

## Lecture 14: SPS v.TBT Agreement

Dear students, in this lecture, we are going to discuss about the TBT Agreement. So, we completed the SPS Agreement in the last two classes and the SPS and TBT Agreement go together because the SPS Agreement talks about the food safety, animal safety, plant safety and the TBT Agreement is going to talk about the you can say that the labelling issues and also the packaging issues.

- TBT Agreement
- SPS v. TBT

And also, in this class, we will see the SPS versus TBT, which means what is the difference between these two measures and what is SPS and what is TBT, and how is it distinguished specifically?

## TBT in GATT

The TBT Agreement was not, however, the first one to discipline technical barriers (standards and regulations) to international trade in goods. In fact, the TBT Agreement was built upon the provisions of a previous GATT agreement that had been in operation for 15 years by the time the WTO was created in 1995: the 1979 Tokyo Round Agreement on Technical Barriers to Trade (commonly known as the Standards Code). As a plurilateral agreement, however, the Standards Code was made up from only a subset (46) of all GATT "contracting parties" (128).<sup>1</sup>

So, we can see that what is this TBT? technical barriers to trade. So, technical barriers to trade discipline; the Uruguay Round is not the first Agreement on TBT. So, you can find

provisions in the GATT Agreement as well which talked about and which is commonly known as the standard code. So, the GATT, you can see, built upon the provisions of the previous GATT Agreements, which was created in 1995; that means the Tokyo Round code played a crucial role in the formation of the Uruguay Round code, which is the present TBT Agreement. So, and also, we can see that the standard code which was developed in the Tokyo Round code is the forerunner and most of the provisions were adopted in the Uruguay Round of negotiations.

## GATT Provisions

- **The provisions of the GATT 1947 contained only a general reference to technical regulations and standards in Articles III, XI and XX.**
- **A GATT working group, set up to evaluate the impact of non-tariff barriers in international trade, concluded that technical barriers were the largest category of non-tariff measures faced by exporters.**
- **Standards Code of 1979 – Tokyo Round – 32 signatories**

And we can see that the GATT provisions very clearly talk about Article 3, Article 11 and Article 20 - which talks about the standard codes, the code on technical barriers to trade, but the only problem was that these codes were adopted in 1979, only adopted by 32 countries, there were only 32 signatories. So, it means that this Agreement was not very popular because people found it very difficult to comply with this Agreement or they feared that these labelling standards or packaging standards are going to damage their prospects of export to other countries.

## Tokyo Round

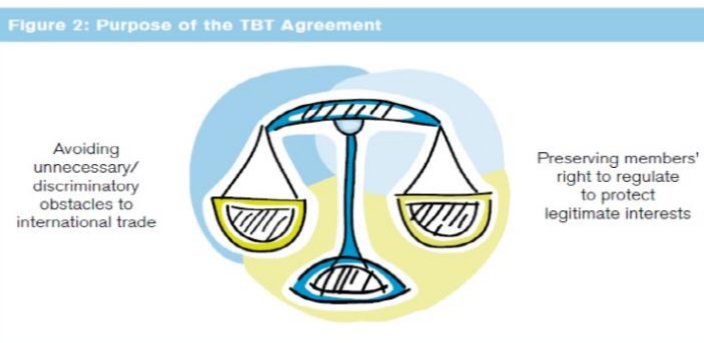
- **Standards Code, 1979**

(1) assuring that technical regulations, standards and conformity assessment procedures, do not create unnecessary obstacles to international trade, while  
(2) leaving Members adequate regulatory discretion to protect human,

- animal and plant life and health,
- national security,
- the environment,
- consumers,
- and other policy interests.

So, this 1979 code talks about technical regulations, standards, and conformity assessment procedures which do not create any barrier to international trade. And again like SPS, it gives the discretion to the member countries to protect animal health, plant health and also food safety standards. The only exceptions that are given are the national security exceptions, and also to look into the policy interest of each and every country.

## TBT Agreement



So, TBT Agreement very clearly, the purpose of the TBT Agreement is clearly stated by the WTO itself; it says avoiding unnecessary, discriminatory obstacles to international trade, which is a common purpose of all Agreements. Secondly, the members have the right to regulate and protect legitimate interests. So, the TBT Agreement gives the discretion to the member countries to come out with their own standards.

## TBT Agreement

- **The Technical Barriers to Trade (TBT) Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.**
- **At the same time, it recognizes WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or the protection of the environment.**
- **The TBT Agreement strongly encourages members to base their measures on international standards as a means to facilitate trade. Through its transparency provisions, it also aims to create a predictable trading environment.**

So, its aim is very clear: technical regulations and standards should not become a barrier to trade. These measures and techniques, especially technical regulations, should be implemented on the principle of a non-discriminatory basis. And the WTO member's discretion or legitimate freedom to implement policies and objectives, or even to protect the environment, is given to the member countries. You adopt measures it is not going to violate the TBT Agreement, but they should be adopted in conformity with the assessment procedures in the TBT Agreement. So, again, the TBT Agreement also encourages the members to adopt international standards developed by these international organizations. International transparency provisions are very important and crucial in the TBT Agreement as well.

## TBT – Technical Barriers to Trade

- **The TBT (Technical Barriers to Trade) Agreement covers all technical regulations, voluntary standards and the procedures to ensure that these are met, except when these are sanitary or phytosanitary measures as defined by the SPS Agreement.**
- **It is thus the type of measure which determines whether it is covered by the TBT Agreement, but the purpose of the measure which is relevant in determining whether a measure is subject to the SPS Agreement.**



So, here it covers technical regulations, voluntary standards and procedures, other procedures to supplement the SPS Agreement. The prominent ones are the technical regulations and voluntary standards. So, its purpose is very clear, and it determines the technical regulations technical standards, especially packaging and labelling, but it should be in conformity with the SPS Agreement as well.

## TBT

- **TBT measures could cover any subject, from car safety to energy-saving devices, to the shape of food cartons.**
- **To give some examples pertaining to human health, TBT measures could include pharmaceutical restrictions, or the labelling of cigarettes.**
- **Most measures related to human disease control are under the TBT Agreement, unless they concern diseases which are carried by plants or animals (such as rabies).**



And TBT measures always for example, is looking into the technical standards of every product. The simple example is the every fan in India has to have an ISI mark Indian Standard Institution mark, energy mark. So, at the same time you can find certain star marking in air conditioners; they are voluntary marks. So, ISI mark for every electric equipment like whether it is a fan or it is an iron box, these are mandatory standards. At the same time, the star marking is a voluntary standard; it will come under the TBT Agreement. Other standards for pharmaceutical products, labelling requirements of cigarettes, labelling requirements in a liquor bottle, in an alcoholic liquor bottle, labelling requirements in food products, the protein content or cholesterol content, or its general energy content. And these prescriptions are TBT measures, and every country has domestic legislation as well.

## TBT

- **tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.**
- **Eg. Emission levels of vehicles**
- **Labeling of cigarettes**
- **Nutritious content on label**
- **Regulations on recycling of plastic, paper**
- **Testing, certification like ISI, ISO etc.**

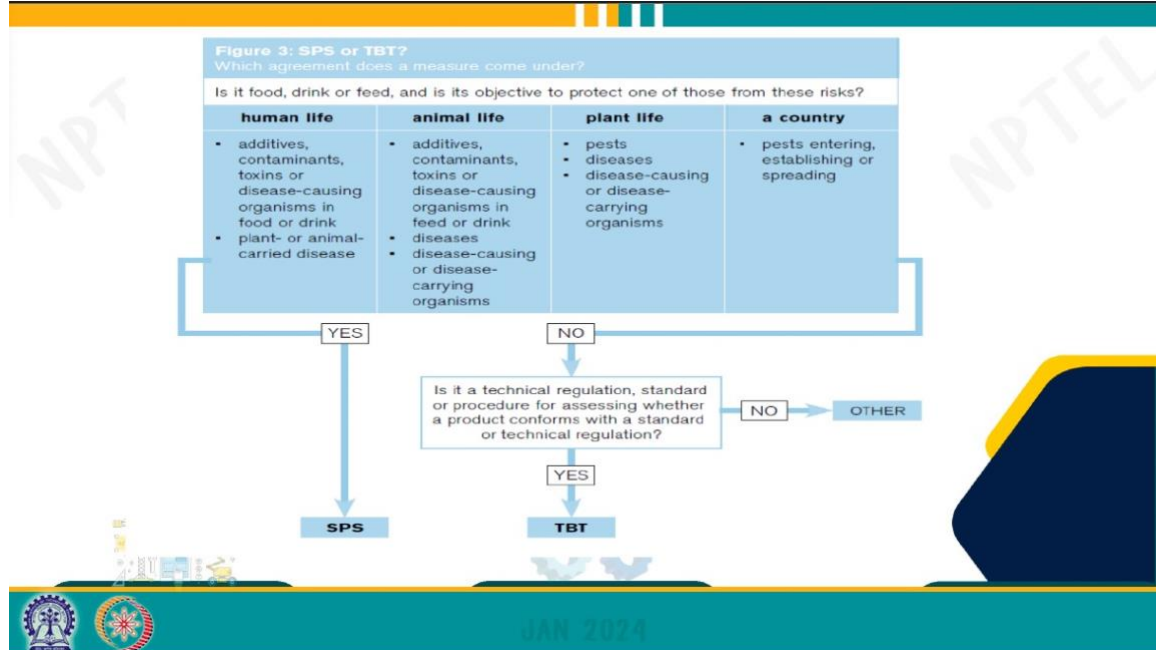
And other examples which you can see is emission standards. So, now, we can see that European Emission Standards; Euro I, Euro II, Euro III, Euro IV, Euro V, and even Euro VI, then nutritious content of food packets, then the standard for recycling paper and plastic. The standards like testing standards, testing and certification is another area under the TBT, I already talked about the ISI marks, ISO marks these all will come under the TBT Agreement.

## TBT

- **In terms of food, labelling requirements, nutrition claims and concerns, quality and packaging regulations are generally not considered to be sanitary or phytosanitary measures and hence are normally subject to the TBT Agreement.**
- **On the other hand, by definition, regulations which address microbiological contamination of food, or set allowable levels of pesticide or veterinary drug residues, or identify permitted food additives, fall under the SPS Agreement. Some packaging and labelling requirements, if directly related to the safety of the food, are also subject to the SPS Agreement.**

So, when it comes to labelling requirements, the nutritional claims of food products, quality and packaging, for example, packaging regulations for tobacco products, the packaging regulations of alcoholic products, and the packaging regulations with regard to plastics. So, these are not sanitary or phytosanitary measures. These are TBT measures. So, all the regulations, for example, specifically microbiological contamination of food or

the pesticide residue in veterinary drugs, these are SPS measures. And packaging and labelling requirements are TBT measures. So, we may see the distribution between these two.



So, here, if you look into it, we were talking about whether it is an SPS measure or a TBT measure. So, if you take a food, drink, feed and its objectives. So, we can say one is human life, affecting human life. So, additives, contaminant toxins, disease-causing organisms for food and drink, and plants or animals that carry diseases are SPS measures. Then you can see animal life, again additives, contaminants, the same affecting animals and plants are also related to SPS measures. Pests, diseases and all these disease-causing organisms are related to SPS measure. At the same time, pests entering and also technical regulations standards and whether a product contains a standard or a technical regulation, that is related to TBT. And also, we will see more about the distribution between these two.

## Differences

- **both agreements encourage the use of international standards.**
- **However, under the SPS Agreement the only justification for not using such standards for food safety and animal/plant health protection are scientific arguments resulting from an assessment of the potential health risks.**
- **In contrast, under the TBT Agreement governments may decide that international standards are not appropriate for other reasons, including fundamental technological problems or geographical factors**

So, here, both SPS and TBT Agreements encourage the use of international standards, but in the SPS Agreement scientific justification is required, and a thorough risk assessment is to be made under the SPS Agreement. So, in the TBT Agreement, the governments decide the international standards. So, they need not adopt international standards because it may be due to geographical problems, geographical factors, or it is due to technological problems or other reasons the government may not decide, the government may decide that the international standards may not be applicable. But the Agreement, TBT Agreement with the WTO encourages the people to adopt international standards, but the governments have the freedom to say no to them.

## Differences

- **sanitary and phytosanitary measures may be imposed only to the extent necessary to protect human, animal or plant health, on the basis of scientific information. Governments may, however, introduce TBT regulations when necessary to meet a number of objectives, such as national security or the prevention of deceptive practices.**
- **Because the obligations that governments have accepted are different under the two agreements, it is important to know whether a measure is a sanitary or phytosanitary measure, or a measure subject to the TBT Agreement.**

Then also, you can see that the TBT regulations must have exceptions; you can see, by showing the national security reasons or prevention of deceptive practices, technical

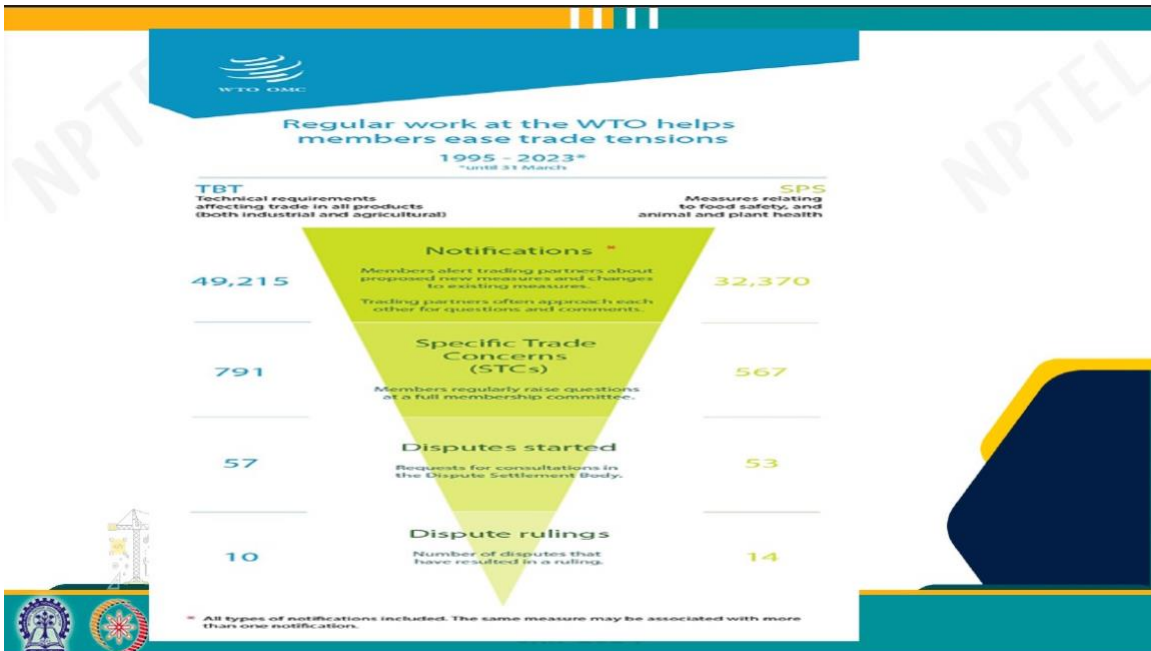


regulations can be imposed. They can be introduced on a national security basis or for national security reasons, and deceptive practices. The government can impose additional TBT measures. Also, you can see that whether it is a measure, a sanitary measure, or it is a phytosanitary measure, it is very easy to decide. So, the criteria are very simple. If it is anything related to food, animal health or plant health it is an SPS measure. If it is related to a technical regulation then it is a TBT measure.

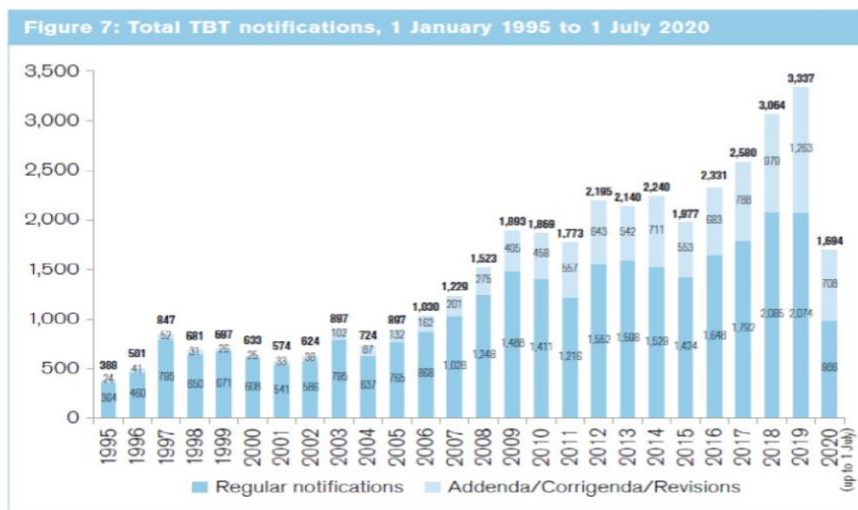
## **TBT Agreement**

- **Applies to all products including industrial and agricultural products**
- **Voluntary standards & Technical regulations (mandatory stds)-notification to all members**
- **Code of good practice for standards development**
- **Product requirements in terms of performance rather than design or descriptive characteristics**
- **Technical regulations of local governments below central govt to be similarly notified**

And TBT is applicable to all industrial and agricultural products and voluntary standards, which we talked about, or regulatory technical regulations. There are mandatory standards as well as voluntary standards which we talked about. Also, the technical committee, which forms good practices, product requirements, and performance requirements in order to prevent descriptive characteristics or design and descriptive characteristics. So, all the central governments and the subsidiary governments or local governments should also be notified of these technical barriers. So, it means that it is applicable to the whole territory.



We saw this particular figure in the SPS class. So, here, you compare the SPS measures and the TBT measures, you can see that it has almost doubled. If the SPS measures taken by the members are around 32,370, at the same time, the TBT measures are 49,215, all the numbers are more. In the TBT cases, the trade measures concerned are also 791 and 57 disputes went ahead, but you can see that most of the disputes are settled through negotiations, through consultations, only 10 disputes went to the WTO panel and the appellate body. Vis-à-vis, there are 14 SPS disputes that went to the dispute settlement body of the WTO. So, when we compare these two, you can see that the TBT measures are more like technical regulations are questioned and reported; more technical regulations are being questioned or reported to the Committee On Technical Barriers To Trade rather than to The Committee on SPS.



So, you can see here the trend of what has happened since 1995. So, you can see the largest regulations and the largest number of TBT notifications have been made in the recent past. You take the last decade, the largest number is 2020 up to only July, and I am very sure that from 2020 onwards, the data available may be higher than in 2019. So, you can see that during the pandemic period, the members have adopted more technical regulations from 2019 to 2023, if you see; more number of regulations have come into place mainly because of the pandemic. And I would say that for the last decade, the number of notifications has been going up like anything; even some years, it has been going up to 3000, and 2019 is the highest, with 3337 TBT regulation, notifications to the WTO. So, it means that the members are very much concerned about technical regulations. They are notifying, they are adopting, they are taking TBT measures and reporting to the WTO in more numbers than the SPS measures.

## TBT Disputes at WTO

• 57

Box 7: Disputes where the findings focused on the TBT Agreement		
Title of dispute	Complainant(s)	Dispute No.
<i>EC – Asbestos</i>	Canada	DS135
<i>EC – Sardines</i>	Peru	DS231
<i>US – Tuna II (Mexico)</i>	Mexico	DS381
<i>US – COOL</i>	Mexico, Canada	DS384, DS386
<i>EC – Seal Products</i>	Canada, Norway	DS400, DS401
<i>US – Clove Cigarettes</i>	Indonesia	DS406
<i>Australia – Tobacco Plain Packaging</i>	Honduras, Dominican Republic, Cuba, Indonesia	DS435, DS441, DS458, DS467
<i>Russia – Railway Equipment</i>	Ukraine	DS499

Here we can see very important TBT disputes. So, around 57 disputes came to the WTO, but very few cases went to the panel and appellate body, and some of the very important cases are, you can see, in the jurisprudence. The WTO disputes mean the jurisprudence itself. These cases are very important. EC-Asbestos case where the health concerns are first discussed then EC-Sardines case; we saw this case, then Tuna Dolphin case, US-Tuna II (Mexico) then US-COOL case then EC-Seal Products then US-Clove cigarettes, the health concerns of cigarettes and clove cigarettes and menthol cigarettes were discussed in this particular case. So, menthol cigarettes are exported from Indonesia, which was discussed in this particular case. Then again, you can see, Australian-Tobacco Plain Packaging case, then Russia-Railway Equipment case, and this was one of the latest cases. So, you can see that there are few cases and I would say that the EU-Beef Hormone case is not only an SPS case and the EU-Biotech case as well includes TBT as well. So, these are the very important cases within the TBT Agreement.

## 6 Principles

1. **Transparency**
2. **Openness**
3. **Impartiality and consensus**
4. **Relevance and effectiveness**
5. **Coherence**
6. **Development dimension**

So, the basic principles are transparency which we talked about. In every WTO Agreement, openness, impartiality, effectiveness, coherence, and development dimensions are the general principles which are included in the TBT Agreement as well.

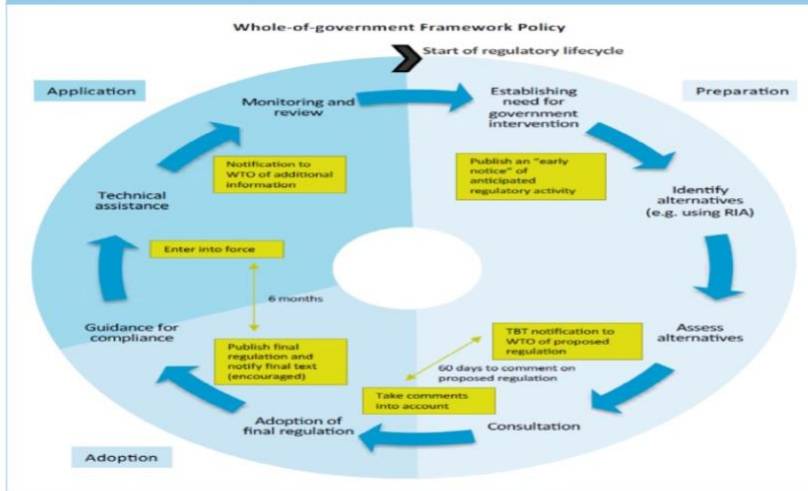
## Good Practices A.4

- **Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the “Code of Good Practice”).**
- **They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice**

And most importantly, you can see that the TBT Agreement forms a good practices code of good practices. So, it talks about the code of good practices for the preparation, adoption and application of standards in Annex 3 to the Agreement. So, every central government must adopt a good practices code of good practice and they should implement at the local government level as well and the bodies the local bodies also should implement these. So, you can see that the standardizing bodies play a very important role in making these particular codes, which means that the domestic authorities also play a very crucial role in making this code of good practice.



Figure 10: Applying GRP to the lifecycle of a TBT measure: an illustration



And the code of good practice: the GRPs, the life cycle of every TBT measure you can see here. So, the government interventions, monitoring review and preparation identifying the alternative ways, assess alternatives, then TBT notification to WTO or proposed regulation. So, when you make a regulation, publish it, and then report it to the WTO committee then take comments into account, then publish the final regulation and notify the final text and then entering into force and notification, finally, the WTO additional information. So, you can see in the yellow colour how the adoption of measures and the regulatory life cycle of the TBT measures adopted by the countries at their domestic level.

## Example

Examples		
<b>Fertilizer</b>	Regulation on permitted fertilizer residue in food and animal feed	<b>SPS</b>
	Specifications to ensure fertilizer works effectively	<b>TBT</b>
	Specifications to protect farmers from possible harm from handling fertilizer	<b>TBT</b>
<b>Food labelling</b>	Regulation on permitted food safety: health warnings, use, dosage	<b>SPS</b>
	Regulation on size, construction/structure, safe handling	<b>TBT</b>

So, quickly let me see some of the examples of SPS and TBT measures. Examples are regulation on permitted fertilizer and residue in food and animal feed because it is related

to food animal feed. So, these are SPS measures. Specifications to ensure fertiliser works effectively - it is a TBT. Every fertilizer packet contains certain prescriptions - that is a TBT measure. And specifications to protect farmers from possible harm from handling fertilizer - it is a TBT measure. And also food labeling, certain food labeling will come under SPS for example, permitted food safety, health warning, use, dosage, etcetera - that is SPS. At the same time, size construction, such as structured safe handling, is a TBT measure.

## SPS v. TBT

Examples		
<b>Fruit</b>	Regulation on treatment of imported fruit to prevent pests spreading	<b>SPS</b>
	Regulation on quality, grading and labelling of imported fruit	<b>TBT</b>
<b>Bottled water: specifications for the bottles</b>	Materials that can be used because safe for human health	<b>SPS</b>
	Requirements: no residues of disinfectant, so water not contaminated	<b>SPS</b>
	Permitted sizes to ensure standard volumes	<b>TBT</b>
	Permitted shapes to allow stacking and displaying	<b>TBT</b>
<b>Cigarette packets</b>	Government health warning: "Smoking can seriously damage your health": the label's objective is health but it is not about food, so it is not SPS	<b>TBT</b>

And with regard to fruits the treatment of imported food to prevent pest spreading is an SPS measure. But the quality grading and also labelling is a TBT measure. Bottled water, many times bottled water is under controversy. So, materials which can be used, because safe for human health - because you directly drink - it is an SPS measure. And no residue of disinfectant or contaminant - these requirements for the bottle bottled water are SPS measures. But the size of the bottle, the volume is a TBT measure, shape displaying stacking, etcetera is a TBT measure. For every cigarette packet, there is a health warning, and even the size of the packet is a TBT measure.

### To summarize

<b>SPS measures typically deal with:</b>	<b>TBT measures typically deal with:</b>
<ul style="list-style-type: none"><li>• additives in food or drink</li></ul>	<ul style="list-style-type: none"><li>• labelling of food, drink and drugs</li></ul>
<ul style="list-style-type: none"><li>• contaminants in food or drink</li></ul>	<ul style="list-style-type: none"><li>• grading and quality requirements for food</li></ul>
<ul style="list-style-type: none"><li>• poisonous substances in food or drink</li></ul>	<ul style="list-style-type: none"><li>• packaging requirements for food</li></ul>
<ul style="list-style-type: none"><li>• residues of veterinary drugs or pesticides in food or drink</li></ul>	<ul style="list-style-type: none"><li>• packaging and labelling for dangerous chemicals and toxic substances</li></ul>
<ul style="list-style-type: none"><li>• certification: food safety, animal or plant health</li></ul>	<ul style="list-style-type: none"><li>• regulations for electrical appliances</li></ul>
<ul style="list-style-type: none"><li>• processing methods with implications for food safety</li></ul>	<ul style="list-style-type: none"><li>• regulations for cordless phones, radio equipment, etc.</li></ul>
<ul style="list-style-type: none"><li>• labelling requirements directly related to food safety</li></ul>	<ul style="list-style-type: none"><li>• textiles and garments labelling</li></ul>
<ul style="list-style-type: none"><li>• plant/animal quarantine</li></ul>	<ul style="list-style-type: none"><li>• testing vehicles and accessories</li></ul>
<ul style="list-style-type: none"><li>• declaring areas free from pests or disease</li></ul>	<ul style="list-style-type: none"><li>• regulations for ships and ship equipment</li></ul>
<ul style="list-style-type: none"><li>• preventing disease or pests spreading to a country</li></ul>	<ul style="list-style-type: none"><li>• safety regulations for toys</li></ul>
<ul style="list-style-type: none"><li>• other sanitary requirements for imports (e.g. imported pallets used to transport animals)</li></ul>	<ul style="list-style-type: none"><li>• etc...</li></ul>



Then again, if you compare these two, you can see that the SPS measures typically deal with additives in food or drink contaminants, poisonous substances in food or drink, residues in veterinary drugs, certification, food safety, animal or plant health, and then processing methods with implications for food safety. Labelling requirements directly related to food; remember, labelling, in general, will come under the TBT, but specifically with regard to food, it is SPS. And plant, animal quarantine – SPS, declaring areas free from pests or disease or virus - it is an SPS measure. And preventing disease of pests from spreading to a particular country is also an SPS measure and then other requirements of import. So, for example, transport of animals is an SPS measure. At the same time, if you look into the TBT measures, you can see that labelling of food and drinks, grading, packaging regulations of electrical appliances, mandatory regulations, voluntary regulations, and textile and garment labelling, phones, radio, other electronic equipment, now for example, electronic equipment, emission standards mentioned in vehicles - are TBT measure. Safety regulations for toys, all these will come under the TBT measure.

**Box 1: TBT measures**

Technical regulations	Standards	Conformity assessment procedures
Technical regulations lay down product characteristics or their related processes and production methods. Compliance is mandatory. They may also deal with terminology, symbols, packaging, marking and labelling requirements.	Standards are approved by a recognized body that is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is not mandatory. They may also deal with terminology, symbols, packaging, marking and labelling requirements.	CAPs are used to determine that relevant requirements in technical regulations or standards are fulfilled.  They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval.

So, technical regulations; we can look into technical regulation as a TBT measure. Technical regulation, standards and conformity assessment procedures. So, we can very clearly say that technical regulations lay down product characteristics, or process and production methods. The compliance is mandatory. So, they may deal with symbols, packaging, marking, labeling requirements. So, related to food, completely it may be an SPS measure or TBT measure, but in general, packaging and labeling is a TBT measure. When it comes to the standards, you can see the international standards, you can see product related standards or process related standards and again the compliance is mandatory. And then again, labelling requirements will come and conformity assessment procedures(CAPS); every central government is responsible for the conformity assessment procedures at the central level as well as the local government level.

**Box 3 – The difference between SPS and TBT measures**

The TBT Agreement (Article 1.5) states that the provisions of the TBT Agreement do not apply to measures as defined in Annex A of the SPS Agreement. In other words, the measures which fall within the "To protect from?" column below are not covered by the TBT Agreement.

**Annex A Definition of SPS Measures**

To protect what?	To protect from?
human or animal life	risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs; (contaminants include pesticide and veterinary drug residues and extraneous matter)
human life	plant- or animal-carried diseases (zoonoses);
animal or plant life, including fish, forests and wild animals or plants	pests (including weeds), diseases, or disease-causing organisms;
a country	damage caused by the entry, establishment or spread of pests (including weeds)



So, you can see the difference between these two.

## International Standards

- **the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice.**
- **Animal health: the standards, guidelines and recommendations developed under the auspices of the Office International des Epizooties (the OIE)-World Organization for Animal Health.**

When we look into international standards, we have already discussed the three sisters. So, the Codex Alimentarius Commission, OIE and International Plant Protection Agency(IPPC).

## International Standards

- **Set of Principles**
  - **Transparency**
  - **Openness**
  - **Impartiality & Consensus**
  - **Effective & Relevance**
  - **Coherence**
  - **Development Dimension**

So, these are the three agencies which form the international standards.

## Measures under TBT

- **The TBT (Technical Barriers to Trade) Agreement covers all technical regulations, voluntary standards and the procedures to ensure that these are met, except when these are sanitary or phytosanitary measures as defined by the SPS Agreement.**
- **It is thus the type of measure which determines whether it is covered by the TBT Agreement, but the purpose of the measure which is relevant in determining whether a measure is subject to the SPS Agreement.**

And in the TBT Agreement, we can see that there are two types of standards, which can be under the TBT, one is the mandatory or compulsory standards and other one is voluntary standards. I have already given examples of compulsory standards like the ISI mark for electrical equipment. Voluntary standards, for example, the star, how many stars are there in the AC or in a washing machine, these are voluntary standards.

## Measures under TBT

- **TBT measures could cover any subject, from car safety to energy-saving devices, to the shape of food cartons.**
- **To give some examples pertaining to human health, TBT measures could include pharmaceutical restrictions, or the labelling of cigarettes.**
- **Most measures related to human disease control are under the TBT Agreement, unless they concern diseases which are carried by plants or animals (such as rabies).**

And also, other measures you can see safety, energy, saving mechanisms, and shape of food cartons, we are talking about packaging and pharmaceutical restrictions, and labelling restrictions. For example, cigarette packet warnings will come under the TBT Agreement.

## Measures under TBT

- **tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.**
- **E.g. Emission levels of vehicles**
- **Labeling of cigarettes**
- **Nutritious content on label**
- **Regulations on recycling of plastic, paper**
- **Testing, certification like ISI, ISO etc.**

And basically, all these testing and certification procedures are necessary testing, which is why every year, you go to a pollution testing agency to test your emissions and get a certificate. Labelling of cigarettes is mandatory, nutritional contents of label in a food packet are mandatory, and with regard to plastic, it is mandatory. So, you can see the certification marks.

## Measures under TBT

- **In terms of food, labelling requirements, nutrition claims and concerns, quality and packaging regulations are generally not considered to be sanitary or phytosanitary measures and hence are normally subject to the TBT Agreement.**
- **On the other hand, by definition, regulations which address microbiological contamination of food, or set allowable levels of pesticide or veterinary drug residues, or identify permitted food additives, fall under the SPS Agreement. Some packaging and labelling requirements, if directly related to the safety of the food, are also subject to the SPS Agreement.**

So, I think we have discussed the various TBT measures when compared with the SPS measure.



## Difference

- **both agreements encourage the use of international standards.**
- **However, under the SPS Agreement the only justification for not using such standards for food safety and animal/plant health protection are scientific arguments resulting from an assessment of the potential health risks.**
- **In contrast, under the TBT Agreement governments may decide that international standards are not appropriate for other reasons, including fundamental technological problems or geographical factors.**

So, here, the differences between both Agreements have also already been discussed.

## Difference

- **sanitary and phytosanitary measures may be imposed only to the extent necessary to protect human, animal or plant health, on the basis of scientific information. Governments may, however, introduce TBT regulations when necessary to meet a number of objectives, such as national security or the prevention of deceptive practices.**
- **Because the obligations that governments have accepted are different under the two agreements, it is important to know whether a measure is a sanitary or phytosanitary measure, or a measure subject to the TBT Agreement.**

So, most importantly, you can see, that the SPS Agreement talks about the food standards or health standards and the TBT Agreement talks about technical standards.



## SDT Provisions

- **Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial,**
- **and trade needs of developing country Members in the implementation of this Agreement,**
- **both nationally and in the operation of this Agreement's institutional arrangements.**

And, you can find a standard special and differential treatment provision. So, it says that particular attention to the provisions of the Agreement concerning developing country members' rights and obligations and shall take into account the special developmental financial trade needs of developing country members when they consider the TBT Agreement. So, you can find the special and differential treatment provisions in each and every WTO Agreement. But the only question is whether the developed countries are going to give special and differential treatment to any developing countries, we cannot find so.

Figure 4: Six Principles for the Development of International Standards, Guides and Recommendations

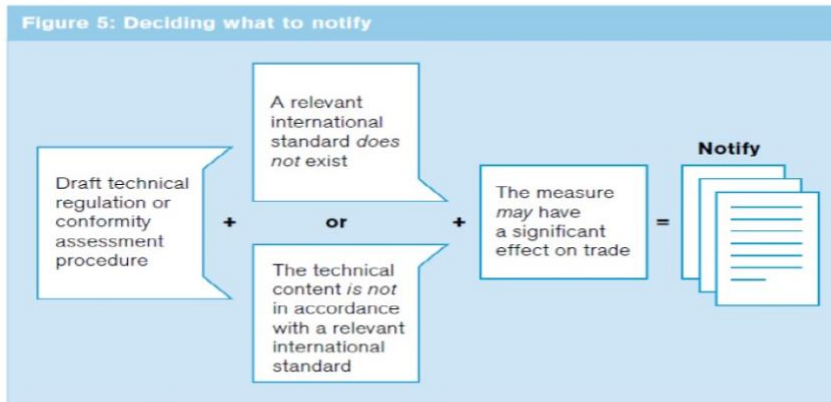


Source: TBT Committee.

So, if you look into the principles for the development of international standards. So, it talks about six principles of standards: (1) talks about openness, then (2) impartiality and (3) consensus, (4) transparency, (5) the development dimension, (6) effectiveness and

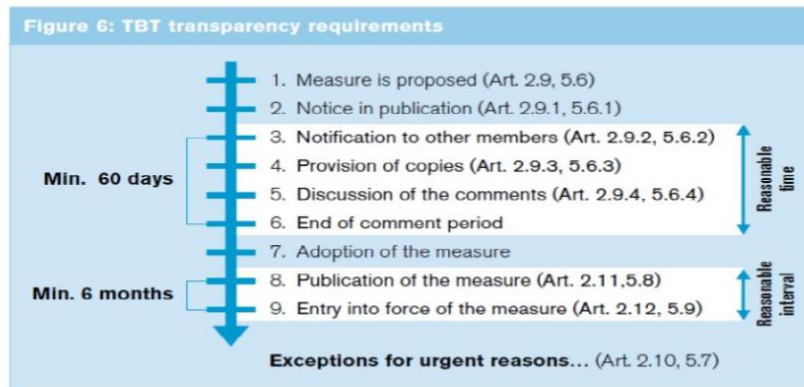
relevance and most importantly, coherence. So, all these are the components of transparency, and these six principles were developed by the TBT committee in the development of international standards in the TBT Agreement.

## Transparency



So, the transparency makes it very clear what is to be notified and what is not to be notified. All draft technical regulations are to be notified, and international standards to be notified, technical regulations are to be notified. So, any measure which affect SPS or TBT measure is to be notified by each member country as a part of transparency.

## Transparency



If you look into it, even there is a time frame for publication of the TBT measures. So, it can be from 60 days to 6 months, and reasonable time is given to every member to notify these particular measures.

## Conclusion

- **It is observed that India has taken adequate measures for ensuring food safety by maintaining appropriate standards.**
- **At international sphere, it was realized that food safety is a major concern for which a separate agreement is necessary, and for which, SPS measures played a vital role in ensuring food safety of the consumer, across the world.**



So, I would say that technical barriers to trade Agreement is an important Agreement. The Agreement goes along with the SPS Agreement to protect or to preserve the technical standards, especially labelling and packaging standards and other standards, especially those that focus on technical standards and regulations. So, here you can see that yes, India has complied with the TBT Agreement and also taken care of the TBT Agreement. So, food safety is always a concern for India because more number of consignments are rejected by showing not only the food safety standards - SPS measures, but also the TBT measures as well. So, it is very pertinent to increase the standard of food safety and also the technical regulations in the country. And this will, in the coming days, it is going to determine the future of exports from India. So, it means that the government of India has to implement the TBT measures in a very strict sense in the country. So, we will see the implementation in India of this particular Agreement in the next class because it is very important to see the implementation of both these Agreements in India as well.

Thank you.