

Food Safety in WTO and TPP

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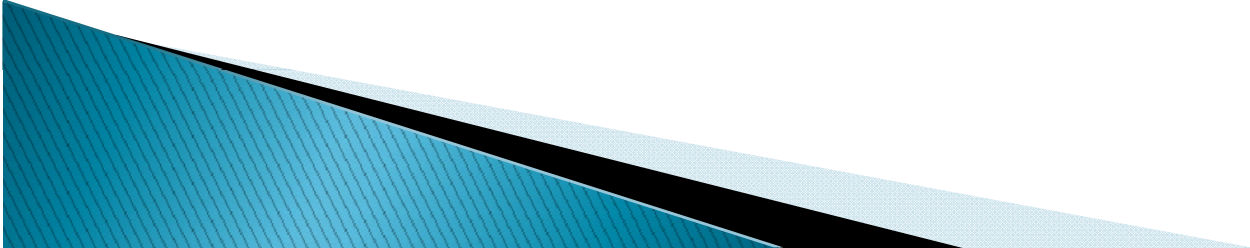
What makes Food Safety matter?(1)

- ▶ **Two major characteristics** of the food supply chain in the modern age. There are advantages and disadvantages.
 - ▶ **Scientific and technological advances** have brought significant changes or improvements to farming, food processing, distribution in the food supply chain. This enriches our lives.
 - ▶ On the other hand, **pesticides, food additives and GMO** have come into wide use. **MBM** (Meat and Bone Meal) was fed to cattle.
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What makes Food Safety matter?(2)

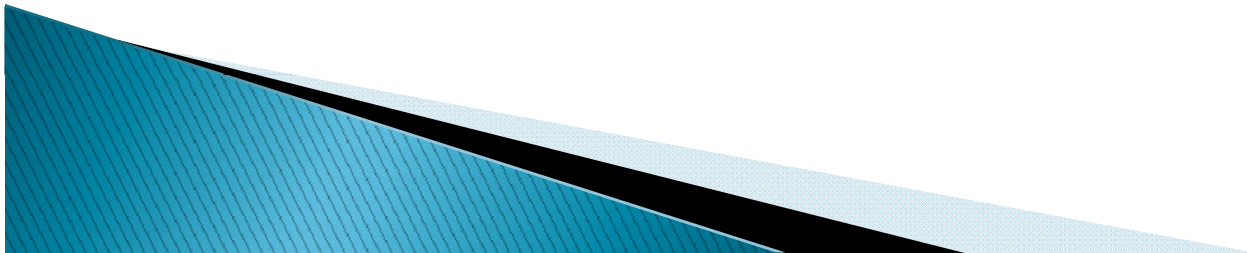
- ▶ We benefit from **globalization** and trade expansion. Now we can enjoy food from all over the world.
- ▶ On the other hand, globalization or trade causes problems. Some **pests, diseases or harmful animals and plants have been transmitted from one country to another**. BSE might not have occurred in Japan had it not been for international trade.

What makes matters much worse?

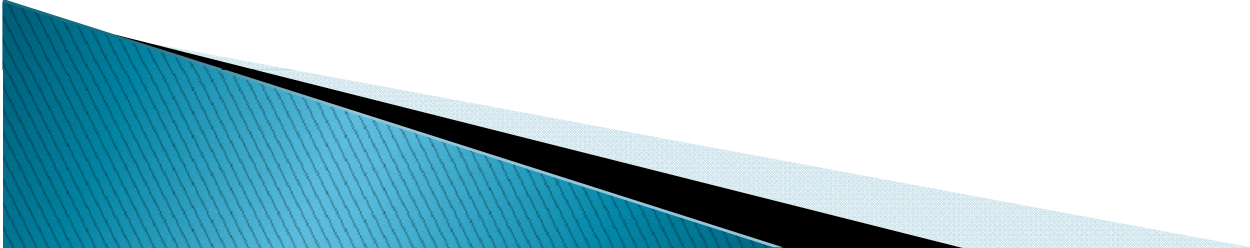
- ▶ 3 kinds of food in the light of risk or safety
 - 1) we easily detect poisonous food if it is rotten, changes colors or smells bad(search)
 - 2) we can know its characteristics after we buy it:milk tastes bad. (experience)
 - 3) even after we buy it, **we have no means to know its ingredients such as vitamins and food additives, whether or not it is GMO, whether or not it is made in Japan or China, or how it is contaminated by chemical residues. (credence)**
 - ▶ food in the second and the third categories has increased.
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Asymmetry of Information

- ▶ In most cases of credence food, **consumers cannot know the characteristics or risks of food but producers or distributors know them.**
(asymmetric imperfect information)
- ▶ Sometimes even producers or distributors do not know whether food is safe or not if it is contaminated by microorganism, for example.(symmetric imperfect information)



Food Safety and Trade(1)

- ▶ Every country has **the sovereign right** to protect the lives, safety and health of its people. **Sanitary and phytosanitary (SPS) measures** introduced to prevent the entry of harmful pests and diseases via the import of foods, animals and plants are a justifiable means for the purpose.
 - ▶ Consumers express **strong concern** that food safety could be jeopardized **if appropriate SPS measures become difficult to implement under globalization.**
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Food Safety and Trade(2)

- ▶ SPS measures are used to protect domestic agriculture and food industries because traditional trade measures such as tariffs are not as effective as they used to be.
- ▶ To promote trade liberalization, SPS measures used as disguised trade restrictions should be restricted or eliminated. However, it is not easy to distinguish bona fide SPS measures for the protection of life, safety and health from those actually intended to restrict trade.

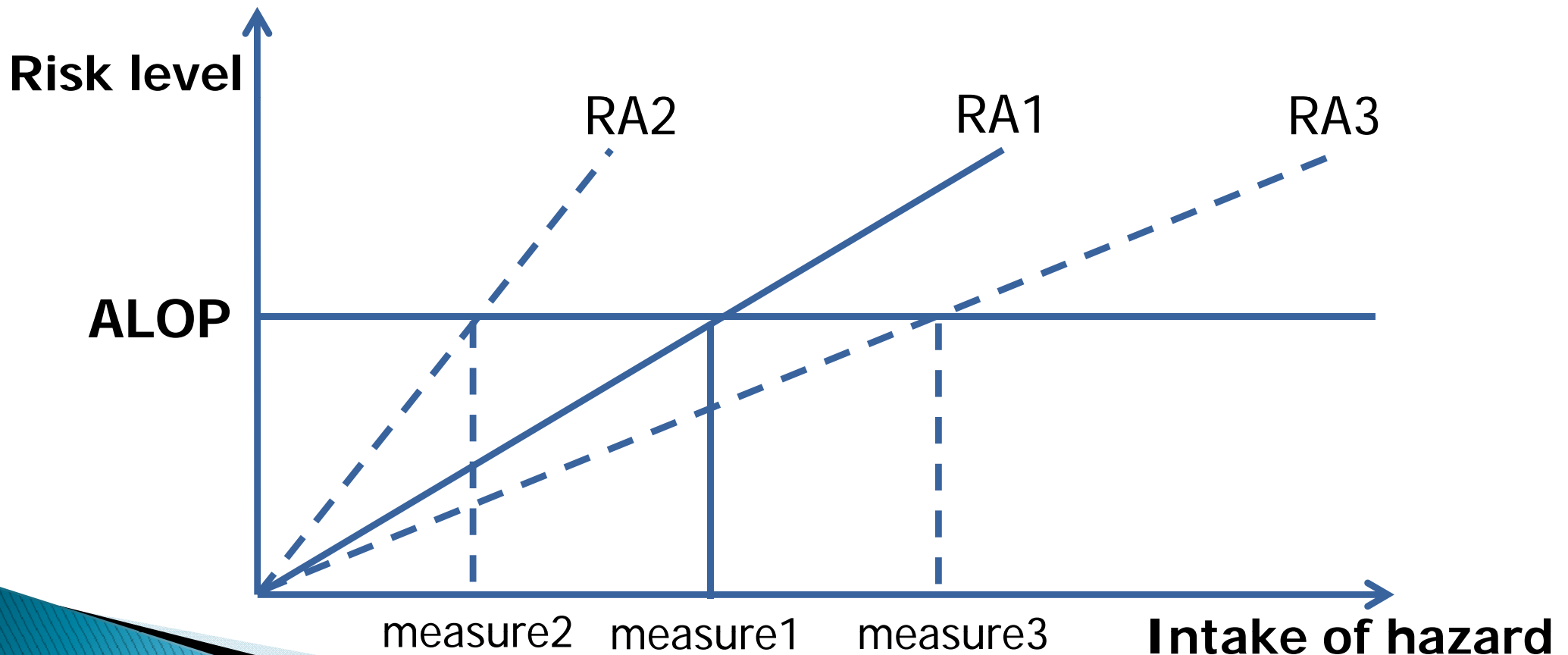
Food Safety and Trade(3)

WTO comes to dinner?

- ▶ The WTO's SPS agreement sets out that measures without **scientific evidence** are not allowed.
- ▶ A country must show scientific evidence that a certain risk to human, animal or plant life or health does exist *and* the risk can be alleviated by its measure.

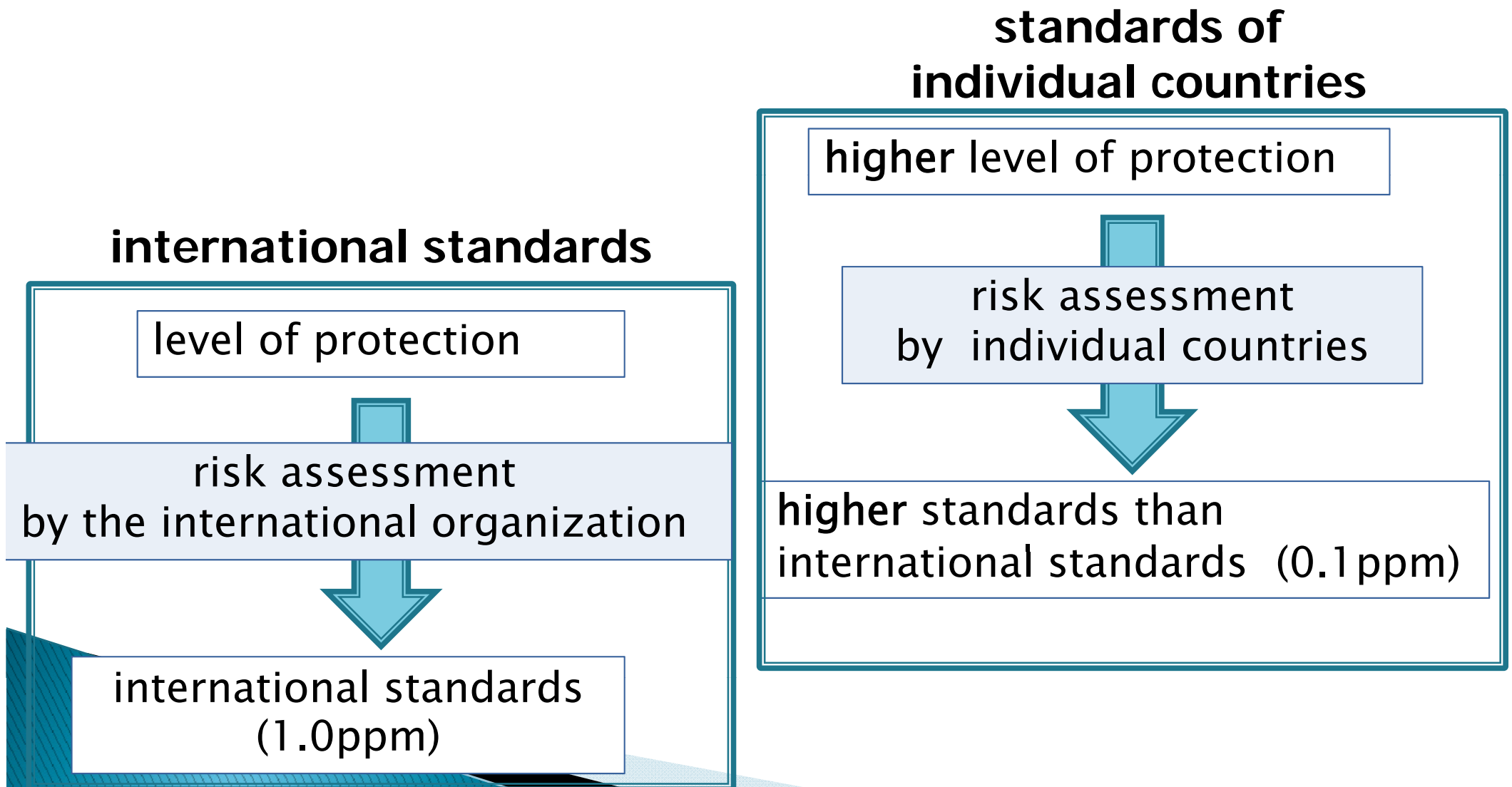
the structure of SPS agreement

The relationship between **ALOP** (the appropriate level of protection) or the acceptable level of risk, as an objective, **risk assessment**, and an **SPS measure**, as an instrument

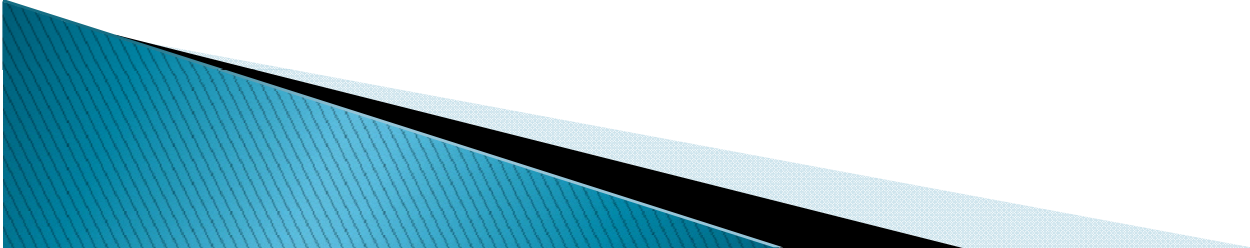


The structure of WTO-SPS agreement: Harmonization or Downward Harmonization?

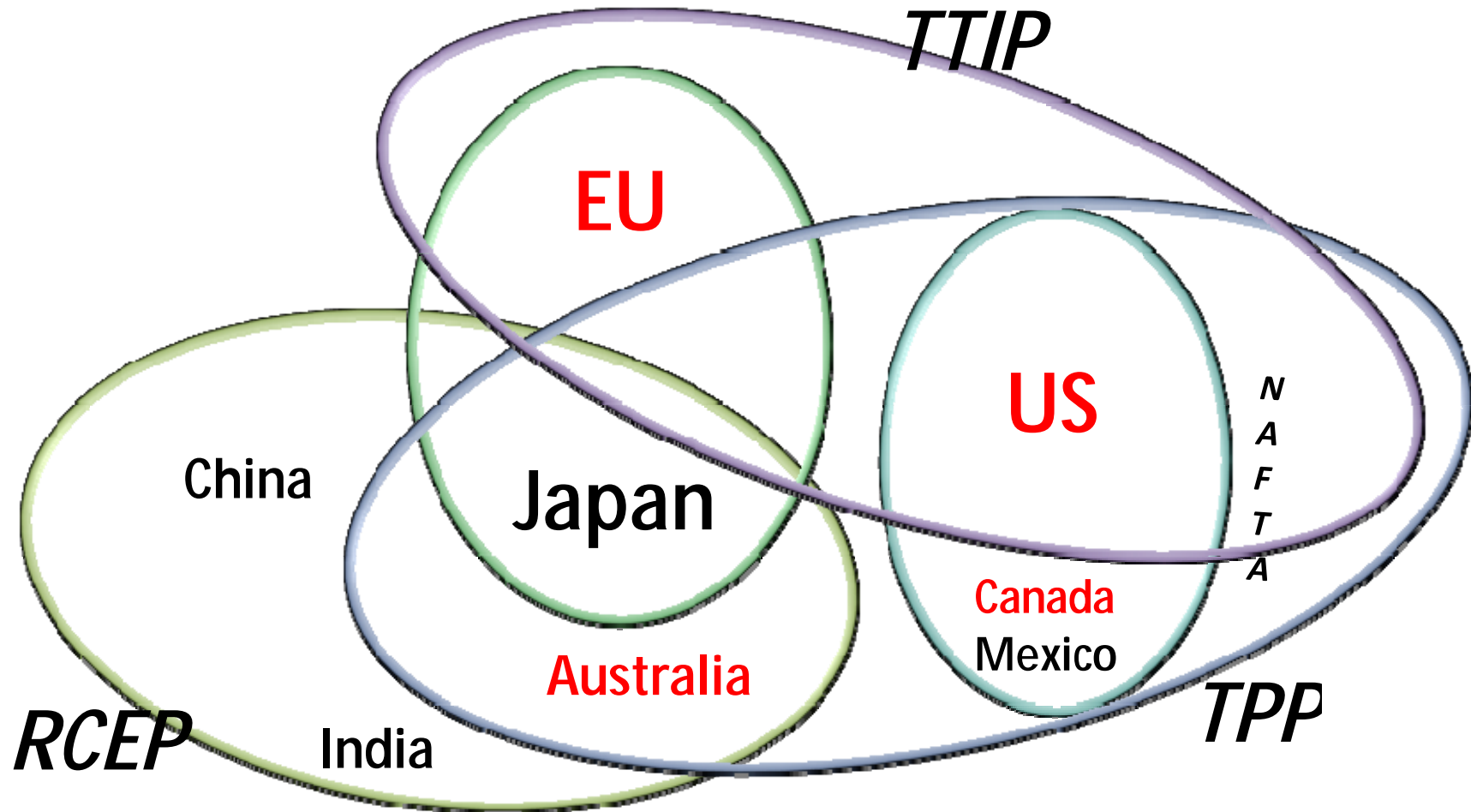
individual countries can restrict food import if they have scientific evidence



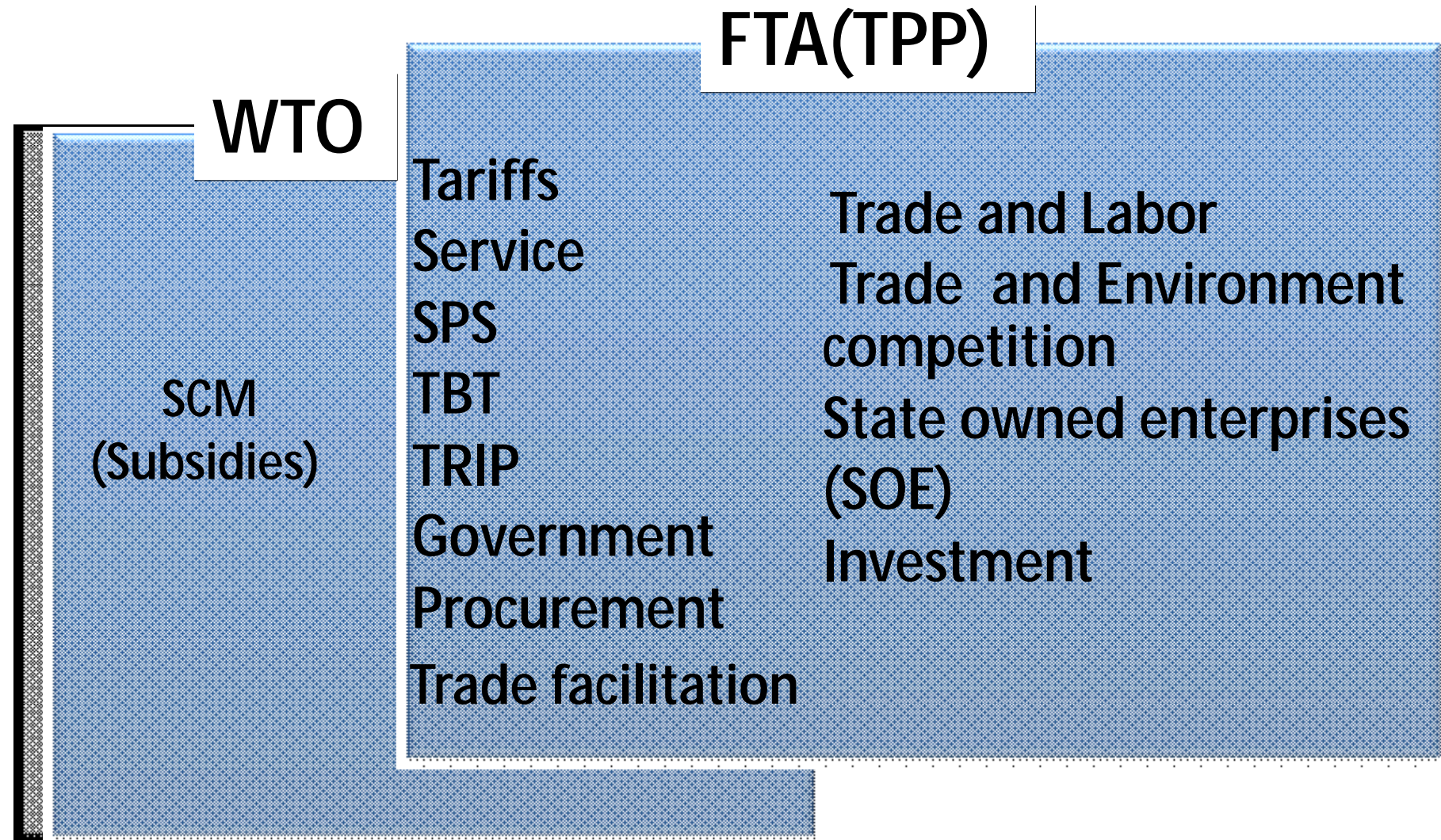
Countries may Deviate from International Standards If

- ▶ 1) there is **scientific justification** (for instance, international standards are found to lack scientific evidence)
 - ▶ 2) a country implements measures that may result in **a higher level of protection** than would have been achieved by measures based on the relevant international standards
 - ▶ 3) **scientific uncertainty** surrounding risk-assessments justifies implementing extended measures, or **the level of intake of foods in question differs** among countries.
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Mega-FTAs



The relationship between WTO and TPP



TPP will expand

- ▶ The essence of FTA is discrimination: it is disadvantageous not to join it.
- ▶ Mega-FTA has domino effects: Korea, Taiwan, Philippine, Thailand and Indonesia show their willingness to join TPP.
- ▶ China is also interested in TPP. If US does not join TPP, China may take it over.

Many Misunderstandings on TPP-1

- ▶ TPP will not replace WTO; TPP will not change the basic structure of WTO's SPS agreement but require more transparency for the establishment of SPS measures.
- ▶ Service provided by the government such as governmental medical insurance is out of the scope in TPP (article 10.2.3) as well as WTO (GATS article 1.3(b)). Also note Annex 26-A (TRANSPARENCY AND PROCEDURAL FAIRNESS FOR PHARMACEUTICAL PRODUCTS AND MEDICAL DEVICES) article 6

Many Misunderstandings on TPP-2

- ▶ ISDS clause will not damage any appropriate regulatory measures such as those on food safety or environment as long as those measures treat domestic and foreign entities alike.

Article 9.16: Investment and Environmental, Health and other Regulatory Objectives

Nothing in this Chapter shall be construed to prevent a Party from

adopting, maintaining or enforcing any measure otherwise consistent with

this Chapter that it considers appropriate to ensure that investment

activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

Annex 9-B article 3(b)

Non-discriminatory regulatory actions by a Party that are designed and applied

to protect legitimate public welfare objectives, such as public health, safety

Arguments against TPP

- ▶ Some people say that Japan's strict food-safety measures could be degraded to the level of America's.
- ▶ Comparing both countries' existing measures of residual pesticide in rice, for example, the limit of the insecticide Chlorpyrifos is 0.1 ppm in Japan, while it is 8 ppm in the US, which is 80 times higher than Japan's standard. Japan's measures may be lowered to the level of America's?

Misunderstanding international law

- ▶ The SPS Agreement intends to harmonize each country's measures with international standards, but not with a specific country's measures, such as those of America.
- ▶ If a country's measures were to be required to be identical to another country's, it would be an **infringement of sovereignty and a violation of international law.**
- ▶ It is **against the basic principle of the SPS Agreement** that each country has the sovereign right to implement its own SPS measures.
- ▶ **The framework of the WTO's SPS Agreement will be maintained!**

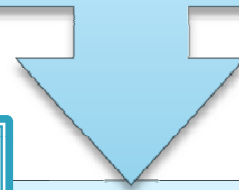
Japanese standard is stricter?

- ▶ Even though the ADI is the same both in Japan and in the US, a higher level of residual pesticides in rice is allowed in the United States than in Japan because Americans consume less. ⇒ It is no use to discuss which country's standards are stricter by comparing the standard values of residual pesticides in each foodstuff.
- ▶ **Compare the ADI** in each country. America's ADI of Chlorpyrifos (0.0003mg/kg/day) is smaller than Japan's (0.001 mg), while Japan's is smaller than the international standard (0.01 mg). American standard is the strictest among the three.

how the measures are determined

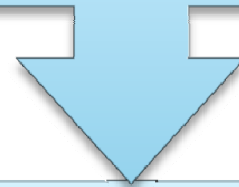
Animal Test

the upper limit or threshold of a certain pesticide (NOAEL) if its dose increases above the level it harms animals is determined.



Multiply by safety factor

that limit is multiplied by a safety factor (usually one-hundredth) to set an acceptable daily intake (ADI) for human beings.



Allocate ADI

ADI is **allocated** to each of the foodstuffs on the basis of the amount of such foodstuffs ingested by people in the country, and thus the standard value of a certain pesticide in each of the foodstuffs is calculated.

Japan's GMO labeling shall be the same as US's?

- ▶ US labeling is **not obligatory**. But more than 30 states demand labeling
- ▶ **Japan (Australia, NZ)**
 - soybeans**: labeling is **obligatory** unless the GMO contained in them is less than 5% (1% in Australia, NZ)
 - Tofu** : labeling is **obligatory** because DNA remains
 - Shoyu and oil** : labeling is **not obligatory** because DNA does not remain
- ▶ **EU** labeling is **obligatory** for all products unless the GMO contained in them is less than 0.9%

ISDS ruins food safety regulation?

- ▶ ISDS clause exists in 24 agreements involving Japan such as those with China and Thailand.
 - ▶ Japanese companies should sue the Thai government but US companies should not sue Japanese government?
 - ▶ US companies can sue Japanese government taking advantage of FTA between Japan and Thailand. But so far no cases.
 - ▶ In the 16 cases of US companies vs Canada in NAFTA, US companies won 2 cases, Canada won 5 cases.
 - ▶ In the TPP ISDS clause, regulations of environmental protection and public hygiene are out of its scope as long as they are not discriminatory.
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