

The SPS committee as an example of how to strengthen WTO regular bodies

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“Sanitary and Phytosanitary Measures”
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Why might SPS be an example?

- **General lessons from what works well**
 - Specific trade concerns
 - ePing and Trade Concerns database
 - eAgenda
 - Thematic sessions
 - Periodic self-reflection
- **Special cases**
 - Fisheries subsidies committee
 - National security

1995 - 2022*

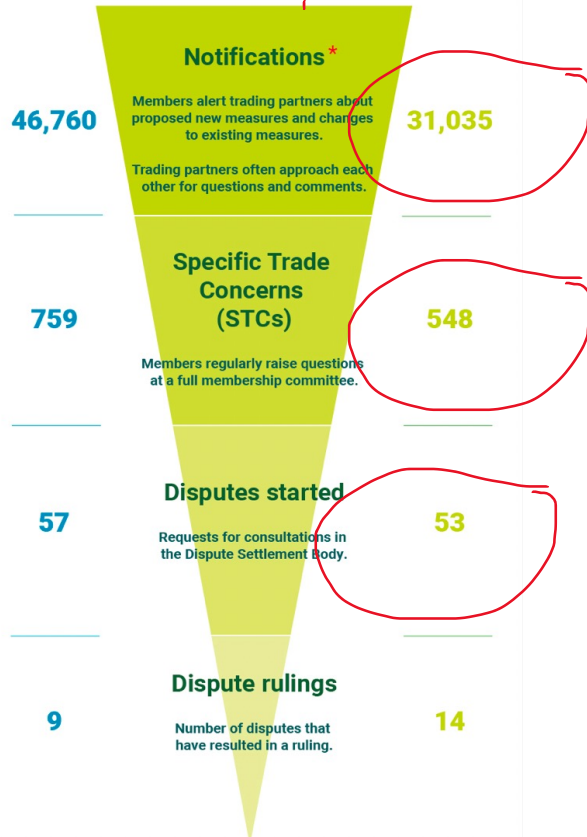
*until 31 August

TBT

Technical requirements
affecting trade in all products
(both industrial and agricultural)

SPS

Measures relating
to food safety, and
animal and plant health



SPS transparency and surveillance

1. Notification: small fraction lead to a dispute.
2. Partly because of the opportunity to raise specific trade concerns:
 - Developed countries and developing countries about even in raising and responding to SPS STCs
3. **Dispute settlement is at the bottom**
 - Probably many more enquiry point comments than STCs
 - Many more STCs than disputes

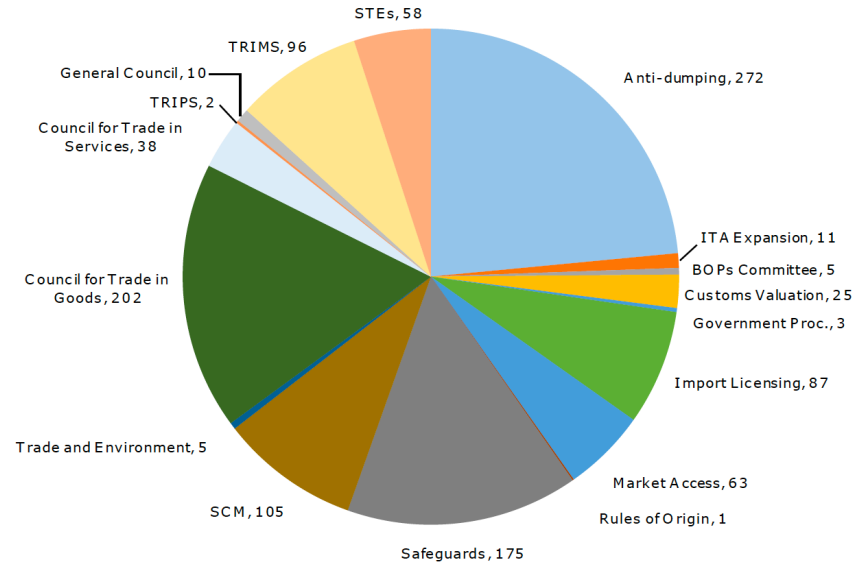
Are SPS and TBT a special case? Not really

- Ex ante notifications of draft measures vs ex post notification of implemented measures?
- True, but misleading: many STCs in SPS concern implemented measures

Pyramid metaphor should apply across WTO

- All Agreements have permissive language similar to SPS Art 12:2:

“The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues.”
- Discussion of trade concerns increasing and widespread
 - 230 trade concerns in 28 meetings **other than** SPS and TBT mid-Oct 2018 to mid-Oct 2019 monitoring period.
 - **Dwarfs the 29 dispute settlement panels that began work during the period.**



Trade concerns raised Oct 2014 to Oct 2019
WT/TPR/OV/23, Nov 2020

Implications for WTO reform

- Many bodies have something that looks like an STC
 - Common terms: “questions”, “consultations”, “issues”, “specific implementation matters” as well as “concerns”
- But practice is uneven
 - Related to type & number of notifications? Whether delegates from capitals?
- Every committee has minutes or summary records of its meetings, but some are more detailed than others
 - Some have one or more document series for questions and answers.
- Few committees have a searchable database
 - No consolidated information on all the STCs raised across the WTO
 - Better databases would help firms as well as Members

Better databases: ePing



[Home](#) [Search](#) [Enquiry points/Notification authorities](#) [Facts & figures](#) [More info](#)



Search notifications



Search trade concerns



Register and receive alerts

- Information is a significant trade cost, especially at the extensive margin
 - Intelligence on market conditions
 - Content of government policy



Trade Concerns Database

[Home](#)[Notifications ▼](#)[Search and Analyse Notified Information ▼](#)[Review Process ▼](#)[Help](#)[Contact](#)

Review Process : [Search Q&A Submitted since 1995](#) : **[View Data List](#)**

Databases should do better horizontally

The screenshot shows the homepage of the WTO Environmental Database (EDB). At the top, there are logos for the World Trade Organization and the Environmental Database, along with a search bar labeled "Search all data". Below the logos is a navigation menu with links for Members, Notifications, Trade policy reviews, Infographics, Documents, and Search. The main banner features a landscape image with a wind turbine and mountains, overlaid with text stating: "The WTO's Environmental Database (EDB) contains all environment-related notifications submitted by WTO members as well as environmental measures and policies mentioned in the Trade Policy Reviews of WTO members." Below the banner, there are three statistics: 7899 Environment-related notifications, 16854 Environment-related measures, and 9383 Environment-related TPR entries. To the right of these statistics is a green box titled "EDB DISCLAIMER" containing a disclaimer statement.

WORLD TRADE ORGANIZATION

Environmental Database

Search all data

Members Notifications Trade policy reviews Infographics Documents Search

The WTO's Environmental Database (EDB) contains all environment-related notifications submitted by WTO members as well as environmental measures and policies mentioned in the Trade Policy Reviews of WTO members.

7899
Environment-related notifications

16854
Environment-related measures

9383
Environment-related TPR entries

EDB DISCLAIMER

The environmental database has been prepared under the WTO Secretariat's own responsibility and is without prejudice to the positions of WTO members or to their rights and obligations under the WTO.

- Example: no trade concerns in EDB

eAgenda

- Annotated agenda posted online in advance of the meeting
 - Documents online in advance allowing better preparation
 - Easier coordination in capitals
 - Statements uploaded allowing minutes to appear more quickly
- SPS and TBT have it. Not sure about CMA. Coming to ILC

Benefits of general STC reform

- Enhanced participation
- More substantive discussion, if it makes it easier for capitals to prepare instructions for committees where delegates are often Geneva-based
- Seeing issues across agreements
- Avoiding dispute settlement

Procedural guidelines proposal WT/GC/W/777/Rev.6

- Paras 1-5 concern meeting arrangements
- Paras 6-7 encourage use of **written questions and answers**
 - No mention of eAgenda
 - If questions and answers are online ahead of a meeting, officials in capitals can interact through WTO
- Para 8 requires **searchable database** of all documents pertaining to trade concerns
 - written questions and replies, relevant minutes of meetings and relevant notifications.
 - when a trade concern is raised in multiple WTO bodies over time.

For more see my 'Reforming WTO Conflict Management: Why and How to Improve the Use of 'Specific Trade Concerns', 'Journal of International Economic Law' 23:4 (December 2020), 817-39.

Enhanced opportunities for dialogue

- Informal “thematic” meetings allow Committees to hear from stakeholders who use their agreements, including regulators, other IOs and the private sector
 - informal, educational, workshop, information, forum, exercise, leadership dialogue, symposium, experience-sharing, dedicated, discussion group
 - Over 100 in three years to December 2019, but some committees held none

For more: Wolfe, Robert, (2021) 'Informal Learning and WTO Renewal Using Thematic Sessions to Create More Opportunities for Dialogue,' Global Policy 12:S3 (April 2021), 30-40.

SPS holds more than other committees



SANITARY & PHYTOSANITARY MEASURES

Thematic Session on the Use of Remote (Virtual) Audit and Verification in Regulatory Frameworks

📍 Virtual + WTO

📅 21/06/2022 - 10:00–18:00

Systematic review of what it does and how it works



WORLD TRADE
ORGANIZATION

G/SPS/64

3 August 2020

(20-5369)

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Committee on Sanitary and Phytosanitary Measures

REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

- Fifth quadrennial review, as mandated by ministers in 2001
- Proposals for improvements
- Record of actions and decisions

And engagement with capitals for a new vision

**Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022**

SANITARY AND PHYTOSANITARY DECLARATION FOR THE TWELFTH WTO MINISTERIAL CONFERENCE: RESPONDING TO MODERN SPS CHALLENGES

MINISTERIAL DECLARATION

ADOPTED ON 17 JUNE 2022

Lessons from SPS for new Fisheries committee

- Article 9 has language permissive of STC process, but it will be essential. Also needs a database
- Members should encourage capital-based participation
 - eAgenda would help
 - Provide opportunity for experts to seek clarifications and raise concerns
- Requirement for periodic review is good
- “Close contact” with FAO and RFMO/As: good but thematic sessions would allow an informal process for discussion hence learning about policy context for fisheries subsidies

Lessons for “national security” at WTO

- SPS agreement in effect an amplification of GATT Art XX exception for measures (b) “necessary to protect human, animal or plant life or health”
- GATT Art XXI also about exceptions, but no committee and limited jurisprudence.
 - Mavroidis: litigation problematic; STCs could be better route
- There are many such STCs already
 - 25 cybersecurity STCs in CMA and TBT. Also in CTS. Others?
 - Many QRs cite Article XXI as a justification (Chart 3 in G/MA/W/114/Rev.4)
 - Do any of 67 CMA trade concerns reference Art XXI?

More lessons for “national security”

- Committee is unlikely: clear who comes from capitals for SPS, but who would come for “security”??
- Even without a dedicated body, eAgenda system could facilitate engagement of capital-based experts in any committee where a security claim arises
- Thematic sessions would be helpful
 - “TBT and cybersecurity” planned for June 2023

Ukraine war referenced a lot in WTO

- Up to July 2022 [WT/TPR/OV/W/16 July 2022]
 - 71 specific trade and trade-related sanctions on trade in goods imposed by 43 WTO Members and one Observer on the Russian Federation
 - 75 services sanctions imposed by 39 WTO Members
 - several measures and sanctions that might indirectly affect the maintenance and licensing of intellectual property rights (IPRs).
- Discussion in SPS, TBT, CTG, CMA, SCM, CoA, CTS, General Council, and others

A final observation

- SPS committee has deep engagement with a community of regulators in capitals who know they need to work with their counterparts
- Not so easy to replicate in other domains