

SPS and TBT Agreements

Professor Michael Blakeney

Outline

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

The WTO/TBT Agreement

Applies to

- Industrial products
- Agricultural products

Does not
apply to

- Sanitary and phytosanitary measures
- Services

The WTO/SPS Agreement

SPS measures are adopted to protect:

- Human or animal life from food-borne risks arising from additives, contaminants, toxins or disease-causing organisms
- Human health from diseases carried by animals, plants or their products
- Animals and plants from pests and diseases
- Against other damage by pests

The WTO/TBT Agreement

Premise

WTO members have the **right** to adopt technical regulations, standards and conformity assessment procedures

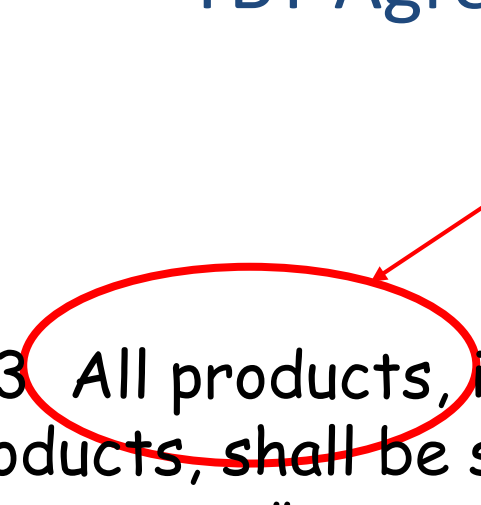
but

these must not constitute **unnecessary** obstacles to international trade

Scope of TBT Agreement

TBT Agreement is applicable to:

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



TBT Agreement is not applicable to

“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.”

TBT Agreement, Article 1:5 (General Provisions)

“International Body or System” (Annex 1, para 4)

“Body or system whose membership is open to the relevant bodies of at least all Members.”



Article 2.1 of the TBT Agreement

“Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.”

Technical Regulation

“Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

TBT Agreement, Annex 1, para 1

Technical Regulation

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

TBT Agreement, Annex 1, para 1 (words)

Technical
Regulations



Conformity
Assessment
Procedures



Standards



Conformity Assessment Procedures

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

TBT Agreement, Annex 1, para 3

Technical
Regulations



Conformity
Assessment
Procedures



Standards



Definition of a “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. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

TBT Agreement, Annex 1, para 2

United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (Tuna Dolphin) WT/DS381/R, 15 September 2011.

This case concerned, *inter alia*, two measures adopted by the US concerning the importation, marketing and sale of tuna and tuna products. Regulations promulgated under the Dolphin Protection Consumer Information Act (DPCIA) regulated the use of the term "dolphin-safe" when it appears on tuna products. (a) *United States Code*, Title 16, Section 1385 ("Dolphin Protection Consumer Information Act"); (b) *Code of Federal Regulations*, Title 50, Section 216.91 ("Dolphin-safe labelling standards") and Section 216.92 ("Dolphin-safe requirements for tuna harvested in the ETP [Eastern Tropical Pacific Ocean] by large purse seine vessels").

Tuna Dolphin

- Mexico claimed that these provisions breached Articles 2.1, 2.2 and 2.4 of the TBT Agreement.
- The US argued that the TBT Agreement did not apply as the measures at issue did not constitute "technical regulations".
- The dispute Panel applied the definition of a "technical regulation" which had been developed by the Appellate Body in *EC – Asbestos* and *EC – Sardines* which established a three-tier test for determining whether a measure was a "technical regulation" namely:
 - (a) the measure applies to an identifiable product or group of products;
 - (b) it lays down one or more characteristics of the product; and
 - (c) compliance with the product characteristics is mandatory.

Applying this test the Panel agreed with Mexico that the US dolphin-safe labelling provisions applied to an identifiable group of products: "tuna" and "tuna products" that could be labelled as dolphin-safe.

The Panel noted that both parties acknowledged that the US dolphin-safe labelling provisions established "labelling requirements" within the meaning of Annex 1 of the TBT Agreement.

Thirdly the Panel considered that the US measures required mandatory compliance because they prescribed "in a binding and legally enforceable instrument, the manner in which a dolphin-safe label can be obtained in the United States, and disallowed any other use of a dolphin-safe designation"

Tuna-Dolphin – national treatment

- The panel determined that "less favourable treatment" would be afforded to Mexican tuna products in respect of the measures if they were placed at a disadvantage compared to US and/or other imported products with respect to the preparation, adoption or application of the US dolphin-safe measures. This entailed a consideration of whether (a) access to the label was an advantage and (b) Mexican tuna products are denied access to it under the measures, so that they were disadvantaged on the US market compared with US or imported tuna products originating in any other country.
- On the first point, the panel agreed with Mexico that retailer and consumer preferences for dolphin-safe tuna products meant that the US legislation afforded an advantage to products eligible for the label however, it was not persuaded that Mexico had demonstrated that the US dolphin-safe provisions afford less favourable treatment to Mexican tuna products.

Article 2.2 (TBT)

(technical regulations)

“Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create...”

United States - Measures Affecting the Production and Sale of Clove Cigarettes - Ab-2012-1 - Report of the Appellate Body, WT/DS406/AB/R, 4 April 2012.

- Indonesia argued that a US ban on clove cigarettes was a "disguised restriction" on international trade and a "wolf disguised in the sheep's clothing" of public health.
- The Panel identified the fundamental issue under Article 2.2 as whether the US ban on clove cigarettes was more trade-restrictive than necessary to fulfil a legitimate public health objective, taking account of the risks non-fulfilment would create.

Clove Cigarettes

- The Panel observed that it was “self-evident that measures to reduce youth smoking are aimed the protection of human health, and Article 2.2 of the *TBT Agreement* explicitly mentions the ‘protection of human health’ as one of the "legitimate objectives" covered by that provision.”
- the Panel considered that Indonesia failed to demonstrate that there were less-trade restrictive alternative measures that would make an equivalent contribution to the achievement of the objective at the level of protection sought by the US.

Tuna-Dolphin

- Mexico submitted that the US dolphin-safe provisions were inconsistent with Article 2.2 of the TBT Agreement because they did not fulfil a legitimate objective or that those objectives could be fulfilled using less trade-restrictive measures.
- The Appeal Body ruled against the US as it had not demonstrated that the difference in labelling conditions for tuna products was "calibrated" to the risks to dolphins arising from different fishing methods in different areas of the ocean. As a consequence, nations such as Mexico which used fishing methods outside those permitted in the legislation were discriminatorily affected.

The WTO/TBT Agreement

Benefits for the business community (1)



Transparency about Standards, Technical Regulations and Conformity Assessment procedures

- Prompt information about technical regulations and conformity assessment procedures
- Monitoring of proposed technical regulations and conformity assessment procedures
- Monitoring of proposed standards

The WTO/TBT Agreement

Benefits for the business community (2)



Harmonization of technical regulations through international standards



Non-discrimination between domestic and imported products for Conformity Assessment procedures



Avoidance of retesting and recertification through Recognition of conformity assessment procedures (e.g. Mutual Recognition)

The WTO/TBT Agreement

Benefits for the business community (3)



Equivalence of technical regulations
(if they fulfil the same objective)



Remedy of problems through
Consultation in TBT Committee/
Dispute Settlement Mechanism

RESULT

Avoidance of Unnecessary Obstacles to Trade

The WTO/SPS Agreement

Premise

WTO members have
the **right** to adopt
measures to protect
human, animal or
plant life or health
Art 2.1

but

these must not
constitute
unjustifiable
**discrimination between
Members** or a
disguised restriction
on international
Trade
Art 2.2

SPS Measures (1):

What are the obligations of regulatory bodies?

- Base their SPS measures on international standards, international guides or recommendations developed by:

CAC

IPPC

OIE

- Accept SPS measures of exporting countries as **equivalent** if they achieve the same level of SPS protection

Harmonization

Article 3

Standard-setting organizations



Codex = Joint FAO/WHO Codex Alimentarius Commission

OIE = World Organization for Animal Health

IPPC = International Plant Protection Convention (FAO)

SPS Agreement: Key Provisions

Article 2.2

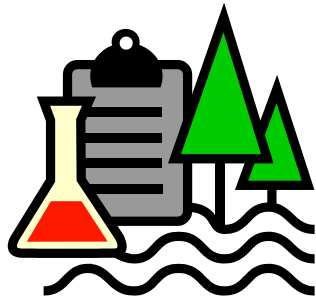
Members shall ensure that any SPS measure is:

based on scientific principles

applied only to the extent necessary to protect human, animal or plant life or health (least trade restrictive)

not maintained without sufficient scientific evidence

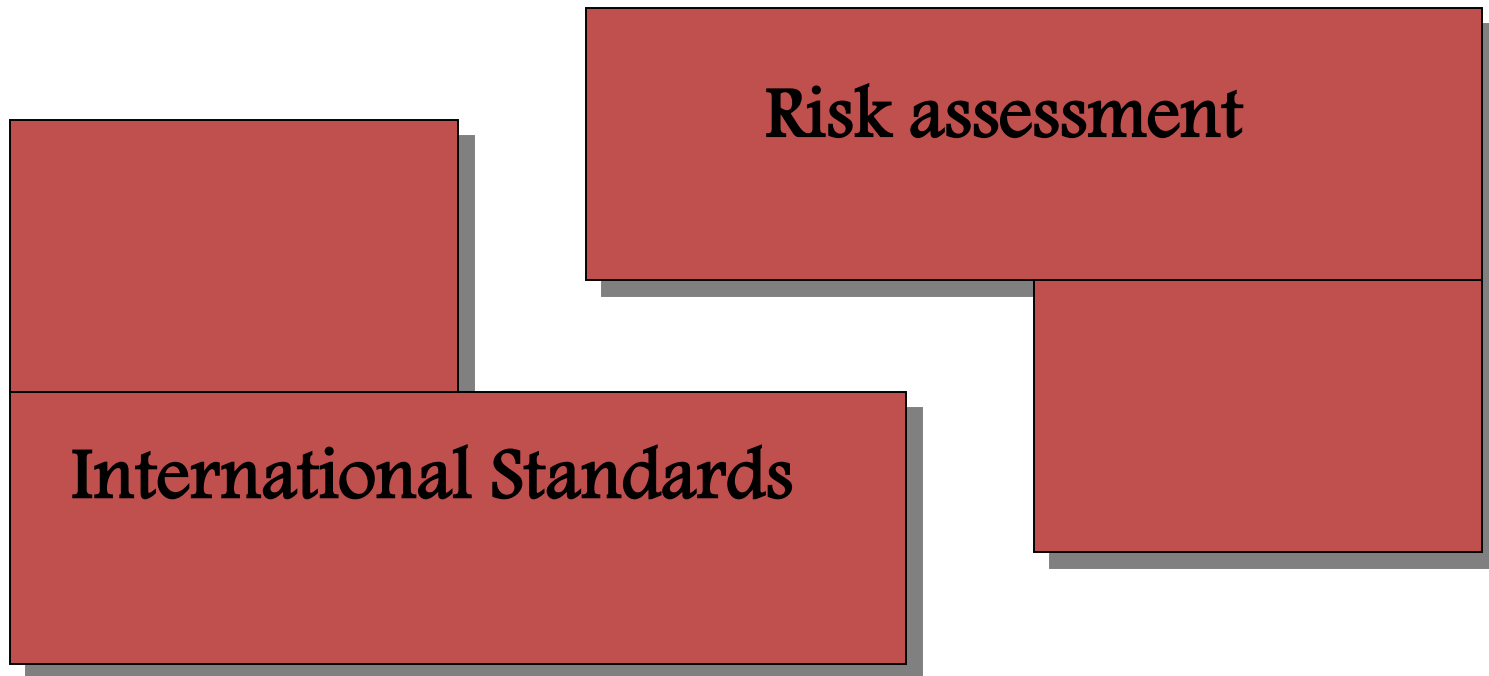
except as provided for in Article 5.7



Scientific Justification

Articles 3 & 5

Measures must be based on



How is risk assessment done?

- **SPS measures to be based on**
 - assessment of risks to human, animal or plant life or health, taking into account risk assessment techniques developed by international organizations.
 - available scientific evidences; process and production methods; inspection & sampling methods; prevalence of specified disease or pests; existence of pests/disease-free areas,etc
 - relevant economic factors & cost effectiveness of alternate approaches
- **Avoid arbitrary/unjustifiable distinctions in the levels in different situations if these result in disguised restrictions**

Exception: Provisional measures

Article 5.7

Members may provisionally adopt SPS measures

- ✓ when relevant scientific information is insufficient
- ✓ on the basis of available information

In such circumstances, Members shall

- ✓ seeks to obtain additional information to assess risk
- ✓ review the measure within a reasonable period of time

Non-discrimination

Article 2.3

No unjustifiable discrimination

- between Members with similar conditions
- between own territory and other Members

SPS permits Members to impose different sanitary and phytosanitary requirements on food, animal or plant products sources from different countries, provided that they "do not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail".

SPS Measures (2):

What are the obligations of regulatory bodies?

➤ If international standards, guides or recommendations are not available or a higher level of protection is needed

AND

➤ SPS measures affect international trade

➤ Measures must be based on science and an appropriate assessment of risks

Governments must inform other WTO Members and take their comments into account

The WTO/SPS Agreement

Benefits for the business community

Exporters' advantages

- Transparency provides essential information
- Prevention of unfair exclusion from market
 - Market access strategy

Importers' advantages

- Protection of legitimate national measures
- Avoiding trade disputes

Trade measures: transparency

(Article 7, Annex B and G/SPS/7/Rev.3)

Members shall



establish an Enquiry Point
AND
designate a Notification Authority_

notify other Members of new or
changed SPS regulations when

For more information see:

<http://spsims.wto.org>

no international standard exists
OR
the new regulation is different to the
international standard

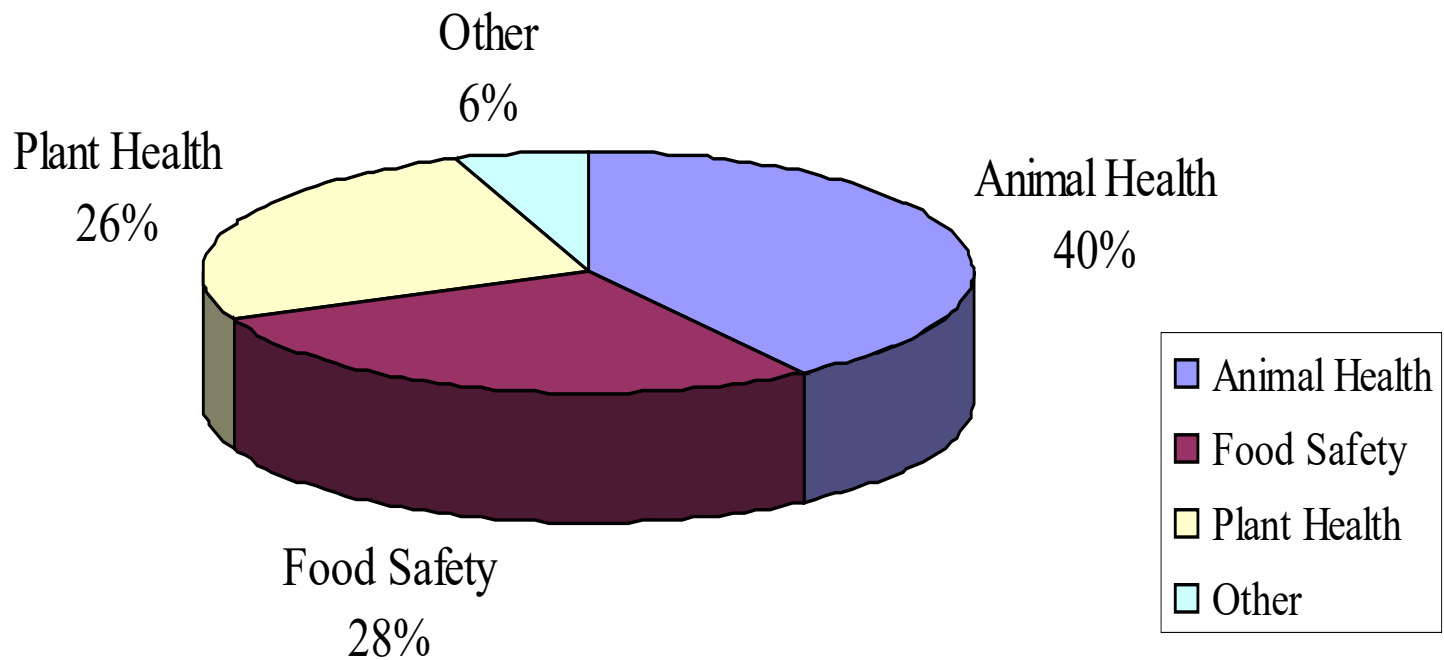
AND

regulation may
have significant
effect on trade

International trade: OIE role

- OIE, CAC and IPPC ('3 sisters') set official standards for purposes of the SPS Agreement
- OIE sets vertical (disease) standards
 - e.g. disease free countries/zones/compartments; safe commodities; trade measures; inactivation of pathogens...
- and horizontal standards, e.g. risk assessment, judgement of equivalence and zoning
 - including animal production food safety
- Codex is the reference ISSO for food safety
- OIE and Codex collaborate to ensure seamless coverage of the food production continuum

SPS Trade Concerns by subject (1995-2010)



Resolving trade differences

➤ **OIE voluntary mediation procedure**

- Technical evaluation based on standards adopted by OIE Members; no involvement of lawyers; less costly. Report confidential unless parties agree to release - outcomes are not binding

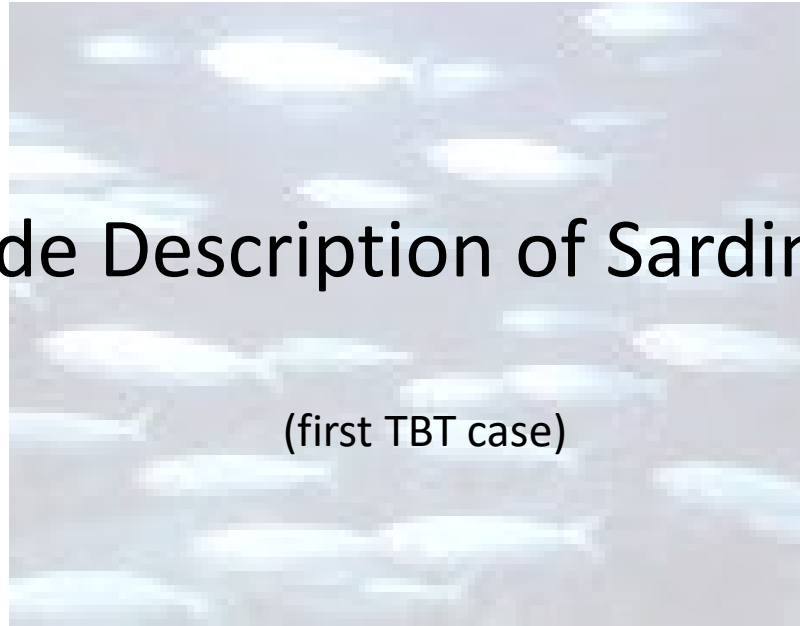
➤ **WTO dispute settlement procedure**

- Legal evaluation with possibility of appeal; is costly but outcomes are binding – report is released publicly once parties have commented.

EC – Sardines (2002)

EC – Trade Description of Sardines (Peru)

(first TBT case)



EC – Sardines (2002)

**World Trade
Organization**

WT/DS231/AB/R
26 September
2002

EUROPEAN COMMUNITIES – TRADE DESCRIPTION OF SARDINES
AB-2002-3

(02-5137)

Original: English

EC – Sardines (2002)

European Communities – Trade Description of Sardines

European Communities, *Appellant*
Peru, *Appellee*

Canada, *Third Participant*

Chile, *Third Participant*

Ecuador, *Third Participant*

United States, *Third Participant*

Venezuela, *Third Participant*

AB-2002-3

Present:

Bacchus, Presiding Member

Abi-Saab, Member

Baptista, Member

Timeline

Panel Request:	June 7, 2001
Panel Established:	July 24, 2001
Panel Composed:	September 11, 2001
Interim Report Issued:	March 28, 2002
Final Report Issued to Parties:	May 22, 2002
Final Report Circulated:	May 29, 2002
Notice of Appeal:	June 28, 2002
AB Report Circulated:	September 26, 2002

EC – Sardines (2002)

- This dispute concerns the name under which certain species of fish may be marketed in the European Communities.
- The measure at issue is Council Regulation (EEC) 2136/89 ("EC Regulation").
- Adopted by the Council of the European Communities on 21 June 1989 and became applicable on 1 January 1990.


Article 2 of the EC Regulation:

“Only products meeting the following requirements may be marketed as preserved sardines and under the trade description referred to in Article 7:

- they must be covered by CN codes 1604 13 10 and ex 1604 20 50;
- they must be prepared exclusively from fish of the species "Sardina pilchardus Walbaum";
- they must be pre-packaged with any appropriate covering medium in a hermetically sealed container;
- they must be sterilized by appropriate treatment.”

Article 2 of the EC Regulation:

“Only products meeting the following requirements may be marketed as preserved sardines and under the trade description referred to in Article 7:

- they must be covered by CN codes 1604 13 10 and ex 1604 20 50;
-  **they must be prepared exclusively from fish of the species "Sardina pilchardus Walbaum";**
- they must be pre-packaged with any appropriate covering medium in a hermetically sealed container;
- they must be sterilized by appropriate treatment.”

Sardina pilchardus Walbaum ("Sardina pilchardus")



“European Sardine”

found mainly:

- around the coasts of the Eastern North Atlantic Ocean
- the Mediterranean Sea
- in the Black Sea

Peru

- Peru exports preserved products prepared from *Sardinops sagax sagax* ("*Sardinops sagax*").



- This species is found mainly in the Eastern Pacific Ocean, along the coasts of Peru and Chile.



EC: Sardina pilchardus



... only *Sardina pilchardus* may be marketed
as preserved sardines in EC (Article 2)



Peru: *Sardinops sagax*

Is it a “technical regulation”?

Technical Regulation

“Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

TBT Agreement, Annex 1, para 1

Peru's claim

- Peru argued that the EC Regulation is inconsistent with
 - Articles 2.4, 2.2 and 2.1 of the TBT Agreement
 - Article III:4 of the GATT 1994

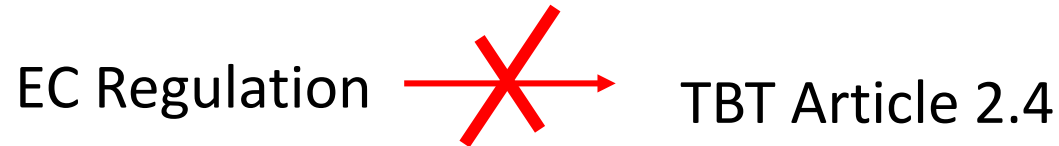
Peru's claim

- Peru argued that the EC Regulation is inconsistent with
 - Articles 2.4, 2.2 and 2.1 of the TBT Agreement
 - Article III:4 of the GATT 1994

Panel considered Article 2.4 only



Peru's claim



- Why?
 - EC did not use the naming standard set out in Codex Stan 94 as a basis for its Regulation ...

... even though that standard would be an effective and appropriate means to achieve the legitimate objectives pursued by the Regulation

Article 2.4

“2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations”

Article 2.4

“2.4 Where technical regulations are required and **relevant international standards exist** or their completion is imminent, Members **shall use them**, or the relevant parts of them, **as a basis** for their technical regulations”

Article 2.4

“2.4 ... **except** when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the **legitimate objectives pursued**, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”

Four key questions

Does a relevant international standards exists?

If so, has this standard been used as a basis for the measure at issue?

Was it a situation where the relevant standard would be and "ineffective or inappropriate means" of fulfilling the legitimate objective?

What was the nature of the "legitimate objective" pursued?

(i)

Does a relevant international
standard exist?

FAO/ WHO Food Standards

CODEX alimentarius

ftp://ftp.fao.org/codex/standard/en/CXS_094e.pdf

- Standard adopted 1978
- For preserved sardines and sardine-type products
- Regulates matters such as presentation, essential composition and quality factors, food additives, hygiene and handling, labelling, sampling, examination and analyses, defects and lot acceptance
- From 21 fish species

Does an international standard exist?



Is it a relevant standard?

EC claim on “consensus” (1st)

Only standards that have been adopted by consensus are “relevant”.

EC claim on “consensus” (1st)

Definition and explanatory note on “Standard”

“ For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus.

EC claim on “product coverage” (2nd)

Codex Stan 94 is not a "relevant international standard" because its product coverage is different from that of the EC Regulation.

Coverage of Codex Standard (21 fish species)

Sardina pilchardus

Sardinops melanostictus, *S. neopilchardus*, *S. ocellatus*,

S. sagax[,] *S. caeruleus*

Sardinella aurita, *S. brasiliensis*, *S. maderensis*, *S. longiceps*, *S. gibbosa*

Clupea harengus

Sprattus sprattus

Hyperlophus vittatus

Nematalosa vlaminghi

Etrumeus teres

Ethmidium maculatum

Engraulis anchoita, *E. mordax*, *E. ringens*

Opisthonema oglinum.

AB on product coverage (2nd)

(para 232)

“... although the EC Regulation expressly mentions only *Sardina pilchardus*, it has legal consequences for **other fish species** that could be sold as preserved sardines, including preserved *Sardinops sagax*.”



Does an international standard exist?



Is it a relevant standard?



YES



The heart of Article 2.4

“the heart of Article 2.4 of the TBT Agreement is a requirement that Members use international standards as a basis for their technical regulations”

(para. 274)

Codex Alimentarius Commission

(Section 6)

6. LABELLING

...

6.1 NAME OF THE FOOD

The name of the product shall be:

- 6.1.1 (i) "Sardines" (to be reserved exclusively for *Sardina pilchardus* (Walbaum)); or
- (ii) "X sardines" of a country, a geographic area, the species, or the common name of the species in accordance with the law and custom of the country in which the product is sold, and in a manner not to mislead the consumer.

(Codex Alimentarius (Secretariat of the Joint FAO/WHO Food Standards Programme, 2001), Volume 9A, Fish and Fishery Products, pp. 75–81)

Peru's argument:

(as summarized in AB)

- the relevant part of Codex Stan 94 is section 6.1.1(ii)
- ... there is no relationship between section 6.1.1(ii) and the EC Regulation prohibition that can be described as "substantive" or "rational".
- ... there is not a single element of the standard foreseen in section 6.1.1(ii) of Codex Stan 94 that is reflected in the EC Regulation.
- “... prohibiting the marketing in the European Communities of *Sardinops sagax* imported from Peru as, for example, "Peruvian sardines" would run counter to the first of the four options in section 6.1.1(ii).”

Codex Alimentarius Commission

(Section 6)

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(Codex Alimentarius (Secretariat of the Joint FAO/WHO Food Standards Programme, 2001), Volume 9A, Fish and Fishery Products, pp. 75–81)

The heart of Article 2.4

“the heart of Article 2.4 of the TBT Agreement is a requirement that Members use international standards as a basis for their technical regulations”

(para. 274)

“contradictory”

(EC-Sardines, ABR para. 248)

“... under Article 2.4, if the technical regulation and the international standard contradict each other, it cannot properly be concluded that the international standard has been used "as a basis for" the technical regulation.”

conclusion
(EC-Sardines, ABR para. 257)

“The **effect** of Article 2 of the EC Regulation **is to prohibit** preserved fish products prepared from the 20 species of fish other than *Sardina pilchardus* to which Codex Stan 94 refers—including *Sardinops sagax*—from being identified and marketed under the appellation "sardines", even with one of the four qualifiers set out in the standard.”

conclusion

(EC-Sardines, ABR para. 257, cont'd)

Codex Stan 94, by contrast, **permits the use** of the term "sardines" with any one of four qualifiers for the identification and marketing of preserved fish products prepared from 20 species of fish other than *Sardina pilchardus*.

conclusion

(EC-Sardines, ABR para. 257, cont'd)

Thus, the EC Regulation and Codex Stan 94 are **manifestly contradictory**.

conclusion

(EC-Sardines, ABR para. 257, cont'd)

To us, the existence of this contradiction confirms that Codex Stan 94 **was not used** "as a basis for" the EC Regulation."

Was it a situation where the relevant standard would be and “ineffective or inappropriate means” of fulfilling the legitimate objective?

The requirement to use international standards is not absolute.

(para. 274)

In Sardines, this was for Peru to prove the claim

The AB concluded that it was for Peru to establish that Codex Stan 94 was effective and appropriate to fulfil the "legitimate objectives" pursued by the European Communities through the EC Regulation.

(para. 275, 282)

Legitimate objective

“The European Communities argues that the objectives pursued by Article 2 of the EC Regulation are **consumer protection, market transparency** and **fair competition** and that these are separate but interdependent objectives.”

(Panel Report, para. 4.60)

(examples of legitimate objectives explicitly mentioned in TBT Agreement)

national security requirements;

the prevention of deceptive practices;

protection of human health or safety, animal

or plant life or health, or the environment.

The EC Regulation was found
inconsistent with Article 2.4 of the TBT
Agreement

mutually agreed solution



EC Regulation No 1181/2003 of 2 July 2003
amending **Council Regulation No 2136/89** laying
down common marketing standards for
preserved sardines

WT/DS231/18

29 July 2003

Mutually Agreed Solution

Notified to WTO in July 2003

WT/DS231/18
29 July 2003

“**Preserved sardines**” means products prepared from fish of the species *Sardina pilchardus* (« European Sardine »)

Preserved “**sardine-type products**” means products prepared from the other 20 species, including *Sardinops sagax*

Mutually Agreed Solution

Notified to WTO in July 2003

WT/DS231/18

29 July 2003

Preserved **sardine-type products** may be marketed in the EC under a trade description consisting of the word 'sardines' joined together with the scientific name of the species

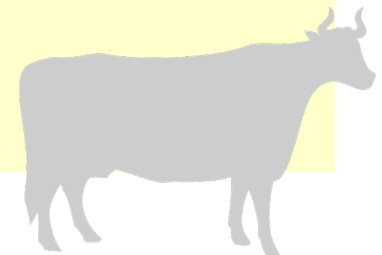
“Sardines – *Sardinops sagax*”

SPS Disputes

- **Food safety:**
 - **US/Canada vs. EC - Hormones (WT/DS26, 48)**
 - **US/Canada/Argentina vs. EC - Biotech (WT/DS291, 292, 293)**
 - **EC vs. US/ Canada - Retaliation on Hormones (WT/DS320, 321)**
- **Animal health:**
 - **Canada / US vs. Australia - Salmon (WT/DS18, 21)**
- **Plant Protection:**
 - **US vs Japan - Variety Testing (WT/DS76)**
 - **US vs. Japan – Fire blight (WT/DS245)**
 - **Philippines vs. Australia - Tropical Fruit (WT/DS270)**
 - **New Zealand vs. Australia - Apples (WT/DS367)**

Hormones – main conclusions

- Precautionary principle does not override SPS obligations (reflected in Art. 5.7)
- Measures not based on international standards – not justified under Art.3.3
 - Codex standards for 5 hormones
 - Art. 3.3 is conditional right
 - To be consistent with Art. 3.3, must comply with Art.5 (risk assessment)



Hormones – main conclusions

- Measure not based on risk assessment (Art.5.1)
 - Risk assessments provided did not support prohibition
 - Quantitative or qualitative risk assessment
 - Does not exclude factors that cannot be quantitatively assessed
- No violation of Art. 5.5 – must show:
 - Different levels of protection in different (but comparable) situations
 - Different levels are arbitrary or unjustified
 - Differences result in discrimination or disguised restriction to trade

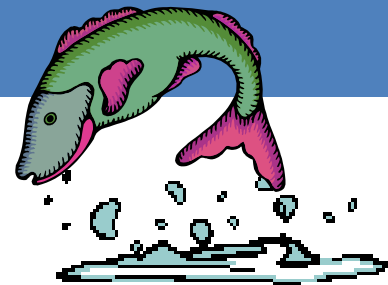


Salmon – Main conclusion

Measures not based on risk assessment (Art. 5.1)

Risk assessments must:

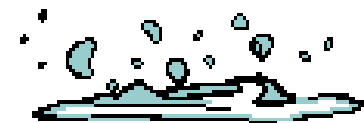
- Identify the diseases which a Member wants to stop from entering
- Evaluate the probability of entry, establishment and dissemination in the case of diseases
- As a function of the SPS measures which could be applied.



Salmon – Main conclusions

No consistency in level of risk accepted (Art. 5.5)

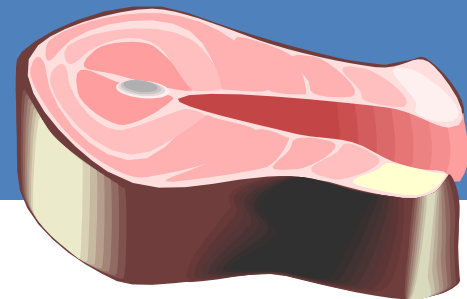
Permitted importation of other products capable of transmitting some of the same diseases



Salmon – Implementation

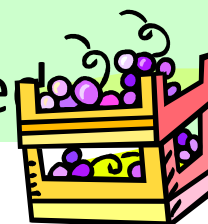
“Consumer ready” requirement – packages of less than 450 g.

- Not based on a risk assessment (Art. 5.1)
- More trade restrictive than necessary (Art. 5.6)



Varietals – Main conclusions

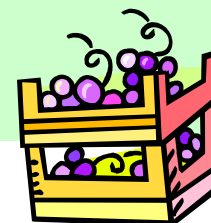
- **Measure maintained without sufficient scientific evidence (Art. 2.2)**
 - Need rational relationship between the scientific evidence and the measure
- **Measure not notified (Art. 7 and Annex B)**
 - Administrative procedures which set conditions for import must be notified



Varietals – Main conclusions

Measure not justified as provisional measure under Art. 5.7

- Japan did not seek more scientific evidence in order to do risk assessment
- Did not revise measure within “reasonable period of time”

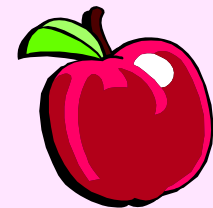


Apples – Main conclusions

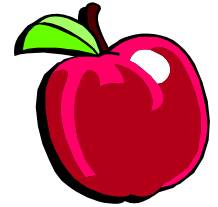
- **Measure maintained without sufficient scientific evidence (Art. 2.2)**
 - No evidence of transmission of fire blight via mature apples
 - Right to take into account risks from human errors or illegal actions
- **Not justified as a provisional measure (Art. 5.7)**
 - Sufficient scientific evidence exists to do risk assessment
 - Scientific uncertainty does not justify measure under Art. 5.7

Apples – Main conclusions

- **Measure not based on risk assessment (Art. 5.1)**
 - Risk assessment not specific to risk from imports of mature apples
 - Did not take account possible risk mitigation measures



Apples – implementation



Measure not justified by scientific evidence
(Art. 2.2)

Measure not based on appropriate risk
assessment (Art. 5.1)

More trade restrictive than necessary (Art.
5.6)

GMOs

Three claims by complainants:

- General moratorium on GM products: GMOs subject to prior approval but for 5 years, no decision on any application
- Product specific moratorium
- EC member states' safeguard measures - some GMOs approved by EC but banned by certain EC member states



GMOs – Main conclusions

- Protection of biodiversity – under SPS
- Food allergens – under SPS
- SPS measure: approval procedure – but existence of prior approval not challenged

Moratorium – found to exist -- application of measure – violation of Annex C

- No violation:
Art. 2.2, 2.3, 5.1, 5.5, 5.6, 7



GMOs – Main conclusions

Product Specific Measures

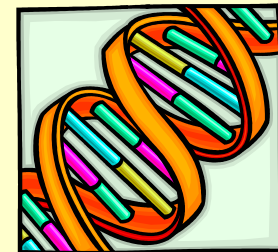
- Panel examined 27 specific applications
- Failure to complete individual approval procedures without undue delay for 24 products
- Violation: Article 8, Annex C (1) (a)
- No violation: Articles 2.2, 2.3, 5.1, 5.5, 5.6, 7



GMOs – Main conclusions

EC member State bans

- Under SPS Agreement
- Not based on risk assessments (Art. 5.1)
- Sufficient scientific evidence -
(Art. 5.7 inapplicable)



GMOs – not considered

- If biotech products pose risk to health or environment
- Right to have prior approval procedure
- EC approval legislation
- Conformity with Agreement on Technical Barriers to Trade
- If biotech products are “like” conventional products

Some specific trade concerns raised in the SPS Committee regarding measures by India

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Biotech labelling and import approval process regulations	United States	Argentina, Brazil, Canada	India	2006	pending
Export certification requirements for dairy products	United States		India	2007	pending

Some specific trade concerns raised in the SPS Committee regarding measures by India

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Phytosanitary import restrictions	United States, European Communities	Canada, Chile, New Zealand, European Communities	India	2004	Partially resolved

Non-notification of various SPS measures	United States	Australia, New Zealand, European Communities	India	2004	pending
Ban on food grade wax	United States		India	2004	pending

Some specific trade concerns raised in the SPS Committee regarding measures by the US

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Restrictions on Ya pears imports	China	European Communities	United States	2005	pending
Import procedures for fruits and vegetables	European Communities	Argentina	United States	2005	pending
Import restrictions on wooden Christmas trees	China		United States	2006	pending
Import restrictions on cooked poultry products from China	China		United States	2007	pending

Some specific trade concerns raised in the SPS Committee regarding measures by the EC

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Application and modification of the EC Regulation on novel foods	Colombia, Ecuador, Peru	Argentina, Bolivia, Brazil, Chile, Costa Rica, Benin, El Salvador, Honduras, and others	European Communities	2006	pending
Restrictions on US poultry exports	United States		European Communities	2006	pending
Import restrictions on cooked poultry products from China	China		European Communities	2007	pending
Maximum Residue Levels for Ethephon in pineapple	Ecuador	Costa Rica	European Communities	2008	pending

Some specific trade concerns raised in the SPS Committee regarding measures by the EC

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Application and modification of the EC Regulation on novel foods	Colombia, Ecuador, Peru	Argentina, Bolivia, Brazil, Chile, Costa Rica, Benin, El Salvador, Honduras, India and others	European Communities	2006	pending
Restrictions on US poultry exports	United States		European Communities	2006	pending
Import restrictions on cooked poultry products from China	China		European Communities	2007	pending

Some specific trade concerns raised in the SPS Committee regarding measures by the EC

Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	date	Status
Geographical BSE risk assessment	Canada, Chile, India	United States	European Communities	2001	Resolved
Transitional TSE measures	Canada	United States	European Communities	2001	Resolved
Application and modification of the EC Regulation on novel foods	Colombia, Ecuador, Peru	Argentina, Bolivia, Brazil, Chile, Costa Rica, Benin, El Salvador, Honduras, and others	European Communities	2006	pending
Restrictions on US poultry exports	United States		European Communities	2006	pending