

Training of Trainers

Enhancing Capacity on Trade Policies and Negotiations

Session 6: WTO TBT and SPS Agreements

Rajan Sudesh Ratna

Economic Affairs Officer

Trade, Investment and Innovation Division

UNESCAP, Bangkok

Email: ratna@un.org

3-5 May 2017

Vientiane, Lao People's Democratic Republic



Standards and safety: Objectives

- Article XX of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism.
- In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general. Both try to identify how to meet the need to apply standards and at the same time avoid protectionism in disguise:
 - Agreement on Technical Barriers to Trade (TBT Agreement.)
 - The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

- **Countries require certain standards for protection of the health and safety of their people.**

Two types of Standards :

- ☐ **Mandatory Standards**
- ☐ **Voluntary Standards**

Technical Barriers to Trade

Objective of the TBT Agreement

Recognizes

That **no country should be prevented** from taking measures (technical regulations, standards, conformity assessment procedures)

Ensures

That such measures **do not create unnecessary obstacles** to trade.

Should be based on scientific information and evidence.

TBT Agreement: the coverage

Art. 1.3

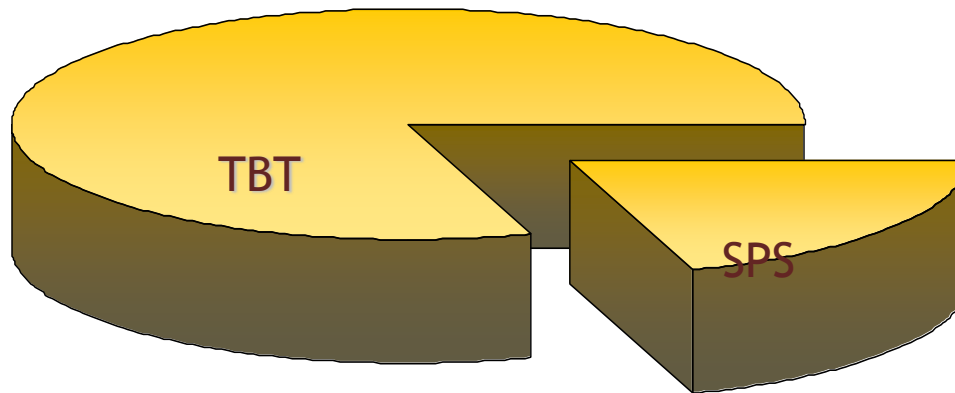
"All products, including **industrial** and **agricultural** products, shall be subject to the provisions of this Agreement."

TBT AGREEMENT

The TBT Agreement

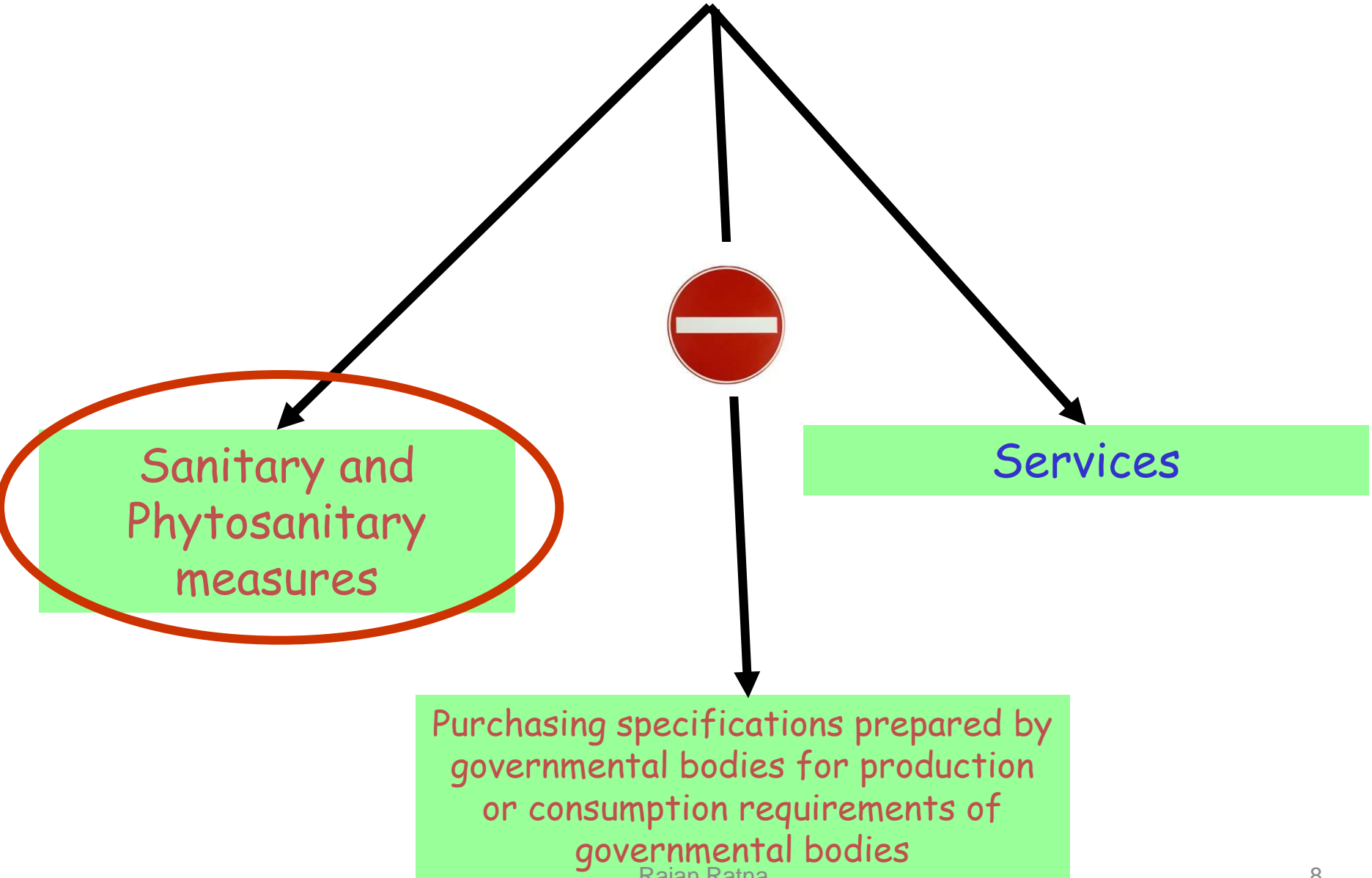
It applies to all

- +technical regulations (mandatory)
- +standards (voluntary)
- +conformity assessment procedures



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

The TBT Agreement does not cover



Standards

- International standards
- If standards are not based on international standards: notify to WTO members seeking their comments on draft regulation.
- Conformity assessment procedures
- For voluntary standards Code of good practices applies

Sanitary and Phytosanitary Measures (SPS)

What is the purpose of the SPS Agreement?

The right to protect
human, animal or
plant life or health



Avoiding
unnecessary
barriers to trade

SPS Agreement - Basic Right

“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”

SPS Measures

A measure taken to protect:

Human or
animal health

from

risks arising from additives,
contaminants, toxins or disease
organisms in food, drink, feedstuff

Human life

from

plant- or animal-carried diseases

Animal or
plant life

from

pests, diseases, disease-causing
organisms

A country

from

other damage caused by entry,
establishment or spread of pests

TBT measures typically deal with

- **Labeling of food, drink and drugs**
- **Quality requirements for fresh food**
- **Packaging requirements for fresh food**
- **Packaging and labeling for dangerous chemicals and toxic substances**
- **Regulations for electrical appliances**
- **Regulations for cordless phones, radio equipment etc.**
- **Textiles and garments labeling**
- **Testing vehicles and accessories**
- **Regulations for ships and ship equipment**
- **Safety regulations for toys**
- **Etc.....**

SPS measures typically deal with

- **Additives in food or drink**
- **Contaminants in food or drink**
- **Poisonous substances in food or drink**
- **Residues of veterinary drugs or pesticides in food or drink**
- **Certification: food safety, animal or plant health**
- **Processing methods with implications for food safety**
- **Labeling requirements directly related to food safety**
- **Plant / animal quarantine**
- **Declaring areas free from pests or disease**
- **Preventing disease or pests spreading to a country**
- **Etc.....**

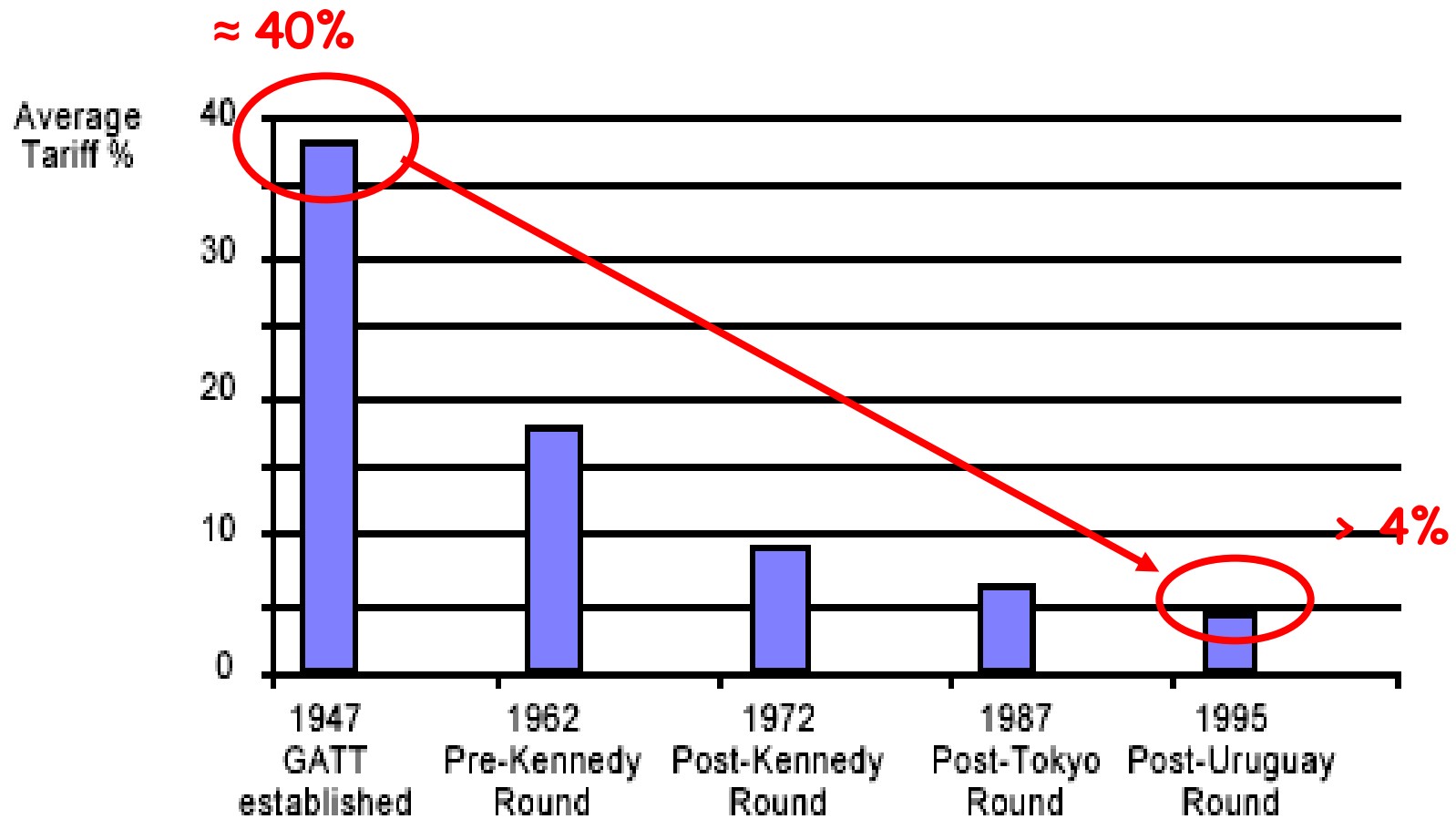
SPS and TBT

- TBT – to be applied on MFN basis.
- SPS – can be applied on a discriminatory basis provided that they *‘do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail’*.
- SPS/TBT – can deviate from international standards, but SPS has greater flexibility:
 - higher level of protection – if scientific justification, or
 - Country determines higher level of protection - assessment of appropriate risk
 - Even apply on provisional basis if ‘scientific evidence’ is insufficient.

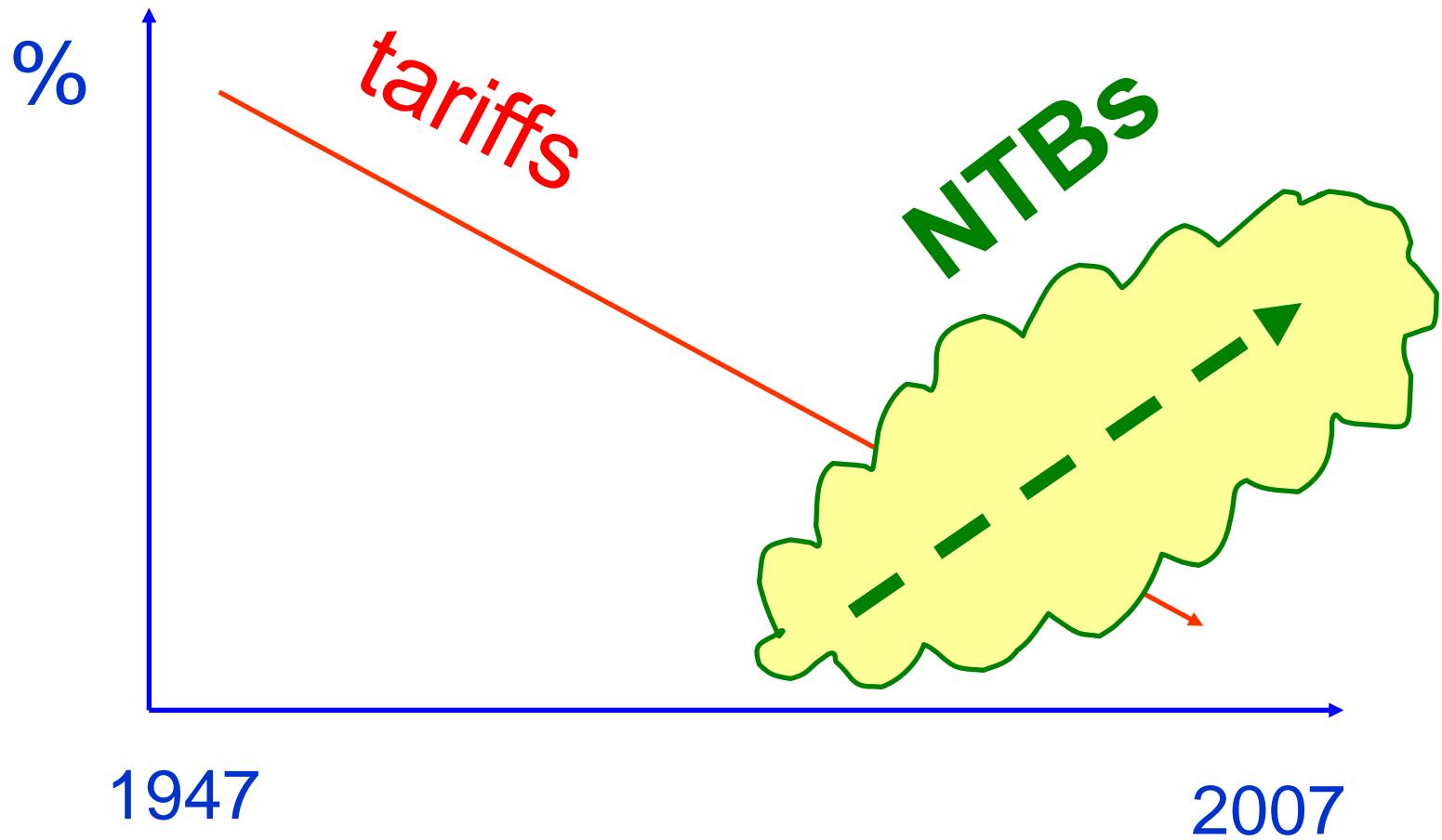
Are Non-Tariff Measures important?



Overall, import weighted tariff on industrial products



Source: WTO

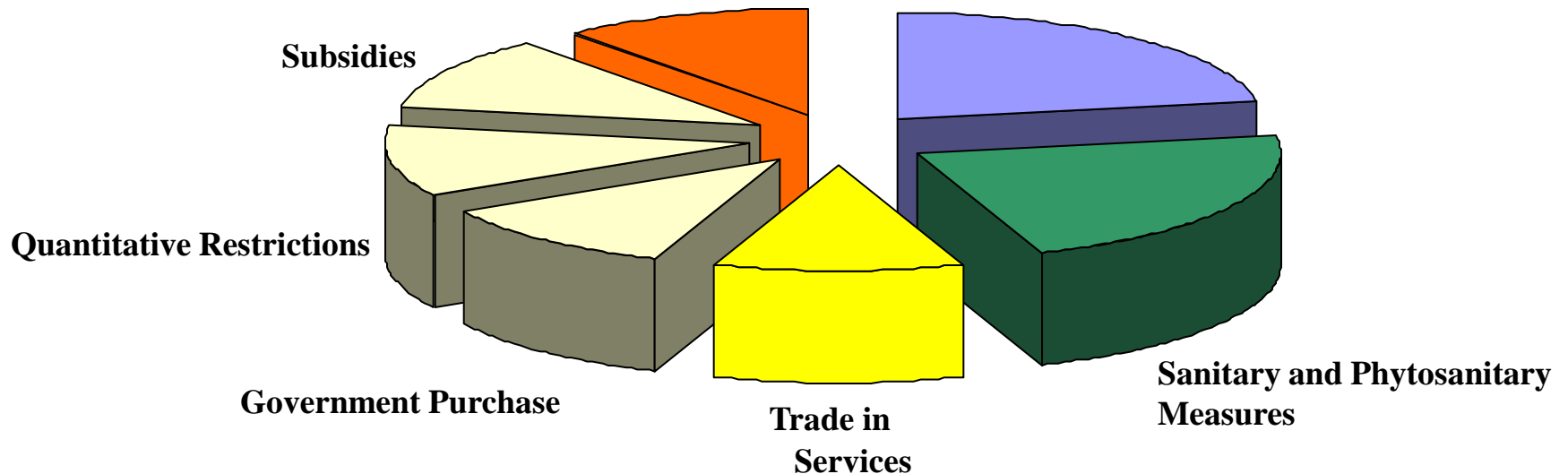


Source: WTO

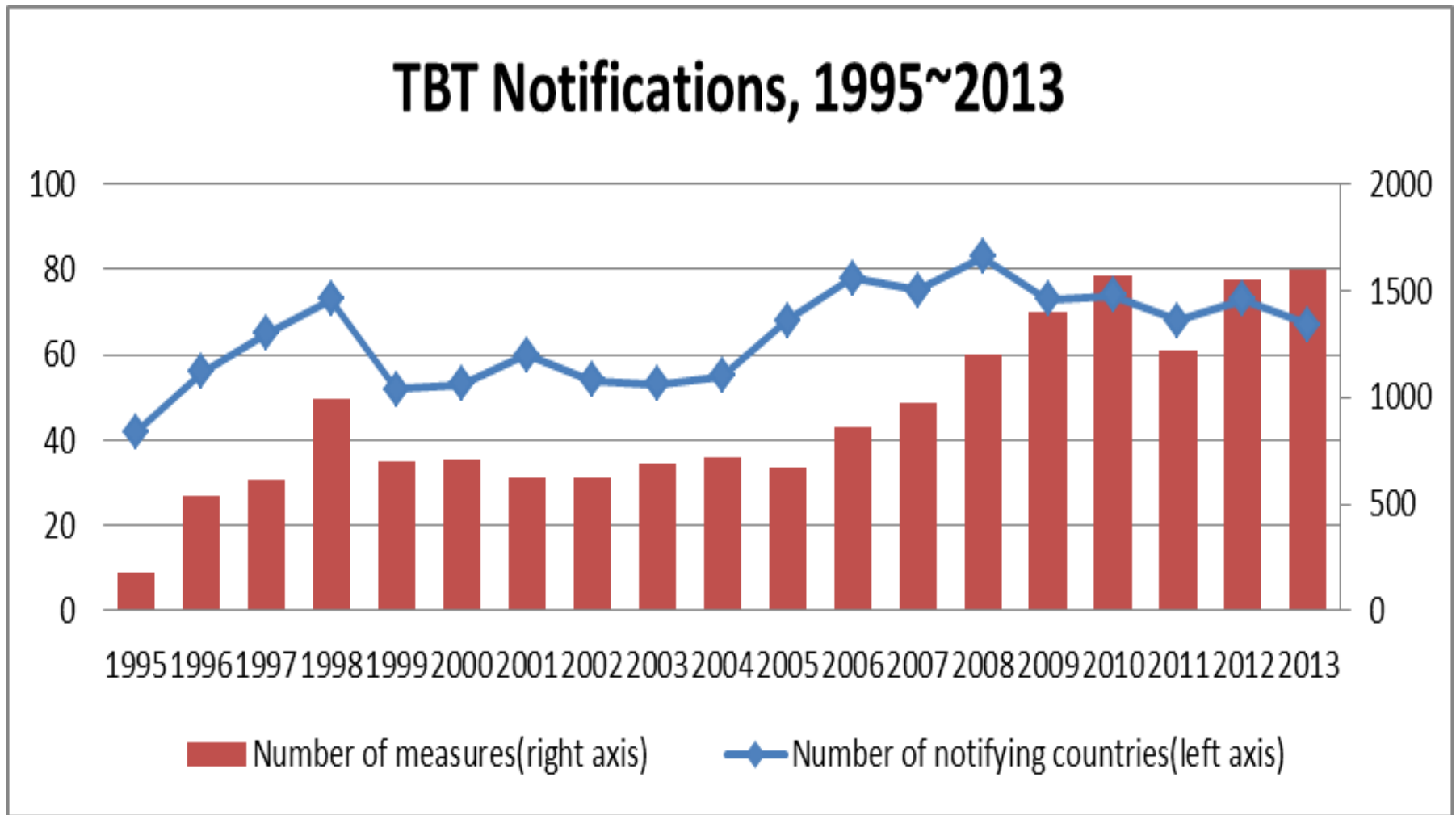
Non-tariff Measures

**Trade-related Intellectual
Property rights**

Technical Barriers to Trade

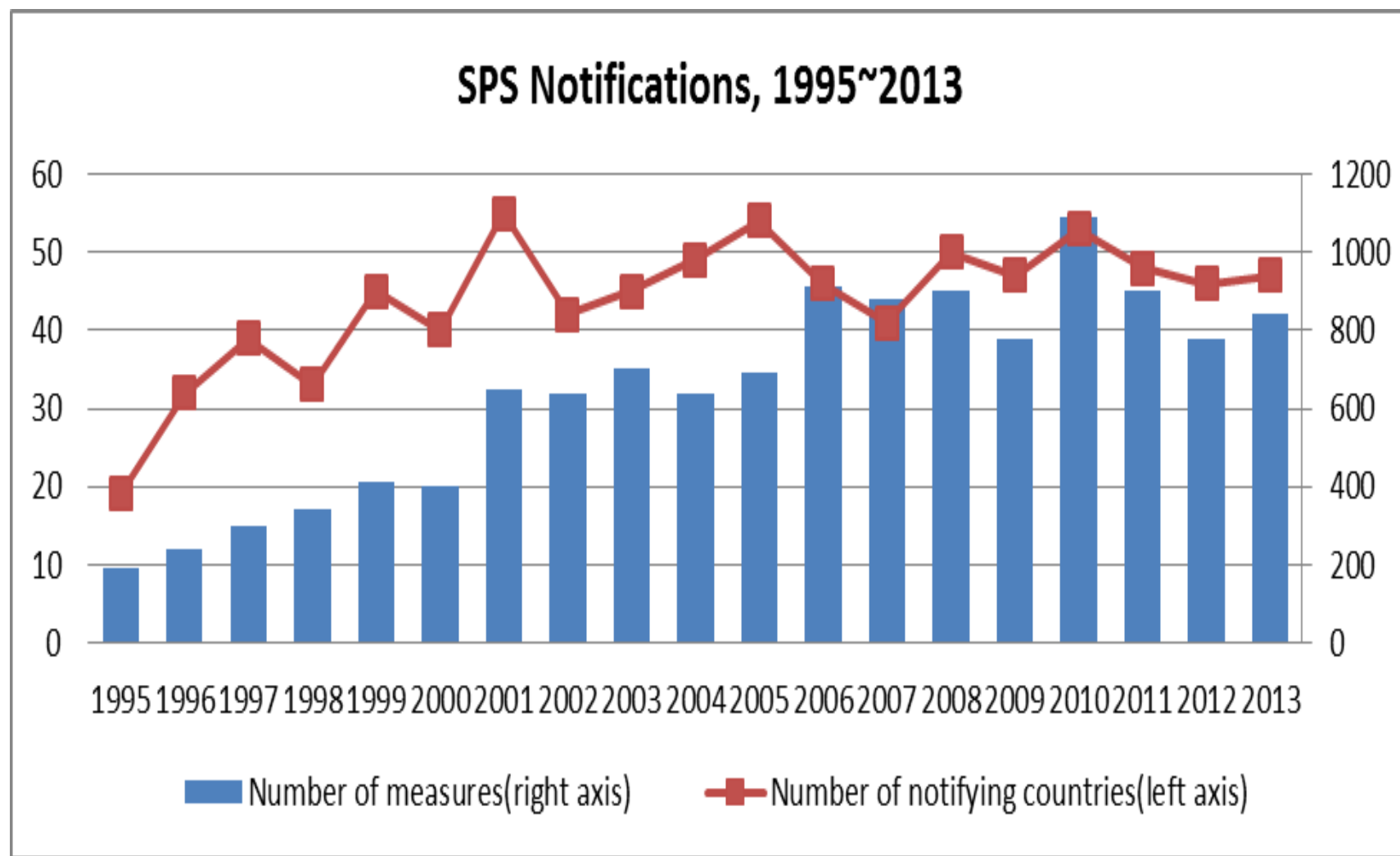


TBT notifications to WTO (1995 – 2010)



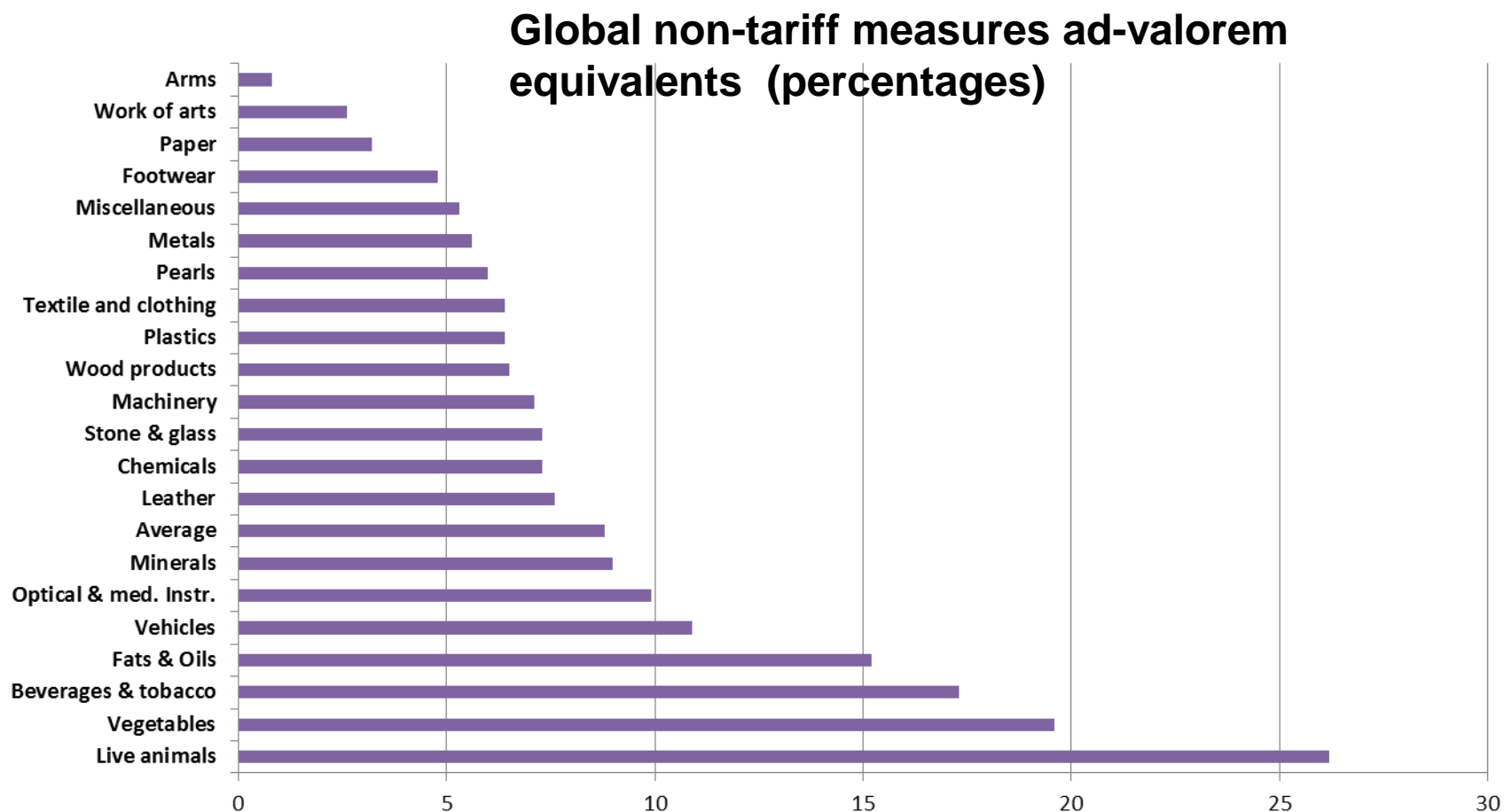
Source: Author's calculation on the basis of WTO I-TIP database accessed on 7 April 2014

SPS notifications to WTO (1995 – 2013)



Source: Author's calculation on the basis of WTO I-TiP database accessed on 7 April 2014

Estimated impacts of NTMs vary by sector



Source: Cadot et al, 2015

EXERCISE

Exercise: case of bottled water



MEASURE - I



Materials that
can be used
because safe
for human
health



MEASURE - II



Requirement:
no residues of
disinfectant,
so water not
contaminated



MEASURE - III

Permitted size
of bottle to
ensure standard
volume



MEASURE - IV



Permitted
shape to
allow stacking
and
displaying



MEASURE - V

**Government health
warning:**
**“SMOKING
INJURIOUS
HEALTH”**

**IS
TO**

Warning:
**Objective – Human
Health**
Label appearance:
**Typography, colour, size,
position etc.**



**(Though the objective
is health, its not for
food)**

Discussion on Case Studies

A few cases

Australia – imports of cars

Canadian MRLs in Vegetable: Case Study of Potato and Lentil

(In MRL)

Cases of Vegetables	First Notification	Subsequent Change	Comments
C.1: Potato and Potato Products	1.5 ppm for dried potato & 0.5 ppm for fresh potato (1997)	0.8 ppm (2008)	Stringency
C.2: Lentil	0.5 ppm (2002)	1.5 ppm (2004)	Liberal regimes, however the nature of application changed

EC

Active substance	Products	Previous MRL (1996)	New MRL (2007)
Glyphosate	Milk	0.01	0.05
	Eggs	0.01	0.05

Phorate MRLs by USA

Products/Vegetables	First Notification	Subsequent Change
Beet, sugar, roots	0.05	0.3
Beet, sugar, tops	0.05	3.0
Coffee, green bean	0.05	0.02

SPS and TBT

- TBT – to be applied on MFN basis.
- SPS – can be applied on a discriminatory basis provided that they *‘do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail’*.
- SPS/TBT – can deviate from international standards, but SPS has greater flexibility:
 - higher level of protection – if scientific justification, or
 - Country determines higher level of protection - assessment of appropriate risk
 - Even apply on provisional basis if ‘scientific evidence’ is insufficient.

Why assessing the impacts of NTMs is hard

Questions of classification

- Lack of precise consensus about what exactly constitutes a NTM and how they should be classified.
- New UNCTAD classification offers some clarity
- But others go further e.g. Global Trade Alert's focus on financial "bailouts"

Shortages of information

- At present there is no single, unified, comprehensive repository of information on NTMs.
- At the national level many governments have not attempted to place all the regulations that may impact on trade into a single database.

Difficulties with impact evaluation

- Because NTMs are not expressed as numerical values like tariffs, but are often complex pieces of regulation, to assess their impacts on trade and welfare is challenging.
- One approach has been to construct Ad-Valorem Equivalents (AVE) that equates the impact of NTMs with certain tariff levels, though this is not without its problems.

Sources of information on NTMs

Source	Pros	Cons
WTO notifications	Frequently reported. Wide coverage of countries.	Reporting is patchy. Only covers NTMs with WTO disciplines.
WTO Specific Trade Concerns	Shows areas concerning policymakers	Not comprehensive
Business Surveys	Identifies real problems affecting business	Problems of selection and misidentification
Global Trade Alert	Wider than WTO	Only since 2008. Does not record technical NTMs.
Transparency in Trade Initiative	Broader coverage. Modern UNCTAD classification.	Only a few countries covered so far

Why are NTMs increasing?

- **Substitution of lower or zero tariffs?**
- **Post-crisis protectionism?**
- **Rising demand for health and environmental protection?**
- **Better reporting and monitoring?**

Streamlining NTMs

Actions required at 3 levels:

- National Level Regulatory Streamlining**
- Streamlining NTMs in regional and bilateral trade agreements**
- Global efforts to increase transparency and provide assistance**

National-level recommendations

Dialogue

- A body dedicated to public-private dialogue (for example, an NTM committee) serving as an entry point for the private sector to flag problems and contribute to the solution.

Analysis

- A technical team dedicated to carrying out substantial analysis (for example, a permanent secretariat for the NTM committee) with analytical capabilities akin to those of a productivity or competition commission, to lead the dialogue into policy action.

Participation

- Outside expertise and collaboration by drawing into the review process line ministries involved in the issuance and enforcement of NTMs to ensure broad participation and ownership.

Thank You