

# How to address SPS & TBT trade problems?



**Gretchen H. Stanton**  
Agriculture and Commodities Division  
World Trade Organization



# Resolving Trade Problems - Exercise

## Sour Grapes





# Ways to Address Trade Concerns

1. Bilateral and/or Regional Efforts
2. SPS/TBT Committee – Specific Trade Concerns
3. *Good Offices by the Chair of the SPS Committee*
4. WTO Dispute Settlement System





# Bilateral and/or Regional Efforts

## Suggested Actions:

- Contact Enquiry Point
- Informal discussions on the margins of the SPS/ TBT Committee meetings
- Request information through diplomatic channels





# Request an Explanation

- SPS Article 5.8

“an **explanation of the reasons** for such SPS measure may be requested and **shall be provided** by the Member maintaining the measure.”

- TBT Article 2.5

“... shall, upon the request of another Member, **explain the justification** of the technical regulation...”





# Ways to Address SPS Trade Concerns

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# What is a Specific Trade Concern?

A specific **trade complaint** raised by Members in the SPS/TBT Committee in relation to **SPS/TBT measures maintained by other Member(s)**.

*(whether draft measures or measures currently in force)*

- All Members can raise a specific complaint about SPS/TBT measures imposed by other Members in the SPS/TBT Committee.



# SPS/TBT Committee – STCs

## Suggested Actions:

- Consult previous Specific Trade Concerns (STCs)
- Communicate intention to raise an STC
  - At least 11 calendar days before the meeting**
    - In writing**
    - Inform the other Member concerned**
- Seek support from other interested Members
- Present the STC at the SPS/TBT Committee Meeting



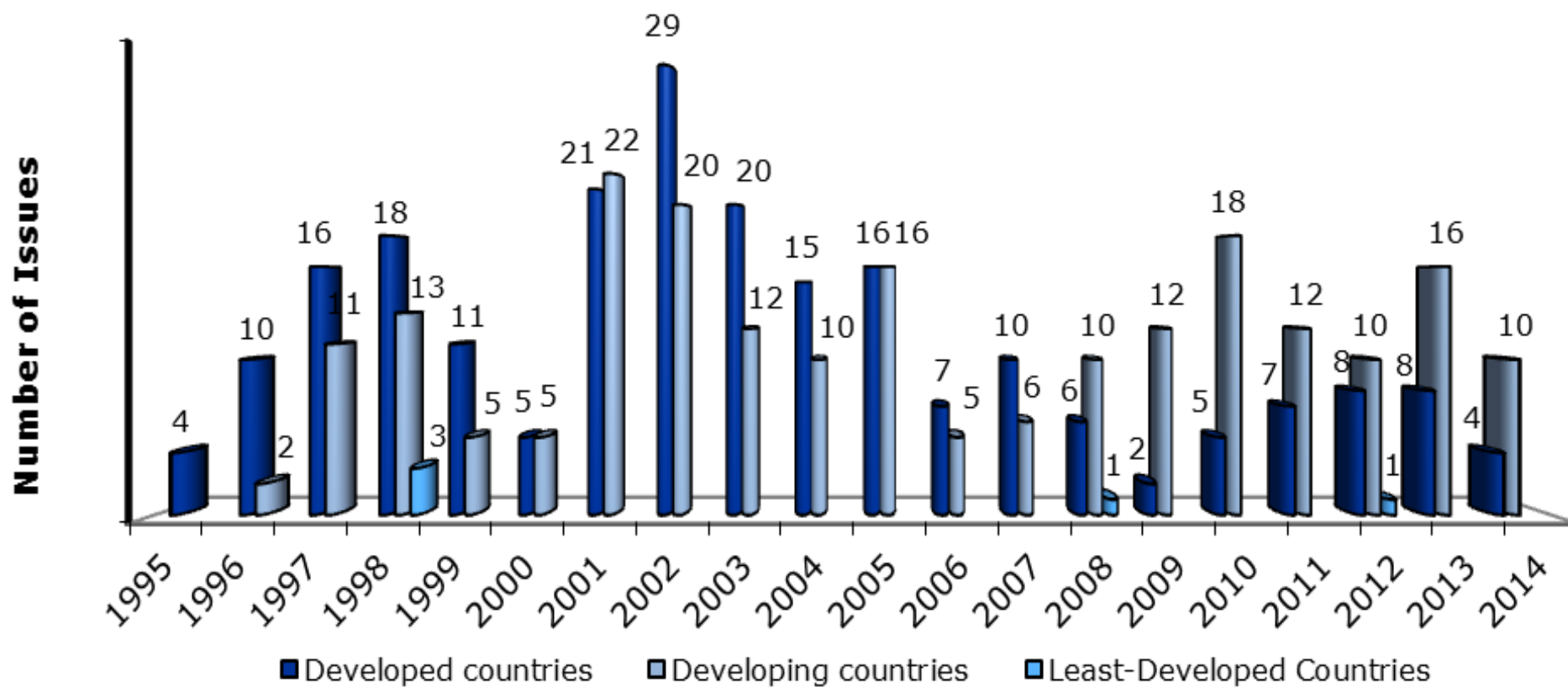


# SPS Specific Trade Concerns

## 1995-2014

**382 Total**  
**(+21 in 2015)**

*G/SPS/GEN/204/Rev.15*

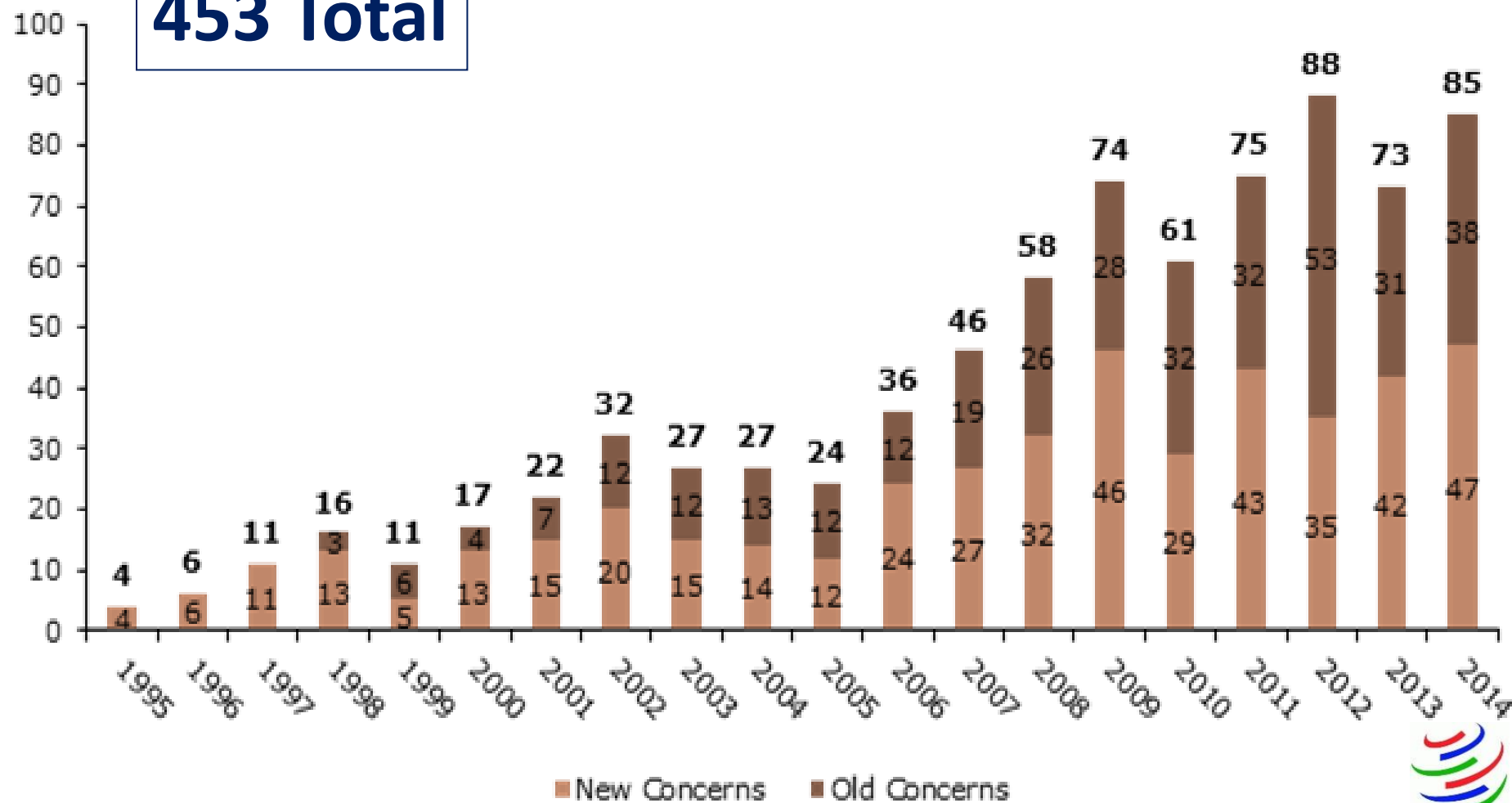




# TBT Specific Trade Concerns

## 1995-2014

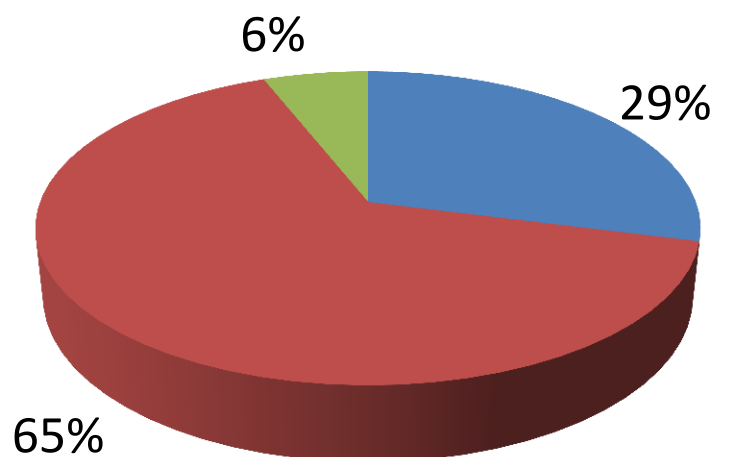
453 Total





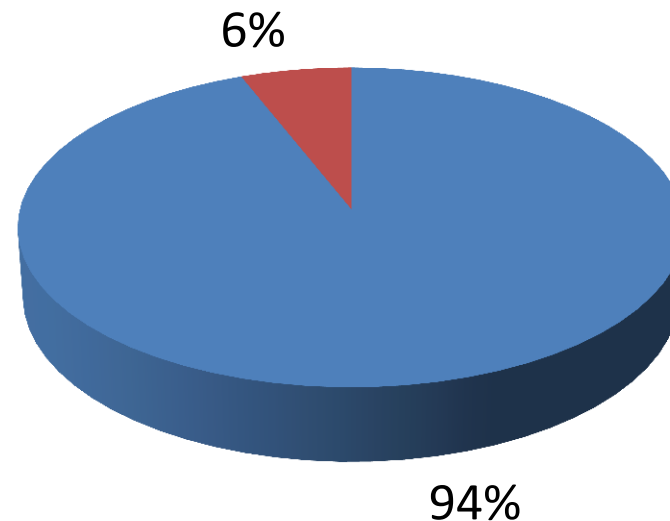
## STCs by sector

### TBT



- Agriculture
- Non-Agriculture
- Agriculture and Non-Agriculture

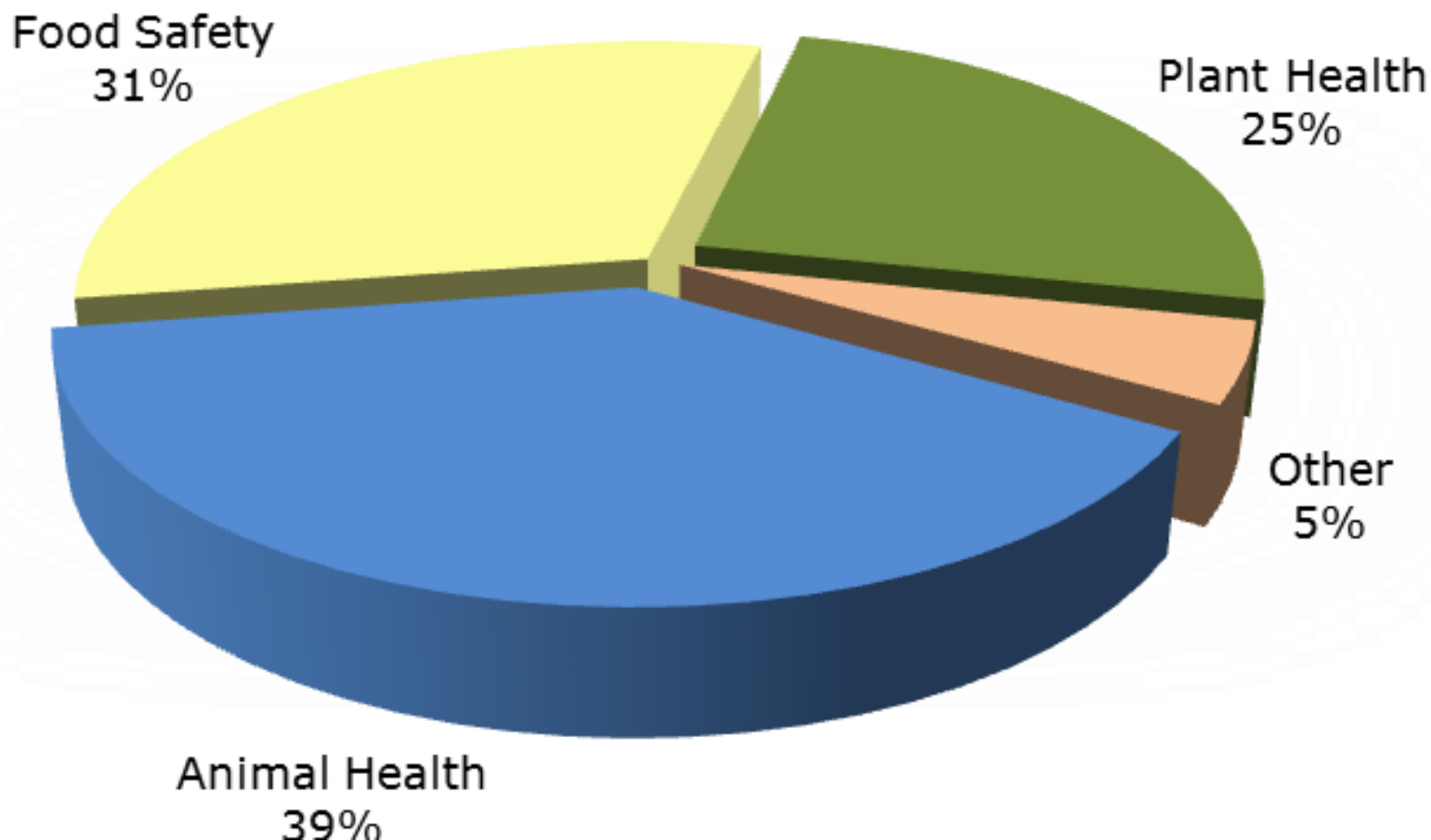
### SPS



Source: WTR 2012, Section C.2(d)



# SPS Specific Trade Concerns by Subject (1995-2014)



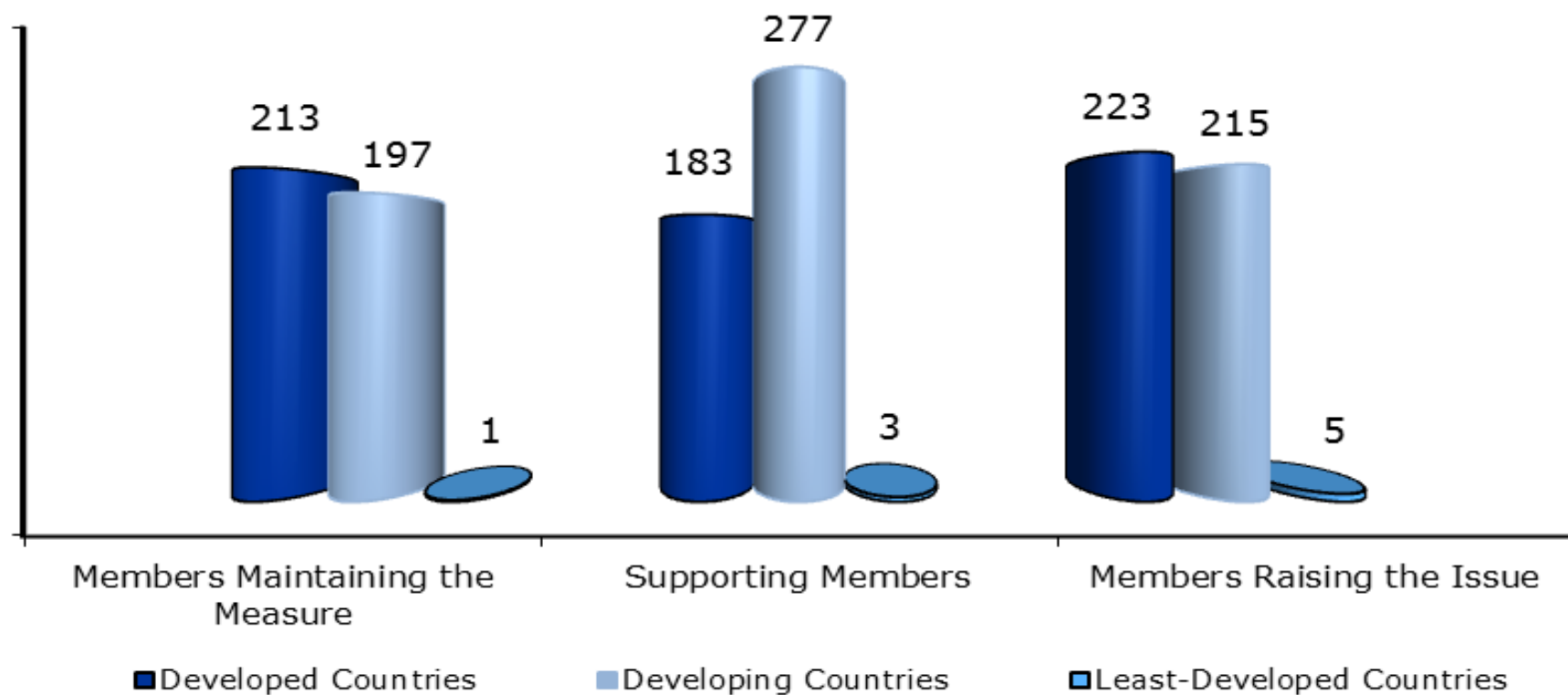
Source: G/SPS/GEN/204/Rev.15,  
SPS Information Management System (<http://spsims.wto.org>)



# SPS Specific Trade Concerns

## 1995-2014

### Number of Members







# Top 10 Members Maintaining Measures Complained Against (1995-2014) - SPS

Member	Number of STCs
European Union	78
United States	45
Japan	29
China	24
Australia	17
Brazil	15
Indonesia	13
Korea, Republic of	13
Canada	11
Mexico	11

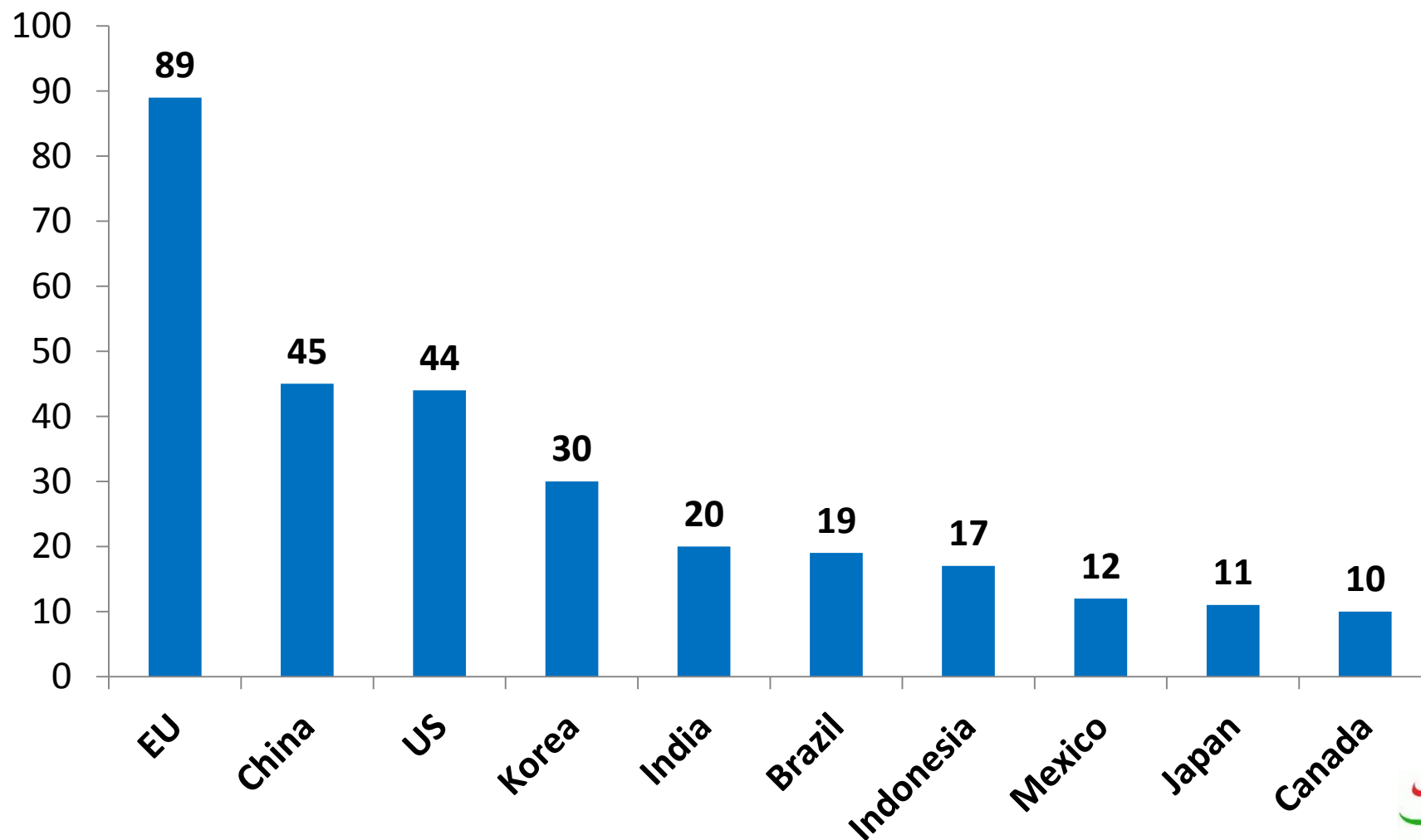


## Top 10 Members Raising Specific Trade Concerns (1995-2014) - SPS

Member	Number of STCs
United States	83
European Union	77
Argentina	42
China	32
Brazil	28
Canada	24
India	20
Australia	9
Chile	9
Ecuador	9



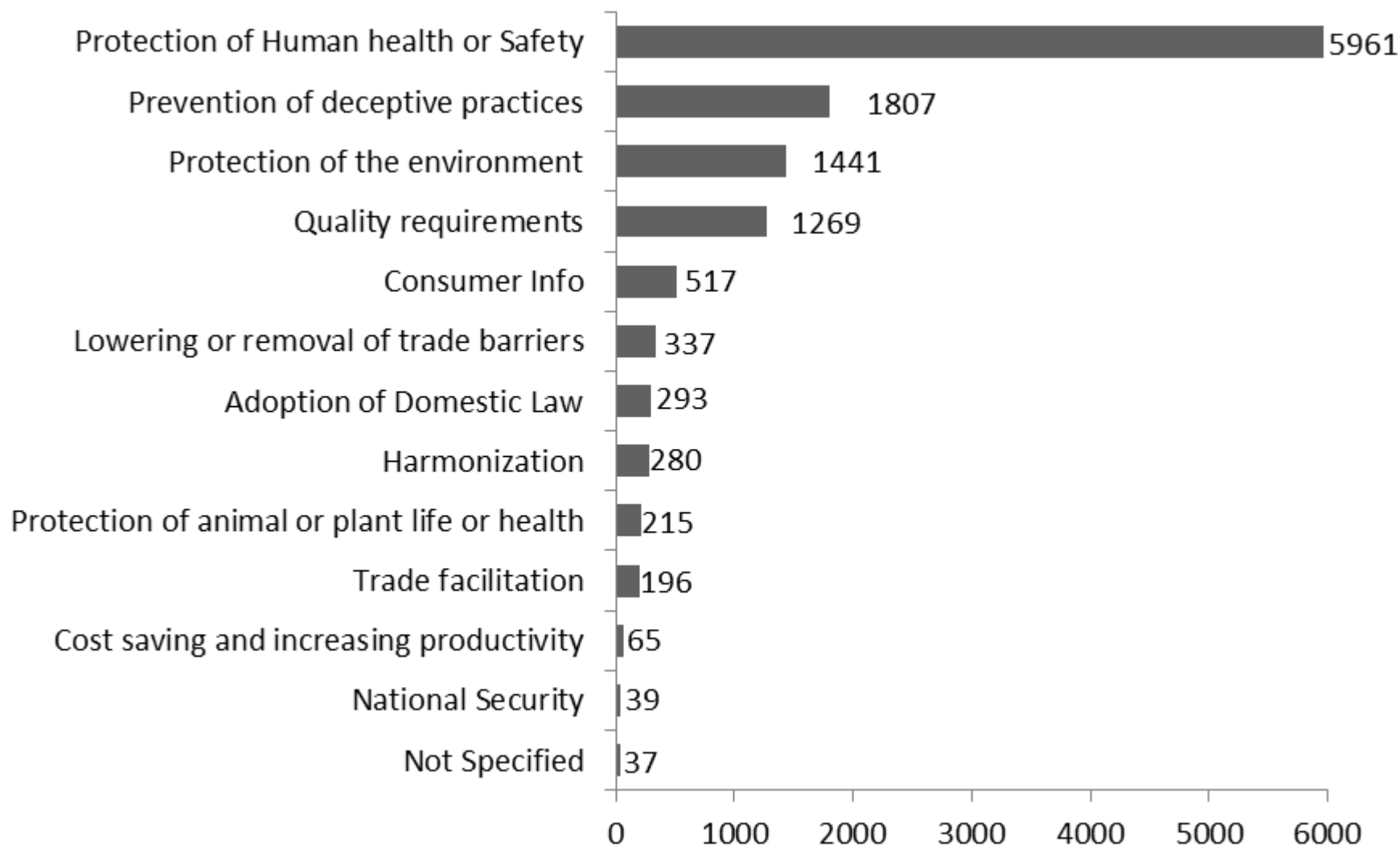
# Top 10 Members Maintaining Measures Complained Against (1995-2013) - TBT



TBT Information Management System (<http://tbtims.wto.org>)



# TBT Notifications by Objective

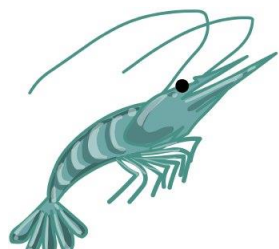


TBT Information Management System (<http://tbtdims.wto.org>)



# SPS Specific Trade Concerns

Member	SPS STCs raised	SPS STCs supported	SPS measure maintained
Chinese Taipei	2	2	9
Hong Kong	2	0	1
India	21	9	11
Indonesia	4	6	13
Pakistan	1	5	0







# SPS Specific Trade Concerns

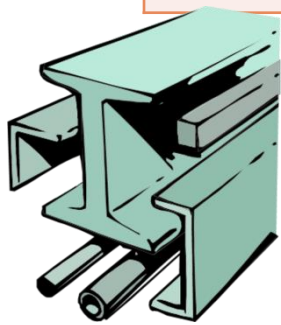
Member	SPS STCs raised	SPS STCs supported	SPS measure maintained
Philippines	5	14	3
Singapore	0	1	2
Sri Lanka	1	2	0
Thailand	9	7	3
Vietnam	0	3	1





# TBT Specific Trade Concerns

Member	TBT STCs raised	TBT measure maintained
Chinese Taipei	4	7
Hong Kong	4	2
India	12	21
Indonesia	23	20





# TBT Specific Trade Concerns

Member	TBT STCs raised	TBT measure maintained
Pakistan	2	0
Philippines	8	1
Singapore	2	0
Thailand	11	9
Vietnam	0	4





# Regional Specific Trade Concerns (STCs)

## SPS - examples

#°	Title	Member raising the concern	Members maintaining the measure	First date raised	Date resolved	Status
85	Import restrictions on prawns and prawn products; revised generic IRA for prawns and prawn products	China, Thailand (raising); Sri Lanka, Indonesia, Malaysia, Philippines, Viet Nam, European Union (supporting)	Australia	01/03/2001	16/10/2013	Partially resolved
231	Restrictions on cinnamon	Sri Lanka (raising); China (supporting)	European Union	01/10/2005	01/10/2006	Resolved
379	Russia's market access requirements for bovine meat in compliance with OIE requirements	India	Russian Federation	15/10/2014		Not reported





# Regional Specific Trade Concerns (STCs)

## TBT - examples

#	Title	Member(s) concerned	Members maintaining the measure	First date raised
466	China – Registration fees for Drugs and Medical Device Products	Canada, US, Korea	China	17/06/2015
367	India – Electronics and Information Technology Goods	Canada, EU, Japan, Korea, Norway, Switzerland, US	India	18/03/2015
467	Chinese Taipei - GMO Labelling	Canada, New Zealand, USA	Chinese Taipei	17/06/2015







# Ways to Address SPS Trade Concerns

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# Good Offices of the Chair of the SPS Committee

Working procedures of Committee (March 1995),  
provide that:

“With respect to any matter which has been raised  
under the Agreement, the Chairperson, may, at the  
request of the Members directly concerned, **assist  
them in dealing with the matter in question...**”

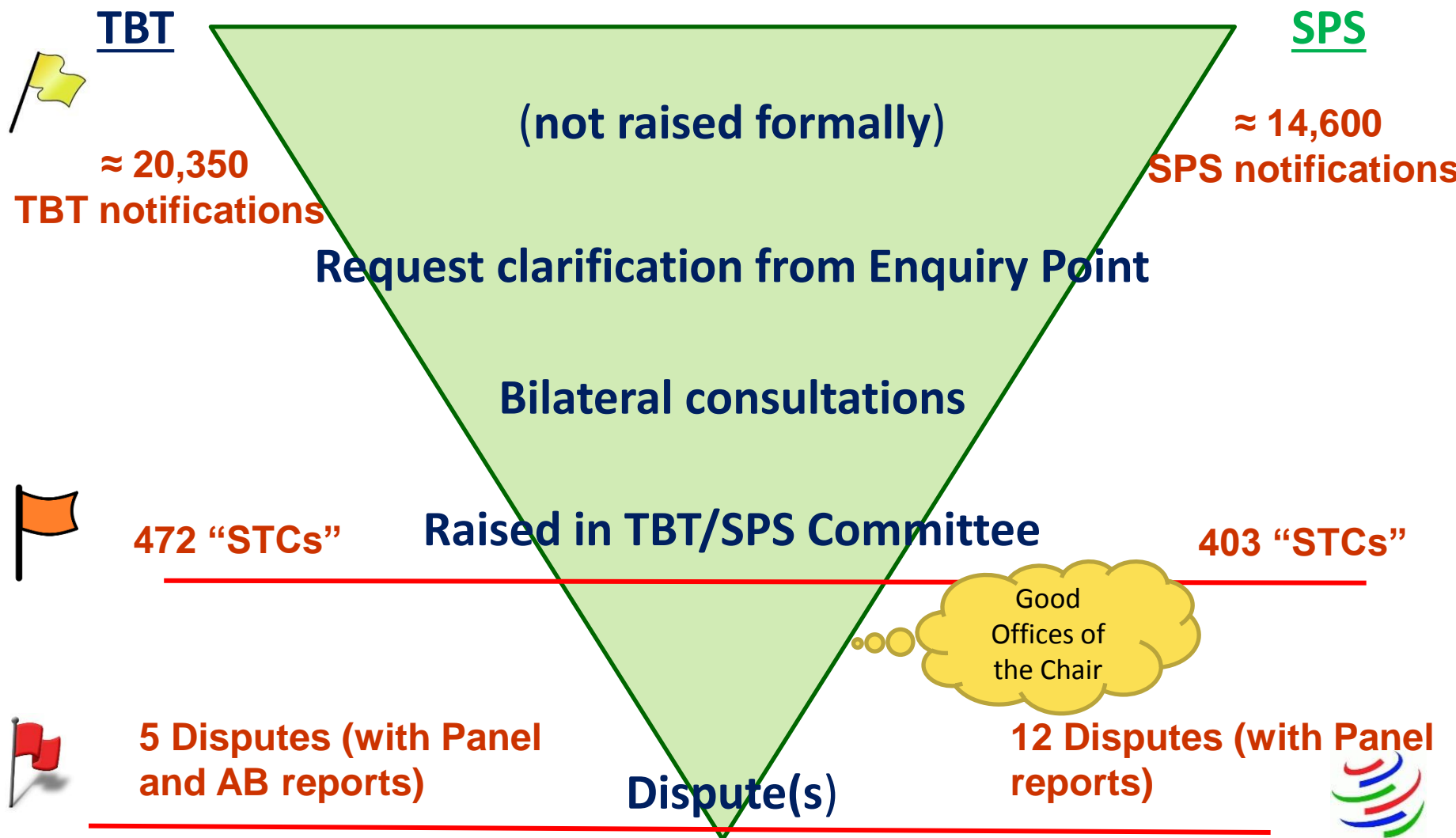
**Procedure adopted in  
the SPS Committee**

**G/SPS/61**





# Review of TBT and SPS measures





# Ways to Address SPS Trade Concerns

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## 4. WTO Dispute Settlement System

### What is a WTO dispute ?

- Arises when a Member believes another is violating an agreement or commitment made
- Only involves governments
- Not a WTO dispute until the Member country notifies WTO Secretariat that a dispute exists





## 4. WTO Dispute Settlement System - Main Stages

**I. Consultation phase**

**II. Panel review**

**III. [AB review]**

*Good offices,  
conciliation and  
mediation  
possible at any  
moment*

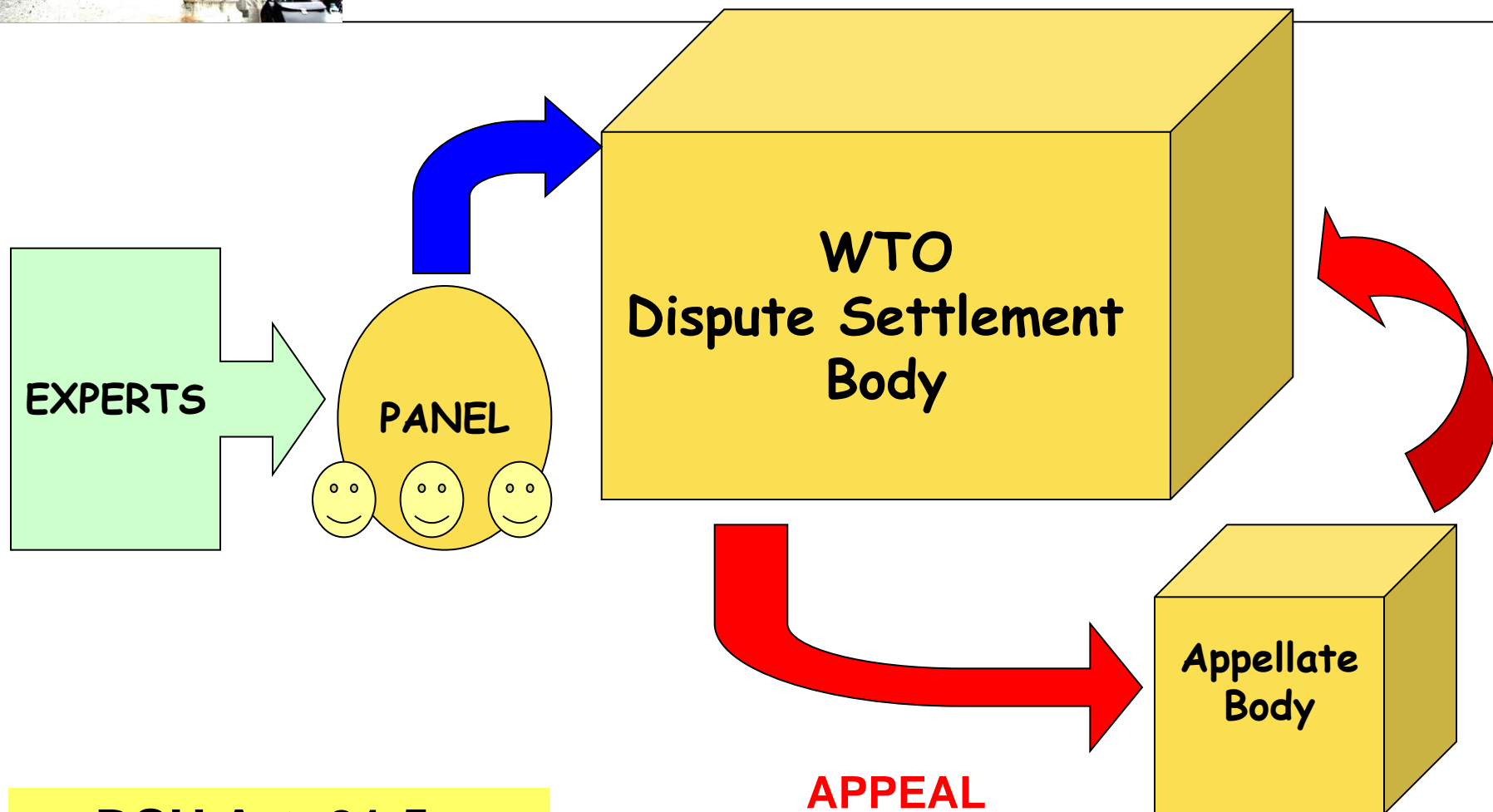
**IV. Adoption of report(s) by the DSB**

**V. Implementation**





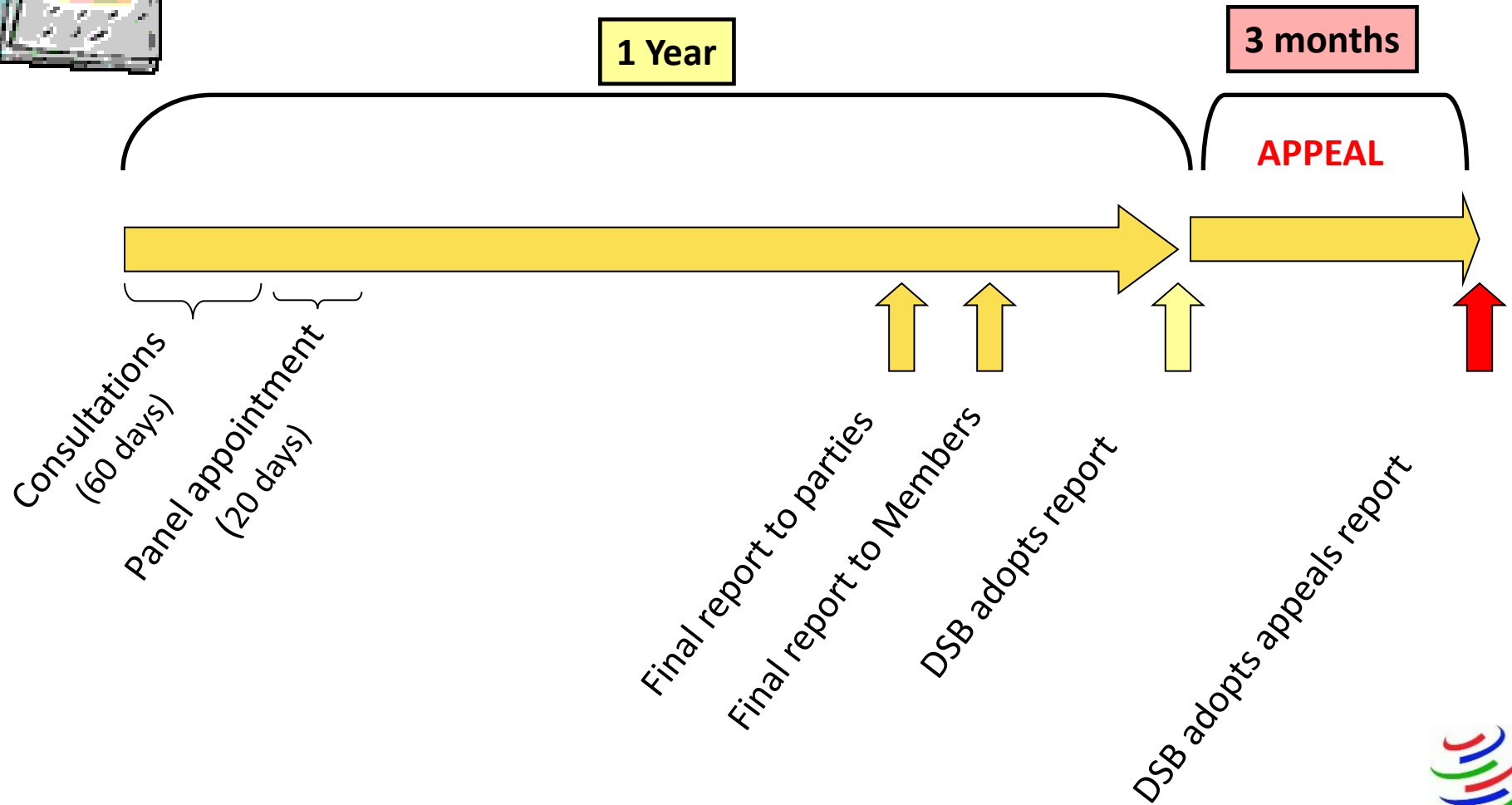
# The Panel Process



**DSU Art. 21.5 -  
evaluating  
compliance**



# Dispute Timetable





# Consistency of SPS Measure

1. Is this an SPS measure? (Art.1, Annex A)
2. Is there a scientific justification? (Art.2.2)
  - a. Is it based on a relevant international standard (Art. 3) OR
  - b. Based on a risk assessment (Art. 5.1-5.3)? OR
  - c. Is this a provisional measure under Art. 5.7
2. Is the measure consistent? (Art.5.5)?
3. Is the measure least trade restrictive (Art.5.6 /2.2)
4. Is the measure discriminatory? (Art.2.3)
5. Was the measure notified? (Art. 7, Annex B)
6. Is any conformity assessment done without undue delay, equitable, etc. (Art. 8, Annex C)



# Consistency of a TBT measure

1. Is this a Technical Regulation, CAP or standard?
2. What is the legitimate objective?
3. Is it more restrictive than necessary, taking into account:  
contribution to objective, trade-restrictiveness, risks  
of non-fulfilment, alternative measures
4. Is there discrimination? Are there like products? Is there  
a “legitimate regulatory distinction”?
5. Is there a relevant international standard? Is measure  
“based on” OR “in accordance” with int’l standard?
6. If CAP, completed expeditiously, equitably, etc.?
7. Was the measure duly notified/published?



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# SPS Dispute Panels

## Food safety

US/Canada vs. EC - Hormones (WT/DS26, 48)

(EC vs. US/ Canada – Continued Suspension (WT/DS320, 321))

China vs. US – Poultry (WT/DS392)

Canada vs. Korea - BSE (WT/DS391)

Japan vs. Korea – Radionuclides (WT/DS495)

## Food safety + plant and animal health (biodiversity considerations)

US/Canada/Argentina vs. EC - GMOs (WT/DS291, 292, 293)





## Animal health

Canada / US vs. Australia - Salmon (WT/DS18, 21)

US vs. India – Avian Influenza (WT/DS430)

Argentina vs. US –Foot-and-Mouth Disease (FMD) (WT/DS447)

EU vs - Russia -- African Swine Fever (WT/DS475)

## Plant protection

US vs. Japan - Variety Testing (WT/DS76)

US vs. Japan – Fire blight (WT/DS245)











New Zealand vs. Australia - Apples (WT/DS367)





## Recent SPS Dispute Requests

- in 2012
  - Argentina's complaint against US re: measures affecting the importation of fresh lemons (DS 448): **In consultations**
- in 2014
  - Brazil's complaint against Indonesia re: measures on importation of chicken meat and chicken products (DS 484): **In consultations**

Case/Art										
Scientific justification (2.2 / 5.7)	X (5.7)		X (5.7)	X (5.7)	X (5.7)	X (5.7)				
Harmonization (3.1 – 3.3)	X					X			X	X
Equivalence (4)								X		
Risk assess. (5.1- 5.3)	X	X		X	X	X	X			X
Consistency (5.5)	X	X								
Least trade restr. (5.6)		X	X	X					X	X
Regionalization (Art. 6)									X	X
Transparency (7 / Annex B)			X	X					X	
Approval proced. (8 / Annex C)					X			X		X



## Main TBT disputes

- **EC vs. Peru – Sardines** (DS231) – mutually acceptable solution notified (2001-2003)
- **US vs. Mexico – Tuna II** (DS381) – compliance proceedings on-going (2008-...)
- **US vs. Mexico/Canada – COOL** (DS386, DS384) – authorization to retaliate requested (2008-...)
- **EC vs. Canada/Norway – Seals Products** (DS410) – report(s) adopted with recommendations (2009-...)
- **US vs. Indonesia – Clove Cigarettes** (DS406) – mutually acceptable solution notified (2010-2014)



# Some recent disputes citing the TBT Agreement

## 2013

- Australia's plain packaging requirements on tobacco products: complaints by Cuba (DS 458), Indonesia (DS467), Ukraine (DS434), Honduras (DS435), Dominican Republic (DS441) - Panel composed

## 2014

- Indonesia's measures on importation of chicken meat and chicken products (DS 484): complaint by Brazil in consultations

## 2015

- Russian Federation's measures affecting the importation of railway equipment: complaint by Ukraine (DS499): in consultations



# Where to get more information?

## Dispute settlement gateway

[http://www.wto.org/english/tratop\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e.htm)

## Panel and Appellate Body report

[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)

## SPS gateway

[http://www.wto.org/english/tratop\\_e/sps/\\_e.htm](http://www.wto.org/english/tratop_e/sps/_e.htm)