

International Food Law

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Overview

■ International food law

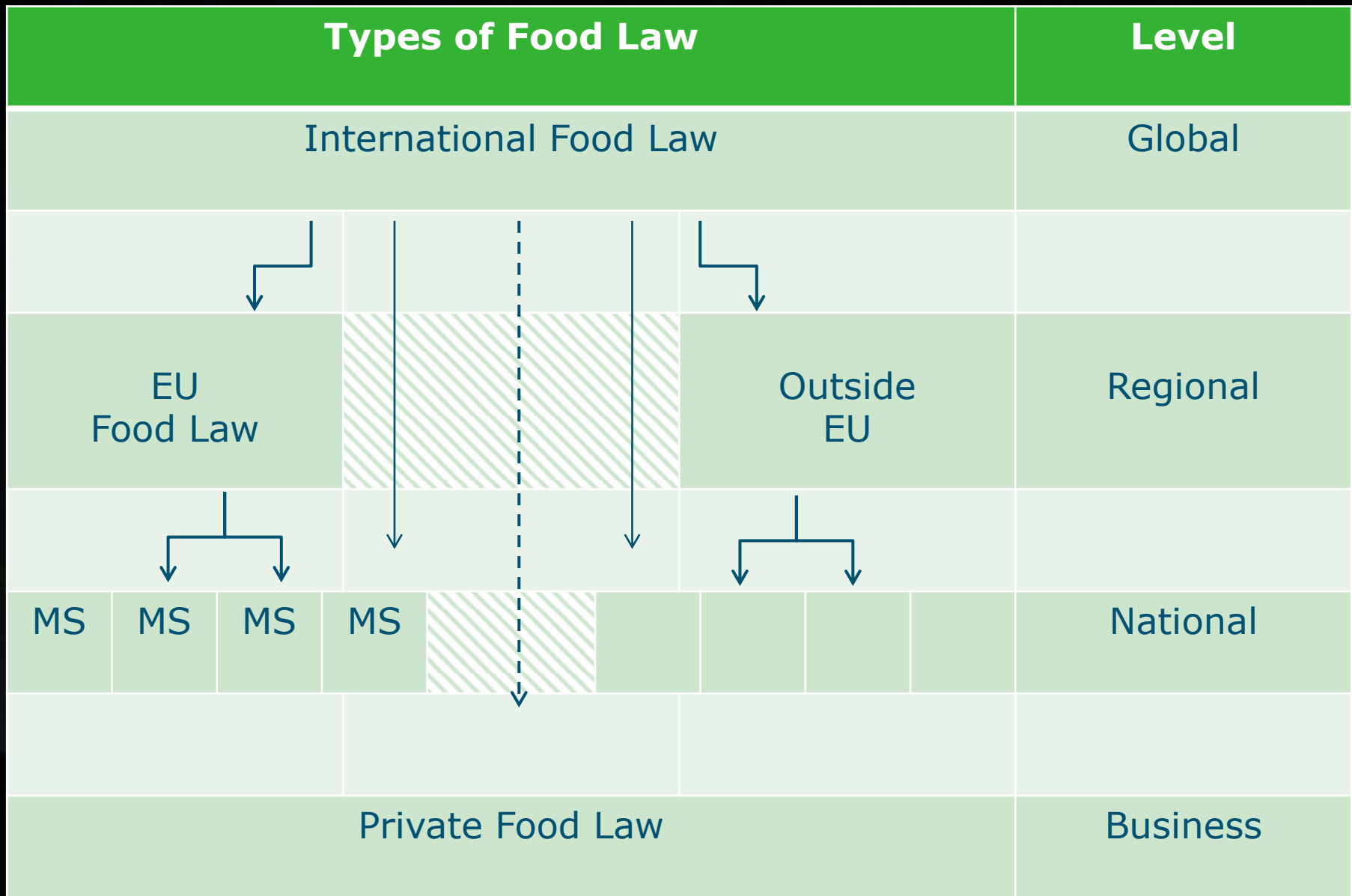
- Materials
- WTO
- Codex Alimentarius
- Codex and WTO
- Relation to EU



Recommended Materials

- Bernd van der Meulen, The Global Arena of Food Law: Emerging Contours of a Meta-Framework. *Erasmus Law Review* 3 (2010): 217-240. < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1815241 >
- WTO, SPS booklet http://www.wto.org/english/ress/e/booksp_e/agrmntseries4_sps_e.pdf





What if the game is played from different arenas?

- Can you play one game
- With different rules?

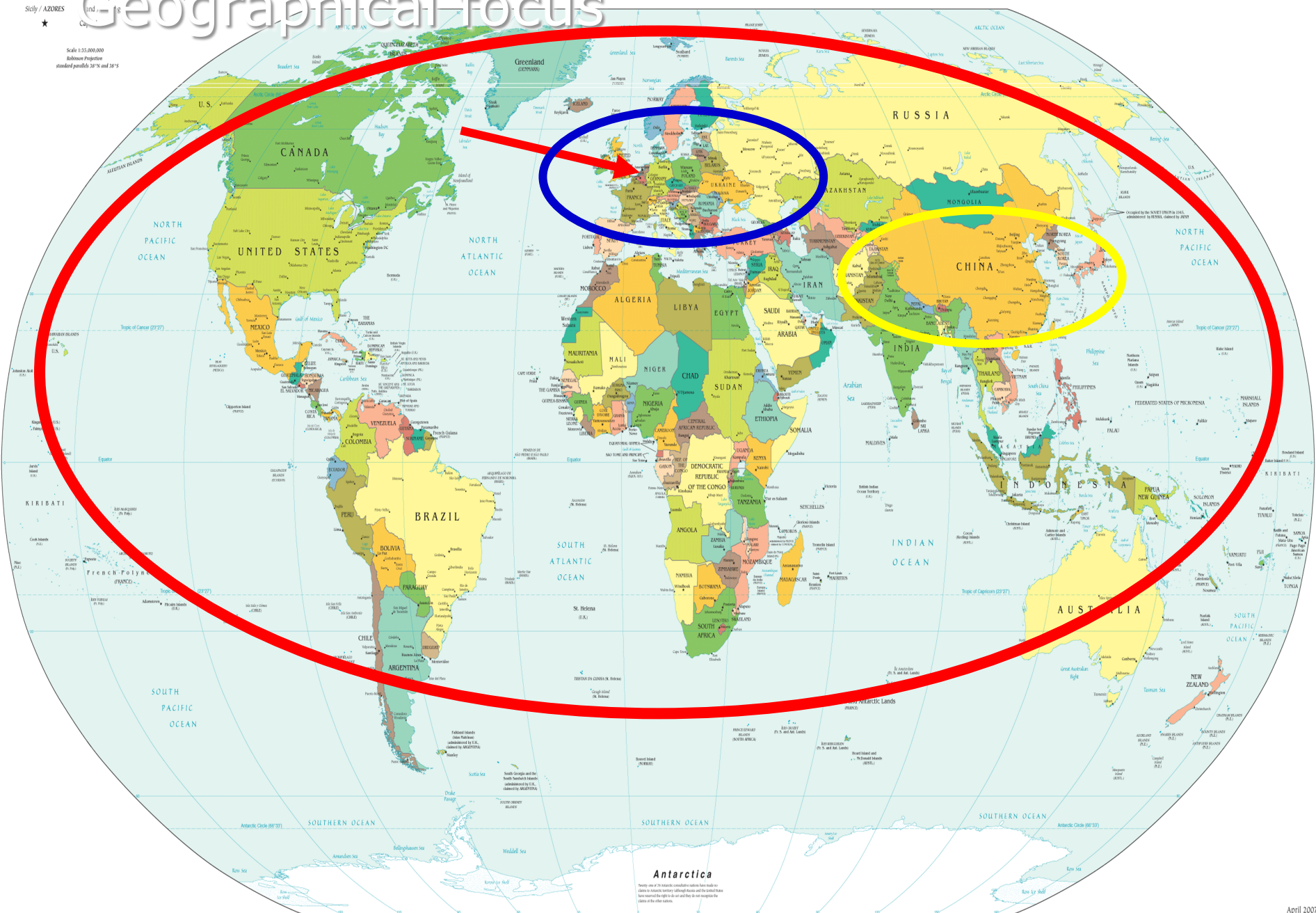


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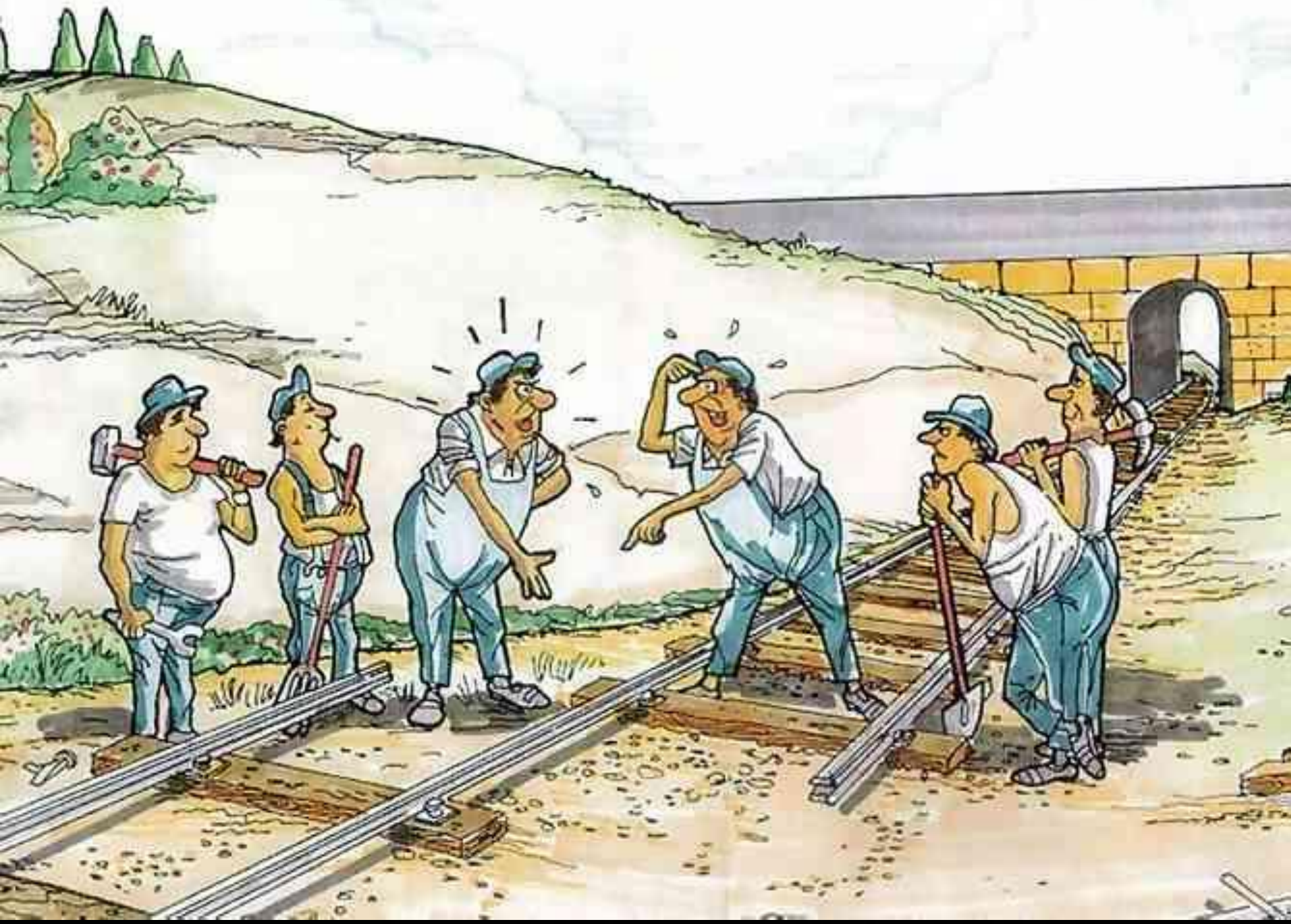
Scale 1:33,000,000
Robinson Projection
standard parallels 30°N and 30°S

Geographical focus



Antarctica

Team Work



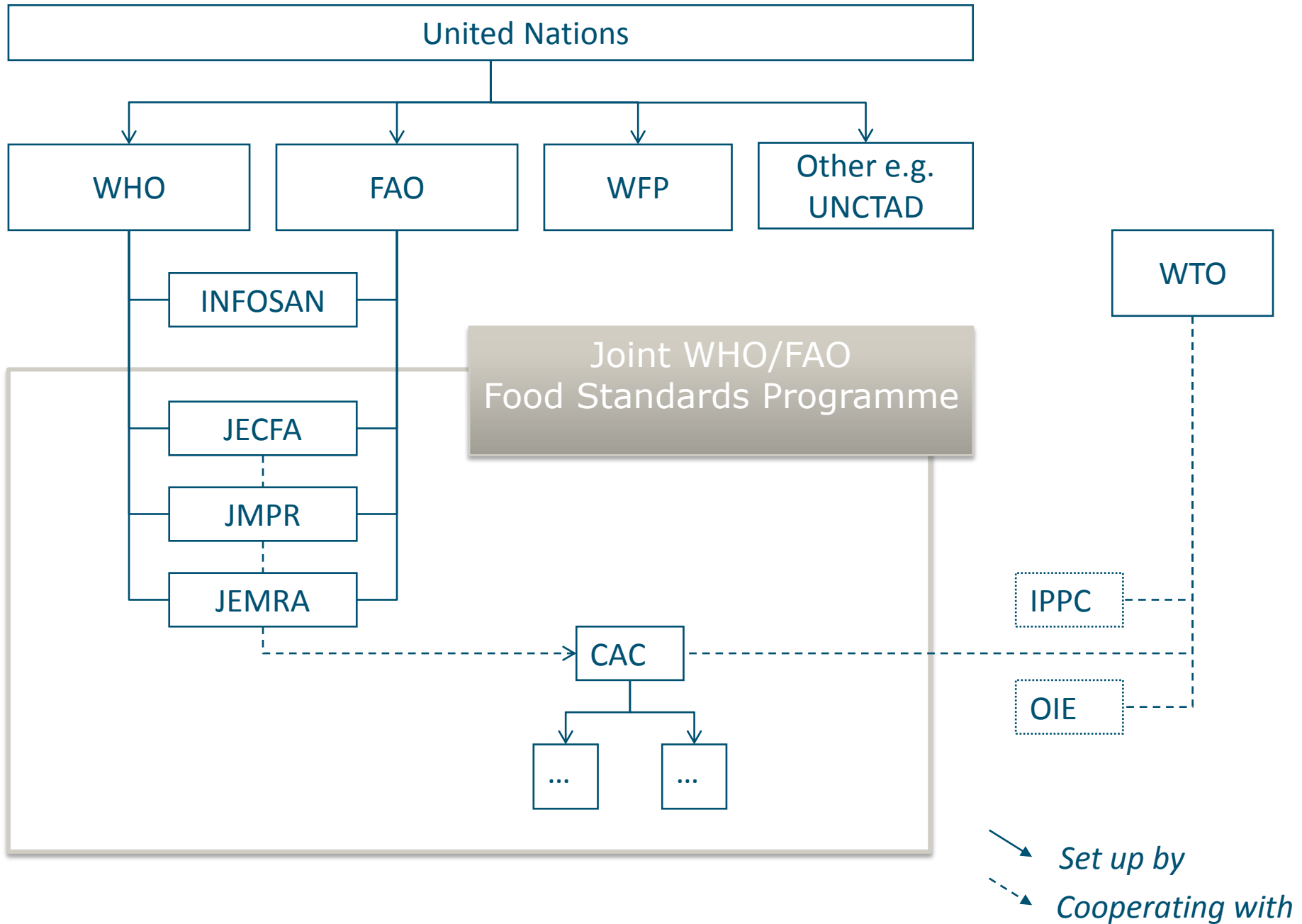
Players in the global field



- UN: virtually all nations → peace and co-operation
UN family:
- FAO: Food and Agriculture
 - Nutrition
 - Trade
- WHO:
 - Health care
 - Nutrition
- WTO
 - Trade → eradication of barriers to trade



Global Food Institutions





Location: Geneva,
Switzerland

Established:
1 January 1995

Membership:
164 countries

Budget: 197m Swiss
francs, 2015

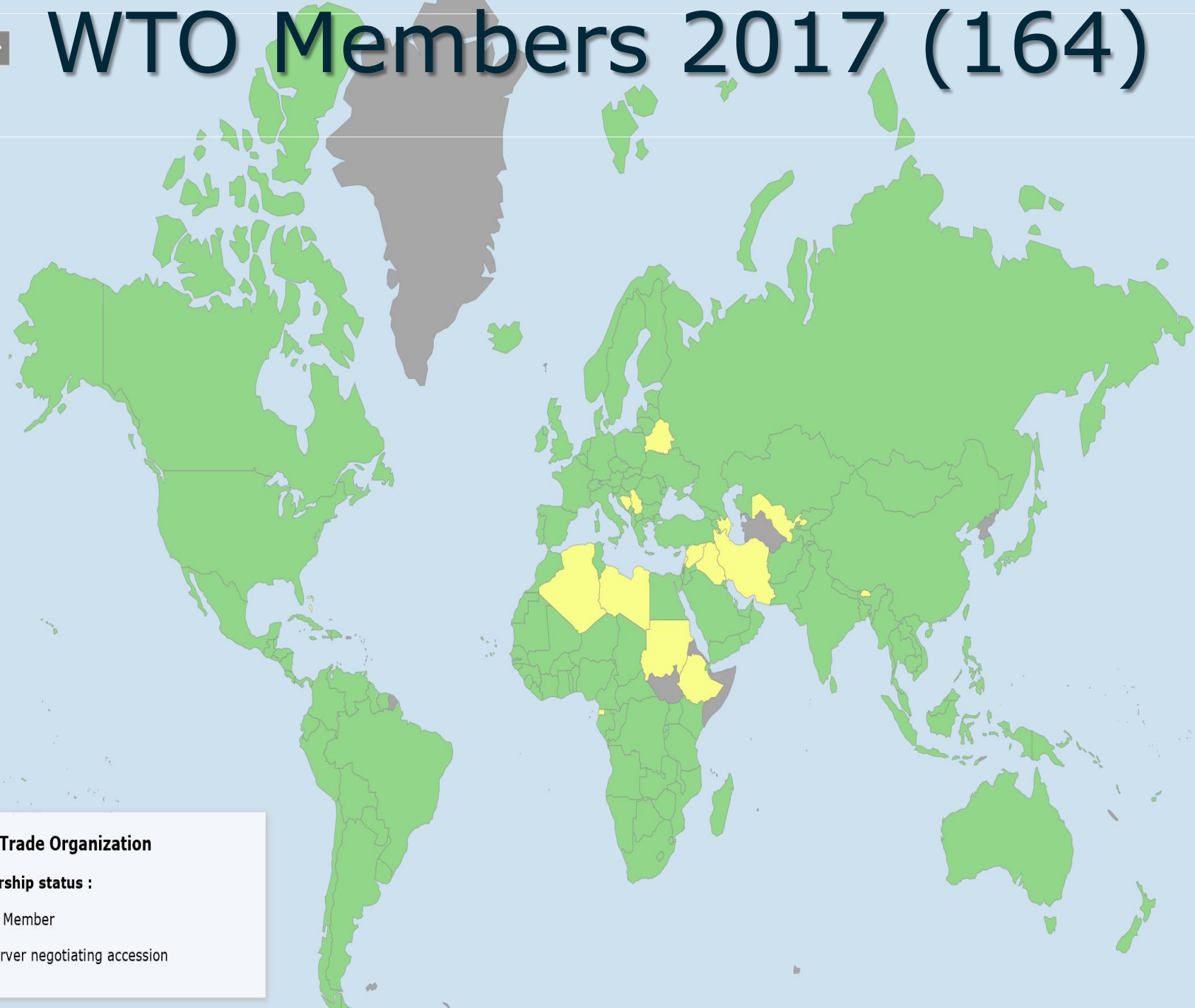
Secretariat staff: ~650

Head: Roberto Azevêdo
(Director-general)



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WTO Members 2017 (164)

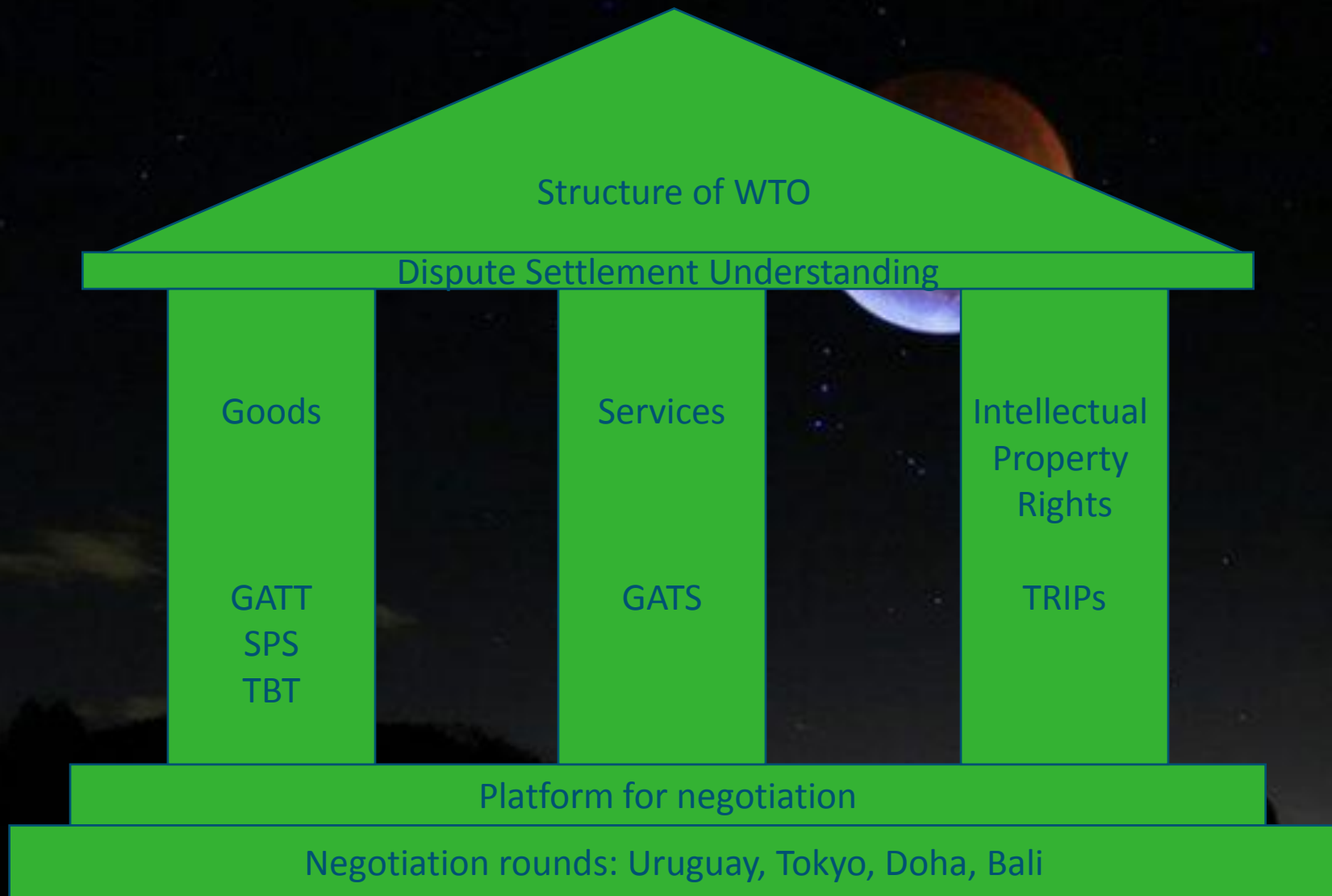


World Trade Organization

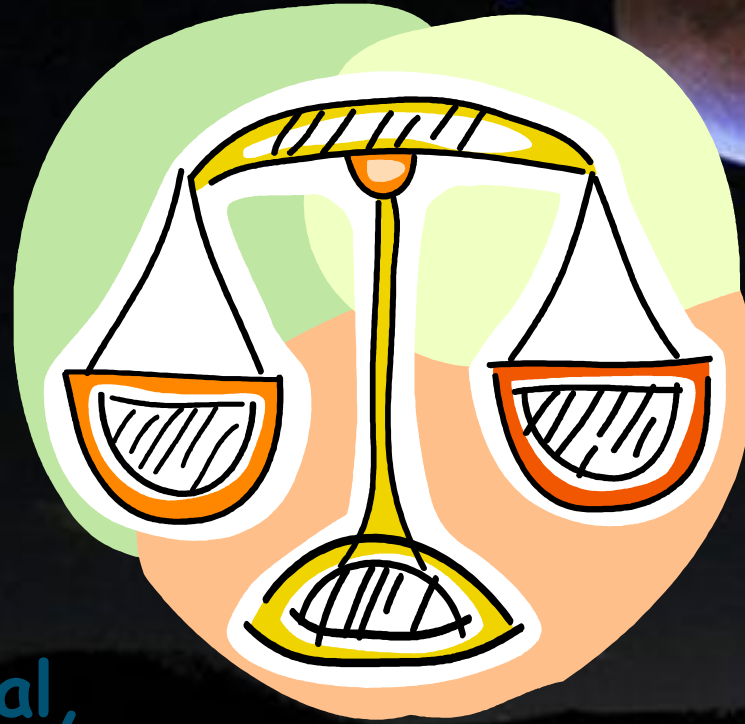
Membership status :

 WTO Member

 Observer negotiating accession



What is the purpose of the SPS Agreement?



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

Avoiding
unnecessary
barriers to trade



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SPS Agreement

WTO Agreement on the Application of Sanitary and Phytosanitary measures

- Members **have the right** to take measures necessary for protection
- Only necessary & science based, no discrimination or disguised barrier to trade
- Measures which conform to international standards shall be deemed necessary and consistent with SPS (3-2)
- International standards: standards, guidelines and recommendations Codex Alimentarius Commission (A 3.a)
- Higher level → scientific justification

SPS Measures

- Art. 1(2) & Annex A: definition
- Scope
 - Within the territory of the member
- Objective
 - A) Protect animal, plant
 - From: pests, diseases, organisms
 - B) Protect human life & health
 - From: additives, contaminants, toxins or disease causing organisms **in food**

SPS Measures: form

- SPS measures include all relevant laws, decrees, regulations, requirements and procedures
- including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to **food safety**.
- → 90% of Food law



Requirements

- Necessary
- Science based
 - Risk analysis, or
 - International standard
- Non discriminatory



Harmonisation

- Based on international standards
- Conform to → presumption of consistency
- Higher level

Harmonisation

- **Based on international standards**
 - “three sisters”
- **Conform to → presumption of consistency**
- **Higher level**

Three sisters of the SPS Agreement

- International Office of Epizootics (OIE)
- Secretariat of the International Plant Protection Convention (IPPC)
- Codex Alimentarius Commission (CAC)

Media attention for the Codex Alimentarius

BANNED?

CODEX ALIMENTARIUS

(Food Codes)

Will **Severely** Limit Our Access to
Supplements, Herbs & Alternative Health

<https://www.youtube.com/watch?v=spoucYXa3-A>

<http://www.trosradar.nl/uitzending/archief/detail/aflevering/19-05-2008/codex-alimentarius/>

1963

■ Joint FAO/WHO food standards program

- Aim: harmonise national food standards
- To protect health
- To promote trade in food products

■ Codex Alimentarius Commission

- Committees around the world
- Standards, guidelines, etc.



Codex Alimentarius

- Food commodity standards (vertical)
- General standards (horizontal)
e.g. contamination
- No treaty, not legally binding
- Model for national (or regional: EU) legislation
 - “common international language in food law”
- Guidelines
- Codes of good practice



CODEX INTERNATIONAL INDIVIDUAL STANDARD FOR EMMENTALER

CODEX STAN C-9:1967

1 DESIGNATION OF CHEESE

Emmentaler, Emmental

2 DEPOSITING COUNTRIES

Switzerland (country of origin), Finland, France, United States of America

3 RAW MATERIALS

3.1 KIND OF MILK: cow's milk

3.2 AUTHORIZED ADDITIONS

3.2.1 Necessary additions

- cultures of harmless lactic acid producing bacteria (starter) and of propionic acid producing bacteria
- rennet or other suitable coagulating enzymes
- sodium chloride
- water

3.2.2 Optional additions

- calcium chloride, max. 200 mg/kg of the milk used
- cupric sulphate, max. 15 mg/kg cheese expressed as copper

4 PRINCIPAL CHARACTERISTICS OF THE CHEESE READY FOR CONSUMPTION

	4A (Round Loaf)	4B (Block)	4C (Rindless Block)
4.1 TYPE	Hard cheese	Hard cheese	Hard cheese
4.2 SHAPE:	Round loaf	Rectangular block	Rectangular block
4.3 DIMENSIONS AND WEIGHTS			
4.3.1 Height	12 to 30 cm	12 to 30 cm	12 to 30 cm
4.3.2 Diameter	70 to 100 cm	-	-
4.3.3 Weight	min. 50 kg	min. 30 kg	min 30 kg
4.4 RIND			
4.4.1 Consistency	Hard	Hard	Soft
4.4.2 Appearance	Dry	Dry	Like inside
4.4.3 Colour	Golden yellow to brown	Golden yellow to brown	Ivory to light yellow
4.5 BODY			
4.5.1 Texture:	sliceable		
4.5.2 Colour:	ivory to light yellow		
4.6 HOLES			
4.6.1 Distribution:	regular, scarce to plentiful		

4.6.2 Shape: round

4.6.3 Diameter: mainly 1-3 cm

4.6.4 Appearance: mat to brilliant

4.7 MINIMUM FAT CONTENT IN DRY MATTER: 45%

4.8 MAXIMUM MOISTURE CONTENT: 40%

MINIMUM DRY MATTER CONTENT: 60%

4.9 OTHER PRINCIPAL CHARACTERISTICS

4.9.1 Taste and flavour: mild, nutlike, more or less pronounced

4.9.2 Ready for consumption: minimum of 60 days from day of manufacture

4.9.3 Storing ability: the cheese should normally maintain its characteristics for a minimum of 1 month at a temperature of 15°C from the time it is ready for consumption

5 METHOD OF MANUFACTURE

5.1 METHOD OF COAGULATION: rennet or other suitable coagulating enzymes

5.2 HEAT TREATMENT: after cutting the curd to particles about the size of wheat grains, heating to 50°C as a minimum

5.3 FERMENTATION PROCEDURE: lactic acid fermentation and propionic acid fermentation taking place throughout the cheese at 20°C minimum, for a minimum of 3 weeks

5.4 MATURATION PROCEDURE: proteolysis due to action of microbial enzymes at succeeding temperatures between 10° and 25°C

5.5 OTHER PRINCIPAL CHARACTERISTICS: treatment with cooking salt; the cheeses are salted by immersion in salt solution and/or dry-salted on the surface; during maturation, except in the case of rindless block, the surface of the cheese is washed, cleaned and salted at intervals

6 SAMPLING AND ANALYSIS

See Volume 13 of the *Codex Alimentarius*.

7 MARKING AND LABELLING

Only cheese conforming with this standard may be designated "Emmentaler" or "Emmental". It shall be labelled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese",¹ except that Emmentaler not produced in the country of origin must be marked with the name of the producing country even when sold on the home market.

¹ Currently Section 7 of the Codex General Standard for Cheese (CODEX STAN A-6:1978, Rev.1-1999)

CODEX GENERAL STANDARD FOR FOOD ADDITIVES

CODEX STAN 192-1995

PREAMBLE

1. SCOPE

1.1 FOOD ADDITIVES INCLUDED IN THIS STANDARD

Only the food additives listed herein are recognized as suitable for use in foods in conformance with the provisions of this Standard.¹ Only food additives that have been assigned an Acceptable Daily Intake (ADI) or determined, on the basis of other criteria, to be safe² by the Joint FAO/WHO Expert Committee on Food Additives (JECFA)³ and an International Numbering System (INS) designation by Codex will be considered for inclusion in this Standard. The use of additives in conformance with this standard is considered to be technologically justified.

1.2 FOODS IN WHICH ADDITIVES MAY BE USED

This Standard sets forth the conditions under which food additives may be used in all foods, whether or not they have previously been standardized by Codex. The use of additives in foods standardized by Codex is subject to the conditions of use established by the Codex commodity standards and this standard. The General Standard for Food Additives (GSFA) should be the single authoritative reference point for food additives. Codex commodity committees have the responsibility and expertise to appraise and justify the technological need for the use of additives in foods subject to a commodity standard. The information given by the commodity committees may also be taken into account by the Codex Committee on Food Additives (CCFA) when considering food additive provisions in similar non-standardized foods. When a food is not covered by a commodity committee, CCFA will appraise the technological need.

Scope codex

- Includes quality issues (TBT)
- Not limited to SPS

1995

- WTO
- *Enforceable* agreements on international trade
- Arbitration → punitive import duties
- TBT / SPS : no barriers to trade unless justified



WTO litigation

- Hormones case US vs EU
- Hormones acceptable in Codex Alimentarius
 - Hormones acceptable unless proven otherwise
- EU lost arbitration and appeal
 - WT/DS26/AB/R and WT/DS48/AB/R



WTO litigation



- **EU GMO**

- **Complaints by: US, Canada, Argentina**
- **Supported by: Australia, Brazil, Chile, China, Chinese Taipei, Colombia, El Salvador, Honduras, Mexico, New Zealand, Norway, Paraguay, Peru, Thailand & Uruguay.**

- **Decision published September 2006**

- **Restrictive EU policy not justified**

Codex Alimentarius

- Acquires de facto legal force through integration in SPS
- Companies that comply with Codex should be able to export to every member of WTO
 - Unless other national standards are scientifically proven necessary
- Burden of persuasion
 - On the party that wishes to depart from Codex

EU → Codex; GFL Art. 13

- Member States shall:
- (a) contribute to the development of international technical standards for food;
- (b) promote the coordination of work on food standards undertaken by international organisations;
- (c) contribute to development of agreements on recognition of the equivalence of food measures;
- (d) give particular attention to developing countries;
- (e) promote consistency between international technical standards and food law while ensuring that the high level of protection adopted in the Community is not reduced.



Codex in GFL

- Definitions
- Science based food law
- Implementation clause



GFL definitions



- Food(stuff): any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans
- Not included: feed, live animals unless they are prepared for placing on the market for human consumption, plants prior to harvesting, medicines, cosmetics, tobacco, drugs, residues, contaminants



GFL principles international trade

■ Exports

- Food exported from EU must comply with relevant food law requirements (never export of unsafe food)

■ Imports

- Food imported in EU must comply with relevant food law requirements or their equivalence

SECTION 3 GENERAL OBLIGATIONS OF FOOD TRADE

Article 11

Food and feed imported into the Community

Food and feed imported into the Community for placing on the market within the Community shall comply with the relevant requirements of food law or conditions recognised by the Community to be at least equivalent thereto or, where a specific agreement exists between the

Codex in European case law

- Emmenthal cheese case (ECJ 5 December 2000)
- Does the requirement of a brown rind constitute a barrier to trade (28 EC)
- ECJ: yes!
 - No rind in definition in other Member States and Codex



Codex in Europe

Article 5-3 GFL

General objectives

3. Where international standards exist or their completion is imminent, they shall be taken into consideration in the development or adaptation of food law, except where such standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives of food law or where there is a scientific justification, or where they would result in a different level of protection from the one determined as appropriate in the Community.



Court of first instance 14.12.05 case

■ **Beamglow Ltd. vs. Parliament (NA), Council & Commission.**

- **Reg. (EEG) 404/93: bananas → preferential treatment ACP countries**
- **WTO-complaint Ecuador & USA**
- **Sanctions imposed**
- **Beamglow claims compensation from EU**

Procedure

■ CFI denies claim:

- WTO rules do not amount to rules of law by reference to which the legality of the institutions' conduct may be assessed.
- Most commercial partners of EU don't include WTO-law among the rules by which their courts review the legality of domestic law.
- To do so in the EU could therefore lead to an unequal application of WTO rules depriving the organs of the EU of the scope for manoeuvre enjoyed by their counterparts
- To require the courts to refrain from applying EU rules which are incompatible with WTO would deprive the legislative or executive organs of the contracting parties of the possibility of entering into negotiated arrangements, even on a temporary basis, in order to arrive at mutually acceptable compensation

EU law vs. WTO law

■ EU

- Private parties have access to court
- Member states liable for infringements

■ WTO

- Only Member States have access to dispute settlement
- The risk of sanctions falls on businesses



Conclusions

- EU food law is a framework for stakeholders
- International food law is a framework for frameworks → meta framework
 - Science based
 - Non-discrimination
 - Harmonisation
- International food law applies
 - Directly to states
 - Indirectly to stakeholders

Objectives of food safety law

- Public health is primary objective of food safety regulation
 - Food law = SPS
 - EU - Art. 5 GFL → (health, consumer protection, fair trade, animal health & welfare, plant health, environment)
- Risk analysis
 - Science based (Art. 6 GFL), but
 - Scientific uncertainty → precaution (Art. 7 GFL)
 - Other legitimate considerations → compatible to SPS?
 - Newly emerging risks

WTO & private standards?; SPS Article 13

- (...) Members shall take such reasonable measures as may be available to them to ensure that **non-governmental entities** within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or **non-governmental entities**, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. (...)



Thank you for your kind attention

Q&A

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