

Hidden Jewel in the Crown: Role of WTO committees in dispute resolution

Examining the contribution of WTO
specialized committees in aiding dispute
resolution through the lens of the SPS
Committee and Specific Trade Concerns

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Abstract

The WTO's Dispute Settlement Body has been regarded as the WTO's crown jewel, bringing stability and predictability to the resolution of disputes among WTO Members. But what about the other jewels in the crown?

This Working Paper¹ looks at one such jewel – the specialized committees. The importance of committee work has never been more critical than it is today, with Members at loggerheads during negotiations and with an over-burdened DSB functioning with a paralyzed Appellate Body (AB). The WTO's credibility is not only dependent on the smooth functioning of its dispute settlement system but also on the existence of other mechanisms that aid in dispute avoidance and provide a platform for Members to engage regularly to resolve their issues. In this regard, it is vital to recognize the role of different bodies, such as committees that act as checkdams, to minimize the influx of disputes and allow only unavoidable concerns to become trade disputes.

The thrust of the paper is to examine the extent to which the SPS Committee contributes to dispute resolution under the WTO framework by drawing inferences from numerous SPS notifications, SPS Committee meeting minutes, Secretariat notifications, Panel and AB reports, and existing literature on the topic to establish a link between the role of the SPS Committee and dispute resolution. In particular, the paper examines a specific mechanism – the Specific Trade Concerns (STC) mechanism and its role in facilitating conflict resolution.

Introduction

STCs are an essential indicator of the SPS committee's health and positive relationships among Members. STCs help Members raise concerns regarding any SPS measure, either in draft form or definitive, which is likely to have an adverse impact on international trade. As elaborated in detail in the subsequent paragraphs, STCs help filter trade concerns by allowing members to detect and respond to trade concerns at an early stage.

The health of an organization can be determined by the quantum of information shared and issues discussed among Members. The STC plays a crucial role in achieving the objectives of the SPS committee by bringing Members together to discuss issues and share their practices with other Members, which helps harmonize rules and practices surrounding SPS measures.

¹ The present Working Paper is a truncated version of the author's Master's thesis on the same topic and deals with key findings presented in the thesis with respect to the role of Specific Trade Concerns.

A brief history of STCs under the SPS discipline

The process of raising STC has evolved. In the context of the SPS discipline, though Members have been raising issues since the GATT days in the Tokyo Round TBT Committee, the term "specific trade concerns" possibly first appeared in the WTO SPS Committee's summary of the meeting held on 29-30 May 1996, based on Argentina's proposal. While agreeing to the proposal, the Committee underscored the importance of the STCs in resolving disputes, whereby "it was agreed that Members be encouraged to discuss trade problems in the Committee whenever possible before initiating formal dispute settlement procedures, without prejudice to their rights under that process. There was also a consensus that Members raised in the Committee about any trade problems or concerns they might encounter regarding other Members' implementation of the Agreement, particularly concerning notifications. For this purpose, it was agreed to add a permanent sub-item entitled "Specific trade concerns" under "Implementation of the Agreement."²

In the subsequent committee meetings, the Members shared their views on the process and sought to clarify its scope. For example, Australia believed that the purpose of the monitoring exercise was not to admonish Members for failing to conform their measures to international standards. Members were expected to take the opportunity under the agenda item on "specific trade issues" to draw the Committee's attention to any specific problems they might face, including circumstances where they believed international standards were not being applied appropriately. The focus under monitoring would be on the standards rather than on the behavior of countries.³ Since October 1997, the STCs have been discussed as a separate item during the SPS Committee meetings.⁴

Procedure for raising STC

There is no specific provision in the SPS Agreement regarding the raising and discussion of an STC. The SPS Committee devised the STC mechanism under Art. 12 of the SPS Agreement, which provides a basis for raising an STC when it provides a "regular forum for consultations."

Even before Members raise an STC, the Members, through the active participation of the SPS Committee, devise a robust notification process before an SPS measure is introduced or adopted. The steps are summarized below in **Figure 1**.

² G/SPS/R/5, para. 28.

³ G/SPS/R/8, para. 41.

⁴ G/SPS/R/9.

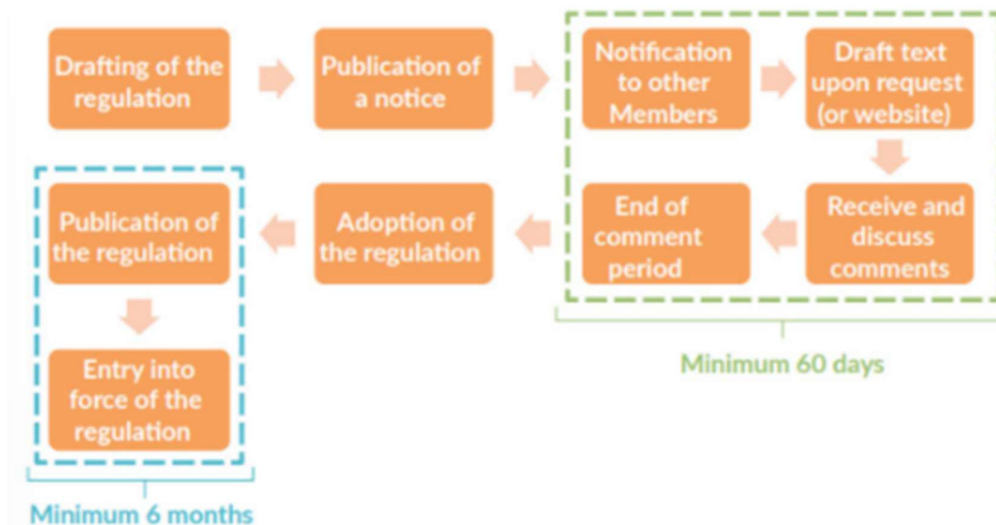


Figure 1: Timeline for SPS notifications (Source – wto.org).

The above notification procedure provides a number of checkpoints where other Members can provide comments and share feedback with the issuing Member. This allows the rising Member to revisit its regulations and improve them.

Where the issue persisted concerning a specific concern, the Members could discuss the issue bilaterally at either the Enquiry Point level or a diplomatic level. This stage could be referred to as the 'bilateral consultation' stage. This stage is optional. Members who do not find a solution at this stage or do not exercise this option may move to the next stage of notifying the SPS Committee.

There is no stated procedure for raising an STC before the SPS Committee. Nonetheless, the raising Member must notify the SPS Committee before the next meeting to enable the Committee to add the issue as an agenda item for the upcoming meeting. Since 2020, the WTO Secretariat has developed an Eagenda system to allow Members to raise agenda items online. To use this platform, the Member must request credentials to access the platform. Alternatively, Members may email the SPS Committee three weeks before the next formal meeting. Delegations are reminded of the exact deadline for submitting agenda items at the end of each SPS Committee meeting, as stated in the airgram (i.e., the notice that convenes SPS Committee meetings), which is issued approximately six weeks before each meeting (symbol: WTO/AIR/SPS/*). The agenda items are then included in an annotated draft agenda (issued with the symbol JOB/SPS/*).⁵

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https://www.wto.org/english/tratop_e/sps_e/faq_spscom_e.htm#:~:text=To%20add%20an%20item%20to,full%20editing%20rights%20are%20needed.

Performance of the STC mechanism in resolving Members' issues.

Indeed, STCs have played an essential role in bringing the Members together to discuss contentious issues, either bilaterally or multilaterally, during committee meetings. There are various ways to examine the effectiveness of STCs and their role in resolving trade concerns and diffusing the possibility of a trade dispute. The role of STCs is further elaborated in the subsequent paragraphs.

(i) Large and diverse participation shows Members' confidence in using the STC mechanism to resolve issues.

Between 01 January 1995 and 31 July 2024, the SPS Committee met 114 times. Members notified 35,078 SPS notifications during the same period and raised 585 STCs. Except for the initial year (1995), all subsequent years have seen Members raise at least ten STCs (**Figure 2**).

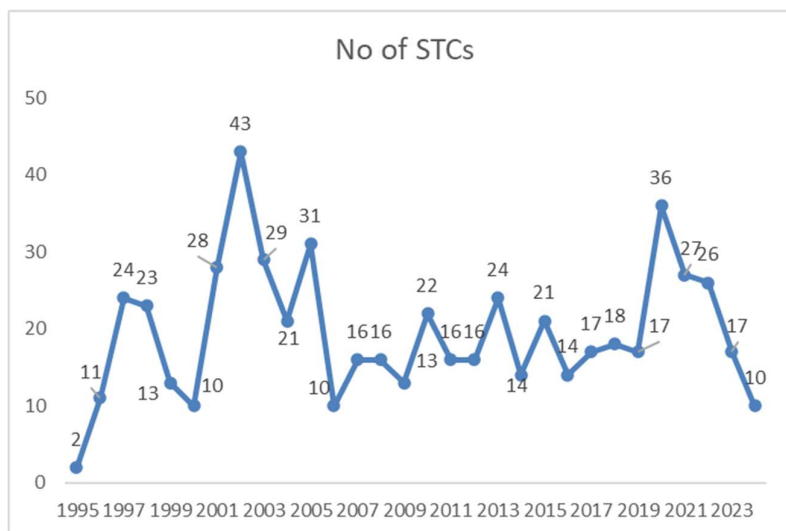


Figure 2: Number of SPS-related STCs between 1995 and 2024 (Data Source – WTO's ePing website).

It is further observed that 66 out of 164⁶ WTO Members have raised STCs, mostly comprising developed and developing Members. Although the number of participating Members is limited, it is observed that at least ten Members raise STCs (either individually or collectively) every year, indicating a robust use of the STC mechanism by these Members to raise and resolve concerns. The European Union is the largest user of the STC mechanism, having raised (individually or collectively) a total of 128 STCs, accounting for almost 22% of the total STCs. The United States (51), China (44), Japan (34), and India (26) are the other top users of the SPS measure-related STC mechanism.

⁶ The present paper examines the data up to 31 July 2024. As of 31 July 2024, there were 164 members. Comoros became the 165th Member of the WTO on 21 August 2024, while Timor-Leste became the 166th Member on 30 August 2024.

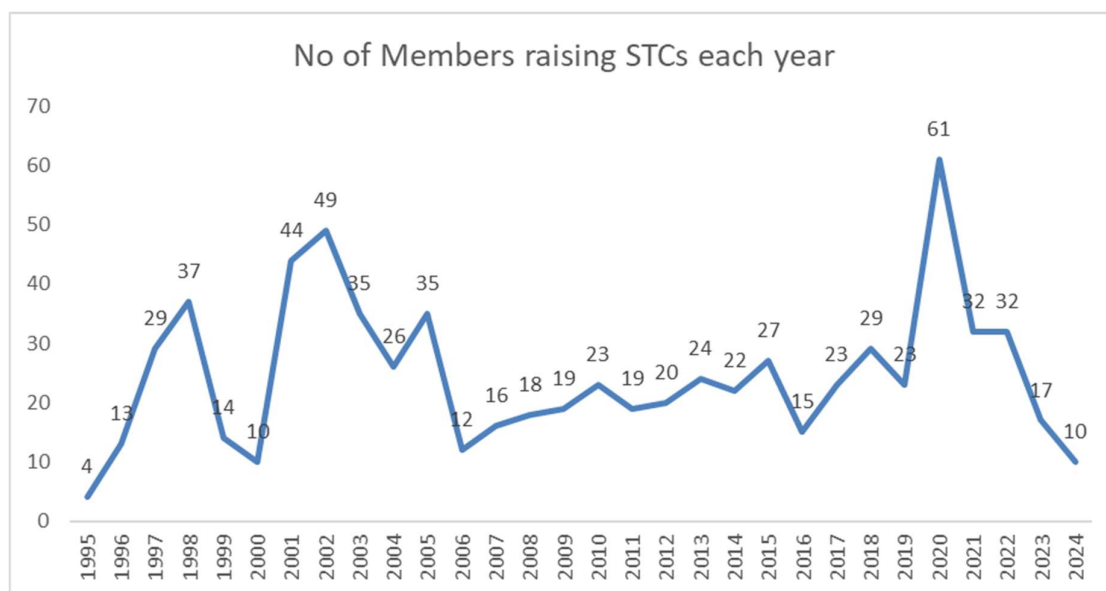


Figure 3: No of Members raising STCs each year (Data Source – WTO’s ePing website).

It is, however, worth noting that although four LDCs also raised STCs, the absence of the remaining thirty-one designated LDCs in raising STCs is a serious concern. Similarly, since 1995, 101 Members have responded (individually or collectively) to STCs raised by other Members. Only 2 LDCs, Nepal and Senegal, were subjected to STCs. There could be several reasons for the non-participation of low-income countries (LDCs) in committee discussions or in multilateral decision-making. Holzer, in her seminal work on the role of STCs in the TBT committee, notes that insignificant trade volumes of these countries could be the most likely reason for their non-participation in the process, including before the DSB. Secondly, many countries opt out of the dispute settlement process due to a lack of human resources and the considerable investment of time and financial resources. Thirdly, low-income countries may need more trade or political power to challenge the measures and practices adopted by other high-income countries on whom their trade may be dependent.⁷ Finally, LDCs and low-income countries face local administrative limitations in establishing a body to monitor policy changes worldwide and creating a system for gathering feedback or conducting outreach programs for domestic industries. As a result, such countries may need access to sufficient and relevant information to raise concerns before the SPS Committee.

Nonetheless, one must recognize the importance of STCs in addressing concerns. Holzer notes in her paper that several reasons are outlined below for why members perceive the STC practice as meaningful.⁸

⁷ Kateryna Holzer, ‘Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee’ (31 October 2018) 7 <https://www.wto.org/english/res_e/reser_e/ersd201811_e.htm> accessed 26 December 2023.

⁸ *ibid* 8–10.

First, STCs allow for clarification of regulations. In the TBT context, Holzer points out that Members often raise STCs to seek clarification or justification for the proposed measure while considering international standards or scientific findings. Such information is helpful to exporters in understanding the measure's applicability to their products and verifying its compliance with the TBT Agreement. In the SPS context, it is observed that Members raise STCs to seek clarification or additional information on the proposed measure. In many cases, the Members point out possible violations of the SPS Agreement and potential harm to international trade.

Second, there are cases where a Member needs to notify its draft or enacted SPS measure. In such cases, other Members raise an STC, seeking publication of the measure and providing an adequate opportunity to offer their comments. In such cases, members also request delaying the adoption or implementation of such measures.

Third, apart from seeking clarifications, STCs also help improve the measures since TBT and SPS measures are mostly notified during the pre-enactment stage. Comments from various Members during the Committee meetings, as well as any subsequent dialogue between the Members, help identify deficiencies in the measure and possible inconsistencies with the WTO agreements, allowing the notifying Member to improve the measure, minimize the creation of trade barriers, and increase compliance with the agreements.

Fourth, one of the biggest advantages of holding regular committee meetings and raising STCs is sharing members' experiences on the development of SPS measures. Holzer notes that in the context of TBT measures, the exchange of questions and responses ensures that TBT measures are best suited to provide information to consumers and protect health and the environment, while not creating unnecessary trade barriers. Holzer pertinently points out that participation in STC discussions is a learning process for some Members, similar to participation by third parties in disputes with the DSU, as participation informs them how to 'prosecute trade conflicts'.⁹

Fifth, sometimes, during discussions, it is revealed that certain issues are relevant under other WTO agreements and require notification to other relevant WTO bodies. As a result, the same measure may be discussed in parallel with different bodies. This is often the case where there is an overlap between measures falling under the TBT agreement and the SPS agreement, which is consequently discussed in both forums. As Holzer points out, one advantage of parallel discussions is that a discussion in one committee can mitigate tension over a measure, decrease the likelihood of it being raised as an issue in other forums, and help decompress trade frictions.¹⁰

Finally, STCs help resolve trade conflicts before they become disputes under the DSU. Comparing the role of STC practice to that of 'Good Offices, Conciliation, and Mediation,' Busch and Pelc note that "given the technical subject of TBT and SPS, and since STCs are not

⁹ Mark Busch and Krzysztof Pelc, 'Dispute Settlement in the WTO', in Lisa L. Martin (ed.), *The Oxford Handbook of the Political Economy of International Trade* (OUP, 2015), at 407.

¹⁰ Holzer (n 9) 9–10.

a part of formal dispute settlement per se, perhaps they fill in where DSU Article 5 has fallen short.¹¹ In a way, committees mirror the work of Good Offices as they provide a conducive environment and logistical support to help Members negotiate productively. The process of resolving trade tensions is not only less costly than formal disputes before the Dispute Settlement Body (DSB) but also more effective. Still, it is also more expedient and certain compared to formal disputes, where, despite a decision by a panel or the appellate body, the trade dispute may not be resolved. In such cases, the time taken by the respondent may be extremely long, or in case of retaliation, the complainant, despite winning the dispute, may not have the necessary trade power to retaliate effectively.¹²

Thus, more STCs signify greater confidence in the system and the likelihood of conflict resolution. As noted above, certain factors contribute to the success of the STC system, including increasing preference among Members.

(ii) STCs help filter trade concerns and avoid the snowballing effect.

Analysis of the data on STCs and SPS disputes suggests that STCs significantly reduced the possibility of formal disputes by allowing Members to discuss issues among themselves during committee meetings.

Between January 1995 and July 2024, the STCs represented 1.6% of total SPS notifications issued. In contrast, Members filed only 54 formal complaints invoking the provisions of the SPS Agreement before the DSB. Of these 54 disputes, only 21 reached the stage of issuance of panel reports. A summary of the data is captured in **Figure 4** above.

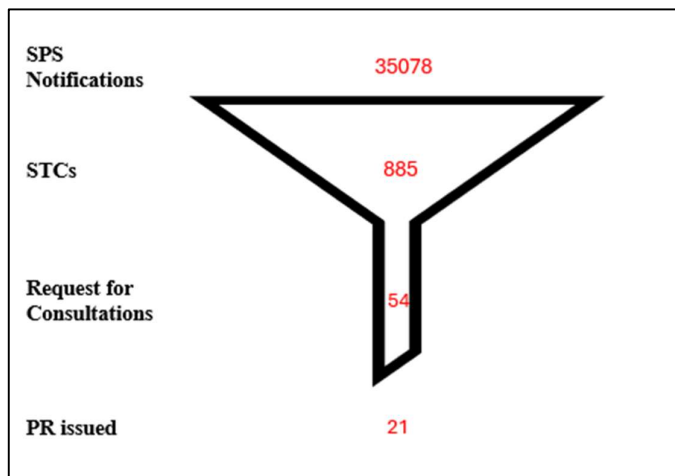


Figure 4: Analysis of SPS notifications, STCs and disputes (Data Source – WTO and ePing website).

However, not all notifications are susceptible to causing trade concerns, and only a few notification types, such as regular notifications, emergency notifications, or addendums/revisions, evoke responses from other Members.

Once an STC is raised during the committee meetings, Members make considerable efforts to amicably resolve the issues among themselves without resorting to formal disputes. The said STCs are discussed continuously during several committee meetings to resolve concerns.

¹¹ Mark Busch and Krzysztof Pelc, ‘Dispute Settlement in the WTO’, in Lisa L. Martin (ed.), *The Oxford Handbook of the Political Economy of International Trade* (OUP, 2015), at 408.

¹² Holzer (n 9) 10.

However, where Members cannot resolve the trade concern, they approach the DSB for formal dispute settlement. The filtration effect of STC is reflected by a significant gap between the number of STCs raised so far and formal disputes (in the form of consultations) before the DSB. Formal disputes (Request for Consultations) account for only 9.2% of total STCs.

The research complements a similar WTO study on the relevance of TBT STCs, which found that STCs that turn into fully-fledged disputes are scarce. In the TBT arena, out of 555 STCS (during the relevant period considered in the paper), only 20 ended up in disputes, with only 7 becoming fully-fledged disputes that ended with Panel and AB reports.¹³

The low number of formal complaints before the DSB is directly attributable to the mechanism established under the SPS Agreement and the SPS Committee's ongoing efforts to resolve members' concerns amicably. These are explained in detail below:

(a) Low proportion of disputes compared to STCs indicates STCs' positive role in reducing disputes

Members have raised 585 STCs since 1995. Most are resolved amicably and within a short period. Only a few are serious enough to be discussed over time by many Members, and they can potentially have a negative impact on international trade.

It is worth noting that while the difference between the STCs raised and trade conflicts leading to formal disputes under the DSB is a prima facie indicator of the role of STCs in mitigating trade tensions, the data in itself does not establish a clear link. It needs to be further investigated if, in the formal disputes filed before the DSB, Members raise or discuss a particular issue related to the dispute during the STC discussions. If so, any positive results were achieved.

In this regard, a methodology was developed to identify prior committee discussions as Special Trade Concerns (STCs) on issues subject to disputes before the Dispute Settlement Body (DSB). **Annex 1** provides a detailed explanation of the methodology. Based on the methodology, it was observed that out of the universe of 585 STCs and 54 formal disputes before the DSB relating to SPS measures, 558 STCs, or 95%, were not connected with formal disputes. There were 34 disputes related to issues previously discussed during committee meetings. These 34 disputes were discussed over 27 STCs, as a single STC may have multiple concerns affecting different products arising from the same SPS measure issued by a Member.

Dispute leading to at least PR	Prior STC		
	Yes	No	Total
Yes	13	8	21
No	21	12	33
Total	34	20	54

Figure 5 presents a 2x2 matrix of the results of SPS disputes with or without prior STCs raised before the SPS committee. The

Figure 5: Whether STCs lead to Panel Reports (Data Source – WTO and ePing website).

¹³ Kian Cassehgari Posada, Emmanuelle Ganne and Roberta Piermartini, 'WTO | The Role of WTO Committees through the Lens of Specific Trade Concerns Raised in the TBT Committee, Staff Working Paper ERSD-2020-09'.

results are significant and establish a link between committee discussions and their effect in formal disputes.

In 60% of the total SPS-related disputes, no panel report was issued. Similarly, in 34 disputes where prior STCs were raised and discussed, no panel reports were issued in 21 disputes. In other words, approx. 61% of disputes with prior STCs resulted in no panel reports. In such cases where a panel report was not issued, the current status of the dispute was either (i) under consultations; (ii) panel composed; (iii) panel established but not yet composed; (iv) authority for Panel lapsed; or (v) dispute were settled or terminated (withdrawn, mutually agreed solution). Of course, where a dispute is under consultation, a future panel report cannot be ruled out; however, statistical data indicate a positive correlation between STCs and the non-issuance of panel reports.

It is also worth noting that out of the 21 disputes with no panel reports, 10 remain under consultation, with only three consultation requests filed after 2021. In the remaining 11 disputes, panels were either established or composed in five disputes, while in the remaining six disputes, the complaint was either withdrawn or the parties reached a mutually agreed solution.

The Panel adjudicated¹⁴ 21 out of 54 disputes, or 39% of the total SPS-related cases. In eight of these 21 adjudicated disputes, there was no prior STC before the committee to discuss the issue. Even in these eight disputes, parties reached a mutually agreeable solution in three disputes.

(b) Continuous discussions during committee meetings have a direct and positive impact on reducing disputes.

The length of discussions during committee meetings indicates whether Members intend to discuss concerns and try to resolve them mutually.

The STC database on the WTO's ePing website provides information on the number of times Members have discussed an STC.

At the outset, it is observed that 44% of the STCs were raised only once, while 38% of the STCs were raised between two and five times. In comparison, 19% of the STCs were raised more than five times, including

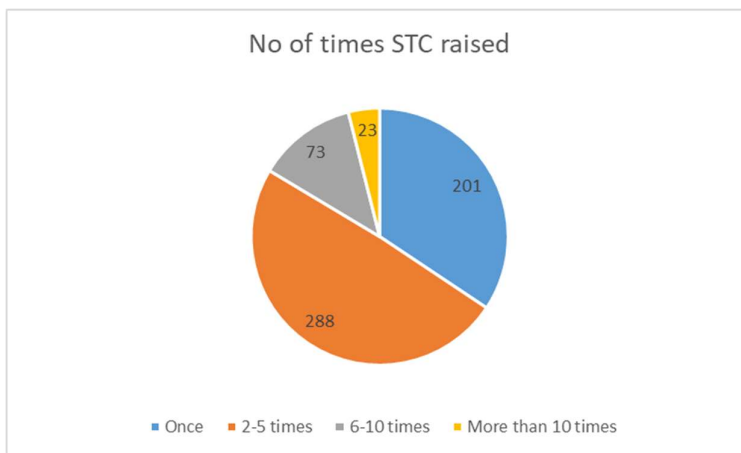


Figure 6: Number of STC discussions in SPS Committee (Data Source – WTO's ePing website).

¹⁴ Leading to at least the panel report.

5% that were raised more than ten times. Furthermore, a correlation between the number of times an STC was raised and whether the issue covered in the said STC became part of the WTO dispute throws some interesting results.

1. STCs with limited discussions act as early warning systems by detecting and resolving potential trade concerns promptly.

It is observed from **Figure 7** that STCs that were not discussed more than five times also saw significantly less conversion into formal disputes. Out of 585 SPS-related STCs raised by the Members since 1995, 489 STCs were not discussed more than five times. Of them, 201 STCs were discussed only once. Of those 489 STCs, the trade concerns raised in only 20 STCs were subject to formal disputes before the DSB, corresponding to 3.4% of total STCs.

No of times STC raised	Part of the WTO Dispute		
	Yes	No	Total
Once	4	197	201
2-5 times	16	272	288
6-10 times	6	67	73
More than 10 times	1	22	23

Figure 7: Number of times STCs raised and connection with WTO dispute (Data Source – WTO and ePing website).

Furthermore, over the past ten years, 203 STCs have been raised, of which only 4 STCs have become the subject of a formal dispute. Next, out of the 203 STCs, 73 STCs were discussed only once, and only one STC was subjected to a formal dispute.¹⁵ Further, 78 STCs were discussed between two and five times, of which only two STCs were subjected to formal dispute.¹⁶ **Figures 7 and 8** present a critical result: STCs nip in the bud any potential dispute that may arise in the absence of prior discussions among Members.

Part of WTO Dispute?	Once	2-5 times	6-10 times	More than 10 times	Grand Total
Yes	4	16	6	1	27
Prior to 2015	3	14	6	0	23
2015		1			1
2017		1			1
2020	1				1
2021				1	1
No	197	272	67	22	558
Prior to 2015	125	196	31	7	359
2015	6	9	2	3	20
2016	7	3	3	1	14
2017	7	7	1	1	16
2018	8	4	2	4	18
2019	10	5	1	1	17
2020	12	10	9	4	35

¹⁵ STC concerning Panama’s import restrictions on animal and plant products (ID 495). Also see DS 599 Panama — Import Measures (Costa Rica).

¹⁶ See DS 607 EU — Poultry Meat Preparations (Brazil) and DS524 Costa Rica — Measures Concerning the Importation of Fresh Avocados from Mexico.

2021	6	10	9	1	26
2022	6	11	9		26
2023	3	14			17
2024	7	3			10
Grand Total	201	288	73	23	585

Figure 8: Period of STC discussions since 2015 (Data Source – WTO’s ePing website).

As regards STCs with limited discussions, there are two possible reasons. First, some of the STCs were raised recently, so there could only be a very limited number of discussions. This does not appear to be a major reason, as only 27 STCs were raised and discussed, not more than five times, in the last two years. Second, the STCs may pertain to issues that (i) seek or provide clarifications on an existing measure, (ii) are under bilateral discussions, and (iii) pertain to a lack of information or supporting scientific evidence.

Figure 9 indicates the broad issues in STCs that have been raised only once since 2021. A vast majority of STCs either requested clarifications on the existing SPS measure taken by a Member or complained about delays in either the publication of relevant notifications under the SPS measure for undertaking due procedures or delays by the importing Member country in granting authorization or approval for the importation of covered products under the SPS measure. Some of the STCs also pertained to issues such as non-notification of measures, measures requiring excessive checks and due process, and instances where Members failed to share sufficient information required under a measure

Issue and status of STCs	No of STCs
Clarification on adopted measure	6
Open to engagements	1
Bilateral engagements ongoing	2
Clarification provided	3
Concerns on non-notifying measure, excessive checks requirements	1
Respond after consulting the capital	1
Delay in publication/authorization/approval process	7
Request to share information.	2
Respond after consulting the capital	1
Draft under review	2
Bilateral engagements ongoing	2
Dispute on lack of information shared between Members.	1
Clarification provided	1
Lack of opportunity to offer comments/feedback	2
No comments as no information provided beforehand	1
Bilateral engagements ongoing	1
Objections to implementation of measure	4
Open to engagements	3
Bilateral engagements ongoing	1
Request to amend measure	2
Bilateral consultations done	1
Bilateral engagements ongoing	1
Grand Total	23

Figure 9: Broad range of issues raised in STCs since 2021 (Data Source – WTO’s ePing website).

with one another, resulting in delays. Some of the STCs also raised objections to the measure's content, while others related to a lack of opportunity to offer comments or awaited feedback from the importing country on the documents and reasoning provided, which ultimately caused a delay in the exportation of the covered product. A few of such STCs are discussed below.

Regarding the status of the 23 STCs (**Figure 9**), it is observed that in most cases, either the Members are already engaged in bilateral consultations or are open to consultations or engagements with the relevant local authorities of the Members to resolve the issues. In certain other cases, Members requested the other Members raising the STCs to share more information as per the established regulations, provided clarifications on the measure taken by them, or offered no comments as they wished to either consult with their capitals or, due to lack of prior notice by the other Member regarding the STC raised by the Member.

For example, in March 2024, among the four new STCs raised, only one STC was raised only once, while the rest were discussed in the subsequent meeting. This new STC was raised once; the Republic of Korea raised an STC against the new obligations imposed by Qatar, which require attaching certificates of conformity to every shipment of processed food products exported from Korea and the Philippines. Korea submitted that there was a lack of transparency and opportunity to provide comments before implementing the measure, which increased costs for Korean exporters and could become a trade barrier. Korea hoped for bilateral consultations with Qatar on this issue. In response, Qatar took note of the concern and committed to taking up this new issue with the relevant authorities. It also expressed its willingness to engage constructively to reach a reasonable solution.¹⁷ This STC shows the effectiveness of STCs in identifying potential trade barriers and establishing early engagement to resolve the matter bilaterally.

Similarly, in 2023, three SPS committee meetings were held, during which 17 STCs were raised. Of these, 10 STCs were not featured in subsequent committee meetings. Some of these STCs pertained to delays in the publication of measures that hindered exports. For example, in two separate STCs raised against two different SPS measures taken by the United States, Argentina and Chile¹⁸ separately raised concerns against undue delay in authorizations for imports and publication of import requirements. In the STC raised by Argentina, it was submitted that there was a lack of progress towards the opening of the US market to its sweet citrus fruits since the United States did not publish the pest risk analysis ('PRA') to the public for offering comments, which was essential for finalizing the process of opening markets for Argentinian products. In this case, the United States responded that it was proceeding through its standard regulatory process, would release the draft PRA for comments, and would continue to work on Argentina's market access.¹⁹ In Chile's case, Chile raised its concerns regarding the US's undue delays in publishing import requirements for table grapes under a systems approach as an alternative to fumigation with methyl bromide. This affected its national production and

¹⁷ G/SPS/R/112, Para. 3.2 and 3.4.

¹⁸ *ibid.*, Para. 3.4 and 3.5.

¹⁹ G/SPS/R/111, Para. 3.2 and 3.3.

export chain; hence, the United States requested that import requirements be published promptly and expressed its willingness to engage in bilateral discussions. The United States stated that the final notice is under review and will keep the committee updated.²⁰

In other STCs, Members responded to queries by Members raising the STCs by stating that they had given ample opportunities to Members to respond at an earlier stage during the consultation period, and Members provided no information. For example, in an STC raised by South Africa against the European Union's regulations to prevent the introduction and spread within the European Union of *Xylella fastidiosa*. In this STC, South Africa questioned the need for *X. fastidiosa*-free countries to undertake risk-based surveys to trade with the European Union, where the pest had been recorded. Noting the high cost and resources involved in the surveys, South Africa believed that third countries could declare their pest freedom on a phytosanitary certificate. The EU recorded its disappointment and clarified its position by stating that members did not provide any prior information about this concern during the consultation period or when the European Union sent reminders.

These STCs also highlight that specific issues can be resolved bilaterally and more quickly if Members promptly share relevant information. In both cases, had timely information dissemination occurred, the need for an STC would not have arisen, let alone the issue escalating into a trade dispute.

There were other STCs in which Members sought clarification on the adopted measure or raised objections to the manner of implementation of an SPS measure. For example, Brazil questioned Thailand's suspension of poultry transit through its territory. Brazil considered the suspension unjustified, as it believed its commercial poultry to be free of highly pathogenic avian influenza. Thailand, on its part, highlighted the need for such a measure but agreed to review the suspension. Thailand also expressed its willingness to engage bilaterally with Brazil.²¹ This case again highlights the role of STCs and committees in bringing parties together to work on an issue before it could snowball into a trade dispute.

Finally, there were STCs that, while raising a concern, also acknowledged the role of bilateral engagements in resolving the ongoing issue. For example, in a trade concern raised by Mexico against Viet Nam against its delay in establishing sanitary requirements for authorizing beef imports, Mexico sought the results of the risk analysis carried out by Viet Nam's authority to enable Mexico to organize in situ inspections at the exporting establishments in Mexico. To this effect, Mexico asserted its willingness to engage in bilateral discussions with Viet Nam. Viet Nam responded that bilateral discussions were underway, and Mexico was requested to provide additional information to enable Viet Nam to review and finalize the export certificates accordingly.

It is worth noting that the above issues are not new, and a similar trend has also been observed in the past. For example, in 2002, forty-three STCs were raised, out of which eighteen were not

²⁰ *ibid.*, paras. 3.4 and 3.5.

²¹ *ibid.*, paras. 3.10 and 3.11.

subject to further discussion in subsequent meetings. In one of the STCs, Canada raised an issue regarding import licenses for agricultural products from Panama. During the committee meeting, however, Canada commented that high-level meetings with Canadian and Panamanian authorities are underway on this issue.²²

In another STC, the Philippines applied an emergency restriction on imports of fruit from China upon detection of codling moth in the imported fruits. During the committee meeting, it was clarified that upon further inspection of the imported fruit, the insect was identified as a peach fruit moth, a common pest, rather than a codling moth. Because of the mistaken identification of the pest, the Philippines lifted the quarantine ban. However, the Philippines' addendum to the notification failed to clarify this mistake, which led to confusion and resulted in unnecessary restrictions on trade with China.²³

Similarly, at the next SPS committee meeting held in June 2002, Chinese Taipei's policies regarding quarantine and non-quarantine pests came under scrutiny, with the United States expressing concern that Chinese Taipei's legislation did not adequately distinguish between quarantine and non-quarantine pests. Chinese Taipei, on its part, acknowledged the issue and stated that it arose due to inconsistencies between the Chinese and English versions of the legislation, agreeing to bring it into conformity with the standards of the IPPC.²⁴

The above cases illustrate the role of the SPS committee through its STC mechanism, which helped Members to bring to light such errors and allowed other Members to rectify the mistake, absent which the only recourse could have been to settle the issue before the DSB formally.

In other instances, the committee facilitated bilateral engagements. In one case, Switzerland referred to US import restrictions on meat and meat products following the outbreak of Bovine Spongiform Encephalopathy (BSE) in Switzerland. Switzerland submitted that it was considered a country with a low incidence of BSE in terms of the OIE International Animal Health Code. Thus, the US measure was in contradiction with international standards. The committee meeting minutes also recorded that Switzerland and the United States had useful consultations on this issue, and bilateral consultations are expected to continue, with the expectation that normal trade in meat and meat products will resume. The United States welcomed the move concerning continued consultations.

However, it is worth noting that having shorter discussions does not guarantee conflict resolution, and trade concerns may escalate into formal disputes. As mentioned, trade concerns in twenty STCs escalated into formal disputes before the DSB. Of these twenty disputes, there were adjudications in nine disputes. In the latter part of this paper, the reasons are detailed as to why certain trade concerns cannot or are incapable of being mutually resolved at the committee level.

²² G/SPS/R/26, Para. 26.

²³ *ibid.*, para. 141.

²⁴ G/SPS/R/27, Para. 33 and 34.

Despite the possibility of escalation into a formal dispute, it remains undisputed that the STCs serve as an early warning system, enabling Members to promptly engage with others by informing them about the issues and concerns arising from SPS measures. A similar study by Posada *et al.* with respect to TBT-related STCs presented a similar finding, noting that *"concerns raised in the TBT committees appear to be resolved quickly. Among the 475 resolved STCs, 82% were resolved within one year or less, meaning that after having been raised during one year or less, they have not been raised again for a period of at least 24 months."*²⁵

As the above examples illustrate, most concerns are resolved bilaterally or through effective communication by clarifying or providing additional information on the adopted SPS measure. This allows Members to be better informed about the measure and take necessary steps to comply with the requirements with the least restrictions on trade.

2. STCs with continuous and lengthy discussions lead to a better understanding and refinement of measures, resulting in lower disputes.

While most STCs are discussed briefly and are resolved promptly, there are also other measures, which are discussed for a longer duration.

It is observed (**Figure 10**) that as the number of discussions about an issue went beyond seven rounds, the propensity of the Members to file a formal dispute significantly reduced (except in three cases). This is a significant result as it confirms the hypothesis that a larger number of discussions amongst Members substantially reduces the likelihood of a formal dispute. The longer duration of STCs indicates the willingness of the Members to continuously engage in discussions to resolve their issues and avoid formal disputes. Since 1995, thirty-one STCs have been raised and discussed by Members at least ten times. Only two issues discussed in those discussions reached the dispute settlement body but are yet to be adjudicated by the Panel.

No of times STC raised	Part of WTO dispute		
	Yes	No	Grand Total
1	4	197	201
2	5	124	129
3	6	65	71
4	3	49	52
5	2	34	36
6		23	23
7	3	17	20
8	1	10	11
9	1	10	11
10	1	7	8
11	1	4	5
12		2	2
14		3	3
15		3	3
17		2	2
18		1	1
19		2	2
21		1	1
23		2	2
29		1	1
51		1	1
Grand Total	27	558	585

Figure 10: STC Discussions in numbers (Data Source – WTO and ePing website).

In addition, a unique aspect of SPS committee meetings is that relevant international organizations are also invited to take part in the committee meetings. This aspect was observed

²⁵ Posada, Ganne and Piermartini (n 15) 17.

in this particular STC, wherein the OIE also participated and shared its views on the issue, including bringing into light the adoption of a new appendix on surveillance, which allowed Members to better show their BSE status to their trading partners. The OIE recommended that Members familiarize themselves with the new standards and adopt them as a basis for their import restrictions.²⁶

In sum, the Members have met fifty-one times since the first discussion in 2004 and continue to engage to keep out dispute settlement. The discussions continue to date, and at various stages, Members have achieved a breakthrough at a bilateral level, as mentioned above. Further, it was reported by the European Union in 2021 that its issues with the Philippines, Singapore, Turkey, and Ukraine stood resolved, while in March 2024, the European Union resolved its issue with Saudi Arabia.²⁷

Similarly, the European Union's 2014 regulation on biocidal products and plant protection products led to severe opposition from nine Members, beginning with the United States, and slowly supported by another forty-one Members in subsequent meetings spanning over ten years and 27 meetings. Among other issues, the EU's legislation had specific provisions on endocrine disruptors but did not identify any scientific criteria for the identification of endocrine disruptors. Endocrine disruptors are chemicals that may mimic, block, or interfere with regular hormone activity.²⁸ Initially, the EU proposed undertaking the process, beginning with an impact assessment. As the legislation was a work in progress, the United States urged swift carrying out of the process and notifying Members of the developments.²⁹ As the EU progressed and notified other countries of the developments, other countries joined the United States in raising objections to the proposed legislation, including questioning the efficacy of banning chemicals and pesticides solely based on their endocrine-disrupting properties, as this would encourage the use of more hazardous products that do not have endocrine-disrupting properties. The Members also urged the European Union to adopt an approach that thoroughly considered the vital role that pesticide chemicals play in food safety and security.³⁰ As the European Union continued to revise its regulations, other Member States continued to offer their comments. They requested the European Union to recognize the risk-based approach followed in different countries, adhere to international standards, and keep the Committee informed of pertinent developments.

Interestingly, new criteria to identify endocrine disruptors for biocides took effect on 7 June 2018 (Delegated Regulation (EU) 2017/2100), whereas for pesticides, the criteria took effect

²⁶ Statement of OIE, G/SPS/R/37.

²⁷ [G/SPS/R/112, para. 3.179 and https://tradeconcerns.wto.org/en/stcs/details?imsId=193&domainId=SPS&searchTerm=193](https://tradeconcerns.wto.org/en/stcs/details?imsId=193&domainId=SPS&searchTerm=193)

²⁸ <https://www.niehs.nih.gov/health/topics/agents/endocrine#:~:text=Introduction,wide%20array%20of%20health%20issues>.

²⁹ Statement of the European Union and the United States, [G/SPS/R/74](#)

³⁰ Statement of the United States, [G/SPS/R/78](#)

on 10 November 2018 (Regulation (EU) 2018/605).³¹ The European Union also introduced the Delegated Regulation on classification, labelling, and packaging of chemicals in March 2023.³² Despite the application of these measures, discussions on them continue before the SPS committee. Some Members, like Peru, have questioned the Regulation's consistency with Article 5 of the SPS Agreement by arguing that a hazard-based approach could lead to establishing trade measures that were more restrictive than necessary and negatively impact food trade.³³ Other Members, like Paraguay, have focused on specific issues like France's ban on entry of fresh fruits and vegetables treated with thicloprid and not following EFSA's recommendation on import tolerances and use of Codex MRLs.³⁴ The issue remains under deliberation before the Committee.

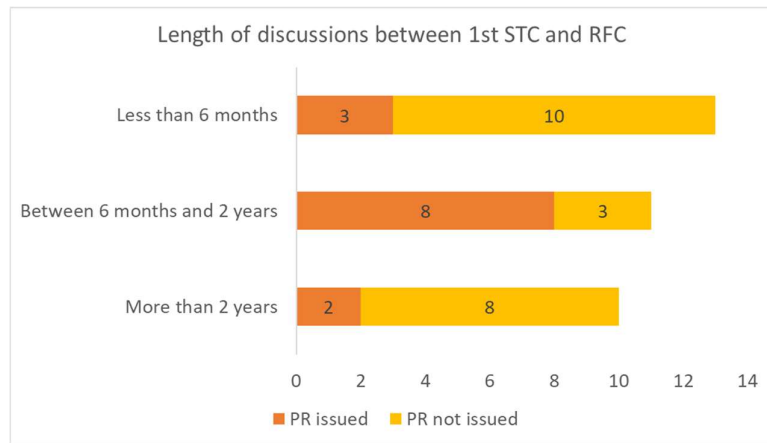


Figure 11: Length of discussions between 1st STC and Request for Consultations (Data Source – WTO and ePing website).

In both cases, Members continuously engaged in discussions over a prolonged period, addressing concerns and modifying regulations as needed to address pain points and arrive at a mutually beneficial solution, thereby avoiding a formal dispute.

3. Gap between the STC discussions and request for consultations

As discussed previously, many STCs are resolved mutually among Members without having to escalate the trade concern into a formal dispute. Nonetheless, some situations lead to a trade dispute, despite discussions among Members.

Out of 54 SPS-related disputes filed before the DSB, Members had discussions on the said issue as an STC during committee meetings in 34 disputes. Of these 34 disputes, panel reports were not issued in 21 disputes, representing 62% of such disputes or 39% of total SPS-related disputes. A further breakdown suggests that in 18 of these 21 disputes, the length of discussions in the committee meetings was either less than six months or more than two years. Only in the three remaining disputes did the length of discussions last between six months and two years.

³¹ https://health.ec.europa.eu/endocrine-disruptors/overview_en

³² https://environment.ec.europa.eu/news/sustainable-chemicals-new-rules-identify-endocrine-disruptors-and-long-lasting-chemicals-enter-force-2023-04-20_en

³³ Statement of Peru, G/SPS/R/112.

³⁴ Statement of Paraguay, G/SPS/R/112.

As a corollary, the length of discussions ranged from six months to two years in eight of the thirteen disputes (with prior STC discussion) where a panel report was issued.

There could be different reasons why relatively shorter or longer STC discussions led to disputes, but with no panel reports.

First, trade concerns beyond two years allow Members to engage continuously and work out a solution before finally resorting to a formal dispute resolution process as a last resort. This was observed in a recent dispute between the EU and South Africa concerning measures affecting the importation of citrus fruits.³⁵ In this dispute, South Africa challenged the phytosanitary requirements relating to *Thaumatotibia leucotreta* (false codling moth) on importing South African citrus fruit.³⁶ According to South Africa, black spot is a cosmetic defect, and the fruit is suitable and safe for consumption; thus, Citrus Black Spot (CBS) was considered a quarantine pest, and placing restrictions was excessively trade restrictive and without scientifically unfounded.³⁷ The import and phytosanitary requirements were made effective through a number of regulations starting in 2013.³⁸ Starting in June 2013, South Africa raised the issue at the SPS committee meeting. It informed that the issue had been ongoing since 1992 and contended that the EU measures were not scientifically justified and lacked a technical basis.

Also, the said issue was subject to IPPC's first dispute settlement procedure. The EU hoped that proceedings before the IPPC, bilateral discussions, and forthcoming scientific information would result in a solution that was agreeable to all involved.³⁹ Both the Members continued their discussions and were joined by Argentina, Zambia, and Brazil until October 2015. The said issue was not discussed again as an STC until November 2023. The reasons for the hiatus are unclear. Nonetheless, the fact that South Africa did not file a formal dispute until July 2022 reflects possible discussions with the EU counterpart for a solution.

Further, even after filing a request for consultations in July 2022, South Africa engaged with the EU during the SPS Committee meetings. In these interconnected disputes, the Panel was established recently in July 2024; hence, no panel report has yet been issued. This reflects the Committee's "alternate" outlet for discussing trade concerns and finding mutually agreeable solutions.

Second, in some cases, even though the trade concern may be under discussion for a long time, the complaining Member in the formal dispute may have joined the STC discussion at a later stage as a new/additional STC raising Member, allowing a larger/influential Member to take on the trade concern. This was the case in the dispute between the United States and Viet Nam,

³⁵ European Union (formerly EC) — Measures concerning the importation of citrus fruit from South Africa (DS613). Also see, European Union — Additional Measures Concerning the Importation of Citrus Fruit from South Africa (DS624).

³⁶ European Union (formerly EC) — Measures concerning the importation of citrus fruit from South Africa, Request for consultations, p.1.

³⁷ Briefing Document, Department of Agriculture, Forestry and Fisheries, South Africa.

³⁸ *ibid.*

³⁹ G/SPS/R/71, para. 4.15 and 4.17.

where Viet Nam challenged certain measures of the United States affecting the import, distribution, and sale of Vietnamese Pangasius (certain fish species) products purportedly because of sanitary and phytosanitary concerns. According to Viet Nam, these measures, which included uncertain inspection procedures, restrict trade and are without sufficient scientific basis. China initially raised an STC against the US in 2009 and continued its bilateral discussions during the committee meetings until October 2015. The main concern of China was the series of mandatory rules concerning the production and inspection requirements for catfish and the recognition of the domestic inspection system as equivalent to the US system.⁴⁰ Viet Nam joined China in raising an STC just twice, starting in March 2016, expressing its concerns regarding existing measures not being based on scientific evidence and being a disguised restriction on international trade. Viet Nam informed the Committee that the US had not raised any food safety concerns over the last 20 years and that a previous United States Department of Agriculture Food Safety and Inspection Service ('USDA FSIS') risk assessment report had concluded that illness from catfish was uncommon. Viet Nam also hoped that in light of the US Senate's action to pass a resolution overturning the USDA program would result in a similar action leading to the program's removal. The United States, while continuing to maintain its measures, committed to working with its trading partners to ensure a smooth transition and avoid trade disruption.⁴¹ The STC was not discussed again during the committee meetings, leading to Viet Nam filing a dispute and a formal complaint in 2018.⁴² While a formal resolution of the issue remains pending, the fact that no panel report has been issued in the dispute indicates ongoing negotiations and discussions between the two Members. This is also supported by China informing the SPS committee about its partial resolution of the STC in 2020.⁴³

Third, in certain other trade concerns, the lack of panel adjudication was more a result of affected Members bringing their procedures into compliance with the required standards and meeting the prescribed criteria. In a trade concern against the EU concerning its restrictions on poultry meat due to Salmonella detection, Brazil raised concerns in 2017 that the measure had distinct microbiological criteria for fresh meat products and poultry meat preparations. Brazil argued that the decision was unjustified, as the two products were similar, and there was an incorrect risk management and communication process.⁴⁴ The EU justified its measure, stating that it was based on scientific considerations. The EU also pointed out that all Brazilian shipments were subject to pre-export testing due to a meat fraud scandal that was detected in Brazil. Despite the pre-export testing, the prevalence of Salmonella in the meat consignments was close to 8%.⁴⁵ The EU also pointed out that, despite Brazilian authorities' attestation

⁴⁰ G/SPS/R/56, para. 21.

⁴¹ G/SPS/R/84, paras. 3.27, 3.28 and 3.30.

⁴² United States – Certain Measures Concerning Pangasius Seafood Products from Viet Nam (DS 540).

⁴³ RD/SPS/114.

⁴⁴ G/SPS/R/88, para. 3.13.

⁴⁵ *ibid.*, para. 3.14.

certifying the absence of Salmonella accompanying the consignments, the prevalence of Salmonella in poultry meat detected at the EU border was still close to 6%, which was a matter of concern.⁴⁶ The concern persisted and continued to be discussed in the SPS committee until March 2019, with the EU conducting an audit and remaining open to bilateral discussions. Though Brazil filed a formal dispute in 2021, the dispute remains in consultations to date.⁴⁷ There are no recorded reasons for the same. Nonetheless, recent news reports suggest that the EU (and the UK in parallel) recently concluded their audits, indicating a significant improvement in testing procedures in Brazil and compliance with previous audit recommendations.⁴⁸ This recent event may explain the impasse at the WTO adjudication stage and is a sign of a mutually agreed-upon outcome that the Members are trying to achieve.

Fourth, in some instances, the dispute arose due to partial or no update on the questions posed as part of the STC. The formal request for consultations prompted the concerned Member to address the trade concern raised and resolve the issue. This was observed in a trade concern raised by Hungary against Turkey's ban on pet food imports. In this trade concern, Turkey banned the importation of pet food from all the EU countries due to the BSE epidemic. Hungary contended that it was a BSE-free country and that the ban was unjustified.⁴⁹ The ban on importation remained in place despite Hungary's compliance with the Turkish authority's explanation for the ban. Hungary also requested an explanation of the scientific justification for the ban, where the Turkish regulation was published, whether it was notified to the WTO, and whether the Turkish suppliers were treated identically to the foreign suppliers. Hungary was joined by the US and the EU. In response, Turkey stated that the issue may have arisen due to missing laboratory reports and confirmed that no ban was in force. Turkey requested the report and assured us that the importation procedures would be completed.⁵⁰ Despite the assurances, Turkey did not formally respond to Hungary's requests, forcing Hungary to file a formal consultation request in 2002, in the hope of finding an amicable solution.

Interestingly and pertinently, after the consultation request, Turkey informed us that it had lifted its import ban and resolved the issue with Hungary.⁵¹ While the official status of the DSU consultations is still pending, the underlying trade concern has been notified as "resolved", implying that the parties to the dispute could mutually settle their trade concerns without forcing an adjudication. This trade concern or dispute perfectly illustrates the role of committees in resolving a potential trade dispute in a mutually amicable manner.

⁴⁶ G/SPS/R/92/Rev.1, para. 4.58.

⁴⁷ EU – Poultry Meat Preparations (Brazil) (DS 607).

⁴⁸ <https://www.foodsafetynews.com/2024/06/eu-finds-big-improvement-in-brazils-poultry-meat-controls/> and <https://www.gov.uk/government/publications/enhanced-controls-for-beef-poultry-meat-and-poultry-meat-products-from-brazil/audit-report-enhanced-controls-for-beef-poultry-meat-and-poultry-meat-products-from-brazil>

⁴⁹ G/SPS/R/27, para. 129-130.

⁵⁰ G/SPS/GEN/204/Rev/4, para. 463 and 464.

⁵¹ G/SPS/R/34, para. 57.

Fifth, in some cases, discussions on STCs continue after a formal request for consultations has been filed, as Members seek to discuss and resolve the issues. Regarding STC discussions after the filing of a request for consultations, there are no restrictions on Members to discuss them, even after initiating formal disputes under the DSB. In 18 out of 34 SPS disputes, STC discussions were initiated on the same issue as the formal dispute. Of these, in 12 SPS disputes, no panel report was issued. Again, some of the disputes are recent and may see an adjudication later, but in other cases, considerable time has elapsed, and the likelihood of a panel report is negligible.

Time between the last STC and Request for Consultations (RFC)	No Panel Report issued	Panel Report issued
No discussions post RFC	9	7
Less than 6 months	2	1
Between 6 months and 2 years	5	4
More than 2 years	5	1
Grand Total	21	13

Figure 12: Breakdown of time between last STC and RFC vs issuance of Panel Reports (Data Source – WTO and ePing website).

For example, in one of the first SPS trade concerns raised, the US questioned the import clearance measures and practices of South Korea⁵², along with its shelf-life practices⁵³ in June 1995. Interestingly, the US challenged the shelf-life practice before the DSB before taking up the STC.⁵⁴ Both Members reached a mutually agreed solution to settle the issue by the next committee meeting and informed the Committee of the same.⁵⁵ Nonetheless, the US continued to express its concern about the implementation of the settlement by Korea, while Korea confirmed that bottled water was excluded from the US-Korea settlement.⁵⁶ In the meantime, the US also supported similar trade concerns raised by other Members against Korea's SPS measures, including Canada, who filed a similar dispute against the same issue (specifically concerning bottled water) concurrently with STC raised in November 1995.⁵⁷ Interestingly, the Members continued to report the status of consultations before the DSB in the committee meetings. The report informed of the discussions that took place between the two Members and the current status of the issues.⁵⁸ The US acknowledged the SPS committee's important role in addressing and resolving trade issues.⁵⁹ In July 2001, the US informed the Committee that its trade concern with Korea had been resolved.⁶⁰

⁵² Republic of Korea - Import clearance measures and practices (ID 2).

⁵³ Republic of Korea - Shelf-life requirements (ID 1).

⁵⁴ Korea – Measures Concerning the Shelf-Life of Products (DS 5), Request for Consultations dated 3 May 1995.

⁵⁵ G/SPS/R/2, para. 39 and 40.

⁵⁶ G/SPS/R/3, para. 7 and 8.

⁵⁷ *ibid.*

⁵⁸ G/SPS/R/8, para. 77.

⁵⁹ G/SPS/R/22, para. 127.

⁶⁰ G/SPS/GEN/265, para. 17.

Likewise, the US also raised other trade concerns on import clearance practices as a dispute before the DSB.⁶¹ In response to US concerns, Korea has noted that it is working on bringing its SPS practices in line with the SPS Agreement. Korea noted that many of the difficulties faced by Members were common to developing countries and that Korea, cognizant of this fact, will continue to streamline its practices.⁶² While the US continued to raise concerns and simultaneously take it up during bilateral consultations, Korea continued to reform its measures to conform with the SPS Agreement until the issue was completely resolved between the two countries. The US acknowledged Korea's work and commended the SPS committee's role as a useful forum to address and resolve trade issues.⁶³

In conclusion, the continuous nature of the committee meetings ensures that trade concerns are discussed among members continuously to resolve the concerns. There is a strong correlation between STC (pre-dispute and post-dispute STCs) discussions during committee meetings and resolution of concerns leading to no panel reports issued by the DSB, which indicates STCs' active and positive role in dispute resolution.

(iii) Committee work allows for larger participation among countries making Members more accountable.

As discussed previously, three sets of Member participants are present during an SPS Committee meeting. Member/s raising an STC, Member/s responding to an STC, and Member/s supporting an STC raised by other Members. Member/s raising an STC can vary from an individual Member to multiple Members joining together at the start of an STC or joining a particular STC later. As **Figure 15** below indicates, Member/s raising an STC varied between one and 12 Members.

In an overwhelming majority of 486 trade concerns, the concerns were discussed bilaterally between two Members, and other countries did not engage or participate as either raising Members or responding Members (**Figure 14**). This includes 316 STCs with no supporting Members in a bilateral trade concern.

Responding to Concerns	Raising Concerns	
	Single Member	Multiple Members
Single Members	486	71
Multiple Members	21	7

Figure 13: STCs raised by Members vs response by Members (Data Source – WTO's ePing website).

Members Responding to STCs	Members raising STCs		
	1	2	Grand Total
1	316	10	326
2	5		5
3	4		4
4	2		2
6	1		1
8	1		1
Grand Total	329	10	339

Figure 14: Members raising and responding to STCs with No Support from other Members (Data Source – WTO's ePing website).

⁶¹ Korea – Measures Concerning the Testing and Inspection of Agricultural Products (DS 3).

⁶² G/SPS/R/5, para. 4 and 5.

⁶³ G/SPS/GEN/265, para. 17.

Regarding bilateral trade concerns, a correlation between STCs and formal disputes reveals that as many as 19 formal disputes arose from bilateral trade concerns, with or without support from other Members. This accounts for 36% of total SPS disputes and nearly 58% of disputes involving prior STCs.

Only seven formal disputes arose in the remaining 71 STCs, where multiple Members raised an STC against a single Member. A panel report was issued in only two of these seven disputes.⁶⁴ Thus, an inference can be drawn that participation by a larger pool of Members increases the likelihood of lower formal disputes and adjudication.

Apart from the above bilateral trade concerns or trade concerns directed against only one Member, there were also a number of trade concerns where single or multiple Members raised an STC against numerous Members. **Figure 13** provides a matrix showing the various combinations of Members raising and responding to STCs. This pattern was typically observed in cases where a single measure could potentially have a negative impact on broader international trade, as opposed to bilateral trade. There were 28 such trade concerns, with the number of responding Members going as high as 20. Interestingly, out of these 28 trade concerns, only one trade concern escalated into a formal trade dispute, which is yet to be adjudicated. Most likely, the contesting Members continued to engage with each other since (a) the issue was taken up during the SPS Committee meetings even 188 days subsequent to the filing of the consultation request, and (b) the status of the STC has been marked as 'resolved'.

Members Responding to STCs	Members raising STCs										Grand Total
	1	2	3	4	5	6	8	9	10	12	
1	486	49	9	2	5	2	1	1	1	1	557
2	10	2									12
3	5										5
4	2										2
5	1										1
6	2	1									3
7				1				1			2
8	1										1
12		1									1
20		1									1
Grand Total	507	54	9	3	5	2	1	2	1	1	585

Figure 15: Members raising STCs vs Members responding to STCs (Data Source – WTO's ePing website).

⁶⁴ Costa Rica — Measures Concerning the Importation of Fresh Avocados from Mexico (DS 524) and European Union (formerly EC) — Measures Affecting the Approval and Marketing of Biotech Products (DS 293).

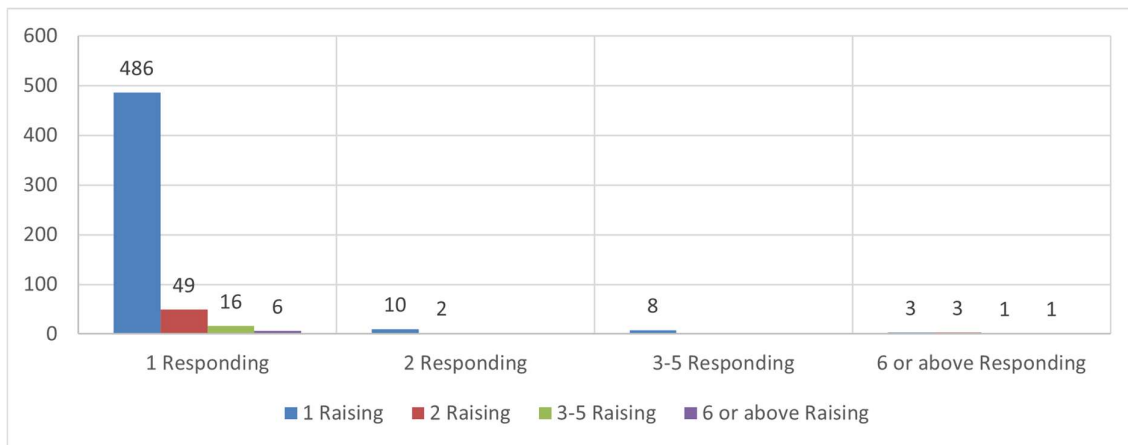


Figure 16: Members raising STCs v Members responding to STCs (Data Source – WTO’s ePing website).

Prima facie, it appears that as the number of raising or responding Members increases, the number of STCs decreases (Figure 16). For example, in 71 STCs, more than one Member raised an STC against a particular Member notifying an SPS measure. In some instances, as many as 12 Members raised an STC against a single Member, while raising an STC against a single Member by ten, nine, or eight Members was rare but occurred. Nonetheless, merely because a smaller number of STCs are raised or responded to by a large number of Members does not mean a lower level of participation among Members. In cases where a large number of Members raised a single STC, they were supported by an even larger number of other Members (Figure 17).

Members supporting STCs	Members raising STCs										
	1	2	3	4	5	6	8	9	10	12	Grand Total
0	329	10									339
1	81	6	1					1			89
2	37	7									44
3	28	7									35
4	12	6	3								21
5	4	5	2		1						12
6	4	1		1							6
7	3	5									8
8	2	1		2							5
9	2					1					3
10	1	2									3
11	2	1									3
12	1		1		2						4
13		2	1								3
14					1		1				2
15		1									1
16	1									1	2
18					1	1					2

23			1								1
27									1		1
50								1			1
Grand Total	507	54	9	3	5	2	1	2	1	1	585

Figure 17: Members raising and supporting STCs (Data Source – WTO's ePing website).

For example, the EU's regulation on prescribing maximum levels of aflatoxins in foodstuffs⁶⁵ was taken up as a trade concern by as many as ten⁶⁶ Members and supported by six other Members starting in 1998. Members were concerned that the EC's (now the EU) proposed measure was unlikely to reduce health risk to EC consumers significantly, but could impose severe restrictions on trade. Members further pointed out that a proposal for more stringent levels than the current international standards was not based on a proper risk assessment considering available scientific evidence.⁶⁷ The said STC was discussed thirteen times, lasting over five years until 2003. During this period, the number of Members raising the STC rose to twelve, while the number of supporters increased to sixteen. The trade concern was eventually marked as "resolved," and none of the Members filed a formal complaint against the SPS regulation.

Similarly, in another SPS measure taken by the EU concerning MRLs for certain substances, namely, buprofezin, diflubenzuron, ethoxysulfuron, ioxynil, molinate, picoxystrobin and tepraloxydim, Colombia and India raised an STC for the first time in November 2018 contending that the EU should take into account existing Codex and other country MRLs and that the EU's regulation. The said fourteen Members supported STC. However, as the discussions progressed in the subsequent committee meetings, more countries joined the discussion, with eight more Members raising concerns and thirteen Members supporting the trade concerns on similar substances covered by the EU's regulation. Again, the said STC (tagged with other similar STCs) continues to date despite being discussed seventeen times. The status of the resolution remains 'unresolved' and Members have refrained from bringing up a legal challenge before the DSB.

Perhaps one of the longest-standing SPS trade concerns relates to the EU's 2014 regulation on endocrine disruptors, specifically biocidal products and plant protection products, which was raised as a trade concern by the United States (see discussion above in part 5.3.3.2) in March 2015. Among other issues, the EU's legislation had specific provisions on endocrine disruptors but did not identify any scientific criteria for the identification of endocrine disruptors. During the subsequent meetings, more Members joined the trade concern, which eventually saw nine Members raising a trade concern and as many as fifty Members supporting the trade concerns. This concern remains ongoing, and Members have refrained from filing a formal dispute. Apart

⁶⁵ European Union - Maximum levels for certain contaminants (aflatoxins) in foodstuffs (ID 39).

⁶⁶ STC raised for the first time in 1998 by Argentina, Australia, Brazil, The Gambia, India, Indonesia, Malaysia, Philippines, Senegal, and Thailand, and cross-supported by Brazil, Canada, Colombia, South Africa, Turkey, the United States, and Uruguay.

⁶⁷ G/SPS/R/10 dated 30 April 1998, para. 25.

from having a large participation in this trade concern, perhaps the biggest achievement was the participation of twelve LDCs⁶⁸, which otherwise have a dismal participation record in trade concerns.

The non-filing of a formal dispute in the above trade concerns can be attributed to the fact that raising and discussing STCs among Members encourages accountability amongst Members by introducing an SPS measure. Since SPS (also TBT) measures must be notified at the draft stage, Members have an opportunity to discuss potential issues affecting international trade. This process, in turn, makes such Members more circumspect while proposing or enacting a final regulation and promotes more transparency. The research complements a recent WTO working paper by Posada *et al*, which showed that *the prevalence of monitoring issues in STCs indicates that the STC mechanism plays an important role in making Members more accountable for their trade measures, which further leads Members to design, adopt and implement less trade-restrictive measures by taking into account comments and concerns of their trading partners*.⁶⁹

For example, in the trade concern pertaining to endocrine disruptors, discussions at the SPS meetings led to an extensive assessment by the EU. For example, after the first time the United States raised the STC, other Members took note of it, and as many as 16 Members came forward in the second meeting. Even though they echoed the concerns of the United States regarding the socio-economic effects that the measure would have on the respective countries, the multiplicity of the shared sentiment led the EU to examine the concerns more thoroughly. As the EU responded to the concerns, it was "in the process of conducting a full impact assessment, where all health, environmental and socio-economic aspects, including impacts on international trade, would be addressed."⁷⁰ The EU further pointed out that it held public consultations and received over 27,000 responses, which will be taken into account. The EU informed us of parallel studies to support the impact assessment, which would help identify substances subject to study and their subsequent impacts on health, environment, trade, agriculture, and socio-economic effects.⁷¹ In the subsequent meetings, more Members raised pertinent issues. For example, Argentina "raised its concern with the EU revised proposal for categorization of compounds as endocrine disruptors, both on defining criteria for identifying endocrine disruptors and on the future EU approach to establishing MRLs and import tolerances for said substances"⁷² and urged the EU to adopt a risk-based rather than a hazard-based approach.

Similarly, China urged the EU to incorporate actual exposure in its regulations and apply existing Codex standards to minimize trade impacts.⁷³ In response, the EU clarified its roadmap, including the approaches it is adopting to identify criteria and regulatory measures, as well as

⁶⁸ Benin; Burkina Faso; Burundi; Central African Republic; The Gambia; Guinea; Madagascar; Mozambique; Senegal; Sierra Leone; Togo; Zambia.

⁶⁹ Posada, Ganne and Piermartini (n 15) 14.

⁷⁰ G/SPS/R/78, para 3.22.

⁷¹ *ibid*.

⁷² G/SPS/R/82, para 3.15.

⁷³ *ibid*, para. 3.16.

the measures it is considering introducing in draft form, and provided adequate opportunities for Members to offer their comments.⁷⁴ In June 2016, the EU informed its proposal to adjust the derogations for plant protection products based on scientific evidence, including information on hazard, exposure, and risk, to make informed decisions on endocrine disruptors in compliance with international obligations.⁷⁵ Finally, as the SPS regulation took shape, the EU communicated its "latest state of play" and informed about the development of a new version of draft criteria for plant protection products, which was under the scrutiny of the European Parliament. The EU also took note of comments from other Members on the guidance document issued by the EU, along with other issues, such as import tolerance requests, which were being taken into consideration. Although discussions in the committee meetings continue regarding this trade concern, the EU has regularly revised its regulations and ensured that issues raised by other Members are duly considered and addressed wherever possible. In other words, the EU was held accountable for each step of the legislation, and the discussions during committee meetings ensured that the Members' concerns were duly noted. It would not be wrong to infer that the open and transparent channel during committee meetings enabled the EU to be more accountable, allowing for back-and-forth on issues and clarifications, and ultimately leading to the avoidance of a formal dispute process.

In sum, an analysis of trade concerns raised, responded to, and supported by Members indicates that, compared to trade concerns discussed bilaterally, a larger participation among Members contributes effectively to reducing disputes by providing a conduit for Members to come together and find a resolution to common trade concerns.

(iv) Status of resolution of STCs

As mentioned earlier, 585 STCs have been raised regarding the SPS measures taken by Members. Many STCs are discussed over a considerable period, either continuously or sporadically, with gaps in between. Thus, it can be not easy to ascertain if the Members have resolved a certain STC or if the concerns persist. Starting in 2000, the SPS committee requested that members report whether a particular STC had been resolved, partially resolved, or remained unresolved. The request is optional, meaning it is voluntary for Members to report on the status of STCs.

Nonetheless, as a result of the SPS committee's relentless pursuit, the Members have started to report on the status of the STCs. The SPS Committee's latest annual overview on the implementation of SPS transparency and STC, issued in 2024, indicates that 311 STCs, amounting to 54% of the total STCs, have been reported as resolved or partially resolved by Members since 1995.⁷⁶ In other words, and simply put, more than half of potential trade disputes revolving around SPS disputes have been mutually resolved among Members.

⁷⁴ *ibid*, para. 3.20.

⁷⁵ G/SPS/R/83, para 3.10.

⁷⁶ G/SPS/GEN/204/Rev.24, para. 1.8.

Nonetheless, despite the complete or partial resolution of STCs, trade concerns may still turn into a formal dispute and even lead to a panel adjudication. It is important to note that a single STC can correspond to multiple disputes; hence, the number of STCs may be lower than the number of corresponding disputes. For example, an STC against the EU on traceability and labelling of genetically modified organisms and food and feed is linked to three separate formal disputes filed by Argentina, Canada, and the US.⁷⁷ Similarly, the Philippines raised an STC regarding restrictions on the import of tropical fresh fruits imposed by Australia. The issues in the said STC became part of two formal disputes, namely Australia — Certain Measures Affecting the Importation of Fresh Pineapple (DS 271) and Australia — Certain Measures Affecting the Importation of Fresh Fruit and Vegetables (DS 270).

A total of 33 SPS disputes had issues raised as part of STCs by Members.

Figure 18 shows that out of the said 33 disputes, 15 disputes related to STCs were fully resolved, while two disputes related to STCs were partially resolved.

In the remaining 16 disputes, the status of the corresponding STCs was unreported. Thus, of the 17 disputes with

connected STCs whose status is known, no panel report was issued in 70.5% of such disputes.

In an ideal scenario, there should not be any panel adjudication once Members have resolved the trade concerns. Nonetheless, five disputes with either complete or partial resolution of corresponding STCs were adjudicated, and a panel report was issued. A summary of the said five disputes is given below:

Status of STCs	Panel Report Issued?		
	No	Yes	Grand Total
Resolved	11	4	15
Partially Resolved	1	1	2
Not Reported	8	8	16
Grand Total	20	13	33

Figure 18: Status of STCs forming part of a dispute (Data Source – WTO’s ePing website).

DS No	Current Status	Status Of STC
DS 447 United States - Animals	Report(S) Adopted, With Recommendation To Bring Measure(S) Into Conformity	Partially Resolved
DS 391 Korea - Bovine Meat (Canada)	Settled Or Terminated (Withdrawn, Mutually Agreed Solution)	Resolved
DS 367 Australia - Apples	Implementation Notified By Respondent	Resolved
DS 245 Japan - Apples	Mutually Acceptable Solution On Implementation Notified	Resolved
DS 18 Australia - Salmon	Mutually Acceptable Solution On Implementation Notified	Resolved

In all the above disputes except Australia — Measures Affecting Importation of Salmon, a request for consultations was filed after raising the STC before the SPS committee. Furthermore, except for the Australia — Measures Affecting Importation of Salmon and Japan

⁷⁷ STC relating to European Union - Traceability and labelling of genetically modified organisms and food and feed (ID 117), was linked to DS292 European Union (formerly EC) — Measures Affecting the Approval and Marketing of Biotech Products.

— Measures Affecting the Importation of Apple disputes, Members did not discuss the trade concern after filing the request for consultations. Given the fact that there was limited discussion at the committee or bilateral level, the only other reason for marking the status of the STC as resolved or partially resolved could be to inform the committee of the implementation of the recommendation of the Panel or the Appellate Body, which resulted in a mutually agreed solution among the parties to the dispute.

Limitations to the analysis

Certain limitations to the above findings exist. First, in 60% of SPS disputes (12 out of 20 cases) no panel report was issued where STCs were not raised, which is similar to cases where STC was raised (20 out of 33 cases). Thus, an STC is not a panacea for stopping formal disputes. Several factors may contribute to irreconcilable differences and eventual formal disputes before the DSB.

First, many disputes before the DSB are politically charged, where Members act in their national interest or are backed by public interest considerations. In such cases, it is difficult for committees or diplomats to come together and resolve issues informally or at the committee level. Further, in *EC-Asbestos*, high awareness of health risks associated with asbestos excluded the possibility that the subject Member would have conceded to the requests of concerned Members about a less restrictive measure.^{78,79} Similarly, in *EC-Seal Products*, *EC-Biotech*, and *US-Clove Cigarettes*, formal disputes were raised by Members given strong support from the public of the subject Member.⁸⁰

Second, situations where measures trigger legal issues under several WTO agreements and thus, STCs that end up before the DSB may not necessarily be a sign of failure of STC discussions, like in the case of *Australia-Tobacco Plain Packaging* where a major claim in the dispute pertained to violations of intellectual property rights, apart from violation of TBT provisions.⁸¹

Third, non-exploitation of STC discussions was observed in *US-Tuna II*, where an eight-year gap existed between the STC discussions and the initiation of a formal dispute. Had STCs been used more with increasing awareness, a dispute resolution case could have been made out.⁸²

Fourth, the paper is heavily based on information from the STC and SPS notification database, along with SPS Committee minutes, reports, and various notifications issued by the Committee from time to time. This information is invaluable in drawing inferences and establishing a causal link between the role of the SPS Committee and dispute resolution before the DSB. Nonetheless, there are limited resources for establishing a direct link between the role of committees in resolving trade disputes. Further research on this aspect will be necessary, based

⁷⁸ Holzer (n 9).

⁷⁹ *ibid* 15.

⁸⁰ *ibid*.

⁸¹ *ibid* 16.

⁸² *ibid*.

on a comprehensive study of disputes and the underlying reasons for these disputes. This will require an in-depth analysis of the dispute records and discussions with the parties concerned to determine whether the dispute topic was addressed bilaterally or within the Committee.

Fifth, the paper relies heavily on existing resources, primarily those published by the WTO Secretariat. As a result, the opinions of the Members are hardly reflected except in the official statements contained in the committee meeting minutes. This opens up another area for further research to understand the behaviour of Member countries in their bilateral interactions outside WTO meetings. Members and delegates can be interviewed, and a survey can be conducted to establish how different Members feel about the work of the SPS Committee and what else can be done from a Member's perspective to improve the system.

Sixth, while the Members have begun to notify their measures and raise concerns more proactively than ever, a lack of notifications or reporting obligations can skew the results. Limited information about the effective resolution of STCs remains a stumbling block in understanding the precise effect of STCs. Members may not be specific or may not want to report a trade concern as "resolved", which only elongates an issue.

Seventh, STCs are dynamic; at subsequent committee meetings, the same STC may include new issues relating to the same measure. For example, an STC may start with the non-availability of translated or other domestic regulations and evolve into a technical discussion on compliance with the SPS Agreement. Thus, an STC may not be a 'dispute' where both parties disagree on specific facts or application of law but may convert into one later.

Eighth, some STCs may remain dormant and resurface later when a new issue arises. As a result, while there remains a possibility that the ratio of disputes to STCs may be understated due to a higher base of STCs, it will require further intensive research to cull out STCs that are entirely 'harmless' and will never have the potential to become a trade dispute.

Finally, this paper opens up research into other committees and whether similar tools and mechanisms could be developed similar to those devised and operated by the SPS Committee. Indeed, many committees have distinct ways of conducting business, bringing Members to the discussion table, and adhering to transparency mechanisms. Some notification requirements were ex ante, while others were ex post. Furthermore, not all committees have the option to implement a Specific Trade Concerns (STC) mechanism, as is available in the TBT and SPS disciplines, due to the unique nature of the notification procedures, which begin with draft measure notification. Hence, applying the STC methods remains difficult. Nonetheless, other unique practices of various committees also play a part in resolving issues to the maximum extent possible. It is worth exploring how committees in other disciplines help achieve conflict resolution.

Despite the above limitations, the analysis of available data suggests that the committees, through the STC mechanism, play a crucial role in helping Members achieve breakthroughs through continuous engagement, thereby assisting in dispute resolution.

Conclusion

The paper builds on previous literature on various topics related to the work of committees and applies the previous work to the work of the SPS Committee, especially looking at the role of STCs.

The research finds that non-use or unsuccessful bilateral discussions can lead to Members raising a trade concern before the SPS Committee meeting, which allows Members to discuss the trade issues more openly and allows other Members to share their views. STCs act as filters, preventing every possible trade issue from escalating into a full-blown dispute and providing a channel for Members to resolve their issues mutually.

The use of the STC mechanism led to large and diverse participation among Members in discussing notifications issued by other Members. There has been consistent use of STCs since 1995, with 66 Members raising at least one STC. Second, the STCs were also found to help resolve trade disputes, with STCs representing a mere 1.6% of total SPS notifications, and Requests for Consultations accounting for 9% of total STCs. It was also observed that eight out of twenty-one disputes where panel reports were issued did not have prior STCs. On the flip side, in 20 out of 32 disputes where panel reports were not issued, there were prior STCs. Third, continuous discussions during the committee meetings (whether prior to or post-filing requests for consultations) led to a reduction in disputes. While in some cases, STCs acted as 'early warning systems' to allow Members to revisit their measures, in other cases, prolonged discussions also led to significant back-and-forth, resulting in continuous improvement and a better understanding of the SPS regulation, which in turn facilitated the diffusion of potential trade concerns. Finally, discussions during committee meetings made Members more responsible and cautious about their measures, reducing the inclusion of SPS Agreement-inconsistent measures. Apart from one-to-one STCs, there were many STCs where a large number of Members participated, either as a raising Member, a responding Member, or as a supporting Member.

Despite an overwhelming contribution of the STCs, it is observed that LDCs do not participate in the proceedings, either as raising or responding Members. Perhaps more capacity-building exercises are required to help Members use the STC mechanism. Second, there is a tendency among Members not to refrain from discussing an issue as soon as the issue reaches the DSB, which hinders discussions at the committee level. Members must be encouraged to use the Committee meetings to resolve the problems before pursuing a formal dispute.

Using STCs as an alternative to litigation encourages Members to pursue a dialogue-based method to achieve a long-lasting, mutually agreed-upon, and beneficial solution.

To conclude, a crown does not need to have just one jewel. While the DSB at its prime was indeed the most shining jewel in the crown, given the behind-the-scene, round-the-clock work of the committees, like the SPS Committee, that not only helps in keeping a check on potential trade concerns becoming a dispute but also strengthens the discipline, it is perhaps time to recognize and celebrate the other hidden gems.

Annex-1: Methodology adopted for linking STCs with the formal disputes before the DSB.

Steps	Methodology
<p>Step 1 – Creation of STC database ("STC Database")</p>	<p>From the ePing website, a database of all STCs was downloaded (as of 31 July, 2024), which contained information relating to –</p> <ul style="list-style-type: none"> (i) IMS ID – specific ID for a STC (ii) Title of STC, indicating the product/measure involved. (iii) Member(s) raising STC. (iv) Member(s) responding to STC. (v) Date when the first STC and the last STC were raised. (vi) Number of times STC was raised. <p>In addition, the following information was populated:</p> <ul style="list-style-type: none"> (vii) Whether a single Member or multiple Members raised the STC (viii) Whether a single Member or multiple Members responded to the STC (ix) Duration of STCs (in days and years) and assigning a range (in terms of years) (x) Number of Members raising a particular STC (xi) Number of Members responding to a particular STC
<p>Step 2 – Creation of SPS Disputes database ("Disputes Database")</p>	<p>Based on information available in WTO's website, a database was created, comprising of all disputes where one of the violations related to SPS Agreement provisions violation was alleged. The database was populated with the following information:</p> <ul style="list-style-type: none"> (i) Complainant (ii) Respondent (iii) Dispute number and short title (iv) Consultation date (v) Current status of the dispute (vi) Whether the dispute lead to at least the panel report issuance stage? This was checked by reviewing the current status of each dispute as provided in the WTO website.
<p>Step 3 – Identification of STCs in formal Disputes</p>	<p>To identify whether an STC discussion took place in respect of a dispute before the DSB, the following procedure was applied:</p> <p>As a first step, the complainant and the respondent in the Disputes Database were correlated with the Members raising and responding to the STC respectively (from the STC Database). It is assumed that the Members parties to the STCs would also be parties to the formal dispute.</p> <p>Second, having identified the parties, a comparison of short title of the dispute was made with the title of STC and filtered for Members raising and responding to STCs. If there was a perfect single match, the Disputes</p>

	<p>Database was annotated with "Yes" in the "Prior STC" column and the corresponding IMS ID was recorded.</p> <p>Third, if the issue raised in an STC could not be identified solely based on the short title of the dispute or where there was more than one match, the underlying measure at issue identified in the request for consultation, was identified. This underlying measure was then compared with the concerned measure of the STC. Measure discussed in an STC was identified based on (i) references made in the minutes of the Committee Meetings and (ii) measures identified in the approximate corresponding SPS notifications. To determine the precise SPS Committee minutes of the meeting, a comparison of the date of the consultation request was compared with the nearest STC date when the complainant and respondent were involved in an STC. If the concerned measure as noted in the request for consultations was also identified and discussed in the Committee minutes of meetings by the same complainant and respondent, the Disputes Database was annotated with "Yes" in the "Prior STC" column and the corresponding IMS ID was recorded.</p> <p>If based on the above, a measure could not be identified in the STC database, it was assumed that there was no prior STC, and the Disputes Database was accordingly annotated with a "No" in the "Prior STC" column.</p>
<p>Step 4 – Identifying relevant information on STCs in the Disputes Database and STC database</p>	<p>Once the STCs were linked with disputes in Step 3 above, following information was populated:</p> <p>(a) In the Disputes Database:</p> <ul style="list-style-type: none"> • Extracting the date when the first STC and the last STC was raised from the STC database. • Difference (in days) between the first STC and request for consultations • Difference (in days) between the last STC and request for consultations <p>(b) In the STC Database:</p> <ul style="list-style-type: none"> • Based on STC and disputes linkage created in the Disputes Database, the STC database was linked with the dispute number, if a particular STC was part of the dispute. This was based on correlating the IMS ID in the STC database and IMS ID linked through Step 3 above.