



# **Overview of the Multilateral Agreements & One-off and Regular Notification Requirements: a Summary for Afghanistan by Agreement**

## **Module III**

**Samer Seif El-Yazal & Anna Varyanik**

**WTO**

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# WTO - Basic Legal and Economic Principles

## Transparency

Publications, Notifications, TPR

## Predictability

Through binding – access to markets

## No Discrimination

Most Favoured Nation (MFN)

National Treatment (NT)

## Undistorted “fair competition”

Anti-dumping, Subsidies and Countervailing, Safeguards

**Encourage development:** Assisting developing countries to increase their participation in the multilateral trading system



# WTO: What is it?

- **The World Trade Organization - a rules-based organization set up by governments to administer multilateral trade agreements (MTAs) and perform a number of other important functions**
- **Established on 1 January 1995; Not an entirely new institution. Succeeded the GATT which existed from 1 January 1948 - 31 December 1994**
- **Membership: keeps on changing, but recent figure is 162 Members, 21 acceding.**
- **Secretariat: around 700 people; different backgrounds and nationalities. Headed by a Director-General, Mr. Roberto Azevêdo from Brazil.**
- **Offices in Geneva. No field offices.**



# WTO - History

- **General Agreement on Tariffs and Trade (GATT)**
- **From 1948 to 1995**
- **Rules with a “provisional” character**
- **23 Contracting parties (in 1948)**
- **Negotiations were organized under the so-called “Rounds” (8 during the GATT)**



# WTO vs GATT: Main differences

- **Nature**
  - **GATT: applied on a provisional basis with no institutional framework**
  - **WTO: permanent framework with a permanent organization**
- **Scope**
  - **GATT: trade in goods**
  - **WTO: trade in goods and services and TRIPS**
- **Approach**
  - **GATT: à la carte (many agreements selective)**
  - **WTO: single undertaking**
- **Dispute settlement**



# WTO: Main functions

Art. III  
WTO Agr.

- **Administering and implementing the multilateral and plurilateral trade agreements**
- **Forum for multilateral trade negotiations**
- **Dispute settlement**
- **Overseeing national trade policy**
- **Co-operation with the IMF and the World Bank (coherence in global economic policy-making)**



# WTO: Uruguay Round Results

## *Final Act*

- ☐ **WTO Agreement (Marrakesh Agreement Establishing the WTO)**
- ☐ **Annex 1A: Multilateral Agreements on Trade in Goods**
- ☐ **Annex 1B: General Agreement on Trade in Services and Annexes**
- ☐ **Annex 1C: Agreement on Trade Related Aspects of Intellectual Property Rights**
- ☐ **Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes**
- ☐ **Annex 3: Trade Policy Review Mechanism**
- ☐ **Annex 4: Plurilateral Trade Agreements**

## **Ministerial Declarations and Decisions**



## Annex 1A

### Multilateral agreements on trade in **Goods**

**1A**

Multilateral trade  
agreement on  
trade in goods

**Goods**

GATT 1994 (General Agreement on Tariffs and Trade)

Understandings

Marrakesh Protocol

Agreements on:

Agriculture

Antidumping

Sanitary and phytosanitary  
measures

Customs valuation

Preshipment inspection

Textiles and clothing

Rules of origin

Technical barriers to trade

Import licensing

Trade-related investment  
measures (TRIMS)

Subsidies and countervailing  
measures

Safeguards



# WTO Ministerial Conferences

- **Singapore (1996), Geneva (1998), Seattle (1999)**
- **Doha (2001) - Doha Development Agenda  
(New Round of Trade Negotiations)**
- **Cancun (September 2003)**
- **Hong-Kong, China (December 2005)**
- **Geneva, 30 November - 2 December 2009**
- **Geneva, 15-17 December 2011**
- **Bali, Indonesia – December 2013**
- **Nairobi, Kenya – December 2015**





WORLD TRADE ORGANIZATION  
ORGANISATION MONDIALE DU COMMERCE  
ORGANIZACIÓN MUNDIAL DEL COMERCIO

# **WTO NOTIFICATION REQUIREMENTS**

## **Background and Procedures**



# NOT: Why?

## ➤ Advantages

- Transparency
- Collective surveillance

## ➤ Disadvantages

- Should Members notify everything?
- Costs: production, circulation, analysis



# NOT: A compromise

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- ☐ Relevant vs. irrelevant
- ☐ Stock/changes vs step by step
- ☐ Reverse notifications



# NOT: Sources

- ❖ **Final Act**
- ❖ **Old obligations .... actual**
- ❖ **New decisions**
  - ❖ **Quantitative restrictions (QRs)**
  - ❖ **Non-tariff measures (NTMs)**
  - ❖ **Integrated Data Base (IDB)**



# NOT: When?

- ❖ ***Ad-hoc*: if ... then notify**
- ❖ **One-off: “snap-shot”**
- ❖ **Regular**
  - ❖ **every 6 months: semi-annual**
  - ❖ **annual**
  - ❖ **other periodicities**



# NOT: What?

- **Legislation**
- **Changes in legislation**
- **Stock: measures in place**
- **Changes: Measures taken in a given period**
- **Step by step: individual actions**



# NOT: How? (1)

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❖ **Guidelines**

❖ **Formats**

❖ **Samples (notifications already submitted)**



# NOT: How? (2)

- ❖ *What needs to be done?*
- ❖ **National coordination**
- ❖ **Data preparation**
- ❖ **Presentation**
- ❖ **Review: oral and written questions**



# NOT: The other side

- *What do we do with other countries' notifications?*
- **Circulation**
- **Analysis**
- **Questions**
- **Dissemination**



# NOT: Secretariat Assistance

**Workshops: Geneva, regional/national**

**Module on notifications in every “general”  
TA activity**

**Focal points with e-mail addresses**

**([www.wto.org](http://www.wto.org) – search for: TRTA notifications)**



# NOT: Documentation

- ☐ **Technical Cooperation Handbook on Notification Requirements : WT/TC/NOTIF**
- ☐ **List of all notification requirements in Annex 1A: G/NOP/W/2/Rev.1**
- ☐ **Timing: G/NOP/W/5**
- ☐ **Compliance: G/L/223 (latest revision)**



# NOT: Ministerial Decision

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- **General obligation to notify**
- **Central Registry of Notifications (CRN)**
- **Working Group on Notification Obligations and Procedures (G/NOP series)**



# NOT: Central Registry of Notifications (CRN)

- ❑ Entry point in the Secretariat for ALL notifications (WT/INF/124)
- ❑ A call every year for each Member - “tailor-made” listing of *regular* notifications
- ❑ Reminders - “tailor-made” list of unfulfilled *regular* notifications



# NOT: Compliance (1)

- *How many notification obligations?*
- **Annex 1A: 175 requirements**
  - **106 ad-hoc**
  - **43 one-off**
  - **26 regular (17 annual, 3 semi-annual, 2 every 2 years)**
- **Annexes 1B + 1C: around 40 requirements**



# NOT: Compliance (2)

**Compliance with notification requirements has not been fully satisfactory (WT/MIN(96)/DEC para. 11)**

## ***Why?***

### **Substantial difficulties**

to modify legislation, etc.

to implement reductions agreed in the schedules

### **Other difficulties**

human resources

lack of experience





**WTO Website**  
**[www.wto.org](http://www.wto.org)**



# How to use the WTO website

- Notifications option  
(accessible through [docs.wto.org](https://docs.wto.org) *Online*)
- WTO website [www.wto.org](http://www.wto.org)
- Members' site [members.wto.org](http://members.wto.org)

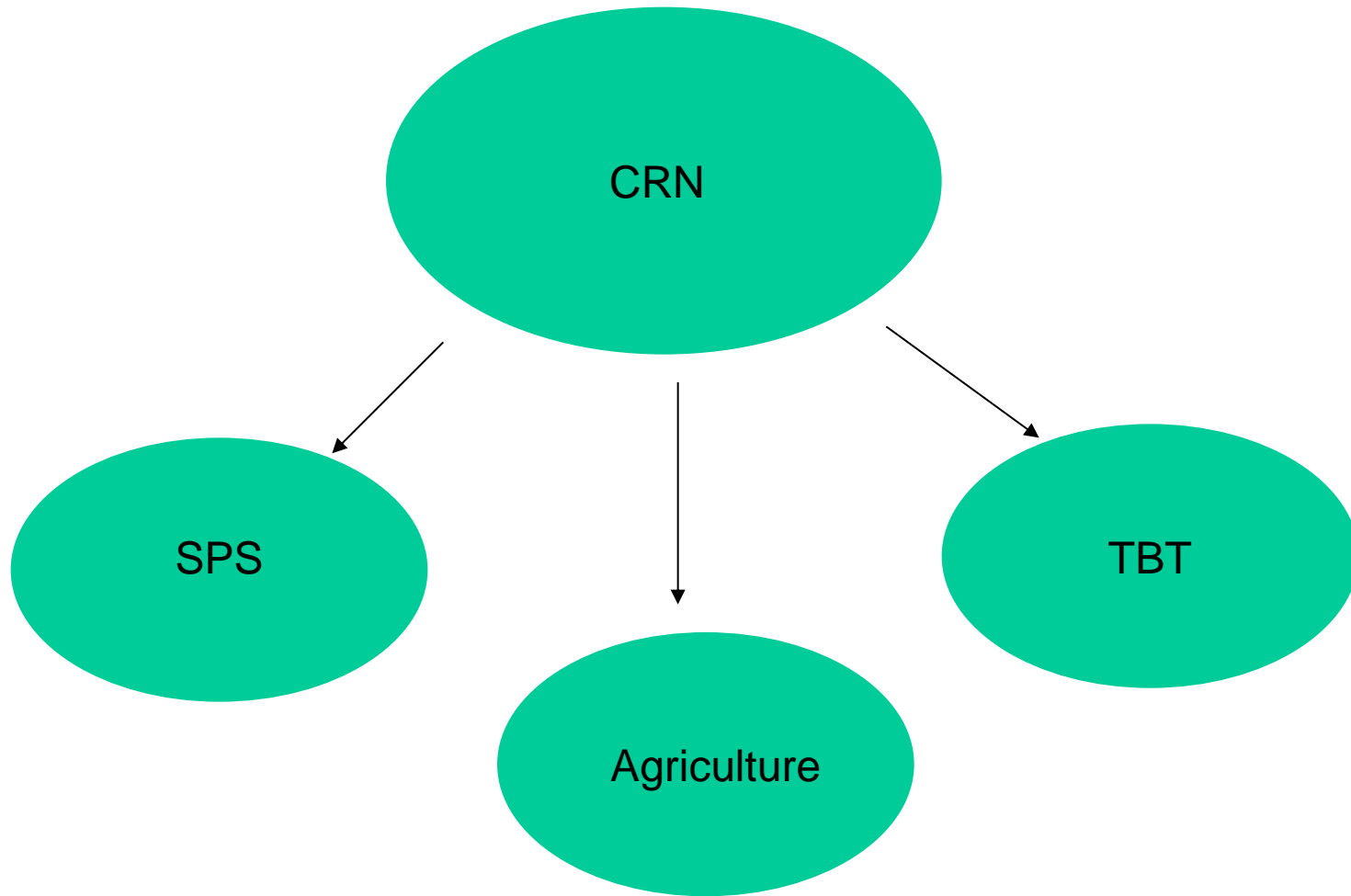


# How to search for notifications

- **Member's page**
- **Trade topics page**
- **A-Z list**
- **Documents Online**



# CRN and other databases





# Search Notifications

- **Date range**
- **Member**
- **Requirement**

Divisions	
<input type="checkbox"/> Agriculture & Commodities	AGR Art. 12.1(b) - ER
<input type="checkbox"/> Development	AGR Art. 16.2 NF:1 (1)-(3)
<input type="checkbox"/> Intellectual Property	AGR Art. 16.2 NF:1 (1)-(4)
<input type="checkbox"/> Market Access	AGR Art. 16.2 NF:1 (4)
<input type="checkbox"/> Rules	AGR Art. 18.2 - DS:1
<input type="checkbox"/> Statistics	AGR Art. 18.2 - MA:1
<input type="checkbox"/> Textiles	AGR Art. 18.2 - MA:2
<input type="checkbox"/> Trade & Environment	AGR Art. 18.3 - DS:2
<input type="checkbox"/> Trade and Finance	AGR Art. 5.7 & 18.2 - MA:5
<input type="checkbox"/> Trade in Services	AGR Art. 5.7 MA:3 & MA:4
<input type="checkbox"/> Trade Policies Review	AGR other
	IDA - Art. III:1 and III:3
	IDA - Art. III:3

Requirements
Agriculture
Anti-dumping
Balance of payments measures
Countervailing measures
Customs valuation
Government procurement
Import licensing procedures
Import restrictions
Infant industry protection
Intellectual property
Investment measures (TRIMs)
Maritime Transport
Non-tariff measures
Preshipment inspection
Quantitative restrictions
Regional Trading Arrangements



# Search Notifications: Advanced

Limit search for documents by

- Full text
- Trade coverage

Trade coverage : [About trade coverage](#)

HS:  ?

Services:  ?

Environment:  ?

Word search:  ?

Sections	
Search all	
<input type="checkbox"/> I	LIVE ANIMALS; ANIMAL PRODUCTS
<input type="checkbox"/> II	VEGETABLE PRODUCTS
<input type="checkbox"/> III	ANIMAL OR VEGETABLE FATS AND OILS AND THEIR CLEAVAGE PRODUCTS; PREPARED EDIBLE FATS; ANIMAL OR VEGETABLE WAXES
<input type="checkbox"/> IV	PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES
<input type="checkbox"/> V	MINERAL PRODUCTS
<input type="checkbox"/> VI	PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES
<input type="checkbox"/> VII	PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF
<input type="checkbox"/> VIII	RAW HIDES AND SKINS, LEATHER, FURSKINS AND ARTICLES THEREOF; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILKWORM GUT)
<input type="checkbox"/> IX	WOOD AND ARTICLES OF WOOD; WOOD

Chapters	
01	LIVE ANIMALS
02	MEAT AND EDIBLE MEAT OFFAL
03	FISH AND CRUSTACEANS, MOLLUSCS AND OTHER AQUATIC INVERTEBRATES
04	DAIRY PRODUCE; BIRDS' EGGS; NATURAL HONEY; EDIBLE PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED
05	PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED





# Searching for notifications - the future

- **Browse interface**
- **No special knowledge**
- **Special display**
- **View directly on screen and download documents**



# Electronic subscriptions

- **Recent Docs. (Documents on-line)**
- **Pre-defined report: TBT only (monthly notification summary)**
- **Email distribution every two-weeks (SPS)**
- **Joint “Eping” project on SPS/TBT**





# Agriculture



# Why rules on agriculture trade?

Special role of the  
sector

History of  
distortions





# The Agreement on Agriculture - WHY?

Trade in agricultural goods always a part of GATT but...

- ✓ Exemptions allowed for the continuation of subsidies and trade barriers prohibited or restricted for non-agricultural goods;
- ✓ Result : Continued and increasing level of unfair competition on world markets;
- ✓ Reform needed



© 1997 The Fat Firm: Zoltners, Sinha, Murphy



# *Preamble of the AoA*

**“to establish a fair and market-oriented agricultural trading system”**

**“a basis for initiating a process of reform of trade in agriculture”**

**“long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained”**

**“Committed to achieving specific binding commitments ...: market access; domestic support; export competition; and to reaching an agreement on sanitary and phytosanitary issues”**



# *Structure of the Agreement*

## Market access

Tariffs

Tariff Quotas

Special Safeguard

## Domestic support

Green Box

Blue Box

Article 6.2 – Development  
Programmes

Amber Box

## Export competition

Export subsidies

Anti-circumvention

**Other rules:** Export prohibitions and restrictions, NFIDC Decision, S&D, Peace Clause (now expired), etc.



# What is an agricultural product ? ... in the AoA context

## Annex 1 of Agreement on Agriculture :

- Chapters 1 to 24 of Harmonized System **except fish and fish products**

(whale 020840, lemon tree 060220, Christmas tree 06049120)

- Plus several other tariff lines such as 4101 to 4103 (hides and skins), 4301 (raw furskins), 5001 to 5003 (raw silk and silk waste)...



# Relationship of AoA with other WTO agreements?

- In principle, all WTO agreements and understandings on trade in goods apply to agriculture
- If there is a conflict between the AoA and other WTO agreements on agricultural products, the provisions of the AoA prevail.



# Uruguay Round Schedules

## Agricultural Concessions and Commitments

Uruguay Round agricultural concessions and commitments are spread between two of the four parts of Uruguay Round Schedules:

➤ Part I, Most Favoured Nation Tariff

**Section I.A – Agricultural tariffs**

**Section I.B – Agricultural tariff quotas**

**Section II – Other products**

➤ Part II, Schedule of preferential tariffs

➤ Part III, Non-tariff measure concessions other than agricultural products

➤ Part IV, Commitments limiting subsidization

**Section I – Domestic support, Total AMS**

**Section II – Export subsidies – budget & volume commitments**

**Section III – Commitments limiting the scope of export subsidies**



# NOT: Agriculture (1)

- **Basic document: G/AG/2 + Notification Handbook**
- **Market Access – Tariff rate quotas (TRQs)**
  - **Table MA:1 (Administration of tariff quotas)**
  - **Table MA:2 (Imports under TRQs) - annual**
  - **Tables MA:3 to MA:5**  
**Members having reserved their right to use the Special Safeguard in their Schedules**  
**-> Afghanistan: No**



# NOT: Agriculture (2)

- **Art. 18.2 - Table ES:1**  
Annually, all Members ( a “nil” return ... at least)
- **Art. 18.2 - Table ES:2**  
Members with export subsidies commitments *plus* significant exporters (G/AG/2/Add.1)  
-> Afghanistan: No
- **Art. 10 and 18.2 - Table ES:3**  
Food donor Members -> Afghanistan: No



# NOT: Agriculture (3)

- Art. 18.2 - Table **DS:1**

**Annually (LDCs every two years), all Members →**

**Afghanistan: yes**

**(base data in WT/ACC/SPEC/AFG/2)**

- Art. 18.2 - Table **DS:2**

***Ad-hoc*: If modified/new exempt programmes**





# **Sanitary and Phytosanitary Measures SPS**

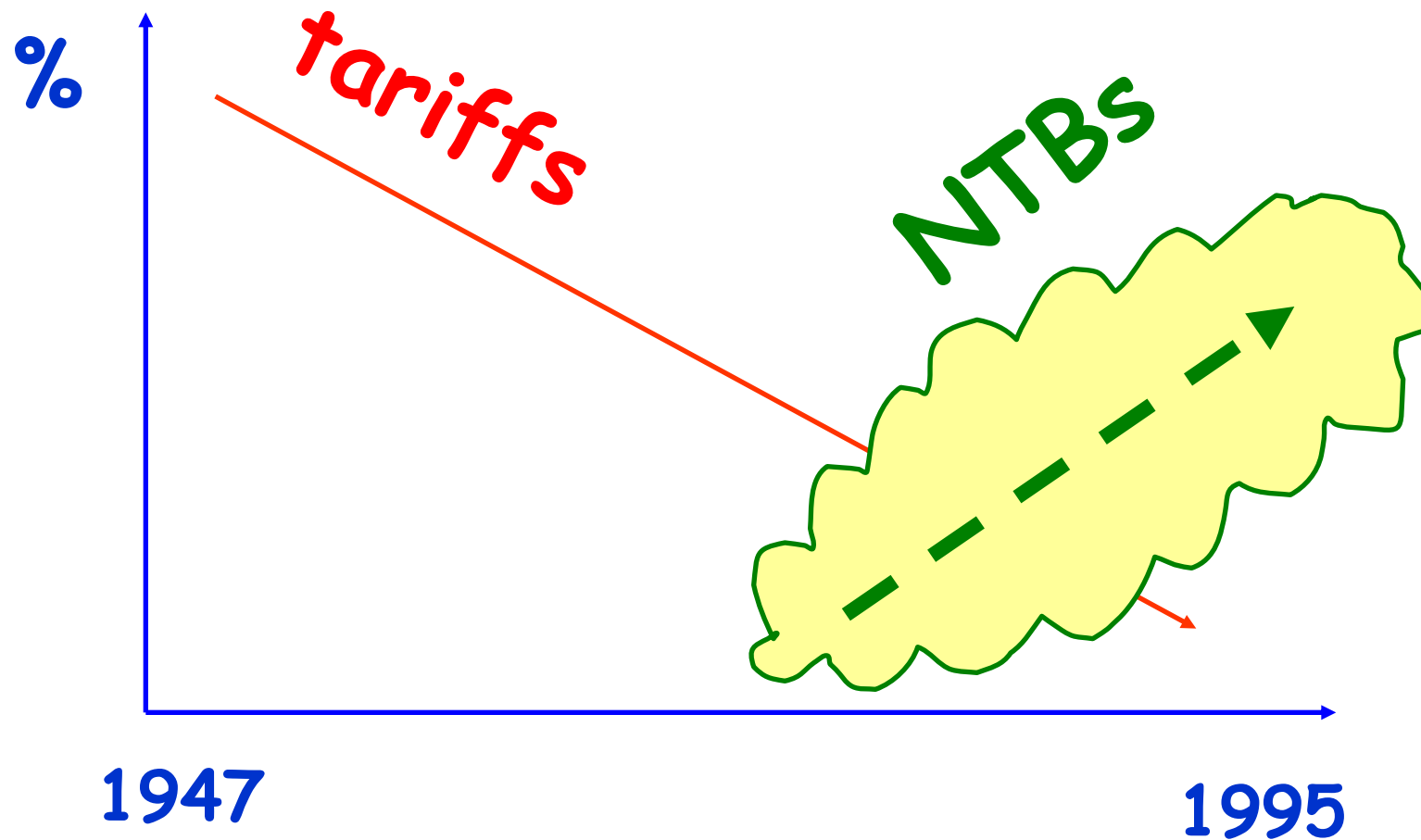


# Uruguay Round: Negotiations on Agriculture

- **Objectives to eliminate quantitative import restrictions**
- **Eliminate other non-tariff barriers (variable levies)**
- **Reduce tariffs**
- **Reduce domestic production subsidies**
- **Reduce export subsidies**
- **Establish sanitary and phytosanitary rules**



# Why the SPS Agreement?





# Key Provisions of the SPS Agreement

1. Non-discrimination
2. Scientific justification
  - harmonization
  - risk assessment
  - consistency
  - least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. Technical assistance/special treatment
7. Control, inspection and approval procedures





# Non-discrimination: Article 2.3

- **No unjustifiable discrimination between Members with similar conditions between own territory and other Members**



# Scientific justification: Article 2.2

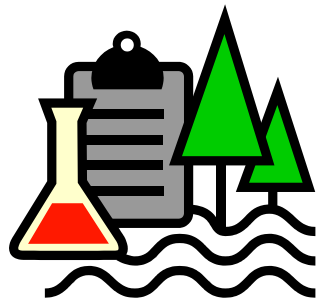
Members  
shall  
ensure  
that any  
SPS  
measure  
is:

**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**

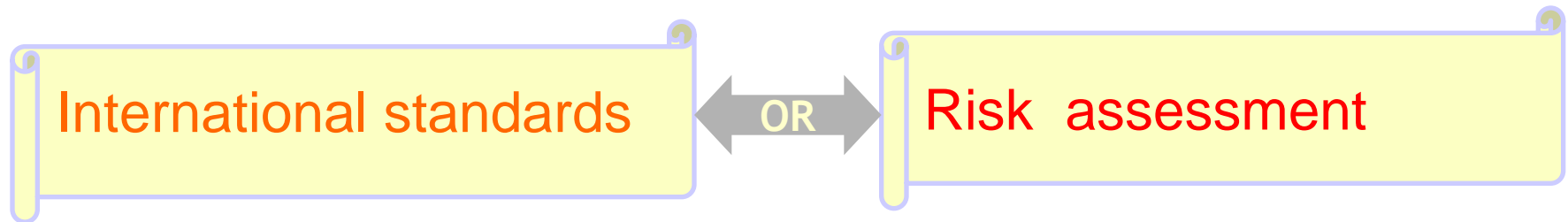
**except as provided for in Article 5.7**





# Scientific justification: Articles 3 & 5

Measures must be based on





# Scientific justification: 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)**



# Scientific justification - 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





### Members shall

avoid **arbitrary** distinctions



in appropriate level of SPS  
protection (ALOP) considered in  
**different** situations



if distinctions result in **discrimination or  
disguised restrictions** on trade



# Equivalence: Article 4

If the exporting country **objectively demonstrates** that its measures achieve the ALOP of the importing country



**Members shall**



accept SPS measures of other Members as **equivalent**

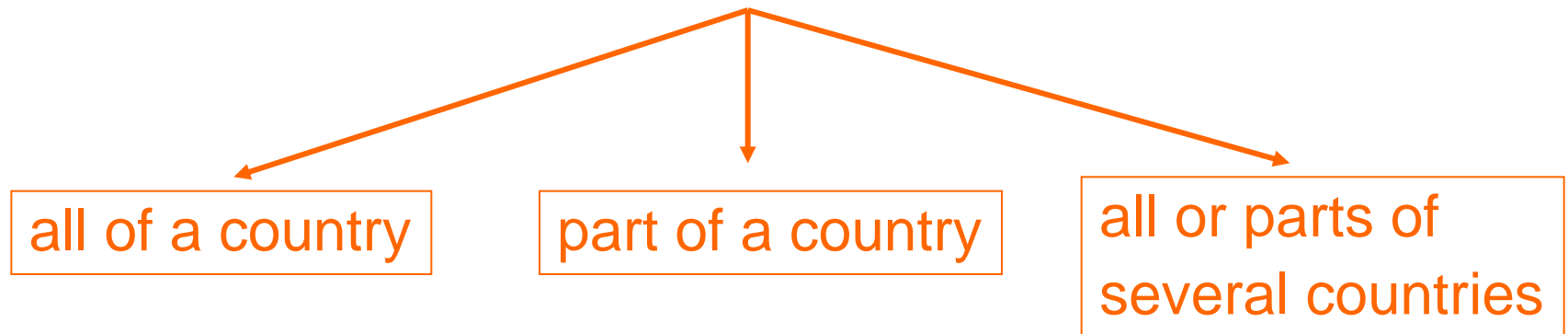


# Regionalization - Article 6

## Pest- or disease-free areas

Members shall ensure that their SPS measures are adapted to the SPS characteristics of an

“area”





# Transparency: Article 7 & Annex B

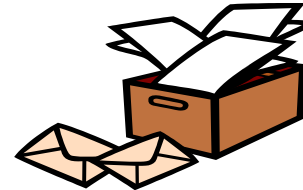
**Members shall**



**establish an Enquiry Point  
AND  
designate a Notification Authority\_**



**notify other Members of new or changed  
SPS regulations when**



**no international standard exists  
OR  
the new regulation is different  
than the international standard**

**AND**

**regulation may  
have  
significant  
effect on trade**



# NOT: Sanitary and Phytosanitary Measures

- Basic documents: G/SPS/7/Rev. 3 (also in SPS Manual)
- Afghanistan: Full implementation by 1/1/2020 based on Table 2 of Action Plan (Para 186 of WP report)
- Annex B para. 10 - “one-time”  
National Notification Authority (NNA)  
*All Members* → Afghanistan
- Annex B para. 3 - “one-time”  
National Enquiry Point (NEP)  
*All Members* → Afghanistan (WP report para. 183, Mr. Abdul Munir, Ministry of Agriculture, Irrigation, and Livestock MAIL) Jamal Mena, Kart e Sakhi, Opposite Kabul University Compound Police District 3 Kabul, Afghanistan; Tel. No.: +93 777 999 950; Email: [Abdul.munir@MAIL.gov.af](mailto:Abdul.munir@MAIL.gov.af))
- SPS measures not based on international standards...
  - *ad-hoc* – Afghanistan? - see SPS Manual



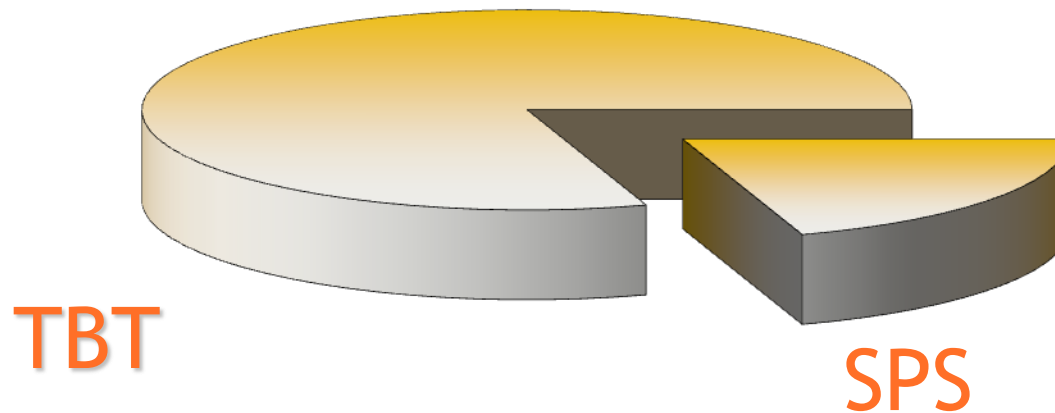


# **Technical Barriers to Trade (TBT)**



# The TBT Agreement

- **It applies to all technical regulations (mandatory) standards (voluntary) conformity assessment procedures**



But: its provisions do **not** apply to SPS measures



# SPS or TBT ?

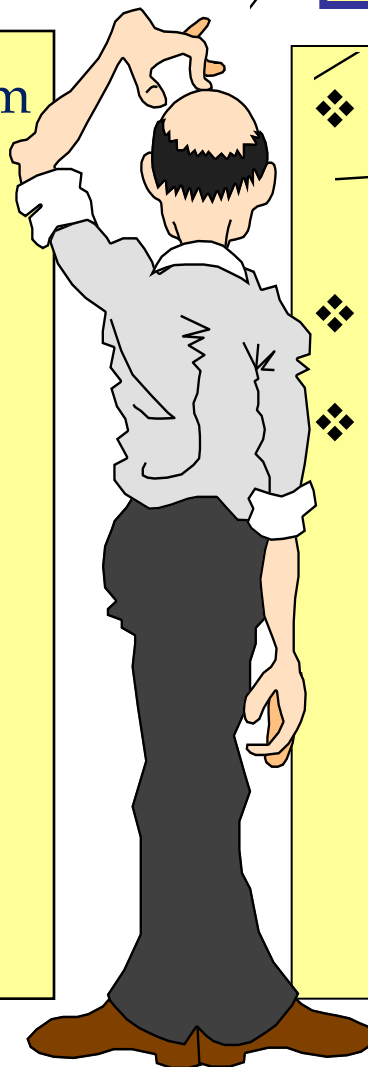
## SPS Measures

- ❖ human or animal health from food-borne risks
- ❖ human health from animal- or plant-carried diseases
- ❖ animals and plants from pests or diseases
- ❖ examples:
  - ❖ pesticide residues
  - ❖ food additives



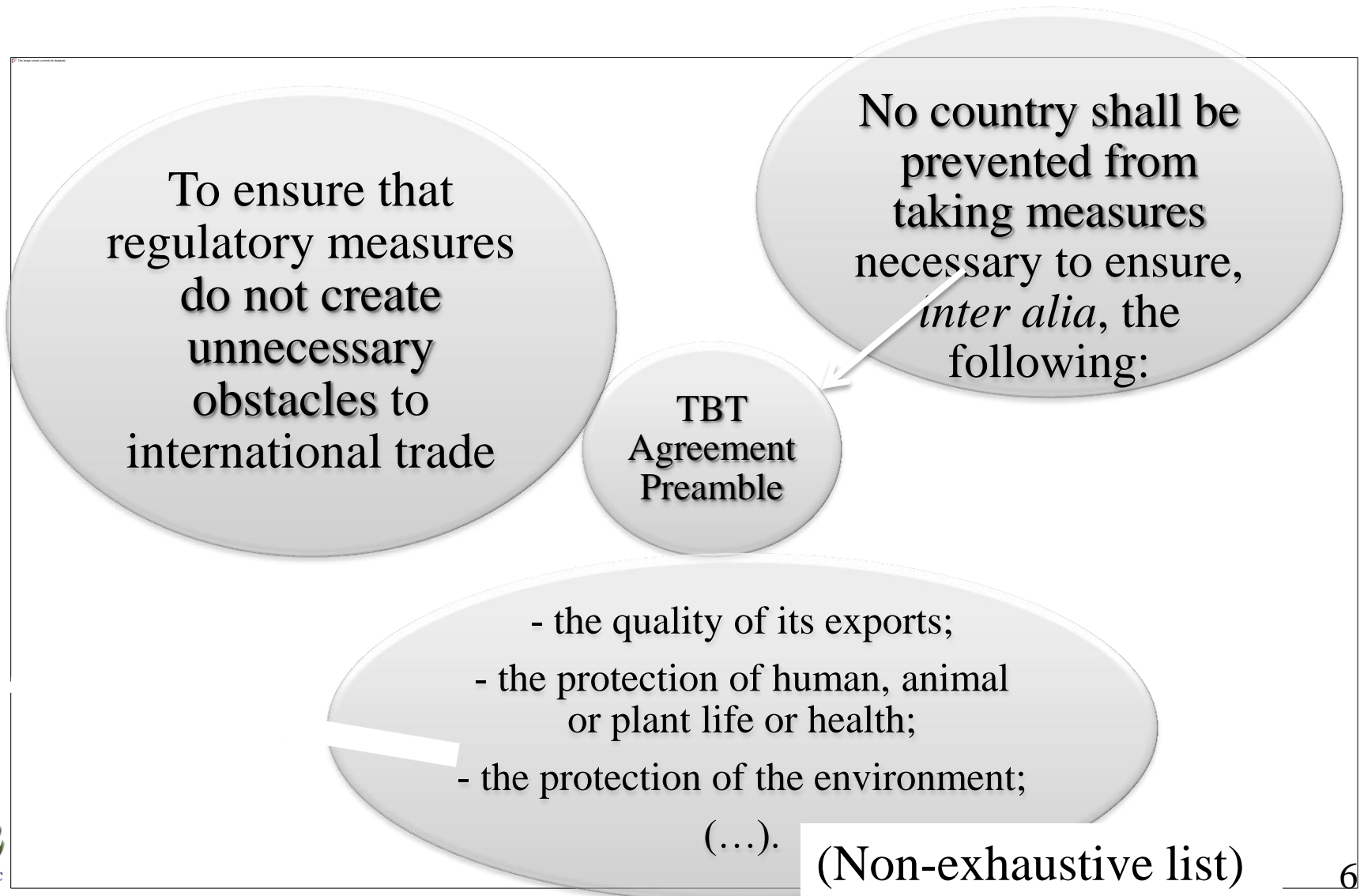
## TBT Measures

- ❖ human disease control  
(unless it's food safety)
- ❖ nutritional claims
- ❖ food packaging and quality examples:
  - ❖ labelling (unless related to food safety)
  - ❖ pesticide handling
  - ❖ seat belts



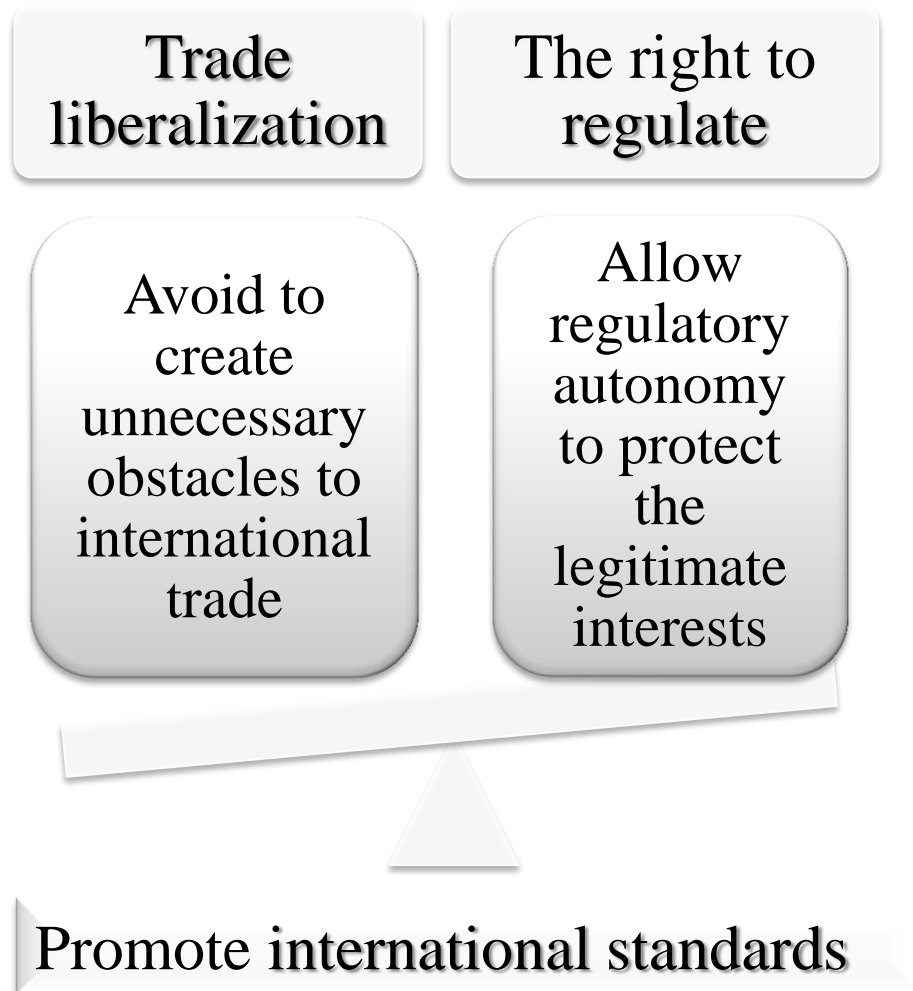


# Objective of the TBT Agreement





# The Agreement on Technical Barriers to Trade





# Coverage of the TBT Agreement

## How do we distinguish SPS and TBT Measures?

Same product? Same objective?



Permitted size to ensure standard volume? → TBT

Materials that can be used because they are safe for human health → SPS

Requirement: No residues of disinfectant, so that water is not contaminated → SPS

Permitted shape to allow stacking and displaying? → TBT

Formulation of the policy/regulation



# Scope of the TBT Agreement

## Voluntary

Standards  
(Article 4 &  
Annex 3)



## Mandatory

Technical  
Regulations  
(Article 2)



Conformity Assessment Procedures  
(Article 5)



Products to Market



# Principles and Disciplines

How does the TBT Agreement Balance trade liberalization and legitimate non-trade concerns?



*(Preamble, TBT Agreement)*

Five principles in the TBT Agreement

- 1) Non-discrimination
- 2) Prevention of unnecessary obstacles to international trade
- 3) Harmonization
- 4) Transparency
- 5) Special and differential treatment and technical assistance



# Transparency (1)

## Why transparency

To ensure that trade flows smoothly, predictably, and freely

## How does the TBT Agreement promote transparency?

Each WTO Member is required to

- 1) Submit a statement on implementation and administration
- 2) Notify draft and adopted technical regulations and CAPs
- 3) Publish all technical regulations, CAPs and agreements
- 4) Establish an Enquiry Point





# NOT: Technical Barriers to Trade

- Basic document: G/TBT/1/rev. 11 or higher
- Afghanistan: Progressive implementation by 1/1/2018 (para. 170)
- Art. 15.2, 10.2 and 10.10 - “one-time”
  - Art. 15.2: Statement on the implementation and administration of the Agreement
  - Art. 10.2: Enquiry point(s) (para 169 of WP report, ANSA)
  - Art. 10.10: Designation of a Government authority for implementation of notification obligations

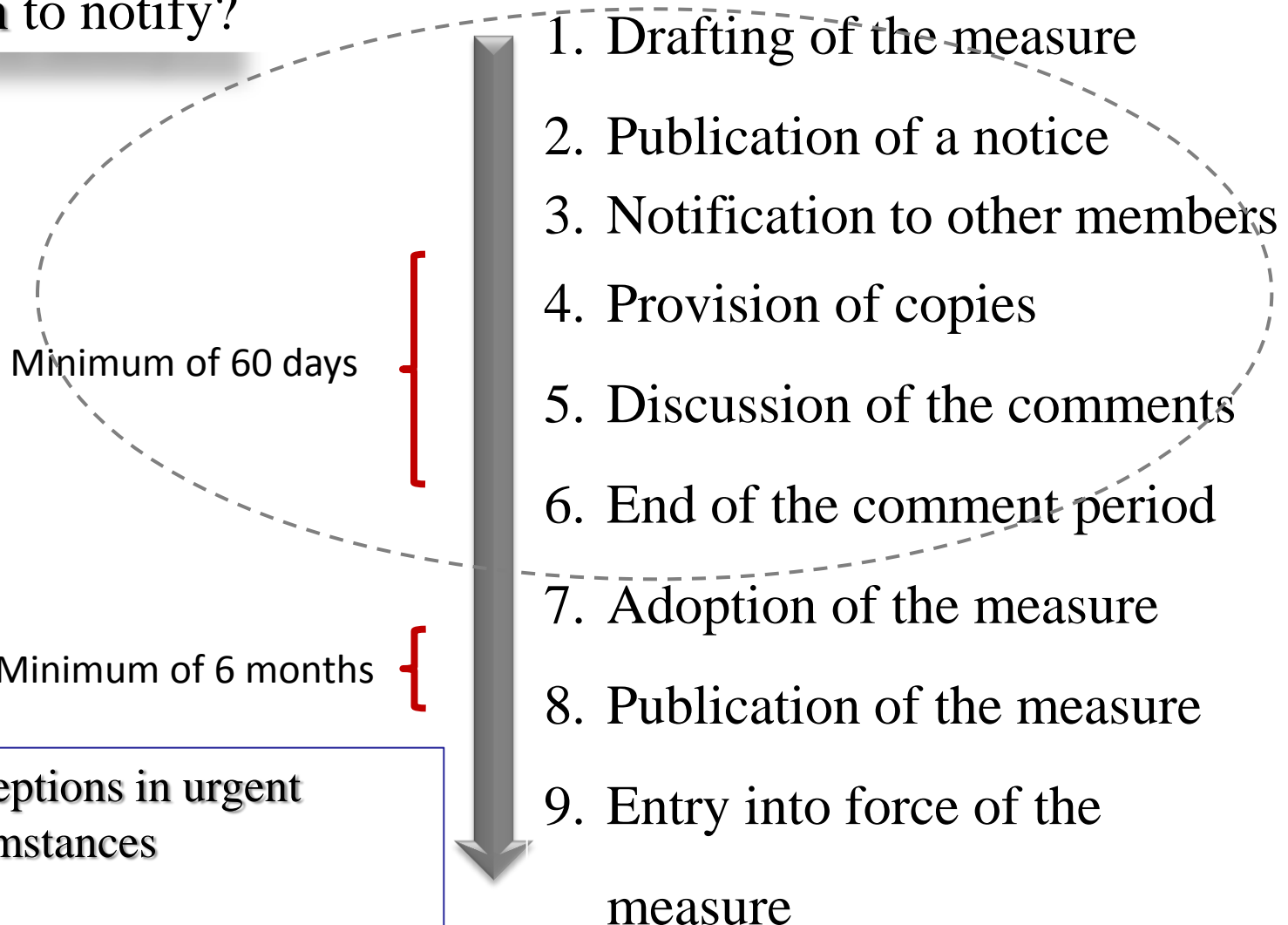
*All Members → Afghanistan*

- Technical regulations and CAPs – *ad-hoc*  
(para. 171 & Table 1 of the Working Party Report, WPR)



# Transparency Notifications

## When to notify?





# Transparency Notifications

## Example

TBT online notifications  
submission system (TBT NSS):

TBT NSS :

<https://nss.wto.org/tbtmembers/>

To request your Member login  
details, please email:

[tbtnss@wto.org](mailto:tbtnss@wto.org)

<b>WORLD TRADE ORGANIZATION</b>	
	G/TBT/N/./
	(00-0000)
Committee on Technical Barriers to Trade	Original: English
<b>NOTIFICATION</b>	
The following notification is being circulated in accordance with Article 10.6.	
1.	Member to Agreement notifying: If applicable, name of local government involved (Articles 3.2 and 7.2):
2.	Agency responsible: Ministry of Industry Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above:
3.	Notified under Article 2.9.2 [ ], 2.10.1 [ ], 5.6.2 [ ], 5.7.1 [ ], other:
4.	Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable):
5.	Title, number of pages and language(s) of the notified document:
6.	Description of content:
7.	Objective and rationale, including the nature of urgent problems where applicable:
8.	Relevant documents:
9.	Proposed date of adoption: Proposed date of entry into force:
10.	Final date for comments:
11.	Texts available from: National enquiry point [ ] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body: Website:



# NOT: Technical Barriers to Trade

- **Annex 3 - Code of Good Practice – paragraph C**  
**“one-time” - ISO/IEC Information Centre in Geneva**  
**Notification of standardizing bodies having**  
**accepted the Code**

***All Members -> ANSA: *in progress from 1/1/2018****

- **Annex 3 - Code of Good Practice – paragraph J**  
**“every six months” - ISO/IEC Information Centre**  
**Work programme on development of standards**

***All standardizing bodies having accepted the***  
***Code***





# Customs valuation



# Purpose of the Agreement

- **Article VII of the GATT deals with Customs valuation**

Principle: the value for Customs purposes based on the actual value of the imported merchandise (or of like merchandise), not on the value of merchandise of national origin or on arbitrary or fictitious values.

- **Brussels Definition of Value (1950s onwards) - BVD**

“normal market price” (theoretical price defined by Customs)

→ adopt a more flexible and uniform valuation method



# Historical Background

## 1979 (Tokyo Round Valuation Code)

- positive system of Customs valuation (“transaction value”)
- Plurilateral agreement

## 1986-1993 (Uruguay Round)

- multilateralization (few changes in relation to the Tokyo Round Code)
  - implemented for the purpose of levying ad valorem duties



# Content of the Agreement



**Valuation Methods** (Art. 1-8)

**Currency conversion** (Art. 9)

**Confidentiality** (Art. 10)

**Right of Appeal** (Art. 11)

**Publication** (Art. 12)

**Release of Goods** (Art. 13)



**Definitions** (Art. 15)

**Written explanation** (Art. 16)



**Interpretative Notes** (Annex I)

**Technical WCO Committee** (Annex II)

**Developing countries** (Annex III)

**The annexes are an integral part of the CVA!**



# General Principles

## Preamble

- ✓ **Primacy of the transaction value method**
- ✓ **Uniformity in valuation**
- ✓ **Fairness and neutrality**
- ✓ **Simple and equitable criteria**
- ✓ **Consistency with commercial practice**



# Authorized Valuation Methods

Order MUST be followed

- 1 - Transaction value
- 2 - Transaction value of identical goods
- 3 - Transaction value of similar goods
- 4 - Deductive value
- 5 - Computed value
- 6 - “Fall-back “method





# NOT: Customs valuation

## Art. 22.1 - “one-time”

Notification of laws and regulations

*All Members* → Afghanistan

- Checklist of issues - “one-time”

*All Members* → Afghanistan (**para. 121 upon accession**)

Decision on the valuation of carrier media bearing software for data processing equipment

→ Afghanistan (**para. 121 upon accession**)





# Rules of Origin



# Why an agreement?

- ◆ **Wide variety of rules**
  - **non-preferential national rules**
  - **preferential national rules (e.g. to administer the GSP)**
  - **regional rules (e.g. preferential rules linked to the administration of free-trade areas)**
- ◆ **Serious lack of harmonization at the international level**
  - **→ to harmonize the rules**
  - **→ to introduce common basic disciplines**



# Why an agreement?

## ◆ Importance of rules of origin

### ➤ administration of different regimes according to the origin of goods

- ☐ tariffs
- ☐ tariff quotas
- ☐ quantitative restrictions
- ☐ anti-dumping measures
- ☐ sanitary and phytosanitary measures
- ☐ collection of statistical data
- ☐ ...



# Coverage

## ◆ **Non-preferential rules of origin**

- **preferential rules covered only partially by a  
Common Declaration (Annex II of the  
Agreement)**



# NOT: Rules of Origin

- **Art. 5.1 - “one-time”**  
**Notification of non-preferential rules of origin**  
*All Members* → Afghanistan  
**(WPR para. 129 upon accession)**
- **Annex II para. 4 - “one-time”**  
**Notification of preferential rules of origin**  
*All Members* → Afghanistan  
**(WPR para. 129 upon accession)**





# Import Licensing



# Purpose of the Agreement

- ◆ **Article VIII of the GATT deals with import licensing procedures in a non-specific manner**
  - **Objective: reduction of barriers to trade**
- ◆ **Article X of the GATT deals with transparency**
  - → **“organize” import licensing procedures**
  - → **minimize the impact on trade**



# Historical background

- **1979 (Tokyo Round Import Licensing Code)**
  - prevent import licensing procedures from unnecessarily hindering international trade
  - Plurilateral agreement
- **1986-1993 (Uruguay Round)**
  - revision of the Tokyo Round Code
    - strengthen transparency
  - multilateralization



# Objectives

---

- ◆ **Simplify import licensing procedures**
- ◆ **Ensure transparency**
- ◆ **Ensure simple, fair and equitable administration**
- ◆ **Minimize the adverse effects of such procedures on trade**



# Automatic licensing

- **Collection of statistical information**
  - Approval of application within 10 working days
  - Used when no simpler procedures are available



# Non-automatic licensing

- **Administration of trade restrictions**
  - no additional restrictive or distortive effects
  - all relevant information to be published
  - non-discrimination
  - processing of applications within 30 days (60 days if considered simultaneously)
  - validity of a licence (reasonable duration)
  - other (see also Article XIII of the GATT)



# NOT: Import Licensing

- **Art. 1.4(a) and 8.2(b) - “one-time”  
Notification of laws and regulations  
*All Members* → Afghanistan**
- **Art. 7.3 - Annual questionnaire (by 30 Sep.)  
see Annex to G/LIC/3  
*All Members* → Afghanistan**
- **(WPR para. 109 WT/ACC/AFG/10/Rev.1, Annex  
8a,b,c)**





# **Preshipment Inspection (PSI)**



# Purpose of the Agreement

- ◆ **Since the 1950s: recourse (by the private sector) to preshipment inspection (PSI)**
  - **control of the quantity and quality of goods**
  - **conformity of goods with the terms of the sales contract**
- ◆ **More recently (1960s): recourse (by the State) to PSI (developing countries)**
  - → “organize” use (by the State) of PSI
  - → minimize the impact on trade



# Functions of PSI

- for the State, prevent capital flight (over-invoicing)
- for the State, ensure that there is no loss in Customs revenue (under-invoicing; tariff misclassification)
- for the State, subsidiary services (determination of origin, collection of data for statistical purposes, technical assistance, training, etc.)



# Coverage

- **PSI activities prescribed by the country of import (user Members) and carried out in the country of export (exporter Members)**
  - verification of the quality, quantity, price, and/or  
Customs classification of the goods



# Obligations (user)

- Non-discrimination (MFN)
- National treatment
- Site of inspection
- Standards (as indicated in the contract)
- Transparency
- Protection of confidential information
- Conflicts of interest
- Delays (maximum time-limits)
- Price verification (guidelines)
- Appeals procedure
- Derogation



# Obligations (exporter)

---

- Non-discrimination (MFN)
- Transparency
- Technical Assistance



# Independent review

- Expeditious review in the event of a dispute (between PSI entities and exporters)
- Independent entity



# NOT: Preshipment Inspection

- **Art. 5 - “one-time”  
Notification of laws and regulations**

***All Members* → Nil notification. If Afganistan introduces a law (para. 133) another notification**





# **The WTO Trade Facilitation Agreement**



# BACKGROUND

- **1996 Singapore Ministerial Conference: “the simplification of trade procedures”**
- **2001 Doha Ministerial Conference: “expediting the movement, release and clearance of goods including goods in transit”**
- **2004 General Council “July Package”: launched negotiations**
- **The 2013 Bali Ministerial Conference (WT/MIN(13)/36 – WT/L/911):**
  - **Concluded the negotiations on Trade Facilitation**
  - **Established a “Preparatory Committee”**
  - **Mandated some follow up work**
  - **Contained, as an Annex, the text of the TF Agreement**



# Objectives of the new agreement

**Preamble:** *“clarify and improve relevant aspects of Articles V, VIII and X of the GATT”* in order to:

- ▶ **Expedite movement, release and clearance of goods**
- ▶ **Improve cooperation between customs agents and other authorities**
- ▶ **Enhance technical assistance and capacity building in developing countries, especially LDCs**





# Benefits for trade and firms

	Benefits for economic operators	Benefits for governments
Transparency	Increased predictability	Enhanced compliance
Fairness	Reduced time and costs	Reduced costs
Good governance	Reduced costs Reduced delays Reduced complexity Fairness - Trust	Enhanced compliance More effective and more efficient government
Modernization	Simplification and reduced clearance times and costs	Enhanced dialogue with economic operators Enhanced compliance More effective and more efficient government



# Structure of the TF Agreement

	WORLD TRADE ORGANIZATION	WT/MIN(13)/36 WT/L/911
		11 December 2013
(13-6825)		Page: 1/30
Ministerial Conference Ninth Session Bali, 3-6 December 2013		
AGREEMENT ON TRADE FACILITATION		
Preamble		
SECTION I		
ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION		
ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION		
ARTICLE 3: ADVANCE RULINGS		
ARTICLE 4: APPEAL OR REVIEW PROCEDURES		
ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY		
ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION		
ARTICLE 7: RELEASE AND CLEARANCE OF GOODS		
ARTICLE 8: BORDER AGENCY COOPERATION		
ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT		
ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT		
ARTICLE 11: FREEDOM OF TRANSIT		
ARTICLE 12: CUSTOMS COOPERATION		
ARTICLE 13: INSTITUTIONAL ARRANGEMENTS		
SECTION II		
SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS		
FINAL PROVISIONS		

**Preamble**

**Section I**

**Actual disciplines (Articles 1-11)**

**Customs cooperation (Art. 12)**

**Institutional Arrangements (Art. 13)**

**Section II**

**Special and differential treatment**

**Implementation mechanism**

**Final Provisions**

**Annex 1**

*Reshuffling or provisions as result of the legal review!*



# Main provisions

GATT	TF
<b>Art. X Transparency</b>	Art. 1 Publication and availability of information
	Art. 2 Opportunity to comment, information before entry into force and consultation
	Art. 3 Advance rulings
	Art. 4 Appeal or review procedures
	Art. 5 Other measures to enhance impartiality, non discrimination and transparency
<b>Art. VIII Fees and formalities</b>	Art. 6 Disciplines on fees and charges imposed on or in connection with import and export
	Art. 7 Release and clearance of goods
	Art. 8 Border agency cooperation
	Art. 9 Movement of goods under customs control intended for import
	Art. 10 Formalities connected with importation and exportation and transit
<b>Art. V: Freedom of transit</b>	Art. 11 Freedom of transit
	Art. 12 Customs cooperation



# Nature and scope of obligations

## Binding

Art. 1.1 (Publication):  
“Each Member **shall**  
promptly publish ...”

## Best endeavour

Art. I.3 (Enquiry  
Points): Members **are  
encouraged** not to  
require...”

## Combination

Art. 1.2 (Information  
through internet): “Each  
Member **shall** make  
available the following...”  
“Members **are  
encouraged** to make  
available”



# Structure of the TF Agreement



## **Section I**

**The TFA contains 12 Articles with approximately 40 “technical measures”**



## **Section II**

**Special provisions for developing and least-developed country Members**



## **Section III**

**Final provisions and institutional arrangements**



# Section I: 12 Articles with approximately 40 “technical measures”



**Article 1**  
Publication &  
Availability  
of Information



**Article 5**  
Measures to Enhance  
Impartiality, Non-  
Discrimination  
& Transparency



**Article 9**  
Movement under  
Customs Control



**Article 2**  
Comment  
and Consultations



**Article 6**  
Disciplines on Fees  
and Charges



**Article 10**  
Import, Export  
& Transit  
Formalities



**Article 3**  
Advance  
Rulings



**Article 7**  
Release and  
Clearance  
of Goods



**Article 11**  
Freedom  
of transit



**Article 4**  
Procedures for  
Appeal or Review



**Article 8**  
Border Agency  
Cooperation



**Article 12**  
Customs  
Cooperation



# Ex: Art 1: Publication and availability of information

## ▶ **Art.1.1 Publication:**

- ▶ **Members shall promptly publish general trade-related information in a non-discriminatory and easily accessible manner**

- ▶ Example: import and export procedures; appeal procedures; applied rates of duties and taxes; import, export and transit restrictions; etc.

## ▶ **Art. 1.2 Info available through internet:**

- ▶ **Each Member shall make available and update to the extent possible the information it provides to the public regarding import, export and transit procedures.**

- ▶ **One of the WTO languages**

- ▶ Example: forms and documents required to import, export and transit; contact information on enquiry points etc.



# Art 1.3 Enquiry points

- Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries and provide required documentation within a reasonable period of time
- Possibility to establish/maintain one regional enquiry point
  - Any interested person may request specific information from a Member about import, export or transit requirements



# Art 1.4 Notifications

- **Each Member shall notify the Trade Facilitation Committee of**
  - **the official places of publication of measures under Art. 1.1**
  - **the addresses of the websites referred in Art. 1.2**
  - **the contact details of its enquiry point(s) (Art. 1.3)**



# How will the TF Agreement be implemented

---

## Section II: Special and Differential Treatment



# General Principles

- ▶ **Section I will be implemented by developing and least developed country Members in accordance with Section II**
- ▶ **Based on the modalities agreed in:**
  - ▶ **Annex D of the July 2004 Framework Agreement (WT/L/579)**
  - ▶ **Paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).**



# New approach to S&D treatment

1. *Country-by-country* vs groups of countries by level of development – better reflection of what happens in each country
2. *Measure-by-measure* depending on the language of each obligation in Section I: “*shall*”; “*shall endeavour*”; “*where appropriate*”
3. Link between *existing implementation capacities* and the *need for technical assistance and capacity building*
4. Choice of *timing* by specific WTO Members



# Categories of measures

Each developing and LDC Member will classify each measure of Section I into one of three **categories**:

## CATEGORY A

- Implementation upon Entry Into Force of the Agreement
- +1 year for LDCs
- Annex to TFA

## CATEGORY B

- Implementation after a transitional period from the EIF  
Only time needed

## CATEGORY C

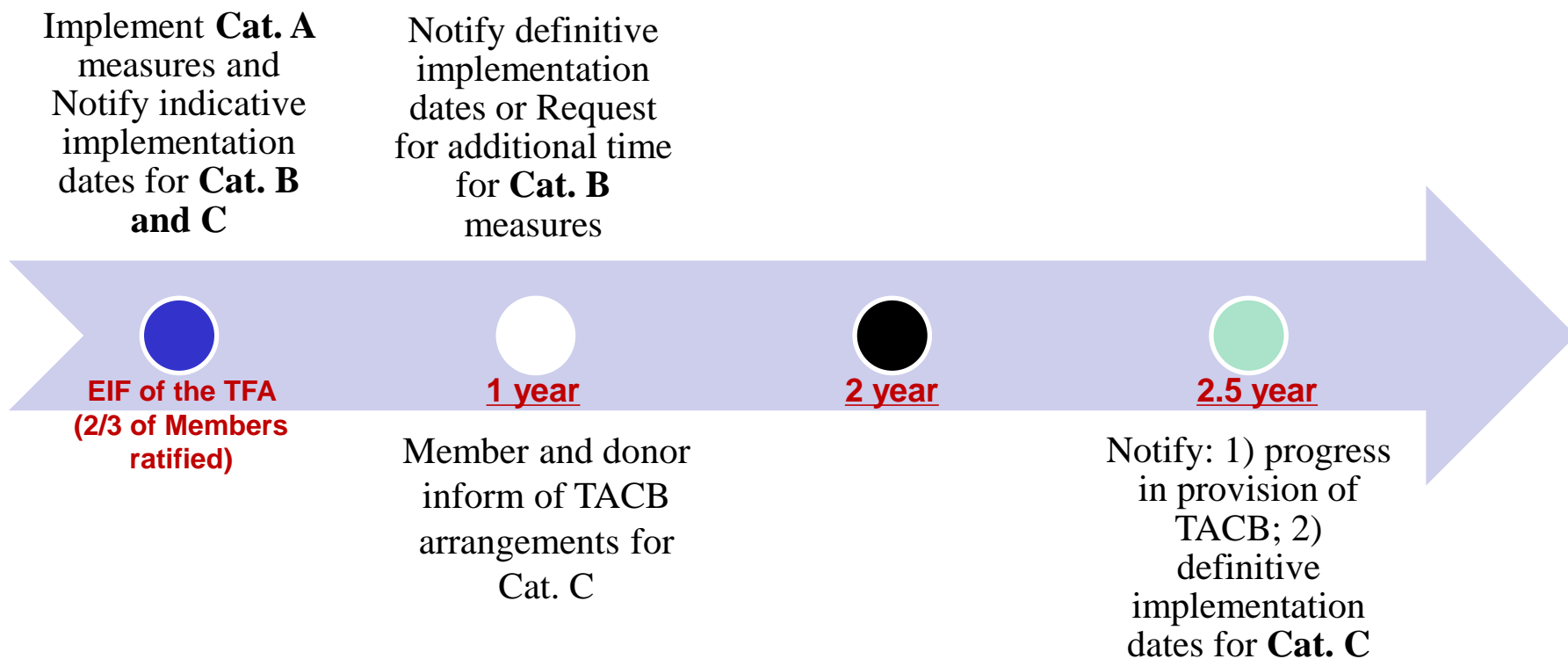
- Implementation only after acquisition of capacities through TA and CB
- Need time + support

*Based on country's own assessment!*



# Implementing the TF Agreement (1)

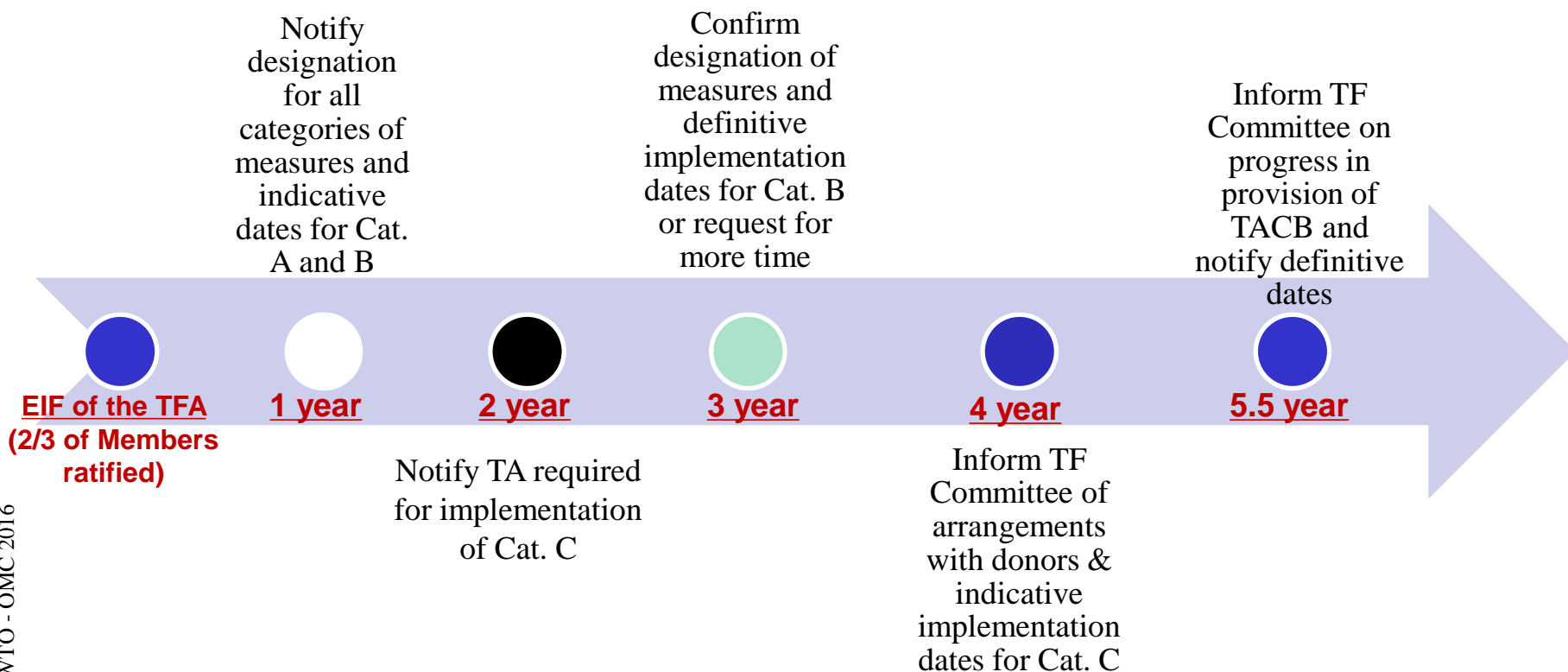
## Developing Countries notification and implementation of all categories of measures





## Implementing the TF Agreement (2)

### LDCs notification and implementation of all categories of measures





# Additional flexibilities for DCs and LDCs

## Early Warning Mechanism (Art. 5)

- Extend implementation period
- Notify new date and reason for delay
- Automatic extension for 1<sup>st</sup> request
- “Sympathetic consideration” for further requests

## Expert Group (Art. 6)

- Assess country’s capacity to implement
- Third-party review
- Category C measures
- No extension granted

## Category Shifting (Art. 7)

- Between B and C
- Provide info on TA and CB needed

## DSU grace period (Art. 8)

- 2 years after entry into force for developing country Members – Category A
- 6 years after entry into force for LDC Members – Category A
- 8 years after implementation of Categories B and C measures by LDC





# **State Trading Enterprises**



# What is a STE?

- GATT Article XVII describes three types of enterprises:
  - ◆ State enterprises
  - ◆ Enterprises granted exclusive privileges
  - ◆ Enterprises granted special privileges
- WTO Understanding
  - ◆ Governmental and non-governmental
  - ◆ Exclusive rights or privileges
  - ◆ Influencing level/direction of imports and exports



# Why disciplines on STEs?

- General principle:
  - ◆ Enterprise should operate on the basis of commercial considerations
- Danger of an enterprise having significant power in a given market
  - ◆ Governments acting indirectly - trade distortion
- Objective of GATT: place the state trading enterprise (STE) in the same competitive position as the private enterprise



# Rules

- Four main rules based on fundamental WTO principles:
  1. Non-discrimination (MFN and National Treatment)
  2. No quantitative restrictions (on imports or exports)
  3. Preservation of the value of tariff concessions
  4. Transparency



# NOT: State Trading Enterprises

- Questionnaire (revised): G/STR/3/Rev. 1
- Full notification of STEs: G/STR/5
  - Two year cycle as of 2004
  - No updates in intervening years
- Afghanistan: Para 40 of the WPR refers to one STE-DABS. Commitment Para 45.
- *All Members* ( a “nil” return.. at least)



# NOT: Privatization process

- **Para. 42 of the WPR: “... Periodic and upon request reports to WTO Members (along the lines of the information provided to the Working Party) on developments in its privatization process for as long as the would be in existence.”**





# **Quantative Resrictions (QRs)**



# New Decision adopted June 2012 (G/L/59/Rev.1)

Members shall make complete notifications of all quantitative restrictions in force **EXCEPT**: *Automatic Import Licensing Procedures, TRQs, SPS and TBT measures.*

Possibility to make cross-reference to other notifications.

It is possible to notify QRs imposed by other Members  
(cross or reverse notification)

**Deadline**: 30 September 2012; 2 year interval thereafter.

**Changes**: as soon as possible, but not later than six months from their entry into force

**QR Database**: Notifications to be compiled by the Secretariat in a new database, which shall be made accessible to the public.





# Which Members have notified thus far?

Several Members, likely to increase soon.

Australia; Canada; China; Costa Rica; Cuba;  
EU; Georgia; Hong Kong, China; India; Japan;  
Lao People's Democratic Republic; Korea;  
Macao, China; Mali; New Zealand; Nicaragua;  
Peru; Philippines; Russian Federation; Chinese  
Taipei; Singapore; Switzerland; Thailand;  
Turkey; Ukraine; the United States; and  
Uruguay

## ANNEX 1

### Format for the Notification of Quantitative Restrictions in Force

<b>A.</b>	<b>Notifying Member:</b> _____
<b>B.</b>	<b>Date of notification:</b> _____
<b>C.</b>	<b>First time notification:</b>
<input type="checkbox"/>	Yes
<input type="checkbox"/>	No, last notification was made in (doc. symbol): _____
<b>D.</b>	<b>Type of notification:</b>
<input type="checkbox"/>	1. Complete (i.e. notification of all quantitative restrictions in force)
<input type="checkbox"/>	2. Changes to a notification previously made in (doc. symbol) _____ which are of the following nature:
<input type="checkbox"/>	2.1 Introduction of new restrictions, as listed in Section 1.
<input type="checkbox"/>	2.2 Elimination of restrictions, as described in G below.
<input type="checkbox"/>	2.3 Modification of a previously notified restriction, as described in Section 1.
<input type="checkbox"/>	3. Reverse notification of restrictions maintained by (Member): _____
<b>E.</b>	<b>The notification provides information for the following biennial period (e.g. 2012-2014): _____ and relates to restrictions in force as of (date) _____</b>
<b>F.</b>	<b>This notification contains information relating to:</b>
<input type="checkbox"/>	<b>Section 1:</b> List of quantitative restrictions that are currently in force.
<input type="checkbox"/>	<b>Section 2:</b> Cross-reference to other WTO notifications with information on quantitative restrictions that are currently in force and additional information.
<b>G.</b>	<b>Comments of a general nature, including a description of the elimination of restrictions notified under D.2.2 and the date they ceased to be in force.</b> _____



# Which QRs should be notified?

All QRs in force (except those mentioned before).  
Indicative list in Annex 2 of G/L/59/Rev.1:

**Prohibition**

**Prohibition under defined conditions**

**Non-automatic licensing procedures**

**Minimum price, triggering a QR**

**Global quota**

**Global quota allocated by country**

**QRs made effective through state-trading**

**Mixing regulations**

**"Voluntary" export restraint (VERs)**

**Members must notify import and export QRs, irrespective of whether they are permanent or seasonal.**





# NOT: Quantitative Restrictions

- **RECAP: Decision adopted by the Council for Trade in Goods on 22 June 2012**
- **Basic document: G/L/59/Rev.1**
- **Afghanistan: Para. 109 of the WPR and Annex 9**
- **Notification of all quantitative restrictions except SPS, TBT and automatic import licensing procedures (by 30 September 2012 and at two-yearly intervals thereafter)**





# **Tariff and Trade Data**



# **NOT: Integrated Data Base (IDB)**

- **Decision WT/L/225 of the General Council  
All Members**
- **Basic document: G/MA/288**
- **Tariff data at the tariff line level  
All Members – annual (by 30 March)**
- **Trade data at the tariff line level  
All Members – annual (by 30 Sept.)**





# **Export Duties**



# NOT: Export Duties

- **Part V of the Goods Schedule**
- **Para. 145 of the WPR: “...any changes of its duties, taxes, fees and charges applied to exports on the day of their publication and in any case at least 30 days before any such changes enter into force.”**





# **Trade-related Investment Measures**



# What is a TRIM?

- ◆ **Not defined by the agreement, but:**
  - **...government measure**
  - **related to investments,**
  - **...with adverse impact on trade.**
  - **...(performance requirements applied on investments).**
- ◆ **Agreement not applicable to investment regimes.**
- ◆ **Agreement only applicable to trade in goods**



# Historical background

- **1986-1993: Uruguay Round Negotiations**
  - Negotiations focused on trade-restrictive effects of investment-related measures
  - Text of agreement a Chairperson's text



# Scope of the Agreement

- ◆ **Measures adopted under investment regimes having adverse effects on trade in goods and which are incompatible with:**
  - **GATT Article III (National Treatment), and**
  - **GATT Article XI (Prohibition of Quantitative Restrictions)**



# Structure

- **Art. 1 Coverage (TRIMs)**
- **Art. 2 Measures incompatible with national treatment and prohibition of quantitative restrictions**
- **Art. 3 GATT Exceptions apply**
- **Art. 4 Developing Countries (BOP exception)**
- **Art. 5 Notifications and Transitional Arrangements**
- **Art. 6 Transparency (notifications)**
- **Art. 7 Committee (Monitor-report CTG)**
- **Art. 8 Dispute Settlement (DSU applicable)**
- **Art. 9 Review by CTG (Competition, Investment)**
- **Annex: Illustrative List**



# NOT: Trade-related Investment Measures (1)

- **Art. 5.1 - Inconsistent measures -> Afghanistan WPR para. 191 upon accession**
- **Para. 191 of WPR: "Except for all local content requirements for goods in the Hydrocarbons Law of 2009 applied to contractors and the Law on Minerals of 2014 applied to holders of licenses and authorizations which would be eliminated by 31 December 2020 ."**



# NOT: Trade-related Investment Measures (2)

- **Art. 5.2 - “one-time”**  
**Name(s) of publication(s)**  
***All Members -> Afghanistan?***





# Subsidies



# Why an Agreement?

**1947:**

- **General rules concerning subsidies and countervailing measures (anti-subsidy)**

**1979:**

- **(Incomplete) plurilateral agreement**
- **→ Desire to clarify and better regulate the use of subsidies and anti-subsidy (countervailing) measures**



# Historical Overview

- **1947**
  - **GATT Art. VI.3**
    - Principle of countervailing duties (anti-subsidy)
  - **GATT Art. XVI**
    - Disciplines concerning subsidies (undefined terms)
      - Section A: subsidies in general
        - if possible, to avoid serious prejudice
      - Section B: export subsidies
        - in principle, prohibited (other than for primary products)



# Historical Overview

- **1979 (Tokyo Round)**
  - **Plurilateral Agreement (Code)**
    - Still no clear definition of “subsidies”
    - Clarified rules concerning the use of subsidies and “anti-subsidy” (countervailing) measures
- **1986-94 (Uruguay Round)**
  - **Negotiations**
    - Agricultural subsidies
    - Other subsidies ...



# Principle

---

- ◆ **Definition of subsidies**
- ◆ **Specificity**
- ◆ **Prohibited subsidies**
- ◆ **(Actionable) subsidies**
- ◆ **Countervailing (anti-subsidy) measures**



# Subsidies ?

## ◆ Financial contribution ...

- Direct transfers of funds
- Potential direct transfers of funds
- Potential direct transfers of funds or liabilities
- Public revenue foregone or not collected
- Provision of goods or services

## ◆ By a government ...

- Or any public body, operating on behalf of or under instructions from the government

## ◆ Whereby a benefit is conferred

- To be determined in relation to the market

## ◆ Are Agriculture excluded from the scope of the Agreement?



# Specificity

## ◆ Subsidy that distorts the allocation of resources within an economy

- Subsidy specific to an enterprise
- Subsidy specific to an industry
- Subsidy specific to a region
- Export subsidy (specific by definition)



# Prohibited subsidies

## ◆ Export subsidies

- Subsidies contingent upon export performance

## ◆ Import replacement subsidies

- Subsidies contingent upon the use of domestic goods (local content)



# Prohibited subsidies

## ◆ Export subsidies

- **Developed countries**
  - Phasing out within 3 years max.
- **LDCs and developing countries (\$1,000/year)**
  - Not prohibited
- **Other developing countries**
  - Phasing out within 8 years (extension possible with the agreement of other Members)
- **Economies in transition**
  - Phasing out within 7 years



# Prohibited subsidies

## ◆ Import substitution subsidies

- **Developed countries**
  - Phasing out within 3 years max.
- **Developing countries**
  - Phasing out within 5 years max.
- **LDCs**
  - Phasing out within 8 years
- **Economies in transition**
  - Elimination within 7 years



# Authorized Subsidies

## ◆ Action in the event that they cause adverse effects

- Injury to a domestic industry (as with dumping)
- Nullification of benefits
- Serious prejudice
  - Distorting the trade of a Member
  - Price undercutting
  - Increase in market share



# NOT: Subsidies

- **Art. 25.1 - Subsidies –**  
**Questionnaire (by 30 June) – G/SCM/6/Rev.1**  
**1995: every year, now 2 years (G/SCM/M/30)**  
**All Members ( a “nil” return.. at least)**  
**→ Afghanistan (WPR para. 158)**





# **Antidumping measures**



# Why an Agreement?

- ◆ 1947: Anti-dumping measures  
GATT Art. VI
- ◆ Increase in the use of anti-dumping measures
  - ☞ No clear criteria for determining injury
  - ☞ No clearly defined procedure for imposing anti-dumping measures
- ◆ → Desire to clarify and better regulate the use of anti-dumping measures



# Historical background

- 1947

- ◆ GATT Art. VI

- ☞ The right to impose a customs duty in excess of the bound rate if the dumping of a product causes or threatens to cause material injury to a domestic industry, or materially retards the establishment of a domestic industry



# Historical background

- 1967 (Kennedy Round)
  - ◆ First revision (clarification of Art. VI)
    - ☞ NB: The Agreement was never signed by the USA
- 1979 (Tokyo Round)
  - ◆ Plurilateral agreement (Code)
    - ☞ “quantum leap forward”
    - ☞ clarification of the criteria determining dumping and injury
    - ☞ investigation procedure



# Principle

- Determination of dumping
- Material injury to a domestic industry
- Causal link
- Investigation
- Imposition of anti-dumping measures



# Determination of Dumping

- Dumping:
  - ◆ Export price (price at which a product is introduced into the importing market - before customs duty) < normal value
  - ◆ Normal value = price in the ordinary course of trade of a like product destined for consumption in the exporting country.
    - ☞ Alternative methods if the normal value cannot easily be determined
- Dumping margin



# ... material injury

- = Material injury to a domestic industry (or threat of material injury), or material retardation of the establishment of a domestic industry.
- Relevant factors:
  - ☞ Volume of dumped imports
  - ☞ Effect of such imports on prices in the domestic market for like products
  - ☞ Impact of dumped imports on domestic producers of such products.



# ... domestic industry

- Producers as a whole of the like or directly competitive products operating within the territory of a Member (broader concept than in the Agreement on Safeguards)



# Anti-Dumping Measures

## ■ Investigation

- ◆ Initiated as a rule by the domestic industry
- ◆ Existence of dumping
- ◆ Existence of material injury
- ◆ Causal link between dumped imports and material injury (or threat thereof)



# Anti-dumping Measures

- Investigation
- Provisional measures (if necessary)
- Measures (final)
  - ◆ Increased customs duties
    - ☞ Maximum = dumping margin
    - ☞ “Lesser duty” rule
  - ◆ Price undertakings
    - ☞ Voluntary on the part of the exporter (so ending the investigation)
  - ◆ “Sunset” normally after 5 years
  - ◆ Review



# Special and differential treatment

- “Special regard” given to the special situation of developing countries
- Study of “possibilities of constructive remedies” prior to action



# NOT: Anti-dumping

- **Para 139 of the Working Party Report**
- **If the Member has no authority competent to initiate and conduct an anti-dumping investigation: “one-time” – G/ADP/19**
- **Otherwise:**
  - **Art. 18.5 - “one-time”**  
**Full text of laws and regulations**  
**All Members with an investigating authority**
  - **Art. 16.4 - Semi-annual report**  
**All Members with an investigating authority**  
**( a “nil” return.. at least)**





# Countervailing Measures



# Action

- = Countervailing duties
- Only following an investigation
  - ◆ Initiation by or on behalf of the domestic industry
  - ◆ Existence of a specific subsidy
  - ◆ Existence of injury, nullification of benefits, or prejudice
  - ◆ Causal link



# Countervailing duties

- DE MINIMIS

- ◆ No action if the subsidy is less than 1 per cent of the value of the product (2% for developing countries; 3% for LDCs and the poorest developing countries) or if the volume of imports is less than 4 per cent of total imports (9% of total imports collectively)



# Countervailing Duties

- Measures
- Increase in customs duties
  - ☞ Maximum = effect of the subsidy
  - ☞ “Lesser duty” principle
- ◆ Subsidy undertakings
- ◆ Price undertakings
  - ☞ voluntary, by the exporter (putting an end to an investigation)
- ◆ “Termination”, in principle, after 5 years
- ◆ Review



# **NOT: Subsidies and countervailing measures**

- **Para 139 of the Working Party Report**
- **If a Member has no authority competent to initiate and conduct countervailing duty investigations:  
“one-time-notification (OTN)” – G/SCM/129**
- **Otherwise:**
  - **Art. 25.11 - Countervailing actions (CV)**  
**Semi-annual report (format: G/SCM/2/Rev.1)**  
**All Members with an investigating authority**  
**( a “nil” return.. at least)**
  - **Art. 32.6 – Countervailing - “one-time”**  
**Full text of laws and regulations**  
**All Members with an investigating authority**





# **Safeguard Measures**



# Why an Agreement?

- ◆ 1947: Emergency action (safeguards) GATT Art. XIX
- ◆ Increase in so-called “grey-area” measures
  - ✦ Bilateral voluntary export restraints
  - ✦ Orderly marketing agreements and similar measures (to limit imports)
- ◆ → Desire to clarify and better regulate the use of safeguard measures



# Historical Background

- 1947
  - ◆ GATT Art. XIX
    - ☞ Emergency action (safeguards)
  - ◆ GATT Art. XII
    - ☞ Restrictions to safeguard the balance of payments
  - ◆ GATT Art. XVIII
    - ☞ Governmental assistance to economic development
    - ☞ XVIII.C (infant industry)



# Structure

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- Coverage
- Application of “new” safeguard measures
- Rules concerning “old” safeguard measures
- Notification and monitoring



# Coverage

- The Agreement defines the use of the safeguard measures provided for in Art. XIX of the GATT
- Conditions:
  - ◆ Safeguard measures are applicable if:
    - ☞ “a product is being imported into a Member’s territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products”



# ... in such increased quantities ...

- Absolute ...
- Relative to domestic production



# ... serious injury ... (threat of)

= significant overall impairment in the position of a domestic industry

- Relevant factors:

- ☞ Increased imports (value and volume)
- ☞ Market penetration of imports
- ☞ Changes in sales
- ☞ Production
- ☞ Productivity
- ☞ Capacity utilization
- ☞ Profits / losses
- ☞ Employment



# ... domestic industry

- Producers as a whole of the like or directly competitive products operating within the territory of a Member (major proportion of the total domestic production of those products)



# “New” Safeguard Measures

- Investigation
  - ◆ Increased imports
  - ◆ Serious injury
  - ◆ Causal link between increased imports and serious injury (or threat thereof)
- Provisional measures (if necessary)
- Measures (final)
  - ◆ Increased tariffs
  - ◆ Quotas (if necessary)
  - ◆ MFN principle, as a rule



# “New” Safeguard Measures

- Maximum duration
  - ◆ 4 years
  - ◆ Extension (max. + 4 years)
- Compensation
  - ◆ In principle (agreement on compensation)
  - ◆ If no agreement :
    - ☞ “retaliation”
    - ☞ not within the first 3 years (if absolute increase in imports)



# Special and Differential Treatment

- No safeguard applied to imports from developing countries if imports are less than 3% (single developing country) or 9% (developing countries collectively)
- Duration of safeguard measures applied by developing countries: 10 years (as compared with 8)



# NOT: Safeguards

---

## **Art. 12.6 - “one-time”**

**Prompt notification of laws, regulations and administrative procedures**

***All Members → Afghanistan (WP report para. 139)***





# **General Agreement on Trade in Services GATS**



# Reasons for the Agreement

- ◆ Growing role of trade in services
- ◆ Absence of common multilateral rules
- ◆ Wide disparities in market access levels and domestic regulations
- ◆ → Establishment of a common framework of basic rules
- ◆ → Initiation of a liberalization process
- ◆ → Dispute settlement



# Concepts to be defined

- ◆ Definition of “Services”
  - ❖ Categorization
  - ❖ Modes of supply
- ◆ Approaches to basic principles
  - ❖ Application to all services
  - ❖ Exceptions
- ◆ Approach to liberalization
  - ❖ “Binding” through specific commitments
  - ❖ Limitations on liberalization



# Services ?

- “Intangible” nature
- No border control measures
- → Importance of the “*mode of supply*”
- → Role of domestic regulations
- Categorization of services (sectors)



# Sectors

- Business services
- Communications
- Construction
- Distribution
- Education
- Environmental services
- Health services
- Financial services
- Tourism
- Recreation, Culture, Sport
- Transport
- Other services



# Modes of supply

1. Cross-border services
2. Consumption abroad
3. Commercial presence
4. Temporary movement of service providers (natural persons)

 ... Services supplied in the exercise of governmental authority



# Structure

- Scope
  - ◆ Part I (Art. I)
- General Obligations
  - ◆ Part II (Art. II-XV)
- Specific Commitments
  - ◆ Part III (Art. XVI-XVIII)
- Progressive Liberalization
  - ◆ Part IV (Art. XIX-XXI)
- Supervision and Institutional Provisions
  - ◆ Part V (Art. XXII-XXVI)



# Scope

- All measures of Members affecting trade in services
- “trade in services” = supply of services according to the four modes
- “measures by Members” =  
measures taken by:
  - ◆ central, regional or local governments and authorities
  - ◆ non-governmental bodies
  - ◆ Exception:
    - ☞ Services supplied in the exercise of governmental authority on a non-commercial basis



# General Obligations

- MFN (Art. II)
  - ◆ Nationality of service supplier
  - ◆ Exceptions (List of exemptions)
- Transparency (Art. III)
- Domestic Regulation (Art. VI)
  - Reasonable, objective and impartial administration
  - Review procedure for administrative decisions
  - “Technical” procedures which do not create unnecessary barriers
  - Mutual recognition
- ◆ Combat abuse by monopolies



# List of Art.II Exemptions - MEMBER

Sector and sub-sector	Description of the measure indicating its inconsistency with Article II	Country to which the measure applies	Duration	Conditions creating the need for the exemption
-----------------------	---	--------------------------------------	----------	--





# Specific Commitments

- Commitments made individually by each Member
- Additional disciplines which only apply to sectors in which commitments have been made and to conditions in the schedules of specific commitments
- Market access (Art. XVI)
- National treatment (Art. XVII)
- Additional commitments (Art. XVIII)



# Schedule of Specific Commitments - MEMBER

## Modes of supply:

1) Cross-border supply   2) Consumption abroad   3) Commercial presence   4) Movement of persons

**Sector  
and sub-  
sector**

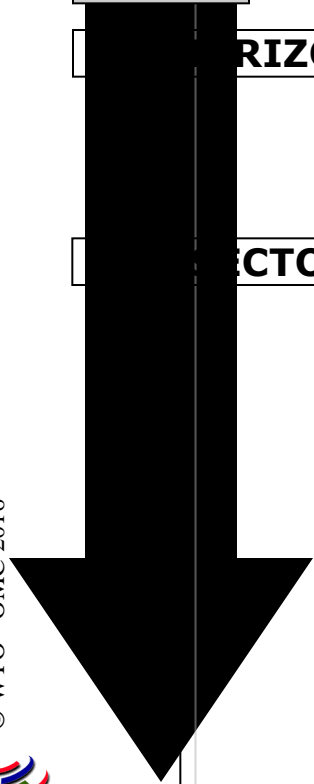
**Limitations on market access**

**Limitations on national  
treatment**

**Additional commitments**

**HORIZONTAL COMMITMENTS:**

**SECTOR-SPECIFIC COMMITMENTS:**





# Market Access

- Basic principles

- ◆ Liberalization

- ☞ Number of suppliers ...
    - ☞ Total value of transactions ...
    - ☞ Number of operations ...
    - ☞ Total number of employees ...
    - ☞ Measures governing the type of service ...
    - ☞ Participation of foreign capital ...

- ◆ ... unless limitations are specified in the schedule of specific commitments



# Schedule of Specific Commitments - MEMBER

## Modes of Supply

1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Movement of persons

**Sector  
and sub-  
sector**

**Limitations on market access**

**Limitations on national  
treatment**

**Additional commitments**

## I. HORIZONTAL COMMITMENTS:

## II. SECTOR-SPECIFIC COMMITMENTS:

- 
- 
-



# National Treatment

- Basic Principles
  - ◆ Treatment no less favourable than that accorded to national suppliers
    - ☞ Formally identical treatment
    - ☞ Formally different treatment
  - ◆ ... unless limitations are specified in the schedule of specific commitments



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## Schedule of Specific Commitments - VANIN

### Modes of Supply:

1) Cross-border supply   2) Consumption abroad   3) Commercial presence   4) Movement of persons

Sector and sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
II. SECTOR-SPECIFIC COMMITMENTS			



# NOT: Services (1)

- **Basic document: S/L/5**
- **Changes in regulations affecting trade in scheduled sectors (art. III.3)**  
*Ad-hoc, at least annually when conditions met*
- **Enquiry point (art. III.4)**  
*All Members -> Afghanistan*
- **Contact point (art. IV.2)**  
**Developed WTO Members**



# NOT: Services (2)

- **Existing recognition measures (art. VII.4)**  
**All Members – one-time**
- **Treatment of permanent residents**  
**(art. XXVIII:(k):(ii):2)**  
**All Members – one-time**
- **MFN exemption: WT/ACC/AFG/36/Add.2**  
**Termination: Annex on Article II exemption (para. 7)**  
**Members with such exemption**
- **Cross-reference to specific commitments relating to**  
**Afghanistan Paras. 279-284**





# **Trade-Related Intellectual Property Rights TRIPS**



# Reasons for the Agreement

- ◆ Increased role of intellectual property in trade
- ◆ Economic interests associated with intellectual property rights
- ◆ Great disparity of intellectual property protection rules
- ◆ → Establishment of common standards
- ◆ → Stronger implementation of standards
- ◆ → Dispute settlement



# Historical background

- Numerous bilateral and regional intellectual property protection agreements
- Plurilateral agreements in certain fields
- Important role of WIPO (World Intellectual Property Organization)
- 1986-1994: Uruguay Round (GATT/WTO)
  - ◆ negotiation of a common framework on *Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement)



# Intellectual property?

- Concept of intellectual creation
- Right conferred by creation
- Exclusive right to use the creation
- Time-limit



# Structure

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- Coverage
- Common (minimum) standards
- Enforcement of rights
- Dispute settlement



# Coverage

- A. Copyright and related rights (“neighboring” rights)
  - ◆ Copyright
  - ◆ Performers’ rights
  - ◆ Rights of phonogram producers
    - ☞ fixation of sound
    - ☞ publication
  - ◆ Broadcasting rights



# Coverage

## B. Industrial property

### ◆ Protection of distinctive signs

- ☞ Trademarks
- ☞ Geographical indications

### ◆ Other types of intellectual property

- ☞ Patents
- ☞ Industrial designs
- ☞ Layout-designs (topographies) of integrated circuits
- ☞ Industrial secrets (protection of undisclosed information)



# Coverage

## C. Control of anti-competitive practices in contractual licences

- ◆ Measures available to Members to combat abuses by IPR owners under licences granted by them to third parties to produce or copy protected marks, works, inventions, designs or models.



# Common standards

## ■ Basic principles

### ◆ Non-discrimination

- ☞ Most-favoured-nation principle
- ☞ National treatment

### ◆ Principle of technology transfer

- ☞ Protection for a specific period of time  
= Encouragement to develop new technologies and creations which are subsequently (after the period of protection) made available to all
- Need to strike a balance between the interests of the creator/inventor and those of users



# Common standards

## ■ Standards

- ◆ minimum
- ◆ by “type” of intellectual property right
- ◆ based on the main WIPO international agreements pre-dating the WTO
  - ☞ Paris Convention for the Protection of Industrial Property (patents, industrial designs etc. ...)
  - ☞ Berne Convention for the Protection of Literary and Artistic Works (copyright)
  - ☞ + Additional standards not covered in some cases by these pre-TRIPS agreements



# Ex: Common standards

## ■ Copyright

- ◆ Basis: Berne Convention (1971), administered by WIPO
- ◆ Automatic protection (no registration or deposit)
- ◆ Rights of translation, reproduction, performance, public recitation, adaptation, arrangement, alteration, cinematographic adaptation and reproduction.
- ◆ Term of protection: in principle 50 years after the death of the author (photographic works and works of applied art: 25 years minimum)



# NOT: Trade-Related Aspects of Intellectual Property Rights

- **Art. 63.2 - “one-time” – Notification of laws and regulations**

*All Members* → Afghanistan progressive implementation in accordance with table 3 and para. 255 by 1/1/2019

- Copyright and related rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout designs of integrated circuits
- Undisclosed information

- **Art. 69 - “one-time”**  
**Notification of contact points for enforcement**  
*All Members*

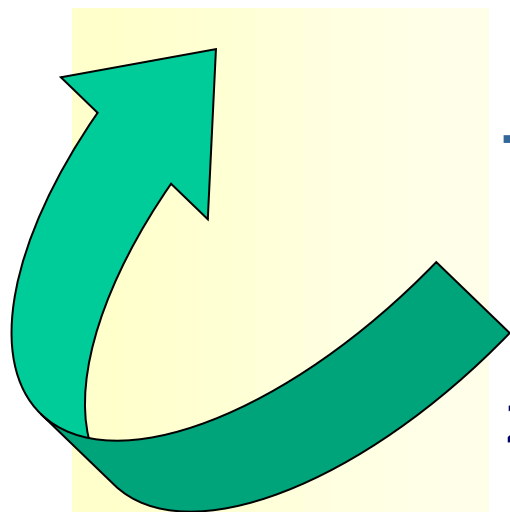




# **Regional Trade Agreements**

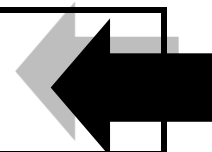


# Exceptions for certain regional initiatives



## The 4 “Duties”

1. **Observe** the most-favoured-nation (MFN) principle
2. **Neither maintain nor introduce** quantitative restrictions
3. **Observe** the bound rates contained in the Schedules of concessions
4. **Observe** the principle of national treatment





# GATT

- ◆ 1947: GATT (goods)
  - ☞ *Art. XXIV*: Customs unions and free-trade areas (as well as interim agreements leading to either of these forms of integration)
- ◆ 1979: Decision by the contracting parties (Tokyo Round)
  - ☞ “Enabling Clause” (goods)



- ◆ 1995: Marrakesh Agreement
  - ☞ Understanding on the Interpretation of Article XXIV of the GATT (goods)
  - ☞ GATS (services)
    - Art. V (economic integration)
- ◆ 2009: Waiver (General Council Decision)
  - ☞ *"Enhanced Enabling Clause"*
- ◆ 2001: "Doha Programme"
  - ☞ Negotiating the "rules"
  - ☞ Early harvest "Transparency Mechanism"



# Context

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- ◆ Proliferation of regional initiatives
- ◆ Agreements between different regional trading blocs
- ◆ Trade creation?
- ◆ Trade diversion?



# GATT Art. XXIV

- Customs Unions (CU)
  - ◆ Elimination of customs duties and other restrictive regulations of commerce between members of the CU “for a substantial part of the trade” between those members
  - ◆ Customs duties and other regulations applied by all members of the CU to products from third countries are identical



# GATT Art. XXIV

- Free-trade areas (FTA)
  - ◆ Elimination of customs duties et and other restrictive regulations of commerce between members of the FTA “for a substantial part of the trade” between those members



# GATT Art. XXIV

- Principle
  - ◆ “deepening” of the process of economic integration
    - = elimination of barriers within the CU or FTA
    - = preferences
    - = violation of the MFN principle
  - ◆ under certain conditions
  - ◆ provided economic integration does not raise barriers for third countries



# Enabling Clause

- Generalized System of Preferences
  - ◆ Preferential tariff treatment accorded by developed countries to products from developing countries
  - ◆ Unilateral measures
    - = elimination or reduction of access barriers on products from developing countries
    - = preferences
    - = violation of the MFN principle



# Enabling clause

- Special and differential treatment with respect to non-tariff measures
  - ◆ Non-tariff preferences for products from developing countries
  - ◆ Measures negotiated multilaterally
    - = elimination or reduction of barriers on products from developing countries
    - = preferences
    - = violation of the MFN principle



# Enabling clause

- Regional arrangements between developing countries
  - ◆ Tariff and/or non-tariff preferences for trade between developing countries (elimination or reduction)
  - ◆ Plurilateral (regional) agreements outside the GATT
- = elimination or reduction of access barriers on products from developing countries within the same region
- = preferences
- = violation of the MFN principle



# Enabling clause

- Special treatment for LDCs
  - ◆ Additional special and differential treatment for LDCs
  - ◆ Measures negotiated multilaterally
    - = elimination or reduction of access barriers on products from the LDCs
    - = preferences
    - = violation of the MFN principle
  - ◆ few specific provisions in the GATT



# GATS V

- (Regional) agreements liberalizing trade in services
  - ◆ Absence or elimination of substantially all discrimination between parties to the agreement
    - ☞ elimination of existing discriminatory measures
    - ☞ prohibition of new discriminatory measures



# 2009 Decision

- “Enhanced Enabling Clause”
  - ◆ Temporary waiver
  - ◆ Preferential tariff treatment accorded by developing countries to products of LDCs
  - ◆ Unilateral measures
    - = elimination or reduction of access barriers on products from the LDCs
    - = preferences
    - = violation of the MFN principle
- Other waivers
  - e.g.: Cotonou Agreement
  - e.g.: US - Caribbean Basin initiative



# Review Procedure

- GATT XXIV + Understanding
  - ◆ Notification (Goods Council)
  - ◆ Mandatory review (CRTA)
- GATS V
  - ◆ Notification (GATS Council)
  - ◆ Review on request (CRTA)
- Enabling Clause
  - ◆ Notification (Committee on Trade and Development)
  - ◆ Review on request (CRTA)
- Waivers
  - ◆ General Council decision



# NOT: Regional Trade Agreements

- **Formation of a regional trade agreement**
  - free-trade area
  - customs union
  - between developing countries
- **Biennial report**
- **Modifications**
- **Trade in services**
- **WPR para. 300: “...upon accession.”**



# NOT: Initial and subsequent notifications

## *Para. 292 of the WPR*

- **“...submit all initial notifications required by the WTO Agreements. Any Laws, regulations or other measures subsequently enacted by Afghanistan, and which would be required to be notified pursuant to the WTO Agreement, would be also notified in a time and manner consistent with WTO requirements.**



# NOT: Afghanistan - Summary – regular (1)

- **Every six months: 3**
  - Antidumping
  - Countervailing measures
  - Code of Good Practice/ TBT: Work programme (sent to ISO/IEC Information Centre)
- **Agriculture: 3**
  - Table MA:2 (every year)
  - Table ES:1 (every year)
  - Table DS:1 (every 2 years for LDCs )
- **Privatization process: periodic and as requested by Members**



# NOT: Afghanistan - Summary – regular (2)

- **Questionnaires: 3**
  - Import licencing (30 September, every year)
  - Subsidies (30 June, every two years)
  - State Trading (30 June, every two years)
- **Integrated Data Base (every year)**
  - Tariffs (30 March)
  - Imports (30 September)
- **Quantitative Restrictions (every two years, 30 September)**
- **Regional Trade Agreements: every two years**



# Thank you!

**Samer Seif El Yazal**  
**samer.seif@wto.org**

**Anna Varyanik**  
**Anna.varyanik@wto.org**