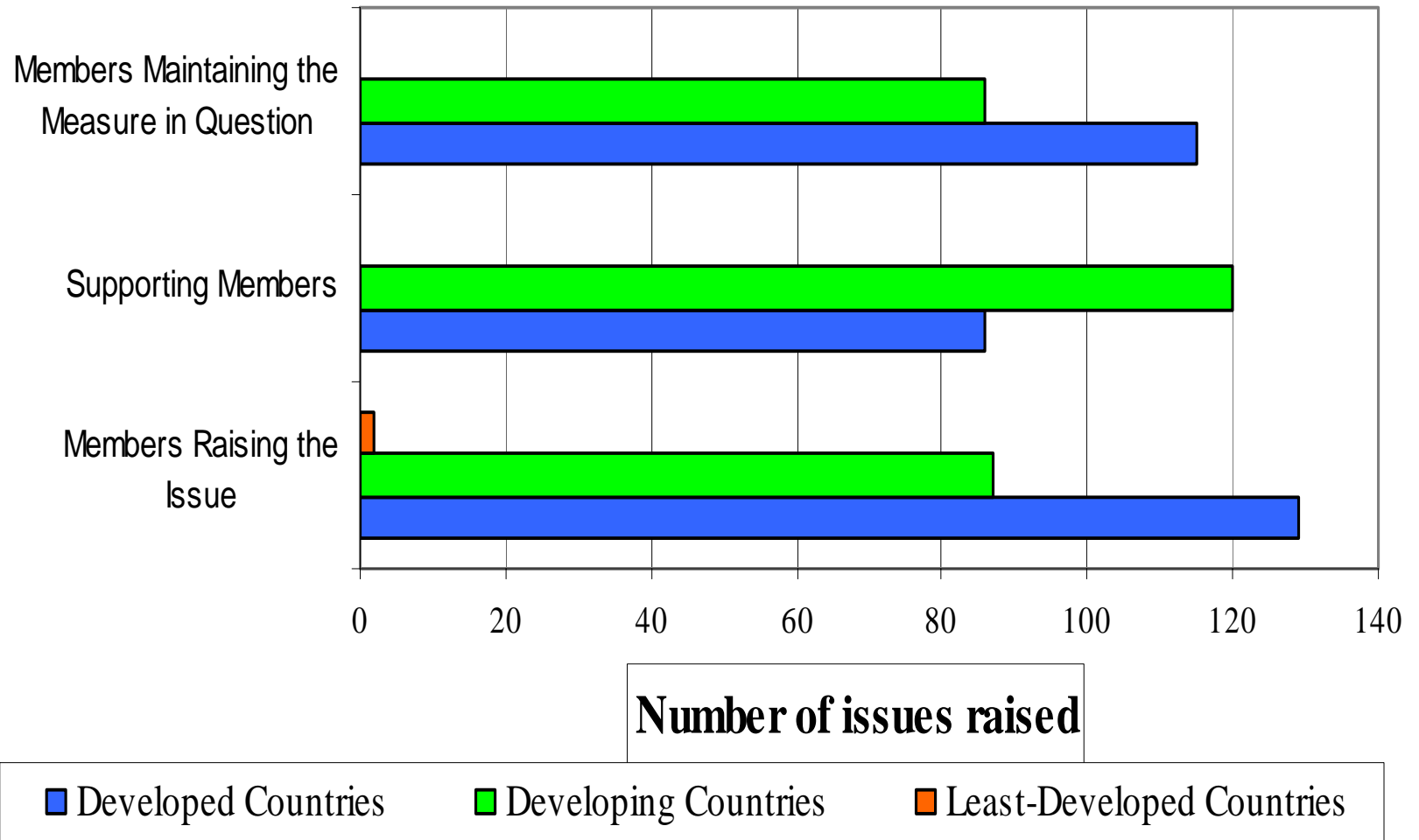
Raised often in SPS Committee Specific Trade Concerns (G/SPS/GEN/204/Rev.4) & major issue of SPS Disputes

Number of New Issues Raised

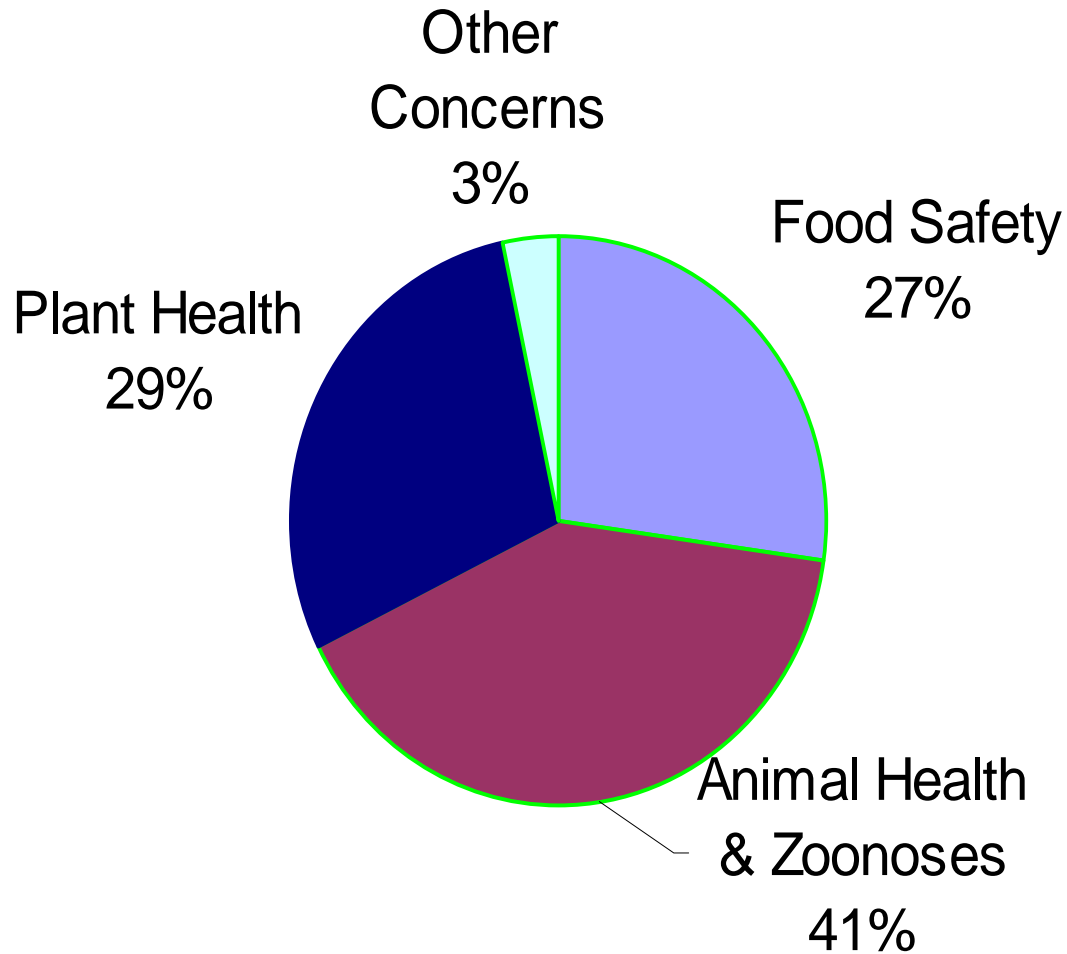
no.



Participation of Developing Countries



Trade Concerns by Subject



SPS - Risk management

- **Appropriate measure**
 - **Minimize negative trade effects**
 - **Not more trade-restrictive than required**
 - **Technical and economic feasibility**

Art.5.4- 5.6

Precaution in the SPS Agreement

Right to take provisional measures in case of insufficient scientific evidence

Obligation:

Art. 5.7

- ◆ **Seek additional information**
- ◆ **review the measure accordingly**
- ◆ **within a reasonable period of time**

International Harmonization

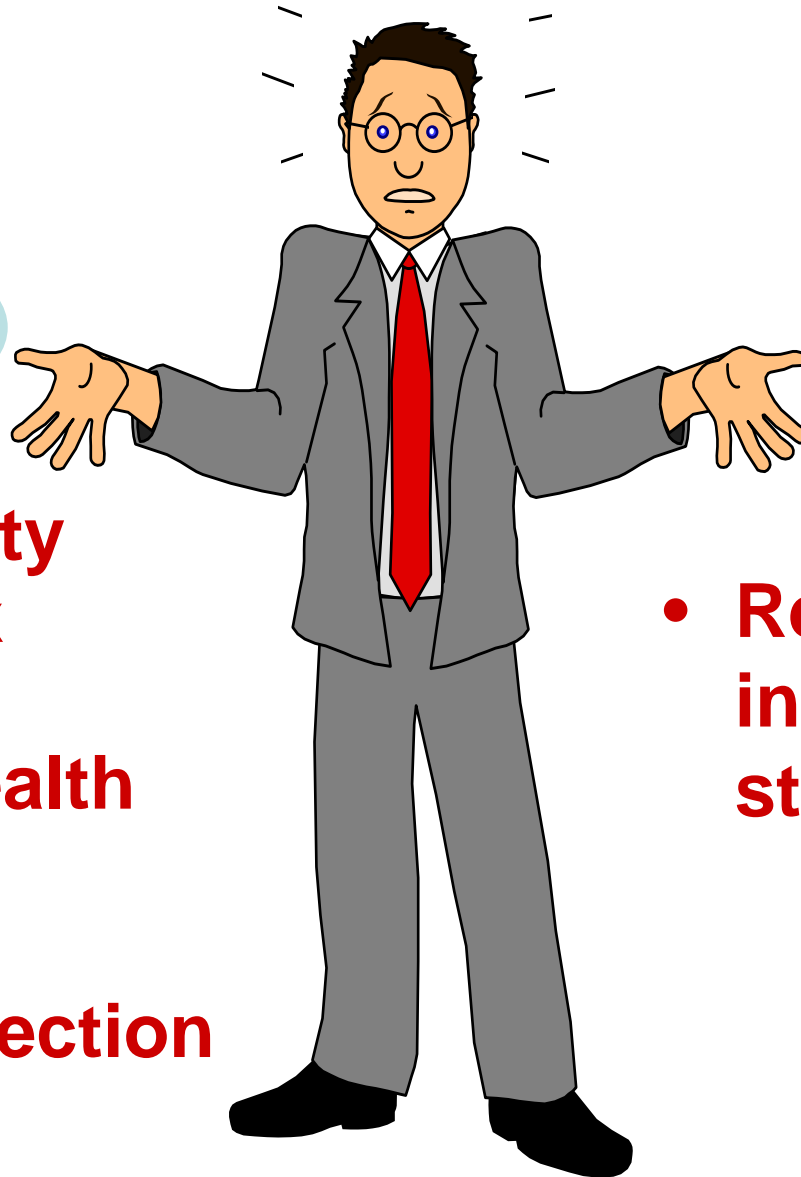
SPS & TBT

- Encouragement to use international standards
- Conformity presumption
- Right to be more stringent, but...
 - SPS requires scientific justification *or* risk assessment
 - TBT only requires indication that fundamental legitimate objectives cannot be met

•Art.3

•Art.2.4

International Harmonization



• SPS

• TBT

- **Food safety**
 - CODEX
- **Animal health**
 - OIE
- **Plant protection**
 - IPPC

- **Relevant international standards**

SPS - Monitoring International Harmonization

Articles 3.5 and 12.4

11 issues raised in the SPS Committee since the implementation of the procedure

•Non-utilisation?

•Inappropriate?

•Non-existent?

•WTO Member

•Apply standard

•“Three sisters”

•Review old

•Create new

Consistency

- Consistency (objective)
- Avoid distinctions ALOP if they result in discrimination or a disguised restriction on int. trade
- Guidelines adopted (G/SPS/15)
- No further work in Committee
- Often issue in disputes

Equivalence/MRAs

SPS

- Acceptance of equivalent measures
- Exporter to demonstrate
- Access to importer
- Bilateral and multilateral agreements
- Guidelines adopted and clarified (G/SPS/19/Rev.1)
- New format for notifications

•Art.4

TBT

- Acceptance of equivalent regulations
- Condition: adequately fulfill the objective of the importer
- Agreements mutual recognition conformity *assessment procedures*

•Art.2.7

•Art.6.3

SPS - Regionalization

- Adaptation of measures to risk profile
 - Pest- or disease-free areas

• Art.6

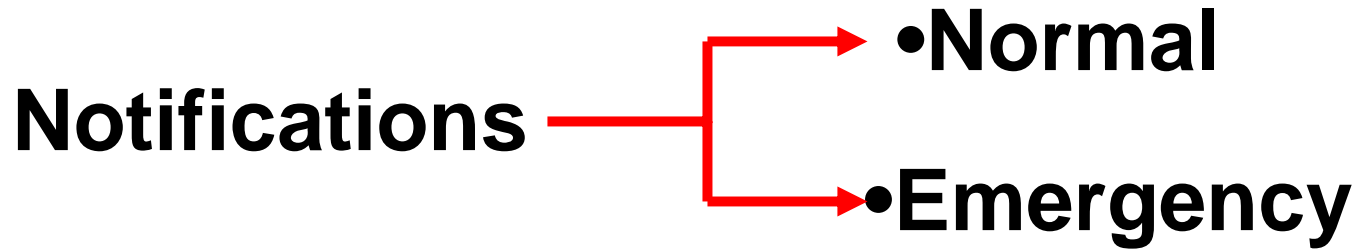
• FMD;... BSE

- Exporter: burden of proof
(...reasonable access)

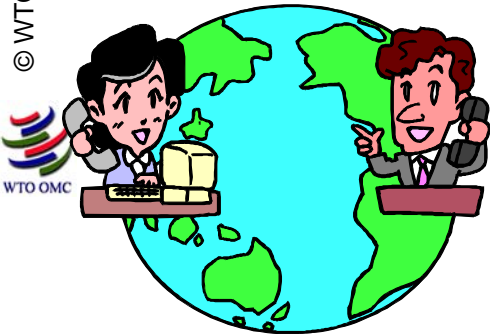
- Proposal for development of Guidelines
(Chile, EC, Canada)

- Advanced work in animal health and plant protection

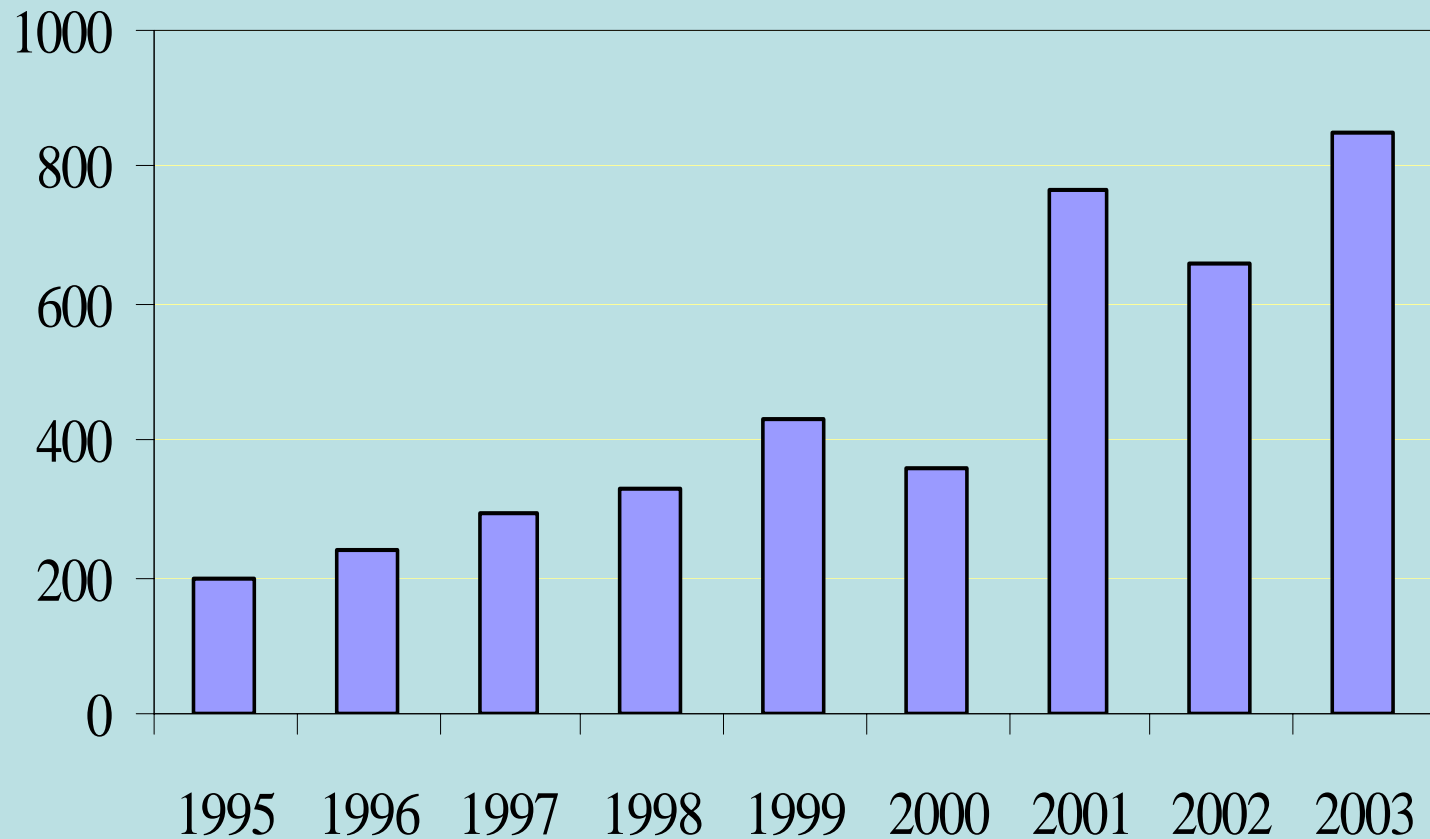
SPS - Transparency - TBT



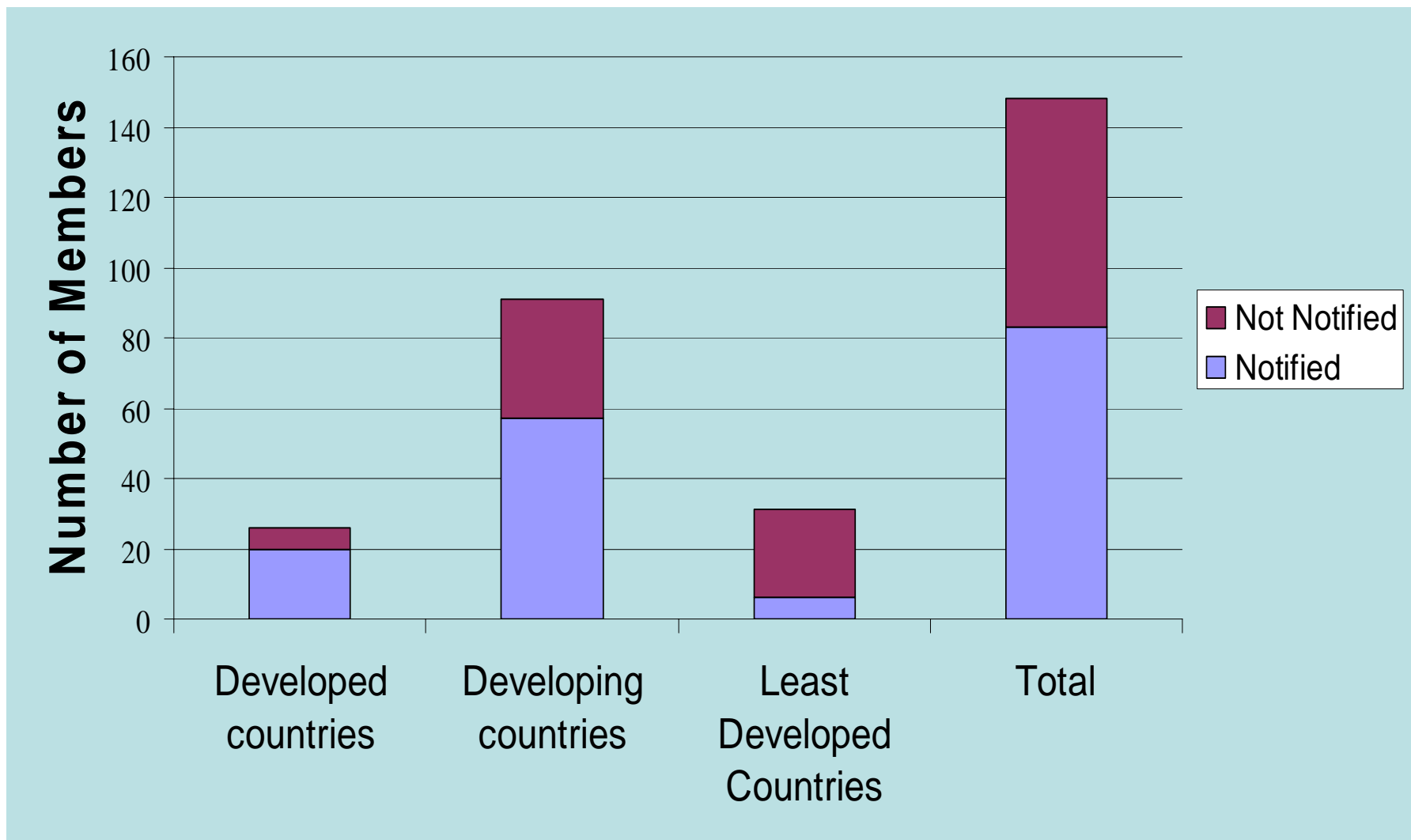
Enquiry Points



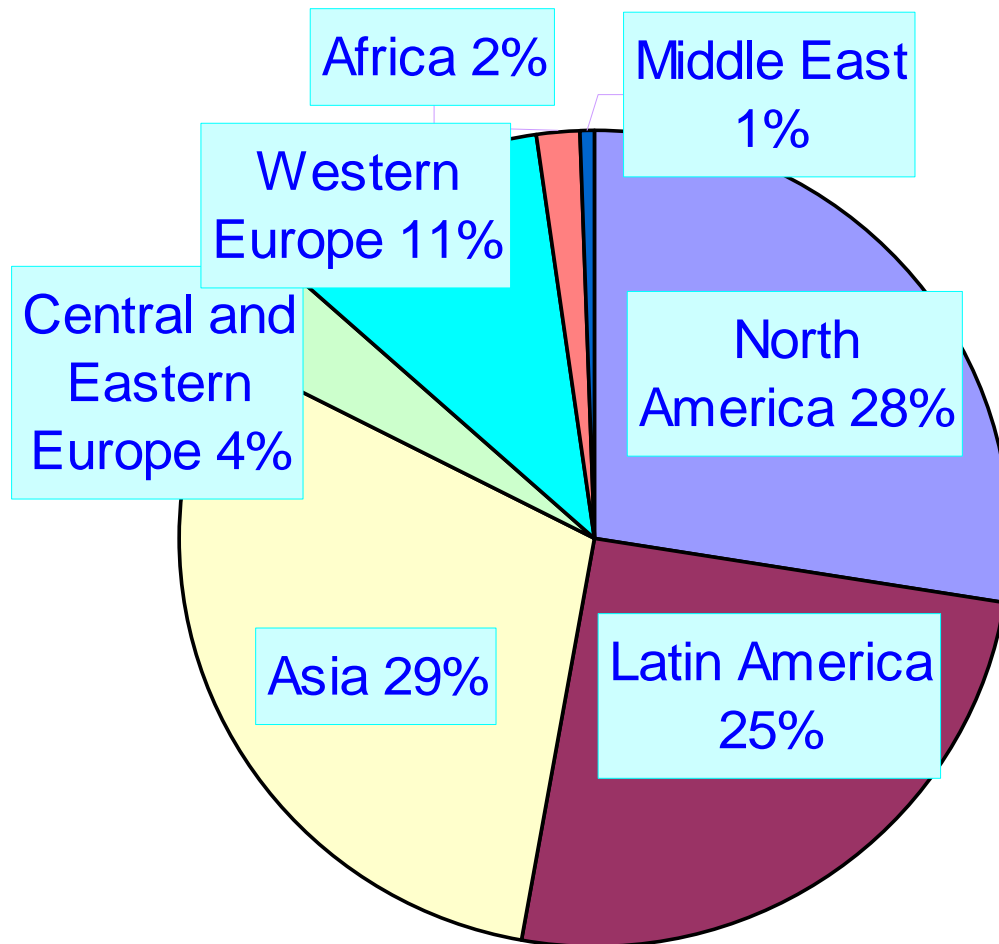
SPS Notifications Circulated (1995-2003)



Members Notifying SPS Measures (1995- 2003)



SPS Notifications by Region (1995-2003)



SPS - Committee - TBT

Implementation of the Agreement

- Information by Members
- Trade problems

Discussion of notifications

SPS

- Monitoring
- Consistency
- Review Agreement
- Technical Assistance

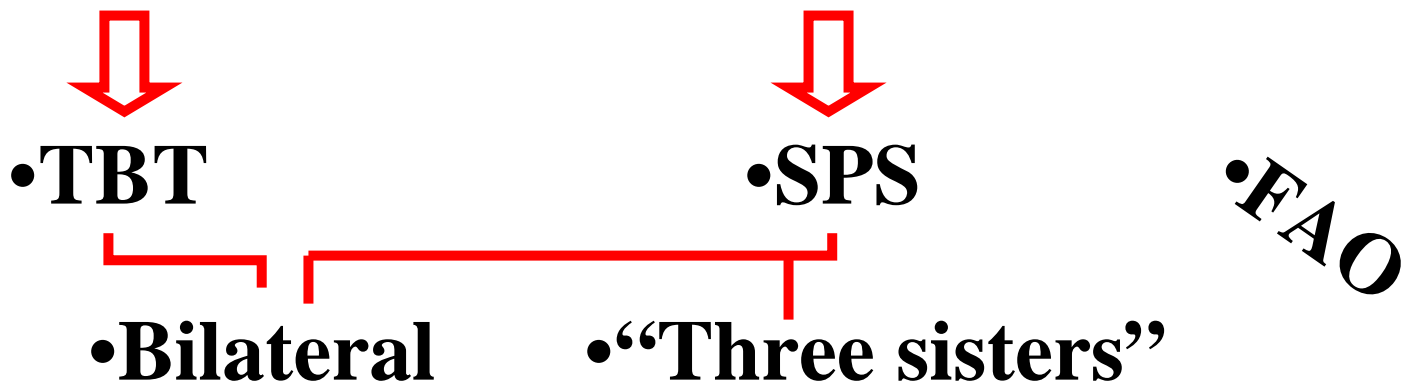
TBT

- Standards
- Technical regulations
- Conformity assessment
- Technical Assistance



Technical assistance

- Reinforcement services
- Establishment regulatory bodies
- Advice, credits, donations, grants



Special and differential treatment

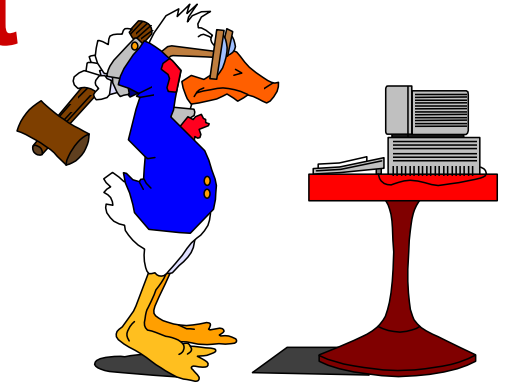
TBT & SPS

Take into account special needs of LDC
Specified, time-limited exceptions upon request
Facilitate active participation LDC in international organizations

TBT → Flexibility international standards

SPS → { No flexibility international standards
Delayed application

Dispute settlement



- **WTO unified dispute settlement procedures**
- **Possibility technical experts (group)**
- **SPS: right to resort to dispute settlement mechanisms of other IO**

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