



REPORT ON MARKET ACCESS STRATEGIES: NON-LITIGIOUS WTO DISPUTE SETTLEMENT MECHANISMS

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NON-LITIGIOUS WTO DISPUTE SETTLEMENT MECHANISMS

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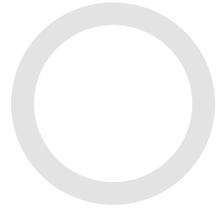
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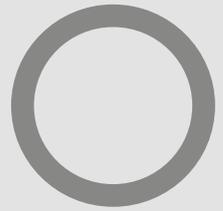


INTRODUÇÃO E SUMÁRIO EXECUTIVO	7
INTRODUCTION AND EXECUTIVE SUMMARY	15
AUSTRALIA	23
A. Introduction and Overview	25
B. STCs Raised in the SPS Committee	25
C. STCs Raised in the TBT Committee	29
D. STCs Raised in the SCM Committee	34
BRAZIL	37
A. Introduction and Overview	39
B. STCs Raised in the SPS Committee	39
C. STCs Raised in the TBT Committee	44
D. STCs Raised in the SCM Committee	49
EUROPEAN UNION	53
A. Introduction and Overview	55
B. STCs Raised in the SPS Committee	56
C. STCs Raised in the TBT Committee	63
D. STCs Raised in the SCM Committee	68
INDIA	73
A. Introduction and Overview	75
B. STCs raised in the SPS Committee	75
C. STCs Raised in the TBT Committee	79
D. STCs Raised in the SCM Committee	82

MEXICO	83
A. Introduction	85
B. STCs Raised in the SPS Committee	85
C. STCs Raised in the TBT Committee	88
D. STCs Raised in the SCM Committee	96

UNITED STATES	99
A. Introduction	101
B. STCs Raised in the SPS Committee	101
C. STCs Raised in the TBT Committee	103
D. STCs raised in the SCM Committee	104

INTRODUÇÃO E SUMÁRIO EXECUTIVO



A Confederação Nacional da Indústria (CNI) e a Steptoe & Johnson LLP (Steptoe) têm o prazer de apresentar este relatório sobre o uso de mecanismos não litigiosos para a solução de controvérsias nos Comitês da Organização Mundial do Comércio (OMC). O objetivo do relatório é analisar de forma comparativa o uso, pelos Membros da OMC, do trabalho especializado dos Comitês da organização como mecanismo informal para a solução de controvérsias sem a necessidade de recorrer à resolução formal de disputas, previstas no âmbito das regras e procedimentos do Órgão de Solução de Controvérsias (OSC). O relatório busca, também, formular recomendações para o melhor uso de tais mecanismos pelo Brasil.

Além de ser um fórum para negociação de novas regras e solução de controvérsias, a OMC tem importante papel em matéria de transparência. Diversos acordos da organização requerem que os Membros comuniquem regularmente aos Comitês especializados, compostos por eles, a adoção de regulamentações domésticas que possam impactar os interesses econômicos de outros Membros. Por exemplo, o Artigo 25 do Acordo sobre Subsídios e Medidas Compensatórias (ASCM, em inglês) exige que os Membros notifiquem todos os subsídios específicos ao Comitê sobre Subsídios e Medidas Compensatórias com antecedência de pelo menos um ano. As notificações devem detalhar as informações sobre os subsídios, incluindo sua forma, a fim de permitir que outros Membros possam avaliar seus efeitos comerciais. Os Membros da OMC também podem, no âmbito do Comitê, apresentar pedidos de informação sobre a natureza e a extensão dos subsídios.

O Acordo sobre Barreiras Técnicas ao Comércio (TBT, em inglês) e o Acordo sobre a Aplicação de Medidas Sanitárias e Fitossanitárias (SPS, em inglês) também exigem que os Membros da OMC notifiquem aos respectivos Comitês as medidas que possam ter “efeito significativo” no comércio de outros Membros da organização. Tais medidas devem ser comunicadas aos Comitês TBT ou SPS antes de sua entrada em vigor, de modo que comentários e solicitações de alterações possam ser realizadas pelos demais Membros.

Estes requisitos de transparência e supervisão permitem que os Membros da OMC utilizem o processo de notificação e revisão dos Comitês não só para buscar mais informações sobre regulamentos domésticos que afetem seus interesses econômicos, mas também para manifestar preocupações sobre a legalidade e os efeitos das medidas. A análise dos dados sugere que os Membros da organização usam os Comitês para levantar Preocupações Comerciais Específicas (STCs, em inglês) em relação a outros Membros, iniciando assim um processo de negociação pelo qual essas STCs podem ser discutidas e resolvidas antes da submissão de uma reclamação formal nos termos do Entendimento sobre Solução de Controvérsias (DSU, em inglês)¹.

¹ Henrik Horn, Petros C. Mavroidis & Erik N. Wijkström, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees*, Research Institute of Industrial Economics, IFN Working Paper No. 960 (2013).

Este relatório examina o trabalho de três Comitês específicos da OMC, desde sua criação em 1995, e analisa em que medida Membros-chave da organização têm sido bem sucedidos na resolução de STCs sem recorrer a uma decisão formal decorrente dos procedimentos de solução de controvérsias da OMC. Para efeitos do presente relatório, STCs são definidas como preocupações levantadas por Membros sobre propostas de legislações ou atos administrativos adotados em três áreas específicas: subsídios, barreiras técnicas ao comércio e medidas sanitárias e fitossanitárias.

Esses três tipos de medidas foram selecionadas dada a importância particular que elas representam para a indústria brasileira. Com o aumento da transparência e a existência de limites mais rigorosos sobre a capacidade dos Membros da OMC para impor tarifas ou medidas comerciais, medidas “por trás da fronteira”, como subsídios, TBT e SPS tornaram-se, em muitos casos, instrumento de escolha preferencial aos formuladores de políticas públicas que desejam oferecer proteção as suas indústrias nacionais. Estas barreiras não tarifárias são muitas vezes menos transparentes e mais difíceis de identificar do que medidas de fronteira e, normalmente, encontram-se sujeitas a normas legais pouco precisas comparadas em conceitos como “efeitos adversos”, “imparcialidade”, ou “base científica”.

A aplicação, pelos painéis da OMC e pelo Órgão de Apelação, de tais princípios vagamente definidos pode tornar o recurso à adjudicação formal menos atraente do ponto de vista de ser uma “medida comercial compensatória”, já que o Membro da organização que violar suas regras pode simplesmente optar por alterar a medida restritiva ao comércio enquanto ela continua em vigor. Além disso, a possibilidade de implementação ineficaz das mudanças pelo Membro que desobedeceu às regras é mais um motivo que pesa a favor do uso de meios não litigiosos para solução de controvérsias comerciais.

Na preparação do presente relatório foram analisadas as atas das reuniões do Comitê de Subsídios e Medidas Compensatórias, do Comitê de Medidas Sanitárias e Fitossanitárias e do Comitê de Barreiras Técnicas ao Comércio, além das bases de dados oficiais da OMC e notificações apresentadas a cada um desses Comitês pelos seguintes Membros: Austrália, Brasil, Estados Unidos, Índia, México e União Europeia. Todos foram selecionados em razão do papel ativo que possuem na solução de controvérsias ou porque são equivalentes ao Brasil do ponto de vista econômico. Para efeito do presente relatório, foram identificados como STCs apenas os casos relevantes em que a notificação do Membro da OMC questionou a legalidade do subsídio ou das medidas TBT ou SPS em questão.

Assim, os casos nos quais os Membros da organização só solicitaram esclarecimentos sobre as medidas e seus efeitos comerciais potenciais, mas não chegaram a questionar a sua legalidade, não foram computados como STCs relevantes. Para cada Membro da OMC pesquisado, desde que os da-

dos estivessem disponíveis, foi feita uma análise quantitativa: o número de STCs levantadas nos Comitês da OMC, bem como o número de STCs que foram resolvidas ou parcialmente resolvidas. Quando os dados não estavam prontamente disponíveis, foi feita uma análise qualitativa, ou seja, em que medida o Membro pesquisado foi bem sucedido em resolver a STC retirando o questionamento da medida ou não iniciando posteriormente um processo formal de solução de controvérsias para resolução do problema.

A imagem que emerge da pesquisa sugere que a estrutura dos Comitês da OMC funciona como importante mecanismo de resolução alternativa, operando em paralelo aos procedimentos formais de solução de controvérsias no âmbito do OSC. A pesquisa também confirma as quatro conclusões seguintes em relação à eficácia dos mecanismos de resolução não litigiosa de disputas como forma de solução controvérsias na OMC.

Em primeiro lugar, os efeitos decorrentes das funções de supervisão e revisão de regulamentos dos Comitês cria uma plataforma de negociação para a resolução de disputas comerciais e os Membros da OMC com frequência aumentam o seu poder de negociação associando-se com as preocupações levantadas por outros Membros da organização. Como resultado, o nível de resolução de STCs no âmbito dos Comitês é consideravelmente alto. Em alguns casos, os Membros da OMC têm sido capazes de resolver parcialmente ou totalmente cerca de metade de todas as STCs levantadas nos Comitês. Esse nível de resolução é particularmente elevado no caso do Comitê de Medidas Sanitárias e Fitossanitárias. Ao considerar-se que cerca de metade das consultas formais no âmbito do OSC não evolui para procedimentos formais de solução de controvérsias, a estrutura dos Comitês, assim como consultas formais previstas no Artigo 4 do OSC, resolvem cerca de 75% de todas as disputas comerciais sem que haja gasto de recursos financeiros envolvidos com o litígio em um processo formal.

Em segundo lugar, e de forma relacionada à conclusão anterior, os Comitês da OMC são uma importante alternativa para a resolução de disputas comerciais em circunstâncias nas quais os Membros da organização podem não estar inclinados a solicitar procedimentos formais de solução de controvérsias, seja por razões políticas, seja por razões econômicas. É notável que os Membros da OMC têm respondido a mais STCs apresentadas por outros Membros nos Comitês do que a questionamentos que se tornaram litígios formais. Além disso, disputas Sul-Sul e disputas comerciais regionais parecem surgir com maior frequência no âmbito dos Comitês do que no OSC.

Em terceiro lugar, os dados apontam uma estreita correlação entre o nível de resolução de STCs e a frequência com a qual os Membros da OMC têm apresentado as STCs nos Comitês em reuniões sucessivas. Persistência e construção de coalizões parecem ser a chave para aumentar as possibilidades de uma resolução bem sucedida das STCs.

Em quarto lugar, os Comitês encontram-se em diferentes estágios de desenvolvimento e o nível de resolução também parece depender do tipo de problema apresentado como uma STC. Medidas sanitárias e fitossanitárias têm taxa de resolução maior do que medidas TBT; e os subsídios são os menos propensos a serem resolvidos por meio do trabalho do Comitê de Subsídios e Medidas Compensatórias. O Comitê de Medidas Sanitárias e Fitossanitárias é o mais avançado. Nele, os Membros da OMC criaram um mecanismo de mediação formal por meio do qual o presidente facilita a resolução de STCs levadas ao conhecimento do Comitê. A recente decisão do Comitê de Barreiras Técnicas ao Comércio para melhorar a sua base de dados e formalmente informar os Membros da OMC sobre o estado das STCs apresentadas é, também, um passo positivo. Por sua vez, o Comitê de Subsídios e Medidas Compensatórias, apesar de receber as notificações e comunicá-las, precisa avançar mais como plataforma para a resolução de STCs.

Neste contexto, o quadro que emerge no estudo, sobre o uso, por parte do Brasil, dos mecanismos não litigiosos para a solução de controvérsias na OMC, é diverso. De um lado, o Brasil tem sido muito ativo na submissão de STCs perante o Comitê de Medidas Sanitárias e Fitossanitárias, no qual o próprio país apresentou direta ou indiretamente 56 STCs, resolvendo com sucesso cerca de 40% delas. Este nível de atividade é compatível com outros Membros do mesmo perfil e importância na OMC. Apesar de dar foco inicial em STCs impostas por países desenvolvidos, nos últimos anos o Brasil tem usado a estrutura do Comitê para abordar as barreiras sanitárias e fitossanitárias impostas pelos países em desenvolvimento; países que, por motivos políticos ou econômicos, podem estar menos dispostos a enfrentar um processo formal de solução de controvérsias.

Em contraste, o Brasil tem sido menos ativo em levantar STCs nos Comitês de Barreiras Técnicas ao Comércio e de Subsídios e Medidas Compensatórias e conseqüentemente, menos bem sucedido na resolução destes tipos de medidas. As STCs levantadas por outros Membros da OMC e apoiadas pelo Brasil no Comitê de Barreiras Técnicas ao Comércio foram prioritariamente centradas em medidas adotadas pela União Europeia. Os dados sugerem que o Brasil teve menos sucesso na resolução de disputas no âmbito do Comitê, porque muitas das STCs levantadas se tornaram disputas formais no âmbito do OSC. Da mesma forma, apenas duas STCs foram levantadas pelo país no Comitê de Subsídios e Medidas Compensatórias. Como exemplo, é possível citar a STC levantada para obter a remoção de uma medida compensatória instituída pelo Peru. Pelo menos essa STC parece ter sido bem sucedida na obtenção de uma solução satisfatória para o problema, já que o Brasil não prosseguiu com uma reclamação formal na OMC.

Com base no exposto, é recomendado que o Brasil tome as seguintes medidas para melhorar a sua utilização dos mecanismos não litigiosos para a resolução de disputas com outros membros da OMC. Primeiro, o país deveria desenvolver uma consistente estratégia de acesso a mercados para

identificar, catalogar e monitorar barreiras não tarifárias, de modo a criar um “pool” de informação consolidada e centralizada, que apresente STCs nos diferentes Comitês da OMC. Em um relatório anterior, a CNI propôs a criação de um sistema para monitorar as barreiras comerciais e de investimento, a ser gerido pela Câmara de Comércio Exterior (CAMEX)². O Plano Nacional de Exportações, lançado em junho de 2015, previu igualmente a criação de um banco de dados on-line para fins semelhantes.

Em segundo lugar, é recomendado que a CAMEX estabeleça um processo de identificação e notificação de STCs como parte da estratégia brasileira de acesso a mercados. Atualmente, não existe uma estrutura integrada de identificação de STCs que potencialmente possam estar afetando as exportações do país. STCs específicas podem ser levantadas por uma multiplicidade de fontes, incluindo o setor privado, o Ministério da Agricultura, Pecuária e Abastecimento (MAPA) e o Ministério da Indústria, Comércio Exterior e Serviços (MDIC). As STCs são comunicadas e processadas, dependendo do tema, pela Divisão de Agricultura e Produtos de Base (DPB) ou pela Divisão de Acesso a Mercado (DACCESS) do Ministério das Relações Exteriores (MRE), apoiados, quando apropriado, pela Coordenação-Geral de Contenciosos (CGC). No estudo, a atribuição de responsabilidades mais clara para a identificação das STCs e um processo mais transparente e previsível para realizar a notificação ao Comitê adequado pode ser benéfico ao Brasil. Além disso, também é desejável que as STCs levantadas e os resultados obtidos nos Comitês sejam comunicados ao público por meio de um relatório anual.

Em terceiro lugar, o Brasil deve continuamente desenvolver a capacidade em agências governamentais e no setor privado para compreender a relevância e a necessidade de aumentar o uso de STCs como mecanismo para tratar questões de acesso a mercado. A estrutura dos Comitês da OMC fornece uma alternativa eficiente para a solução de controvérsias e deve ser um instrumento na “caixa de ferramentas” de todos os *stakeholders* relevantes.

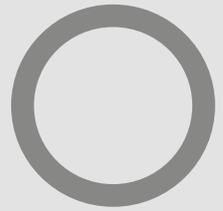
Em quarto lugar, o Brasil deve aumentar sua cooperação com os principais parceiros comerciais, de forma pragmática (ou seja, com base em interesses econômicos do país), para que em conjunto aumentem o apoio à STCs levantadas contra terceiros, a fim de ampliar a eficácia de tal estratégia.

Em quinto lugar, o Brasil deve continuar a trabalhar com outros Membros da OMC para reforçar a estrutura dos Comitês, em particular, aumentar o número de ferramentas para relatar os resultados de STCs levantadas com base nos acordos TBT e SCM, bem como continuar a desenvolver mecanismos alternativos de resolução no âmbito de cada Comitê. Recomenda-se, assim, que a Missão do Brasil junto à OMC torne esse objetivo uma prioridade no cenário pós-Pacote de Nairobi e trabalhe para propor e apoiar propostas concretas para melhorar o sistema.

² Report on Market Access Strategies, Brasília, CNI, 2014.

A CNI está pronta e disposta a continuar a trabalhar junto com o governo brasileiro para tomar medidas concretas para melhorar a utilização brasileira das estruturas dos Comitês da OMC como mecanismo alternativo para a resolução de disputas comerciais antes do recurso à adjudicação formal, no âmbito do mecanismo de solução de controvérsias.

INTRODUCTION AND EXECUTIVE SUMMARY



The Brazilian National Confederation of Industry (CNI) and Steptoe & Johnson LLP (Steptoe) are pleased to present this report on the use of non-litigious mechanisms for the settlement of disputes before the World Trade Organization (WTO). The purpose of the present report is to conduct a review of the use, by key WTO Members, of the work of specialized WTO Committees as an informal mechanism for the settlement of disputes without recourse to formal dispute settlement procedures under the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and to formulate recommendations for the improvement of Brazil's use of such mechanisms in the future.

In addition to serving as a forum for negotiations and the settlement of disputes, the WTO serves an important transparency function. Various WTO agreements require Members to regularly notify specialized committees, comprising all WTO Members, of domestic regulation that may impact the economic interests of other Members. For example, Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) requires WTO Members to notify all specific subsidies to the SCM Committee at least once yearly. These notifications must contain detailed information about the subsidies, including their form, amount, purpose, duration, and statistical data in order to allow other WTO Members to assess their trade effects. WTO Members may also present written requests for information on the nature and extent of subsidies (including reasons for non-notification if applicable) in the framework of the SCM Committee process.

The Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) likewise require WTO Members to notify the relevant WTO Committees of those measures that may have a "significant effect on trade" of other WTO Members. Technical barriers to trade and sanitary or phytosanitary measures that meet this standard must be notified to the TBT or SPS Committees prior to their entry into force, so that comments and amendments may be taken into account by the notifying WTO Member.³

The transparency and surveillance requirements allow WTO Members to use the notification and review process of the WTO Committees not only to seek information about domestic regulation affecting their economic interests, but also to raise concerns about the legality and the effects of measures on their economic interests. Empirical evidence suggests that WTO Members use the WTO Committee notification and review process to raise "specific trade concerns" (STCs) with the notifying WTO Member, and to

³ See, e.g., Agreement on Technical Barriers to Trade art. 2.9.2, April 15, 1994, Multilateral Agreement on Trade in Goods, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A [hereinafter TBT Agreement]; Agreement on the Application of Sanitary and Phytosanitary Measures para. 5(b) of Annex B, April 15, 1994, Multilateral Agreement on Trade in Goods, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A.

create a negotiating process whereby such STCs may be addressed and resolved prior to the lodging of a formal WTO complaint under the DSU.⁴

This report reviews the work of three specific WTO Committees since their inception in 1995, and analyzes whether and to what extent key WTO Members have been successful in resolving STCs without recourse to adjudication through formal WTO dispute settlement proceedings. For the purposes of this report, STCs are defined as concerns raised by Members regarding proposed or adopted legislation in three specific substantive areas: subsidies, technical barriers to trade, and sanitary and phytosanitary measures.

We have selected these types of measures because they are of particular concern to the Brazilian industry. With increased transparency and more stringent limits on WTO Members' ability to impose tariffs or contingent trade remedies, "behind the border" measures such as subsidies, TBT and SPS measures have become the instrument of choice for policy-makers that wish to offer protection to the domestic industry. Such non-tariff barriers are often less transparent and harder to identify than border measures, and typically subject to more ill-defined legal standards such as "adverse effects", "even-handedness", or a "scientific basis". The application by WTO panels and by the Appellate Body of such loosely-defined principles can make recourse to formal adjudication less attractive from a remedy standpoint, given the prospect that the violating WTO Member may simply opt to amend its trade-restrictive measure while keeping it in place. The prospect of ineffective implementation by the violating WTO Member is yet another reason that might weigh in favor of recourse to non-adjudicatory means of settling trade disputes.

In preparing the present report, we have reviewed the minutes of the SCM, TBT and SPS Committee Meetings, official WTO databases, as well as notifications presented to each of these Committees by the following WTO Members: Australia, Brazil, India, Mexico, the United States and the European Union. These WTO Members have been selected as our sample either because they are active in WTO dispute settlement or because they are similarly-situated to Brazil from an economic standpoint, and frequently for both reasons. For purposes of this report, we have identified as relevant STCs only those instances in which the notifying WTO Member has specifically raised concerns about the legality of the subsidy, TBT or SPS measure in question. Accordingly, instances in which WTO Members only requested clarifications about the measures and its potential trade effects, but stopped short of questioning their respective legality, have not been computed as a relevant STC. For each surveyed WTO Member, where data was available, we have identified, from a *quantitative* perspective, the number of STCs raised in the relevant WTO Committee, as well as the number of STCs

⁴ Henrik Horn, Petros C. Mavroidis & Erik N. Wijkström, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees*, Research Institute of Industrial Economics, IFN Working Paper No. 960 (2013).

that were either resolved or partially resolved. Where empirical data was not readily available (as in the case of the SCM and TBT Committees), we have identified, from a *qualitative* perspective, whether and to what extent the surveyed WTO Member was successful in resolving specific STCs, using withdrawal of the measure or failure to subsequently initiate dispute settlement proceedings as a proxy for resolution.

The picture that emerges from our survey unequivocally bears out empirical research which suggested that the WTO Committee framework is an important alternative dispute resolution mechanism that operates in parallel to formal WTO dispute settlement procedures under the DSU. Our research also supports the following four conclusions with respect to the effectiveness of non-litigious dispute resolution mechanisms as a way of settling trade disputes at the WTO.

First, “name and shame” effects stemming from the surveillance and review functions of specialized WTO Committees create a negotiating platform for the resolution of trade disputes, and WTO Members frequently increase their negotiating leverage by associating themselves with concerns raised by other WTO Members. As a result, the overall rate of resolution of STCs in the WTO Committee framework is considerably high. In some cases, WTO Members have been able to partially or fully resolve about half of all STCs brought to the relevant WTO Committee. The rate of resolution seems to be particularly high in the particular case of the SPS Committee. If one considers that about half of formal consultations under the DSU do not evolve into formal WTO dispute settlement procedures, the WTO Committee framework and formal consultations under Article 4 of the DSU potentially resolve about 75% of all trade disputes without committing the resources necessary to adjudicate a WTO panel and appellate process.

Second, and closely related, specialized WTO Committees provide an important alternative for the resolution of trade disputes in circumstances where WTO Members may be disinclined to request formal dispute settlement proceedings, for political or economic reasons. A wider array of WTO Members have addressed specific STCs raised by other Members in the relevant WTO Committees than those that eventually become formal respondents in WTO litigation, and south-south and regional trade disputes seem to arise more frequently in the framework of the WTO Committees than in formal WTO dispute settlement.

Third, empirical data seems to suggest a close correlation between the rate of resolution of STCs and the frequency within which WTO Members have raised those STCs before the relevant WTO Committee in successive meetings. Persistence and coalition-building seem to pay off as a strategy to enhance the prospects of a successful resolution of STCs.

Fourth and finally, specialized WTO Committees seem to be at different stages of development and the rate of resolution also seems to depend on the subject matter of the STC. SPS measures are more frequently resolved than TBT measures, and subsidies are the least likely to be resolved through the work of the SCM Committee. Reflecting the more advanced stage of development of the SPS Committee, WTO Members have created a formal mediation mechanism⁵ whereby the Chair of the SPS Committee facilitates resolution of STCs brought to the attention of the Committee. The recent decision of the TBT Committee to improve its database and formally report to WTO Members on the status of STCs raised in the Committee is also a positive step in the right direction. The SCM Committee, for its part, despite rigorous notification and reporting disciplines, needs to advance more as a platform for resolution of STCs.

Against this background, Brazil has been using non-adjudicative mechanisms for the resolution of disputes in the WTO with different frequencies and the picture that emerges from our study is somewhat mixed. Brazil has been very active in raising STCs before the SPS Committee, where it directly or indirectly raised 56 STCs, successfully resolving about 40% of those. This level of activity is commensurate with other WTO Members of the same profile and importance. Despite an initial focus on STCs imposed by developed WTO Members, in recent years Brazil has been using the framework of the SPS Committee to address SPS barriers imposed by developing Members, countries which – for political or economic reasons – it may be less willing to challenge through formal dispute settlement proceedings.

In contrast, Brazil has been less active in raising STCs before the TBT and SCM Committees, and consequently less successful in resolving these types of STCs. STCs raised by other WTO Members and supported by Brazil in the TBT Committee overwhelmingly focused on measures by the European Union. Anecdotal evidence suggests that Brazil was less successful in resolving disputes in the TBT Committee, because many of the STCs raised eventually became formal disputes under the DSU. Similarly, only two STCs were specifically raised by Brazil before the SCM Committee. In one instance, the STC was ostensibly raised build up pressure to obtain the removal of a countervailing duty measure imposed by Peru. At least that instance seems to have been successful in obtaining a satisfactory resolution of the matter, as Brazil did not proceed further with a formal WTO complaint.

Based on the foregoing, we recommend that Brazil could take the following actions to enhance its use of non-litigious mechanisms for the settlement of disputes with other WTO Members. First, Brazil should develop a consistent market access strategy to identify, collect, catalogue and monitor non-tariff barriers to create a “pool” of consolidated and centralized information

⁵ Committee on Sanitary and Phytosanitary Measures, *Procedure to Encourage and Facilitate the Resolution of Specific Sanitary or Phytosanitary Issues Among Members In Accordance With Article 12.1, G/SPS/61* (Sep. 8, 2014).

for addressing STCs through the relevant WTO Committees. In a previous report, CNI has proposed the creation of a database to monitor trade and investment barriers within the Brazilian Foreign Trade Chamber (“CAMEX”) that could be used for these purposes.⁶ The National Export Plan of the Brazilian Ministry of Industry, Foreign Trade and Services (MDIC) launched in June 2015, likewise provides for the creation of an online database for similar purposes.

Second, we recommend that CAMEX establishes a process to streamline the identification and notification of STCs as part of Brazil’s market access strategy. Currently, there is no integrated framework for the identification of STCs potentially affecting Brazilian exports. Specific STCs can be raised by a multitude of sources, including the private sector, the Ministry of Agriculture (MAPA), and the Brazilian Ministry of Industry, Foreign Trade and Services (MDIC). STCs are then communicated and processed, depending on the subject matter, by the Division of Agriculture and Basic Products (DPB) or the Division of Market Access (DACCESS) of the Ministry of Foreign Relations (MRE), in consultations, when appropriate, with the Central Geral de Contenciosos (CGC). In our view, clearer allocation of responsibilities for identification of STCs and more transparent and predictable process leading to their notification to the relevant WTO Committee may be beneficial. In addition, it is also desirable that the STCs raised and results obtained through recourse to the relevant WTO Committees be reported annually to the general public in a performance review.

Third, Brazil should continuously build capacity in government agencies and the private sector to understand the relevance and increase the use of STCs as a mechanism to address market access issues. The WTO Committee framework provides an efficient alternative for the settlement of potential WTO disputes, and must be an instrument in the toolkit of all relevant stakeholders.

Fourth, Brazil should increase its cooperation with key trading partners, in a pragmatic way (i.e., based on Brazil’s economic interests), to jointly pursue or increase support for STCs raised against third countries, in order to increase the efficacy of such strategy.

Fifth and finally, Brazil should continue to work with other WTO Members to reinforce the WTO Committee framework, in particular to increase the tools for reporting results of STCs addressed in the context of the TBT and SCM Agreements, and to continue to develop alternative resolution mechanisms within the framework of each Committee. We recommend that the Brazilian Mission to the WTO puts this as a top priority in a post-Nairobi scenario, and works toward making and supporting concrete proposals to improve the system.

⁶ Report on Market Access Strategies, Brasilia, CNI, 2014.

CNI stands ready to continue to work closely with the Brazilian Government to take concrete steps toward improving Brazil's utilization of the WTO Committee framework as an alternative mechanism for the resolution of trade disputes prior to recourse to the formal adjudication under the WTO dispute settlement mechanism.

AUSTRALIA



A. INTRODUCTION AND OVERVIEW

Australia has been relatively active in the SPS, TBT and SCM Committees, with stronger emphasis on the SPS Committee, where it has adopted a strategy of primarily associating itself with STCs raised by other Members. The SPS measures that Australia has directly raised focused primarily on the European Union, and its Asian trading partners. Overall, Australia has been very successful in resolving disputes about SPS measures through the SPS Committee, with a rate of resolution slightly above half of all STCs that it has raised. In the TBT Committee, Australia has also pursued a strategy of associating itself with concerns raised by others, but has raised STCs against a wider variety of trading partners. In at least one instance, STCs raised in the TBT Committee were not successful in defusing the dispute, and Australia brought formal WTO dispute settlement proceedings. Before the SCM Committee, Australia has been somewhat more targeted in its approach, and in at least three instances pro-actively pursued STCs against developing WTO Members which, for political reasons, it was perhaps less willing to challenge in formal WTO dispute settlement.

B. STCS RAISED IN THE SPS COMMITTEE

Australia has raised or supported a total of 35 STCs related to SPS issues.⁷ Nine of those concerns, or 26%, have been resolved. Eight, or 23%, have been partially resolved. For the remaining 18 STCs, or 51%, the outcome is not reported, according to WTO data.

Australia has directly raised (as opposed to supported) a total of nine STCs before the SPS Committee.⁸ Five of those concerns, or 56%, have been resolved. One, or 11%, has been partially resolved. For the remaining 3 STCs, or 33%, the outcome is not reported. Below is a chart listing the 9 STCs that Australia has raised, and their status. It is noteworthy that most STCs Australia raised were concentrated in the 1995-2003 period, as the country spent almost ten years without raising another STC in 2012. During this interval, Australia's strategy was to associate itself with STCs raised by others primarily against developing WTO Members. Australia has been inactive since 2012.

⁷ WTO SPS Information Management System, <http://spsims.wto.org>.

⁸ *Id.*

One STC supported by Australia in the SPS Committee is maintained by Brazil: Pest risk assessments for imports of plant origin, first raised in the Committee in January 2002.

Source: WTO SPS Information Management System.

STCs RAISED BY AUSTRALIA IN THE SPS COMMITTEE⁹

Title	Members maintaining the measure	First date raised	Status
Shelf-life requirements	Korea, Republic of	1/6/1995	Partially resolved
Cosmetics and BSE	European Union	1/3/1997	Resolved
Fresh fruit and vegetables	Indonesia	1/3/1997	Not reported
Maximum levels for certain contaminants (aflatoxins) in foodstuffs	European Union	1/3/1998	Resolved
Live animals and animal products	European Union	1/6/2003	Not reported
Animal health conditions and certification requirements for live fish	European Union	1/6/2003	Resolved
Notification on uses of living modified organisms	Japan	1/6/2003	Resolved
Notification on transboundary movement of living modified organisms	Korea, Republic of	1/6/2003	Resolved
Requirements for importation of sheep meat	Turkey	18/10/2012	Not reported

⁹ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, November 4, 2015.

Australia has supported other WTO members in voicing 26 STCs.¹⁰ Four of those concerns, or 15%, have been resolved. Seven, or 27%, have been partially resolved. For the remaining 15 STCs, or 58%, the outcome is not reported. Below is a chart listing the 26 STCs that Australia has supported, and their status.

STCs SUPPORTED BY AUSTRALIA IN THE SPS COMMITTEE ¹¹			
Title	Members maintaining the measure	First date raised	Status
Rules on "specified risk materials" in products of animal origin	European Union	1/10/1997	Not reported
Gelatin imports	European Union	1/10/1997	Partially resolved
Import ban on livestock	Turkey	1/6/1998	Partially resolved
Notifications regarding import requirements on meat and eggs	Switzerland	1/9/1998	Resolved
Notification on amendment of the Japanese Plant Protection Law	Japan	1/11/1998	Not reported
Ban on antibiotics in feed	European Union	1/7/1999	Not reported
Regulations on genetically modified food and feed	European Union	1/10/2001	Partially resolved
Agricultural biotechnology approval process	European Union	1/10/2001	Partially resolved
Food safety regulations affecting agricultural products produced from modern biotechnology	China	1/3/2002	Not reported
Traceability and labelling of genetically modified organisms and food and feed	European Union	1/3/2002	Not reported

¹⁰ *Id.*

STCs SUPPORTED BY AUSTRALIA IN THE SPS COMMITTEE¹¹

Title	Members maintaining the measure	First date raised	Status
Official control restrictions on citrus and other fresh fruits and vegetables	Japan	1/6/2002	Not reported
Pest risk assessments for imports of plant origin	Brazil	1/11/2002	Not reported
Ban on hormones in animal production	Indonesia	1/11/2002	Resolved
Certification of meat and dairy products	Philippines	1/11/2002	Resolved
Proposal on animal by-products	European Union	1/4/2003	Not reported
Sanitary conditions for the importation of live material for apiculture	European Union	1/10/2003	Not reported
Guidelines for maximum residue level (MRL) testing	Korea, Republic of	1/10/2003	Resolved
Restrictions due to avian influenza	India	1/3/2004	Not reported
Non-notification of various SPS measures	India	1/6/2004	Not reported
Positive list system for pesticides, veterinary drugs and feed additives MRLs	Japan	1/3/2005	Partially resolved
Lack of recognition of pest-free areas	Indonesia	1/10/2006	Partially resolved
Importation of live animals and meat products	Indonesia	1/10/2006	Not reported
Price list for inspections	Malaysia	2/4/2008	Not reported
Import restrictions on pork products due to influenza A/H1N1	Bahrain, Kingdom of, Armenia, China, Gabon, Indonesia, Jordan, Suriname	23/06/2009	Not reported

STCS SUPPORTED BY AUSTRALIA IN THE SPS COMMITTEE ¹¹			
Title	Members maintaining the measure	First date raised	Status
Ban on offals	Viet Nam	30/03/2011	Not reported
Indonesia's port closures	Indonesia	27/03/2012	Partially resolved

Despite its relatively active participation in raising or supporting STCs in the SPS Committee, Australia has never filed a formal request for consultations under the SPS Agreement.

C. STCS RAISED IN THE TBT COMMITTEE

Differently from its track record in the SPS Committee, in recent years Australia has been more active in the TBT front, where it has focused on STC imposed by developing WTO Members in Asia. Australia has voiced concern over 48 STCs in the TBT Committee.¹² The following chart lists the 48 STCs that Australia has raised or supported in that Committee.

STCS RAISED OR SUPPORTED BY AUSTRALIA IN THE TBT COMMITTEE ¹³		
Title	Members maintaining	First date raised
Regulation on the Registration of Geographical Indications and Designations of Origin	European Union	28/06/1996
Directive 2002/95/EC on the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)	European Union	31/03/1999
Ban on the use of Nickel-Cadmium in Batteries	European Union	11/6/1999
Regulation on Certain Wine Sector Products	European Union	1/10/1999

¹¹ *Id.*

¹² WTO TBT Information Management System, <http://tbtims.wto.org>.

**STCs RAISED OR SUPPORTED BY AUSTRALIA
IN THE TBT COMMITTEE¹³**

Title	Members maintaining	First date raised
Standards for Labelling on Quality of Processed Foods, Fresh Foods, Husked Rice and Milled Rice and Marine Products	Japan	17/05/2000
Labelling of Pre-packaged Consumer Products and Mandatory Quality Standards for 133 products	India	30/03/2001
Traceability and Labelling of Biotech Food and Feed Products	European Union	29/06/2001
Regulation Concerning Import Requirements and Certification of Organic Products	European Union	9/10/2001
Standard on Fire Detection and Alarm System Control Equipment	United States	17/10/2002
Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH)	European Union	20/03/2003
Bioterrorism Act	United States	20/03/2003
Country of Origin Labelling	United States	21/06/2002
Labelling Requirement for Snack Foods	Thailand	21/03/2007
Compositional requirements for cheese	Canada	5/7/2007
Regulation on Classification, Labelling and Packaging of Substances and Mixtures (ATPs and CLP)	European Union	5/7/2007
Labelling Guidelines on Wagyu Beef	Japan	20/03/2008
Quality Assessment System for Imported Cotton	China	18/03/2009
Beef	Korea, Republic of	18/03/2009
Accreditation and market surveillance relating to the marketing of products	European Union	25/06/2009
Poultry Meat	European Union	25/06/2009

**STCs RAISED OR SUPPORTED BY AUSTRALIA
IN THE TBT COMMITTEE¹³**

Title	Members maintaining	First date raised
Tariff Rate Quota on Meat and Meat Products	European Union	25/06/2009
Regulation for Food Industry Promotion Act	Korea, Republic of	25/06/2009
Milk Class 4m	Canada	5/11/2009
Ice-cream Butterfat Subsidy/ Labelling Programme (previously raised under the description "Ontario ice-cream subsidy")	Canada	5/11/2009
Halal Food Requirements	Bahrain, Kingdom of, Kuwait, the State of, Saudi Arabia, Kingdom of	5/11/2009
Health warnings for alcoholic beverages	Thailand	24/03/2010
Dairy products	European Union	24/03/2010
Alcoholic Beverages	Viet Nam	23/06/2010
Foreign Manufacturers Legal Accountability Act	United States	3/11/2010
Labelling Regulations (Ministry of Trade Regulation 62/2009 and 22/2010)	Indonesia	3/11/2010
Food Safety and Standards Regulation - Food labelling requirements	India	24/03/2011
Conformity assessment procedures for alcohol, cosmetics, and mobile phones (Notice regarding the import of alcohol, cosmetics and mobile phones, No.: 197/TB-BCT (6 May 2011) and Ministry of Finance No.: 4629/BTC-TCHQ on the importation of spirits and cosmetics (7 April 2011))	Viet Nam	15/06/2011
Draft on Technical Regulation of Alcohol Drinks Safety (published on 24 October 2011)	Russian Federation	20/03/2012

**STCs RAISED OR SUPPORTED BY AUSTRALIA
IN THE TBT COMMITTEE¹³**

Title	Members maintaining	First date raised
Draft Implementing Regulations amending Regulation (EC) No. 607/2009 laying down detailed rules for the application of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products	European Union	13/06/2012
Regulations relating to liquor production and trading	Viet Nam	13/06/2012
Decree No 38 Detailing the Implementation of Some Articles of Food Safety Law	Viet Nam	13/06/2012
Proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96	Chile	6/3/2013
Transformation of still wine into sparkling wine EC Regulation 479/2008 of 29 April 2008	European Union	17/06/2013
Ministry of Health Regulation 30/2013 on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods	Indonesia	17/06/2013
Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment	European Union	17/06/2013
Labelling Regulations for Canola Oil	India	19/03/2014
Draft Notification of the Alcoholic Beverages Control, Re: Rules, Procedure and condition for Labels of Alcoholic Beverages, issued under B.E.	Thailand	18/06/2014
Banking IT Equipment Security Regulation	China	18/03/2015

STCs RAISED OR SUPPORTED BY AUSTRALIA IN THE TBT COMMITTEE ¹³		
Title	Members maintaining	First date raised
Regulation of the Minister of Agriculture No. 139/Permentan/PD.4, 10 December 2014, concerning Importation of Carcass, Meat and/ or Processed Meat Products into the Territory of the Republic of Indonesia, and Regulation of the Minister of Agriculture No. 02/Permentan/PD.4, 10 January 2015, concerning the Amendment of the Regulation of the Minister for Agriculture No. 139/Permentan/PD.4, 10 December 2014	Indonesia	18/03/2015
MOI 69/2014 Article 3: LCR Requirements for LTE Devices - Requirement that Domestic Component Level (TKDN) of LTE TDD & FDD broadband services equipment	Indonesia	17/06/2015
Amendments in the import policy conditions applicable to apples	India	04/11/2015
Proposal for Government Decree on the amendment of Government Decree 39/2013 (of 14 February 2013) on the Manufacture, Placement on the Market and Control of Tobacco Products, Combined Warnings and the Detailed Rules for the Application of the Health-Protection Fine	European Union	09/03/2016
Draft Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2015	India	09/03/2016

Ultimately, it is difficult to determine whether Australia satisfactorily resolved any STCs in the TBT Committee because, unlike the WTO SPS database, the WTO TBT database does not designate any of those types of STCs as “resolved” or “partially resolved”. Instead, the status of all such STCs is “not reported”. In 2012 the TBT Committee began to include a “Follow-up” section to its meeting minutes on a trial basis, but members noted that reporting on the status of STCs was challenging,¹⁴ and the agenda item has not

¹³ Chart generated by the WTO TBT Information Management System, <http://tbtims.wto.org>, August 8, 2016. Note: While the WTO SPS Information System provides specific information on whether a Member raised a concern, or whether it supported a concern that a different Member raised, the WTO TBT Information System does not differentiate between a Member raising or supporting a concern. For that reason, the STCs raised, or supported, by a Member in the TBT Committee are presented in one single chart.

¹⁴ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 20-21 March 2012*, G/TBT/M/56, at 60 (May 16, 2012).

been included in the most recent Committee meetings. Instead, in 2014 the agenda began to include a “Withdrawn concerns” section, where the Chairman reports instances where concerned members have withdrawn STCs.¹⁵ Review of TBT Committee meeting minutes since the inclusion of this agenda item does not indicate that Australia has requested for any STCs be withdrawn from a TBT meeting agenda.

Looking at WTO disputes which cite the TBT Agreement in the request for consultations, Australia has been the complainant in one such case, *European Communities – Protection of Trademarks and Geographical Indicators for Agricultural Products and Foodstuffs* (DS290), with consultations requested in April 2003.¹⁶ Arguably, therefore, concerns earlier expressed by Australia in connection with the European Union’s GI regime were not successfully addressed through the TBT Committee, even though the primary focus of the dispute were violations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”).

D. STCS RAISED IN THE SCM COMMITTEE

According to SCM Committee meeting notes, there is no indication that Australia has ever unequivocally stated during an SCM Committee meeting that a country’s actions were inconsistent with its WTO obligations.¹⁷ However, there have been several instances where Australia raised concerns in the Committee. For example, during the SCM Committee meeting held on April 29, 2014, Australia brought up the subject of sugar subsidies maintained by India. Australia stated that it – and other WTO Members – had questioned the consistency of the sugar subsidy with the Agreement on Agriculture in a meeting of the Committee on Agriculture. Specifically, according to the SCM Committee minutes, Australia noted that “[a]t the 21 March 2014 meeting of the Committee on Agriculture, Australia and a number of other Members had raised questions and concerns regarding this subsidy, including with respect to its consistency with the Agreement on Agriculture.”¹⁸ Several months later in October 2014, Australia broached the issue again, stating that it “remained concerned about the impact of these subsidies on the

¹⁵ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 June 2014*, G/TBT/M/63 (Sep. 19, 2014); Committee on Technical Barriers to Trade, *Minutes of the Meeting of 5-6 November 2014*, G/TBT/M/64 (Feb. 10, 2015); Committee on Technical Barriers to Trade, *Minutes of the Meeting of 5-6 November 2014*, G/TBT/M/64/Rev.1 (Mar. 6, 2015); Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 March 2015*, G/TBT/M/65 (May 28, 2015); Committee on Technical Barriers to Trade, *Minutes of the Meeting of 17-18 June 2015*, G/TBT/M/66 (Sep. 17, 2015).

¹⁶ World Trade Organization, Disputes by agreement, https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#.

¹⁷ Australia’s submissions and notifications to the SCM Committee were not examined – only SCM Committee Meeting minutes were examined. As of this writing, the most recent SCM Committee meeting for which minutes are public is the meeting held on October 28, 2014. The minutes for the meeting held on April 28, 2015 have not yet been released.

¹⁸ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 29 April 2014*, G/SCM/M/89, para. 125 (Jul. 17, 2014).

world sugar market” (quoting from the meeting minutes).¹⁹ There has been one regular SCM Committee meeting since October 2014, in April 2015, but the minutes from that meeting are not yet available.²⁰

Two other examples of Australia raising concerns during SCM Committee meetings are listed below, in reverse chronological order:

- During the SCM Committee meeting held October 28, 2014, Australia “urged China to comply with its subsidy notification obligations as soon as possible”,²¹ suggesting that Australia believed China was not in compliance.
- During the SCM Committee meeting held April 29, 2004, Australia raised concerns about South Africa’s Motor Industry Development Programme, stating that it was a “specific” subsidy and that Australia’s concerns “related to both the export and local content contingency of certain elements of the scheme and the serious trade effects which the scheme was having on Australian motor vehicle component producers in the Australian market, as well as the adverse and distortive effects the scheme was having in world markets.”²² As of this writing there is no indication that Australia has raised this specific subsidy again during SCM Committee meetings.

Australia has raised other concerns under the auspices of the SCM Committee, including concerns related to the European Union enlargement and gluten exports, and the U.S. Byrd Amendment legislation.²³ Australia eventually requested consultations and subsequently the establishment of a panel to adjudicate its dispute with the U.S. over the Byrd Amendment.²⁴

¹⁹ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October 2014*, G/SCM/M/91, para. 159 (Mar. 4, 2015).

²⁰ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 April 2015*, G/SCM/M/93 (Sep. 25, 2015) (not yet available on the WTO website).

²¹ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October 2014*, G/SCM/M/91, para. 92 (Mar. 4, 2015). Also, in October 2011, Australia had said that “[t]here was, under Article 25.10 [of the SCM Agreement], an obligation for China to take action.” Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 26-27 October 2011*, G/SCM/M/79, para. 115 (Feb. 2, 2012). (Article 25.10 states that “Any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.”)

²² Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 29 April 2014*, G/SCM/M/50, paras. 79-80 (Jul. 29, 2004).

²³ See Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October, 1 and 8 December 2003*, G/SCM/M/48 (Mar. 30, 2004) (EU modalities during enlargement); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 13 and 19 December 2002*, G/SCM/M/45 (Mar. 17, 2003) & Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 8 May 2003*, G/SCM/M/46 (Mar. 17, 2003) (Thailand’s BOI & IEAT programs); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 7 November 2000*, G/SCM/M/26 (Mar. 30, 2001) (US Byrd Amendment); Committee on Subsidies and Countervailing Measures, *Minutes of the Meeting Held on 23-24 October 1997*, G/SCM/M/15 (28 Jan. 1998) (EC consumption subsidies on starch and the effect on EC exports of gluten); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 1-2 May 1995*, G/SCM/M/9 (Sep. 13, 1996) (subsidies maintained by Hungary).

²⁴ *United States – Continued Dumping and Subsidy Offset Act of 2000* (DS217 & DS234).

BRAZIL



A. INTRODUCTION AND OVERVIEW

Brazil has been somewhat active in its use of WTO Committees as a mechanism for the settlement of disputes. This is particularly the case in the SPS Committee, where it raised 57 STCs either directly or indirectly, resolving or partially resolving about half of those. One noteworthy feature of Brazil's engagement in the SPS Committee is a gradual shift from STCs from developed to developing WTO Members in those STCs directly raised by Brazil.

In contrast, Brazil has been less active in raising concerns in both the TBT and SCM Committees. Only six STCs were directly raised by Brazil in the TBT Committee, and at least one of those became an actual WTO dispute. STCs raised by other WTO Members and supported by Brazil overwhelmingly focused on measures by the European Union. Anecdotal evidence suggests that Brazil was less successful in resolving disputes in the TBT Committee, because many of the STCs raised eventually became formal disputes under the DSU. Similarly, only two STCs were specifically raised by Brazil before the SCM Committee, and in at least one instance to build up pressure to obtain the removal of a contingent trade-remedy measure imposed by Peru. At least that instance was successful in obtaining a satisfactory resolution of the matter, as Brazil did not proceed further with its complaint.

B. STCS RAISED IN THE SPS COMMITTEE

Brazil has raised or supported a total of 57 STCs related to SPS issues.²⁵ Seventeen of those concerns, or 30%, have been resolved. Seven, or 12%, have been partially resolved. For the remaining 33 STCs, or 58%, the outcome is unreported, according to WTO data.

Brazil has directly raised a total of 30 STCs in the SPS Committee to date.²⁶ Nine of those concerns, or 30%, have been resolved. Five, or 17%, have been partially resolved. For the remaining 16 STCs, or 53%, the outcome is unreported.

Nearly half of the STCs raised by Brazil were in the 2008-2010 period, and a vast majority of such STCs related to measures imposed on exports of animal protein. Fruits are clearly underrepresented, with only 4 STCs.

A chart listing the 30 STCs that Brazil has raised, and their status, is below.

²⁵ WTO SPS Information Management System, <http://spsims.wto.org>.

²⁶ *Id.*

STCs RAISED BY BRAZIL IN THE SPS COMMITTEE²⁷

Title	Members maintaining the measure	First date raised	Status
Restrictions on gelatin imports	Norway	1/3/1996	Resolved
Gelatin imports	European Union	1/10/1997	Partially resolved
Maximum levels for certain contaminants (aflatoxins) in foodstuffs	European Union	1/3/1998	Resolved
Emergency measures on citrus pulp	European Union	1/9/1998	Resolved
Measures affecting imports of products containing Brazilian beef	Canada	1/3/2001	Resolved
Restrictions on beef and pork	South Africa	1/6/2002	Partially resolved
Restrictions on the importation of fruits and fruit juices	European Union	1/11/2002	Resolved
Restrictions on imports of mangoes	Japan	1/6/2003	Resolved
Importation of live animals and meat products	Indonesia	1/10/2006	Not reported
Regionalization for bovine and pig meat products	Korea, Republic of	28/02/2007	Resolved
Application of regionalization and prohibition of bovine meat	China	27/06/2007	Resolved
Import restrictions on cooked and frozen meat	Mexico	2/4/2008	Not reported
Regulatory process economic analysis requirement	United States	2/4/2008	Not reported
Price list for inspections	Malaysia	2/4/2008	Not reported

STCs RAISED BY BRAZIL IN THE SPS COMMITTEE²⁷

Title	Members maintaining the measure	First date raised	Status
Restrictions on imports of swine meat	Mexico	24/06/2008	Not reported
Import restrictions on gelatine from bovine hides and head skin due to BSE requirements	Colombia	23/06/2009	Resolved
Pesticide maximum residue levels (MRLs)	Japan	23/06/2009	Partially resolved
Import restrictions on fresh pork meat and beef	United States	28/10/2009	Partially resolved
Import restrictions on poultry meat	Indonesia	28/10/2009	Not reported
Import restrictions on fresh pork meat and beef	South Africa	28/10/2009	Partially resolved
Risks arising from Carambola fruit fly in French Guyana	France, European Union	17/03/2010	Not reported
Import restrictions on plant and plant products	Malaysia	17/03/2010	Not reported
Import restrictions on Brazilian beef	Colombia	29/06/2010	Not reported
Import restrictions on poultry meat	Senegal	29/06/2010	Not reported
Import restrictions on beef and recognition of the principle of regionalization	Indonesia	20/10/2010	Not reported
Import restrictions on beef due to BSE	South Africa	16/10/2013	Not reported
Import restrictions on beef due to BSE	China	16/10/2013	Not reported
Import restrictions on beef due to BSE	Japan	16/10/2013	Not reported

STCs RAISED BY BRAZIL IN THE SPS COMMITTEE²⁷

Title	Members maintaining the measure	First date raised	Status
Import restrictions related to approval of poultry meat plants	Malaysia	15/07/2015	Not reported
Restrictions on exports of pork from the State of Santa Catarina	European Union	16/03/2016	Not reported

Relatively speaking, Brazil was much less active in supporting STCs raised by other WTO Members in the SPS Committee, particularly in more recent years. Brazil has supported other WTO members in voicing 27 STCs, a majority of which relating to measures maintained by the European Union.²⁸ Eight of those concerns, or 30%, have been resolved. Two, or 7%, have been partially resolved. For the remaining 17 STCs, or 63%, the outcome is unreported. Below is a chart listing the 27 STCs that Brazil has supported, and their status.

STCs SUPPORTED BY BRAZIL IN THE SPS COMMITTEE²⁹

Title	Members maintaining the measure	First date raised	Status
Cosmetics and BSE	European Union	1/3/1997	Resolved
Measures affecting imports of bovine meat	Israel	1/3/1997	Resolved
Citrus canker	European Union	1/7/1997	Resolved
Rules on "specified risk materials" in products of animal origin	European Union	1/10/1997	Not reported
Notifications regarding import requirements on meat and eggs	Switzerland	1/9/1998	Resolved
Notifications on veterinary measures and measures on animal products including gelatin	Poland	1/7/1998	Resolved

²⁷ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, August 8, 2016.

²⁸ WTO SPS Information Management System, <http://spsims.wto.org>.

STCs SUPPORTED BY BRAZIL IN THE SPS COMMITTEE²⁹

Title	Members maintaining the measure	First date raised	Status
Restrictions on imports of tropical fresh fruit	Australia	1/3/2000	Not reported
FMD-related import restrictions	Certain Members ³⁰	1/7/2001	Partially resolved
FMD restrictions	Chile	1/10/2001	Resolved
FMD restrictions	Indonesia	1/10/2001	Not reported
Proposal on animal by-products	European Union	1/4/2003	Not reported
EC proposed regulation on maximum residue levels of pesticides	European Union	1/6/2003	Not reported
Notification on maximum tolerance levels for Ocratoxin A in coffee	Germany, European Union	1/10/2003	Partially resolved
FMD restrictions	Panama	1/3/2004	Resolved
Regulation on Ocratoxin A in coffee	European Union	1/10/2004	Resolved
Restrictions on EC exports of plant and animal products	Japan	1/6/2005	Not reported
Application and modification of the EU Regulation on Novel Foods	European Union	1/3/2006	Not reported
Biotech labelling and import approval process regulations	India	1/6/2006	Not reported
Restrictions on ractopamine in beef and pork	Chinese Taipei	8/10/2008	Not reported
Import restrictions on pork products due to influenza A/H1N1	Bahrain, Kingdom of, Armenia, China, Gabon, Indonesia, Jordan, Suriname	23/06/2009	Not reported

STCs SUPPORTED BY BRAZIL IN THE SPS COMMITTEE²⁹

Title	Members maintaining the measure	First date raised	Status
Maximum residue levels of pesticides	European Union	20/10/2010	Not reported
EU regulations on cadmium in cocoa	European Union	19/10/2011	Not reported
Ban on Bisphenol A	France, European Union	21/03/2013	Not reported
Accreditation of third-party bodies to conduct food safety audits and to issue certifications	United States	16/10/2013	Not reported
U.S. high cost of certification for mango exports	United States	09/27/2014	Not reported
European Union revised proposal for categorization of compounds as endocrine disruptors	European Union	25/03/2014	Not reported
EU proposal to amend regulation (EC) No. 1829/2003 to allow EU member States to restrict or prohibit the use of genetically modified food and feed	European Union	15/07/2015	Not reported

Looking at WTO disputes which cite the SPS Agreement in the request for consultations, Brazil has been the complainant in only one such case, *Indonesia – Measures Concerning the Importation of chicken Meat and Chicken Products* (DS484).³¹ Brazil had brought up Indonesia's import restrictions on poultry meat within the SPS Committee in October 2009, prior to submitting a request for consultations in October 2014, suggesting that Brazil's concern was not successfully resolved in the SPS Committee on at least one occasion.

²⁹ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, August 8, 2016.

³⁰ During the meeting of the SPS Committee on July 10-11, 2001, the EC and Argentina raised concerns over FMD-related import restrictions. While they did not mention specific countries, it seems likely that the comments pertained to Australia and the United States, because both of those countries responded to the EC/Argentina comments. Committee on Sanitary and Phytosanitary Measures, Summary of the Meeting Held on 10-11 July 2001, G/SPS/R/22, at para. 56-64 (Oct. 5, 2011)

³¹ World Trade Organization, Disputes by agreement, https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#.

C. STCS RAISED IN THE TBT COMMITTEE

Relative to the SPS Committee, Brazil has been much less active in raising STCs in the TBT Committee. Brazil has directly raised only six STCs, most of which related to food products. Industrial goods are remarkably absent from Brazil's strategy, with only 2 STCs (toys and medical products) raised during the 1995-2016 period. Below is the list of the six STCs Brazil has raised in the TBT Committee.

STCs RAISED BY BRAZIL IN THE TBT COMMITTEE ³²		
Title	Members maintaining	First date raised
Restrictions on the use of Certain Phthalates in Toys	European Union	25/02/2000
Dolphin-Safe Tuna Labelling Requirement	United States	25/02/2000
System for the Identification and Registration of Bovine Animals and the Labelling of Beef and Beef Products	European Union	21/07/2000
Poultry Meat	European Union	25/06/2009
Directive 2011/62/European Union of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products	European Union	20/03/2012
Regulation number 84/Permentan/PD.140/2013, on halal food	Indonesia	30/10/2013

Brazil supported 37 STCs raised by other countries.³³ In the initial 10 years of the WTO, STCs raised by Brazil were mostly focused on barriers imposed by the European Union and the United States. Beginning in 2006, however, Brazil raised STCs of a more diverse group of countries, including emerging countries such as China, Indonesia, and many countries in Latin America, such as Peru, Chile and Ecuador, which accounts for a disproportionate amount of STCs in the 2013-2016 period. Below is a list of the 37 STCs that Brazil has supported in the TBT Committee.

³² Chart generated from the WTO TBT Information Management System, <http://tbtims.wto.org>, August 8, 2016. Steptoe has separated the STCs that were raised by Brazil from the STCs that were supported by Brazil.

³³ WTO TBT Information Management System, <http://tbtims.wto.org>, and author's review of the TBT Committee meeting minutes.

STCs SUPPORTED BY BRAZIL IN THE TBT COMMITTEE³⁴

Title	Members maintaining	First date raised
Compulsory Indication of the Labelling of Certain Foodstuffs Produced from GMOs	European Union	20/06/1997
Royal Decree limiting the Marketing, Manufacture and use of some Hazardous Substance: Asbestos	European Union	27/03/1998
Measures on the use of Asbestos in Brick Lining	European Union	1/7/1998
"Vos" Bill on Wood Products	European Union	15/09/1998
Regulation on Certain Wine Sector Products	European Union	1/10/1999
Draft Law aiming at Promoting Socially Responsible Production	European Union	30/03/2001
Traceability and Labelling of Biotech Food and Feed Products	European Union	29/06/2001
Regulation Concerning Import Requirements and Certification of Organic Products	European Union	9/10/2001
Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH)	European Union	20/03/2003
Bioterrorism Act	United States	20/03/2003
Country of Origin Labelling	United States	21/06/2002
Fire Performance of Construction Products	European Union	15/03/2006
Testing and certification requirements for medical devices	China	7/6/2006
Regulation on Classification, Labelling and Packaging of Substances and Mixtures (ATPs and CLP)	European Union	5/7/2007
Novel foods	European Union	5/11/2008
Seal products	European Union	18/03/2009

STCs SUPPORTED BY BRAZIL IN THE TBT COMMITTEE³⁴

Title	Members maintaining	First date raised
Bill C-32 amendment to Tobacco Act	Canada	5/11/2009
Requirements for information security products, including, inter alia, the Office of State Commercial Cryptography Administration (OSCCA) 1999 Regulation on commercial encryption products and its on-going revision and the Multi-Level Protection Scheme (MLPS)	China	24/03/2011
Loi No. 2010-788: The National Commitment for the Environment (Grenelle 2 Law)	France, European Union	15/06/2011
Draft Protocol for Halal Meat and Poultry Production	Malaysia	15/06/2011
Draft Supreme Decree Approving the Regulations Governing the Labelling of Genetically Modified Foods	Peru	10/11/2011
Issue with respect of honey containing pollen from genetically modified maize MON810, Ruling from ECJ	European Union	10/11/2011
Wine and Grape Juice Certification	European Union	20/03/2012
Proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96	Chile	6/3/2013
Act to Promote Healthy Eating Among Children and Adolescents	Peru	17/06/2013
Ministry of Health Regulation 30/2013 on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods	Indonesia	17/06/2013
Resolution establishing the "General conformity assessment framework for Ecuador" and the "Handbook of procedures to be observed prior to all stages of the customs clearance, marketing and market surveillance of manufactured, imported and marketed goods subject to Ecuadorian technical regulations	Ecuador	30/10/2013

STCs SUPPORTED BY BRAZIL IN THE TBT COMMITTEE³⁴

Title	Members maintaining	First date raised
Proposed Motor Vehicle Safety Regulatory Requirements (RTE INEN 034)	Ecuador	19/03/2014
Resolution No. 116 of the Foreign Trade Committee of Ecuador of 19 November 2013 and Technical Regulation of the Ecuadorian Standardization Institute RTE INEN 022 on the labelling of processed and packaged food products	Ecuador	19/03/2014
Systematic failure to publish notices at an early appropriate stage – WITHDRAWN – see below	Ecuador	19/03/2014
Ministry of Public Health Executive Decree (Agreement) No. 00004522 amending the Sanitary Regulations for the Labelling of Processed Foods for Human Consumption	Ecuador	19/03/2014
Cosmetic products	Ecuador	19/03/2014
Certification of Ceramic Tiles II	Ecuador	19/03/2014
Equivalence Agreement N° 14.241 with the European Union regulations	Ecuador	05/11/2014
Proposed modification of Regulation (EC) 1829/2003 referring to genetically modified organisms	European Union	17/06/2015
Proposal for a Directive of the European Parliament and of the Council on the Cloning of Animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes (197) and Proposal for a Council Directive on the placing on the market of food from animal clones (198) G/TBT/N/EU/197 and G/TBT/N/EU/198	European Union	04/11/2015
Amendment 367 on Biodiversity Law	European Union	09/03/2016

³⁴ Chart generated from the WTO TBT Information Management System, <http://tbtims.wto.org>, August 8, 2015. Steptoe has separated the STCs that were raised by Brazil from the STCs that were supported by Brazil.

As we noted earlier with respect to Australia, it is difficult to ascertain whether STCs raised in the TBT Committee were satisfactorily resolved, for lack of appropriate data from official WTO sources. Beginning in 2014, however, the agenda of the TBT Committee began reporting withdrawn concerns. During the TBT Committee meeting in March 2015, Brazil withdrew the following two STCs from the agenda:

- Ecuador – Ministry of Public Health Executive Decree (Agreement) No. 00004522
- amending the Sanitary Regulations for the Labelling of Processed Foods for Human Consumption; and
- Ecuador – Systematic failure to publish notices at an early appropriate stage.³⁵

Looking at WTO disputes which cite the TBT Agreement in the request for consultations, Brazil has been the complainant in two such cases, *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products* (DS484), with consultations requested in October 2014, and *United States – Standards for Reformulated and Conventional Gasoline* (DS4) with consultations requested in April 1995.³⁶ Brazil had brought up Indonesia's import restrictions on poultry meat within the TBT committee in October 2013, prior to submitting a request for consultations in October 2014.³⁷ Brazil also supported concerns raised by other WTO Members that eventually became high-profile TBT disputes, such as *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* (DS291, DS292/DS293), *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (DS400/DS401), and *United States – Certain Country of Origin Labelling Requirements* (DS384/DS386), but was not a complainant in any of these disputes.

D. STCS RAISED IN THE SCM COMMITTEE

While Brazil has raised plenty of questions for WTO members within the SCM Committee (it has submitted at least twelve sets of questions), there are only two instances where Brazil clearly stated, according to SCM Committee meeting notes, that a WTO Member's actions were inconsistent with its WTO obligations. These STCS are summarized below.

³⁵ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 March 2015*, G/TBT/M/65, at 2 (May 28, 2015).

³⁶ World Trade Organization, Disputes by agreement, https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#.

³⁷ Regulation No. 84/Permentan/PD.410/8/2013 on Importation of Carcass, Meat, Offal, and/or Processed Products thereof into Indonesian Territory. See also the request for consultations by Brazil, *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products*, WT/DS484/1 (Oct. 23, 2014).

Japan – Subsidies for the Mitsubishi Regional Jet Project

During the October 2013 SCM Committee meeting, Brazil stated – according to the meeting minutes – that subsidies provided by the Japanese government to the Mitsubishi Regional Jet Project (“MRJ Project”) were inconsistent with the SCM Agreement.³⁸ Several months later, in June 2014 Brazil submitted written questions to Japan about its support for the MRJ Project.³⁹ The written questions themselves do not assert that the subsidies are inconsistent with the SCM Agreement, rather they state that Brazil would like confirmation that the support complies with the SCM Agreement. Following the October 2013 SCM Committee meeting, Brazil raised this issue on two other occasions during Committee meetings.⁴⁰

Japan claims that it provided answers to Brazil during bilateral consultations in September 2014.⁴¹ However, as of the time of writing, it does not appear that Japan has issued a publicly-available, written reply.

Peru – Compliance with Article 14 of the SCM Agreement

During the April 1998 SCM Committee meeting, Brazil reportedly stated that Peru’s legislation did not comply with Article 14 of the SCM Agreement which required that domestic regulation specified the method to calculate a benefit to the recipient in countervailing duty investigations.⁴² Following the April 1998 meeting, in May 1998 Brazil submitted questions to Peru about Peru’s implementation of Article 14 of the SCM Agreement.⁴³ Peru replied in September 1998, essentially stating that WTO Agreements were directly applicable and therefore had the status of domestic law.⁴⁴ During the SCM Committee meeting held in November 1998, Brazil said Peru’s response was not satisfactory. The November 1998 meeting was the last SCM Committee meeting in which Brazil raised this STC,⁴⁵ suggesting that it might have been solved through bilateral consultations or other means.

³⁸ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 21 October 2013*, G/SCM/M/87 (Jan. 31, 2014).

³⁹ Committee on Subsidies and Countervailing Measures, *Subsidies: Request from the Brazil to Japan Pursuant to Article 25.8 of the Agreement*, G/SCM/Q2/JPN/65 (Jun. 24, 2014).

⁴⁰ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 29 April 2014*, G/SCM/M/89 (Jul. 17, 2014); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October 2014*, G/SCM/M/91 (Mar. 4, 2015).

⁴¹ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October 2014*, G/SCM/M/91, at 21 (Mar. 4, 2015).

⁴² Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 2 November 1998*, G/SCM/M/18, at 7-8 (Feb. 12, 1999). In fact the April 1998 SCM Committee notes do not contain a record of Brazil raising this issue, but during the November 1998 SCM Committee meeting, Brazil said it had raised this issue in April.

⁴³ Committee on Subsidies and Countervailing Measures, *Notification of Laws and Regulations Under Articles 18.5 and 32.6 of the Agreements: Questions from Brazil to Peru*, G/SCM/Q1/PER/9 (May 7, 1998).

⁴⁴ Committee on Subsidies and Countervailing Measures, *Notification of Laws and Regulations Under Articles 18.5 and 32.6 of the Agreements: Replies to Questions Posed by Brazil and the United States Regarding the Notification of Peru*, G/SCM/Q1/PER/11 (Sep. 25, 1998).

⁴⁵ According to the SCM Committee meeting notes kept by the WTO.

The concerns Brazil expressed about Peru's implementation of Article 14 may have been related to an earlier WTO dispute Brazil launched against Peru in late 1997 on countervailing duty measures imposed on imports of Brazilian buses.⁴⁶ In this context, Brazil effectively used the SCM Committee framework to build pressure for a negotiated solution to the formal WTO dispute. Brazil never requested the establishment of a WTO panel to adjudicate the dispute, suggesting that the case was successfully resolved.

⁴⁶ *Peru – Countervailing Duty Investigation against Imports of Buses from Brazil* (DS112).



A. INTRODUCTION AND OVERVIEW

The European Union is the second most active user of the WTO Committee framework to raise STCs, only behind the United States.⁴⁷ The European Union has raised or supported a total of 126 SPS measures and 224 TBT measures in the relevant WTO Committees. This volume of STCs has allowed us to examine the frequency with which SPS measures were raised, with which TBT measures were raised or supported, which in turn serves as a rough indicator of European Union priorities and enables some assessment of the resolution of the STCs. In the SPS Committee, 50% of the STCs either raised or supported by the European Union were successfully or partially resolved, and that percentage increases to slightly more than 50% when the STCs that the European Union directly raised (as opposed to raised or supported) are analyzed. Due to their high volume, the European Union statistics thus influence the statistics of other WTO Members that associated themselves with the European Union concerns. Analyzing the STCs raised by the European Union in the SPS Committee, and the STCs raised or supported by the European Union in the TBT Committee, the United States, followed by major emerging markets (BRICS), have been the main target of the European Union's STC-related actions.

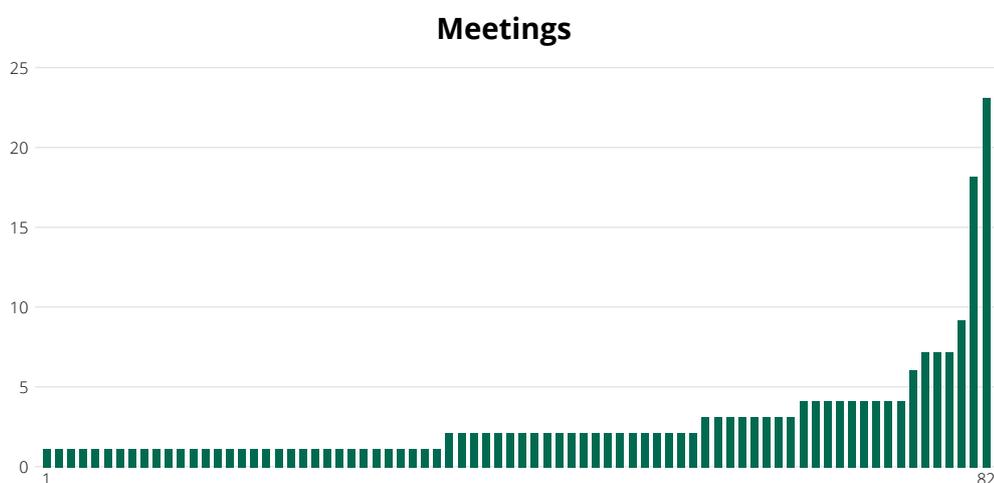
In the TBT Committee, the European Union has focused primarily on STCs arising in large emerging economies, particularly BRICS countries, and has increased its activity over the years. The available empirical evidence does not permit an assessment of the European Union's success in addressing STCs before the TBT Committee, but anecdotal evidence suggests that this particular mechanism has been less effective in resolving or partially resolving STCs. The European Union, however, is one of the main proponents of tighter TBT Committee surveillance concerning resolution of STCs.

In the SCM Committee, the European Union has been active but the great percentage of its enquiries towards other Members' subsidy measure notifications appears to be directed towards clarification of the application of the respective Members' notified measure rather than challenging the subsidy measure as such. On the other hand, the European Union has been strongly advocating enhanced compliance with the notification rules under the SCM Agreement so as to ensure greater transparency and eventual compliance by all Members with the SCM disciplines.

⁴⁷ Information regarding STCs raised or supported by the EU in the SPS and TBT Committees, as well as the EU's participation in the SCM Committee, was taken from the WTO SPS Information Management System (<http://sp-sims.wto.org>), the WTO TBT Information Management System (<http://tbtims.wto.org>), the WTO website, and/or documents available through the WTO website, <https://www.wto.org/>, unless otherwise noted.

B. STCS RAISED IN THE SPS COMMITTEE⁴⁸

Eighty-five STCs concerning SPS measures have been raised by the European Union between May 1, 1996 and July 15, 2015.



Around 71% of the STCs raised by the European Union were addressed in one or two SPS Committee meetings (low frequency), another 21% in three to five meetings (medium frequency), and the remaining 8% in six to 23 meetings (high frequency).

	Low frequency		Medium frequency		High frequency				
Number of meetings	1	2	3	4	6	7	9	18	23
Percentage of STCs per number of meeting	45%	26%	10%	11%	1%	4%	1%	1%	1%
Percentage of STCs per category	71%		21%		8%				

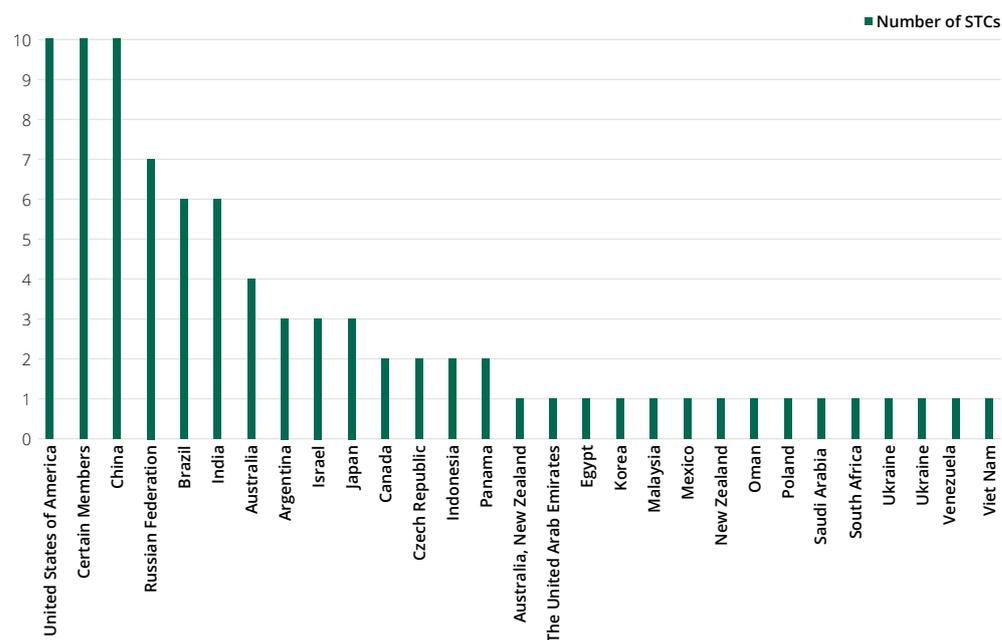
In the SPS Committee, the European Union has raised the highest number of STCs against the United States (10), Certain Members⁴⁹ (10), China (10), Brazil (6), India (6), and the Russian Federation (7).

⁴⁸ In addition to the 85 STCs raised by the EU, the EU also supported an additional 41 STCs raised in the SPS Committee by other Members. Regarding these 41 STCs, 17, or 40%, have been resolved or partially resolved, according to the WTO TBT Information Management System, <http://tbtims.wto.org>.

⁴⁹ Several Members or Members not clearly identified.

STCs Raised by the European Union in the SPS Committee

Members that Faced SPS STCs Raised by the EU



Six STCs raised by the European Union in the SPS Committee are maintained by Brazil:

- Import requirements for wine
- Import requirements for seed potatoes
- Imports of live ostriches
- Lack of recognition of regionalization and disease-free status for classical swine fever
- Lack of regionalization for Newcastle disease and restrictions on live birds
- Labelling of products of animal origin

Source: WTO SPS Information Management System.

Of the 85 STCs raised by the European Union before the SPS Committee, 36 (42%) have been reported as “resolved”. Argentina, Australia, Brazil, China, Israel and the United States have all addressed STCs raised by the European Union in a manner deemed satisfactory. Nine STCs (11%) have been reported as only “partially” resolved, while the status of 40 STCs (47%) has not been reported.

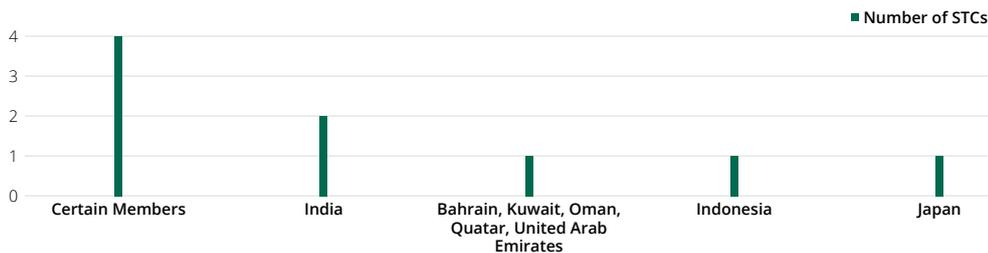
Two STCs supported by the European Union in the SPS Committee are maintained by Brazil:

- Pest risk assessments for imports of plant origin
- Measures on canned sardines

Source: WTO SPS Information Management System.

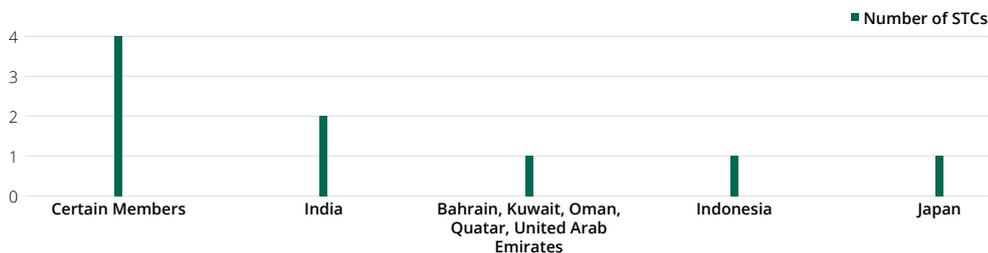
STCs Raised by the European Union in the SPS Committee and Reported as Resolved

Status: Partially Resolved (9 out of 85)



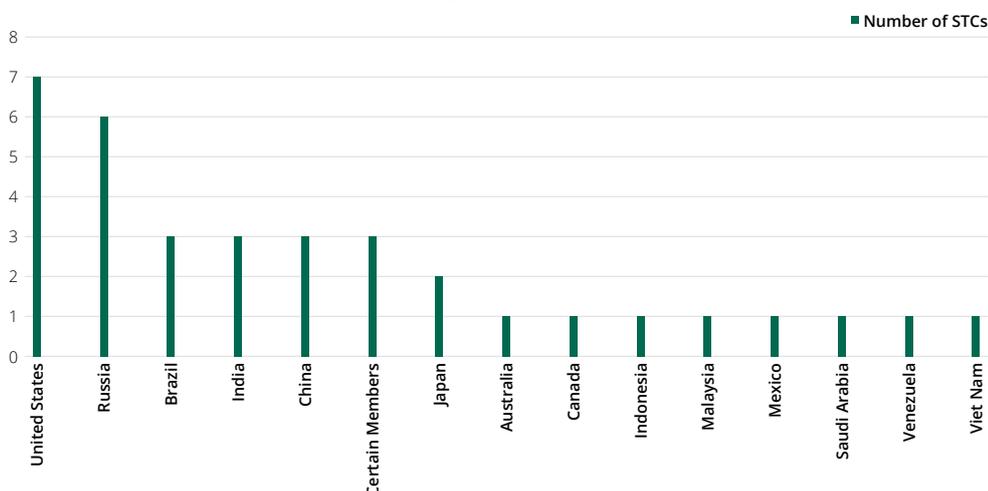
STCs Raised by the European Union before the SPS Committee and Reported as "Partially Resolved"

Status: Partially Resolved (9 out of 85)



STCs Raised by the European Union in the SPS Committee with Status "Not Reported"

Status: Not Reported (40 out of 85)



a. Qualitative data analysis

Hereunder follow qualitative descriptions of three STCs, all in the field of animal health, which are of interest in that they have necessitated frequent (*i.e.*, greater than six) Committee meetings each. Not all of the Minutes of the relevant meetings are readily available on the WTO's website, so these descriptions remain high-level.

i. Vietnam's ban on offal

The European Union and the United States both raised an STC related to a ban on offal in Vietnam. They were supported by Australia, Canada, Chile and New Zealand. Nine Committee meetings took place between March 30, 2011 and October 16, 2013 concerning the matter. In the European Union's view, Vietnam's ban, in place since July 2010, seriously affected European Union exports of offal.

Vietnam indicated its intention to conduct a risk-assessment and claimed to have taken these measures because imported frozen animals and animal products were found to violate its food safety requirements. However, Vietnam eventually confirmed that no violations were found on European products, and the European Union thus claimed that the import bans on offal were not justified. Moreover, since there were no similar measures on domestic offal, the European Union contended that the measure discriminated against foreign imports.

Vietnam partially lifted the ban on red offal, and made a commitment to fully lift the ban by the end of 2011. It saw the ban as a temporary measure geared at protecting human health from risks arising from contaminants, toxins or disease-causing organisms in food, and held that the measure did not aim to impose trade restrictions. In light of the concerns of its trading partners, Vietnam was considering how to prevent a negative trade impact from the measure, and had already lifted the ban on red offal. However, as a developing country with limited resources, the Vietnamese authorities needed time to collect information for risk assessments. Vietnam urged trading partners to provide relevant information and technical cooperation to facilitate the process.

The European Commission's website⁵⁰ mentions that Vietnam announced on September 1, 2013, that the remaining ban on white offal would be lifted. However, the European Commission states that "at the same time, Vietnam is imposing several new conditions on imports of white offal, such as: a limitation to use only three ports of entry into Vietnam and additional registration and certification

⁵⁰ European Commission: Trade: Market Access - Flashnote, Vietnam lifts its remaining import ban on certain types of offal, Jun. 11, 2015, <http://trade.ec.europa.eu/eutn/psendmessage.htm?tranid=8409>

requirements. Trading partners have not been consulted on these new measures and it remains to be seen whether exports of offal will now take place in trade friendly conditions.”⁵¹

Therefore, although the status on the WTO’s website is indicated as “not reported”, it could actually be reported “partially resolved”, but with potential new STCs to be raised regarding Vietnam’s follow-up measures.

ii. India’s restrictions due to avian influenza

The European Union, together with the United States, raised an STC against India following its enacting of restrictions due to avian influenza. Australia, Canada and China supported the concern. Eighteen Committee meetings concerning this matter took place between March 1, 2004 and October 19, 2011.

The concern arose in the context of import restrictions imposed by India on poultry, pigs and their products, from areas that had reported outbreaks of either low- or high-pathogenic avian influenza in wild bird populations.

The European Union was of the view that India’s import restrictions were not justified according to World Organization for Animal Health (“OIE”) rules, and that India had not provided adequate scientific justification for the ban.

The European Commission requested that India review its measures. In the SPS Committee, India argued for a continuation of the measures. The United States and European Union thus jointly requested the OIE to provide an expert opinion of the risk assessment document provided by India. The OIE pointed out that countries should not take measures when outbreaks occur only in wild birds.

The European Union was of the view that the risk analysis provided by India was not complete and did not evaluate the likelihood of entry, establishment or spread of the disease, and the associated potential biological and economic consequences, nor had the document led to any changes to the OIE standards. The European Union urged India to bring its import requirements fully into line with the relevant international standards, including through the recognition of regionalization.

The European Union recalled that it had previously questioned whether India’s measures were based on a valid risk assessment, and stressed that the key question now was whether India would

⁵¹ *Id.*

continue to maintain these measures, or bring them into line with the OIE standards.

The Members did not succeed in resolving their concerns and, on March 6, 2012, the United States initiated consultations with India over its prohibition on imports of poultry, chicken eggs, and other agricultural products.⁵²

A panel was established on June 25, 2012 and a panel report⁵³ was circulated to Members on October 14, 2014. The report found that India's measures were inconsistent with several provisions of the SPS Agreement. India appealed these findings on January 26, 2015. On June 4, 2015, the Appellate Body issued its report, essentially upholding the Panel's substantive rulings on India's failure to comply with several provisions of the SPS Agreement. The reasonable period of time for implementation expired on June 19, 2016. On July 7, 2016, the United States tabled a request to retaliate against India for its failure to implement the recommendations and rulings of the DSB in this dispute. India objected to the proposed level of retaliation on July 18 and the arbitration proceedings under Article 22.6 of the DSU are ongoing at the time of writing.

iii. Certain member's general import restrictions due to Bovine spongiform encephalopathy ("BSE") (STC "193")

The European Union and the United States raised STCs against "Certain Members" that had enacted general import restrictions due to the outbreak of BSE. The concern was supported by Canada, Switzerland and Uruguay. This issue was raised in 25 SPS Committee meetings between June 1, 2004 and October 15, 2014.

In the European Union's view, "Certain Members", including Australia, China, Japan, Korea, and the United States had put in place unjustifiable trade restrictions relating to BSE, which were not compatible with OIE standards for safe trade that had existed for more than 10 years.

China saw the import prohibition of bovine cattle and related products as a safety measure. According to Chinese legislation, China could conduct inspection and quarantine activities only after the BSE ban on certain European Union member states had been lifted. Since 2010, the OIE had released reports that a number of European Union member states (France, Portugal, Spain, the United Kingdom, etc.) still suffered from BSE and these countries had

⁵² *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/1 (Mar. 8, 2012).

⁵³ Panel Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/R (Oct. 14, 2014) and WT/DS430/R/Add.1 (Oct. 14, 2014).

not applied for the ban to be lifted in China. Technical exchanges, including a seminar on BSE jointly held with the European Union, and the assignment of a technical person to participate in BSE prevention training, took place. In March 2012, European Union beef exports were discussed at the 7th China-EU Summit, and a joint expert team was established to pursue the technical issues.

Korea indicated that its authorities had been conducting import risk analysis on beef from several European Union member states. Responses to questionnaires were awaited so as to proceed with the risk analysis in a timely manner. Korea maintained a close dialogue with the concerned Members in this regard.

As far as the United States restriction were concerned, imports from the European Union resumed in January 2015. The United States market had been closed to any European Union beef, including deboned beef, since January 1998, when the United States introduced import restrictions on beef, sheep and goats (ruminant animals) and their products on the basis of the BSE concerns. In the European Union's view, these measures went beyond the standards of the OIE according to which, for example, deboned skeletal muscle beef is safe and can be freely traded from all countries, regardless of their BSE status.⁵⁴

The OIE has evaluated the BSE risk status of European Union member states and has found that almost all have the same or a better risk status than most countries in the world. While certain Members such as the United States and Australia have finally responded positively to the European Union's concern in this area, negotiations with others such as China, Japan and Korea are still ongoing and the STC is still on the agenda of the SPS Committee. The last meeting took place in September 2015.⁵⁵ Its status on the WTO's website is reported as "partially resolved".

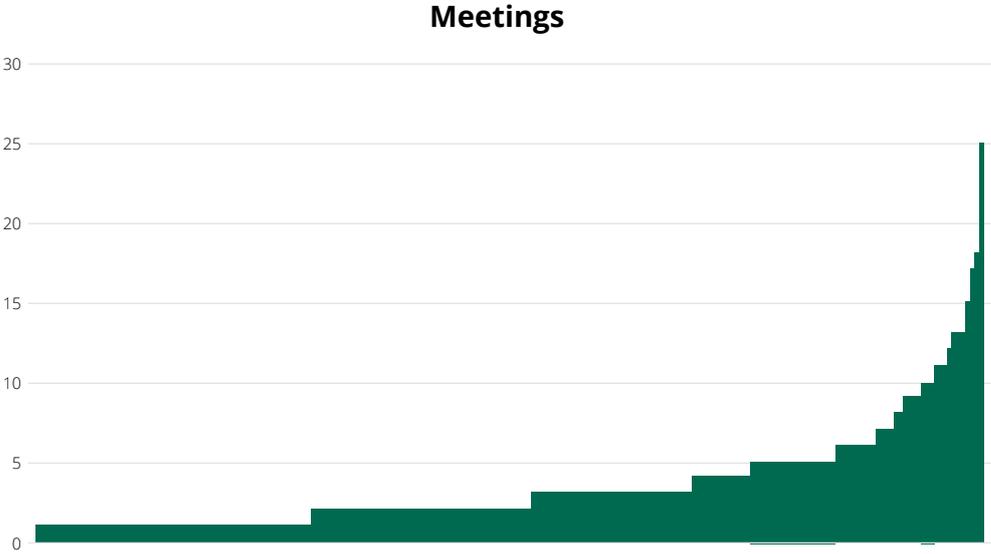
⁵⁴ European Commission Statement, Re-opening of the US market for imports of EU beef from January 2015 - Statement by EU Health Commissioner Vytenis Andriukaitis, Trade Commissioner Cecilia Malmström and Agricultural and Rural Development Commissioner Phil Hogan, Jan. 5, 2015, http://europa.eu/rapid/press-release_STATEMENT-15-2942_en.htm.

⁵⁵ Committee on Sanitary and Phytosanitary Measures, *Summary of the Meeting of 15-16 July 2015*, G/SPS/R/79 (Sep. 4, 2015).

C. STCS RAISED IN THE TBT COMMITTEE

a. Quantitative data analysis

Two-hundred and 24 STCs were raised or supported by the European Union in the TBT Committee between May 1, 1996 and December 1st, 2015.

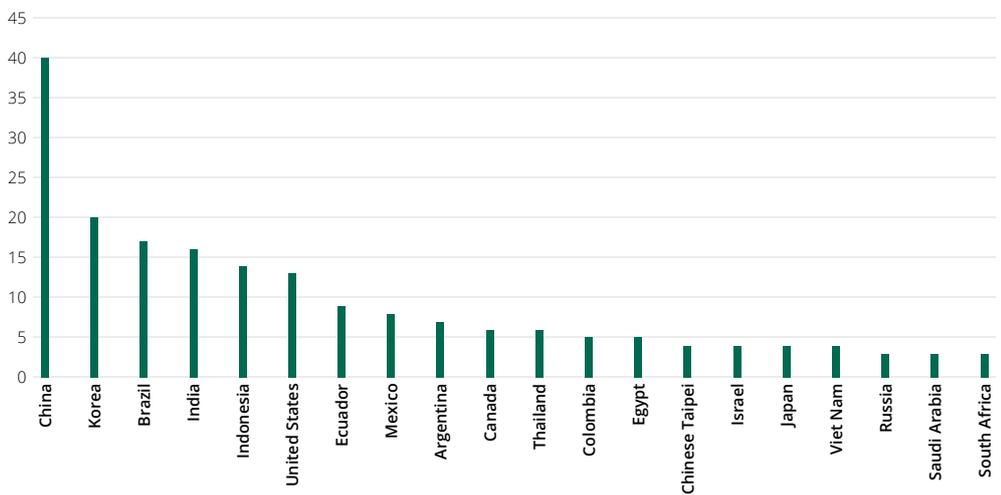


Around 53% of the 224 STCs raised or supported by the European Union relating to TBT measures were addressed in one or two TBT Committee meetings (low frequency), another 32% in three to five meetings (medium frequency), and the remaining 15% in six to 25 meetings (high frequency).

	Low frequency		Medium frequency					High frequency									
Number of meetings	1	2	3	4	5	6	7	8	9	10	11	12	13	15	17	18	25
Percentage of TBTs per number of meeting	29.6%	23%	16.9%	6.1%	8.9%	4.2%	1.9%	0.9%	1.9%	1.4%	1.4%	0.5%	1.4%	0.5%	0.5%	0.5%	0.5%
Percentage of TBTs per category	53%		32%					15%									

The highest number of STCs raised or supported by the European Union in the TBT Committee involved measures maintained by China (40), Korea (20), Brazil (18), India (16), Indonesia (15), the United States (13), Ecuador (11), Mexico (8), Argentina (7), Canada (6), Thailand (6), Colombia (5) and Egypt (5).

STCs Raised or Supported by the European Union in the TBT Committee



Eighteen STCs raised or supported by the European Union in the TBT Committee are maintained by Brazil:

- Certification of pacifiers and nursing bottles
- Technical regulation on labelling of textile products
- Criteria and procedures for the import of wines and beverages derived from grapes and wines
- Decree on beverages and spirits
- Mandatory certification of batteries
- Registration requirements for medical devices
- Toys
- Regulation and identification and quality standards of ethyl alcohol and other spirits
- Wines
- Health products
- Alcoholic beverages
- Instructions for registration for labels of imported products of animal origin
- Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives
- Canned sardines; Ministerial Act N° 406, 10 August 2010
- ANVISA enforcement of CATEC Technical Opinions 4, 5, 6 and 7 of 21 December 2010
- Draft ANVISA Resolution on used, refurbished, rented and lent medical devices
- Draft Technical Resolution n° 69, 9 September 2014, regarding the requirement of describing the chemical composition, in Portuguese, in the label of personal hygiene products, cosmetics and perfumes
- Draft Ordinance Act N°. 374, 27 November 2014 (Portaria SDA/ MAPA 374/2014); establishes quality requirements for wine and derivatives of grape and wine

Source: WTO TBT Information Management System.

b. Qualitative data analysis

Hereunder follows a qualitative description of three STCs that were discussed during a number of TBT Committee meetings.

i. India's pneumatic tires and tubes for automotive vehicles

On March 15, 2006, the European Union, together with Japan, Korea and the United States, raised an STC against India for its consumer protection and safety measures concerning pneumatic tires and tubes for automotive vehicles. India had imposed certification requirements and license fees, as well as prohibition of the manufacture, sale, distribution, import and storage of pneumatic tires which did not conform to the specified standard and which did not bear the Standard Mark of the Bureau of Indian Standards (BIS). Australia, Canada, Chile and New Zealand supported the STC. Twenty-five Committee meetings took place between March 15, 2006 and November 5, 2014 during which this STC was discussed.

The European Union questioned whether India considered existing international standards and whether certain products, especially tyres, covered by United Nations Economic Commission for Europe ("UNECE") standards, would be admitted on the Indian market. It requested that India align its procedures to international practices and remove the obligation to pay a marking fee per marked tire and to eliminate a bank guarantee requirement that the European Union deemed discriminatory.

Despite all of the meetings on this STC, discussions are still ongoing. The representative of India reported, during the meeting of the TBT Committee of June 17-18 2015, that most of the concerns are not new and have been sufficiently explained already in both previous Committee and bilateral meetings, and requested that interested Members refer to the minutes of the previous meeting.⁵⁶ He would refer to his capital regarding any new questions.

The status of this STC is "not reported", but clearly resolution is problematic.

ii. China's administration on the control of pollution caused by electronic information products

The European Union, together with Japan, Korea, Switzerland and the United States, raised an STC against China concerning an "administration on the control of pollution caused by electronic information products". This measure entailed certification, inspection, labelling and CCC Scheme Revision by the Ministry of Industry

⁵⁶ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 March 2015*, G/TBT/M/65, paras. 2.41-2.43 (May 28, 2015).

and Information Technology together with other relevant agencies of the State Council. The revision set limitations on six categories of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers. This STC was discussed during 12 TBT Committee meetings from February 11, 2005 to November 27, 2012. The European Union was particularly concerned about mandatory third party certification.

China developed a catalogue of products required to comply with pollution control, and stated that mandatory, voluntary or other kinds of certification could be chosen for the purpose of certification. It clarified some points bilaterally with the European Union, Canada, Japan, Korea, and the United States. China notified the “administration on the control of pollution caused by electrical and electronic products” to the WTO at the end of 2010, and revised it afterwards according to comments from interested countries and regions. According to China’s process of legislative revision, public comments were sought through the website of the Legislative Affairs Office of the State Council P.R. China, from June 4, 2012 to July 10, 2012.

The status of this STC is “not reported”.

iii. Canada’s compositional requirements for cheese

The European Union, together with Australia, New Zealand, Switzerland and the United States raised an STC related to compositional requirements for cheese and curd in Canada. This STC was discussed during 17 TBT Committee meetings which took place between May 7, 2007 and November 27, 2012.

During the first of these meetings, the representative of the European Union noted that the proposed Canadian amendments to its compositional standards for cheeses set minimum percentages of proteins to be derived from liquid milk for various cheeses, and required a detailed system of certification and import licensing. She stressed that a preliminary examination of the proposal indicated that the measure could have a negative impact on European Union exports to Canada and could *de facto* ban certain cheese varieties from being exported to that market. If the proposed amendment was adopted, it could result in a decrease in the demand for basic products such as protein, casein protein and milk protein.

The European Union also noted that the announced measure included an additional licensing scheme for imports other than the requirement to get an import permit under Canada’s tariff-rate quota regime. Information was therefore requested with respect to the meaning of “fine” cheeses for which the proposed amendments set

the minimum percentage of raw milk at 98 per cent, on the treatment of imports of cheeses that did not comply with these new standards, and on the proof that had to be provided by foreign suppliers that cheeses complied with the requirements.

At a later stage the European Union, in bilateral discussions, received assurances from the Canadian authorities regarding Canada's flexibility on the implementing rules of these standards. The European Union continued to have concerns, however, regarding the overall nature of the measure and indicated that it would monitor the implementation closely to make sure that the impact on its cheese exports was minimized.

In late November 2012, during the last TBT Committee meeting where this matter was discussed, Canada updated the Committee on the revised regulations, which clarified and harmonized federal composition standards for cheese. Canada confirmed that it took international standards and other country's regulations into account, as well as the comments received during the WTO notification period. There was no evidence that the regulations had constrained the overall usage of milk ingredients such as milk protein concentrates and, as of that time, no imported cheeses had been found in contravention of the standard.

The status of this STC is indicated as "not reported", but no meeting on this issue has been held since November 2012 so we can assume that the matter has been satisfactorily resolved. In the meantime the EU-Canada Comprehensive Economic and Trade Agreement ("CETA") has been concluded and both sides have agreed on the respective provisions involving trade in cheese.

D. STCS RAISED IN THE SCM COMMITTEE

The European Union is a regular and active member in the SCM Committee. The European Union's involvement in the Committee, however, does not appear to be focused mainly on the resolution of STCs, but on obtaining improved compliance with notification obligations and transparency overall.

The European Union's involvement takes several forms. First, the European Union regularly submits notifications of its own preliminary/final SCM measures adopted, pursuant to Article 25.11 of the SCM Agreement. It also regularly submits the required semi-annual reports on countervailing duty actions during the respective period.

Second, the European Union regularly notifies new European Union and member state subsidy measures. This particular area of involvement actually is a rather complex administrative task because the European Union is responsible for notifications not only concerning European-level measures but also all subsidy measures adopted by each of the 28 member states. The European Union notifications are typically divided into two parts. This first part deals with subsidies granted by the European Union and general information on aid granted within the Union's territory. The second part, circulated as addenda to the European Union notification, covers subsidies granted by the individual member states. The member states' notifications cover subsidies granted at both national and sub-national levels.

Third, the European Union often raises questions concerning the substance of other Members' notified new subsidy measures, and further responds to other WTO Members' questions concerning the notified European and member state subsidy measures ("questions and replies").

Fourth, the European Union is active alongside other Members, notably the United States, in seeking effective reforms to improve the content and timeliness of Members' notifications to the Committee of new subsidy measures, and also to improve Members' replies to other Members' questions regarding those measures. These objectives appear to be a principal focus of the European Union in the SCM Committee. As explained further below, China and India are the principal targets of European Union criticism relating to inadequate notifications and lack of transparency of their subsidy measures.

A review of the European Union's involvement in the SCM Committee over the past several years provides some indications of the European Union's approach and usage of the Committee to address the European Union's subsidy concerns. As mentioned above, the European Union's involvement appears not so much directed at resolving STCs but rather to secure better Member reporting and transparency in this SCM realm.

The European Union has raised questions concerning subsidy notifications made by a number of other Members. As indicated in the minutes of the respective Committee meetings between 2011 and 2015⁵⁷, the European Union's questions have targeted a range of other Members, as follows:

⁵⁷ In 2015, the European Union did not raise any questions concerning other Members' subsidies notifications.

MEMBER	2011	2012	2013	2014
Albania		✓		
Argentina		✓	✓	✓
Australia		✓	✓	
Brazil		✓		
Canada		✓		
Chile		✓		
Honduras		✓	✓	✓
India	✓	✓	✓	
Israel		✓		
Korea		✓		
Malaysia		✓		
Macedonia			✓	
Mexico	✓	✓		
New Zealand		✓		
Chinese Taipei		✓		
Turkey			✓	
Ukraine		✓		
United States		✓		
Uruguay		✓		

A clear trend of European Union's questioning is not apparent, with the opportunity for questioning dependent largely on other Members actually making the required notifications of their new measures. In fact, a number of Members consistently fail to make meaningful notifications as required; in some years nearly half of Members fail to make their notifications. However, we note from a sampling of the European Union's questions that they are in any event fairly superficial and quite neutral in approach, *i.e.*, not raising STCs as such. The European Union's single question to Brazil in this period was minor, merely querying the scope of beneficiaries of a subsidy program aimed for the development of the pharmaceutical sector (notified by Brazil in G/SCM/N/220/BRA). The European Union has raised more questions to Argentina, but again these mainly ask for clarification on basic issues (*e.g.*, persons eligible for the subsidy, eligibility criteria, form of the subsidy, duration, etc.).

With regard only to India, the European Union has taken a more aggressive stance and actually identified specific apparent subsidy measures which India had failed to list in its formal notification, and thus requested India to confirm the status of the identified unreported measures (the United States has taken the same approach towards China, actually listing unreported subsidy measures and requesting China to report their status). The one European Union question directed at the United States during this period related to the latter's notification (G/SCM/N/220/USA) of a number of renewable energy subsidy programs. Again, however, the European Union asked merely for technical clarifications on how the different measures operated and who could be eligible for the subsidies.

Regarding STCs, the European Union has targeted only three in recent years, involving Canada, China and India. These are highlighted in the following country sections, along with certain broader substantive and structural concerns relating to these Members:

- **India:** Two main concerns have been expressed by the European Union. One, which could qualify as a STC, relates to the requirement, per Article 27.5 of the SCM Agreement, for India to phase out, by 2015, India's export subsidies for textiles and apparel in light of India's reaching export competitiveness in these sectors in 2007. The second, more fundamental concern about India relates to the failure of India to make complete or timely subsidy notifications. The European Union's remarks on India's inability to adequately notify its subsidy measures are made on a regular basis at the SCM Committee meetings, and these views are normally expressed in concert especially with Japan, Turkey and the United States.
- **China:** The one STC that the European Union has raised regarding China relates to China's system of export credit financing. The European Union has highlighted that such financing is prohibited unless granted in accordance with the SCM Agreement. In this context, the European Union has encouraged China to follow the international disciplines in order to avoid giving unfair competitive advantage to its exporters to the European Union (this concern has been seconded by the United States). More fundamentally, however, the European Union has regularly highlighted China's substantial non-notification of its alleged subsidies, at both central and sub-central levels (this criticism normally being made in conjunction with Australia, Canada, Japan and the United States). China's response to this latter criticism may be of interest to Brazil, given that it raises capacity issues applying in probably a number of countries that don't have the resources of the European Union or the United States. In essence, China has replied that full involvement and compliance in the SCM Committee is the province of more developed countries. Subsidies, given their high technicality, demand long experience and high legal expertise that may be present in the European Union and United States, but not in many other nations without such

resources. Despite goodwill, it thus remains a challenge for lesser-developed countries to stay fully compliant with the SCM notification and related requirements.

- **Canada:** The European Union has expressed specific concerns relating to government assistance provided to a pulp and paper mill in Nova Scotia, Canada. These concerns have normally been expressed by the European Union in conjunction with the United States. These concerns are apparently being driven by European Union and United States domestic paper producers who do not view the Canadian subsidies as justified and which are resulting in unfair exports to their paper markets. This STC was first raised in October 2012 and was still being criticized through 2015.

INDIA



A. INTRODUCTION AND OVERVIEW

India's participation in raising and supporting STCs at the WTO has increased significantly in the last five years after being relatively dormant throughout the first 15 years of the WTO's existence, in implicit recognition of the increased importance of these non-litigious mechanisms for the resolution of trade disputes. India became particularly active since 2010, when it began actively raising STCs before the SPS Committee. It has raised 21 STCs before the SPS Committee since then, but its success rate is slightly below other WTO Members, with only about a third STCs resolved during the period. India has been less active in the TBT Committee, and results are commensurate with its lower participation in the process. In the SCM Committee, India is a major focus of contingent trade remedies and therefore its work is more concentrated in that subject matter.

B. STCS RAISED IN THE SPS COMMITTEE

India has raised or supported a total of 30 STCs related to SPS issues.⁵⁸ India was not very involved with raising STCs in the early years of the SPS Committee. In fact, India raised only three STCs through the end of 2009, but has raised 18 STCs since the start of 2010. Of the 21 STCs raised by India in the SPS Committee, 85% have been raised since 2010, suggesting that India has grown more assertive in the past five years.

It is not just the extent of India's participation in the SPS Committee that has shifted in recent years, but the countries involved in the India-related STCs have also expanded in recent years. The 3 STCs India raised prior to 2010 all concerned the United States, European Union and another developed WTO Member (Japan). Since 2010, the distribution has been a bit more varied, with India raising STCs against not only the United States, the European Union, and Japan, but also against fellow BRICS countries China (two STCs) and Russia (two STCs), as well as Taiwan and Australia (one STC each). Looking at the nine STCs that India has supported (as opposed to raised), all were maintained by developed-country WTO Members.

India has been less successful than other Members in resolving STCs in the SPS Committee. Only 9 of the 30 (30%) STCs raised or supported by India have been resolved or partially resolved.

Since 2010, India has resolved three STCs it raised against other countries – all involving maximum residue levels (MRLs). The first of the recently resolved STCs was raised in October 2011 and involved United States default MRLs relating to the importation of basmati rice. Through communication

⁵⁸ WTO SPS Information Management System, <http://spsims.wto.org>.

between the two countries, the STC was deemed resolved in October of 2014.⁵⁹ The second resolved STC also had to do with MRLs, in this instance MRLs relating to coffee being imported into Taiwan. Following India's original complaint in August 2012 (and subsequent support from Colombia and the European Union), Taiwan published a modified draft regulation in October of 2012 that had resolved the STC.⁶⁰ The third resolved SPS STC was raised in October of 2012 and concerned Japanese restrictions on the importation of shrimp due to residue levels of Ethoxyquin. India objected to testing of Ethoxyquin at the Japanese level, as it was too stringent and there was no MRL for Ethoxyquin in shrimp defined by the Codex Alimentarius. The issue was resolved in October 2014 when the Codex announced that Ethoxyquin had been placed on Codex's priority list for evaluation and thus would be considered at the international level.⁶¹

India has brought only one WTO Dispute Settlement case relating to the SPS agreement, *European Communities — Restrictions on Certain Import Duties on Rice* (DS134) against the European Union's restrictions on import duties on rice. This issue was not raised as an SPS STC and has been in consultations since May of 1998, when India's request for consultations was made.⁶²

Following is the list of 21 STCs that India has raised in the SPS Committee.

STCs RAISED BY INDIA IN THE SPS COMMITTEE ⁶³			
Title	Members maintaining the measure	First date raised	Status
Maximum levels for certain contaminants (aflatoxins) in foodstuffs	European Union	1/3/1998	Resolved
Geographical BSE risk assessment	European Union	1/7/2001	Resolved
Import requirements for Indian mangoes	Japan	1/6/2005	Not reported
2009 Food Safety Enhancement Act	United States	29/06/2010	Not reported
Regulation No. 1099/2009	European Union	29/06/2010	Not reported

⁵⁹ WTO SPS Information Management System, <http://spsims.wto.org/web/pages/edition/stc/SpecificTradeConcern.aspx?ID=2014026>.

⁶⁰ WTO SPS Information Management System, <http://spsims.wto.org/web/pages/edition/stc/SpecificTradeConcern.aspx?ID=2348368>.

⁶¹ WTO SPS Information Management System, <http://spsims.wto.org/web/pages/edition/stc/SpecificTradeConcern.aspx?ID=2493230>.

⁶² WTO Dispute Settlement: Dispute DS134, *European Communities – Restrictions on Certain Import Duties on Rice*, Current status, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds134_e.htm.

STCs RAISED BY INDIA IN THE SPS COMMITTEE⁶³

Title	Members maintaining the measure	First date raised	Status
Maximum residue levels of pesticides	European Union	20/10/2010	Not reported
Prohibition of certain food additives	Japan	20/10/2010	Not reported
Requirement for registration and supervision of foreign enterprises	China	19/10/2011	Not reported
Default MRLs, limits of determination or limits of quantification on basmati rice	United States	19/10/2011	Resolved
Testing methods for food additives	China	27/03/2012	Not reported
MRLs for roasted and powdered coffee	Taiwan	10/7/2012	Resolved
Testing of pesticide residues	European Union	10/7/2012	Not reported
Restrictions on shrimp due to anti-oxidant residues	Japan	18/10/2012	Resolved
Non-recognition of testing laboratories for meat products	Russia	16/10/2013	Not reported
High cost of certification for mango exports	United States	9/7/2014	Not reported
Ban on mangoes and certain vegetables from India	European Union	9/7/2014	Not reported
Non-acceptance of OIE categorization for BSE	United States	9/7/2014	Not reported
Non-acceptance of OIE categorization for BSE	Australia	9/7/2014	Not reported
Withdrawal of equivalence for processed organic products	European Union	9/7/2014	Not reported

STCs RAISED BY INDIA IN THE SPS COMMITTEE⁶³

Title	Members maintaining the measure	First date raised	Status
Market access requirements for bovine meat in compliance with OIE requirements	Russia	15/10/2014	Not reported
Measures on bovine meat	China	26/03/2015	Not reported

Following is the list of nine STCs that India has supported in the SPS Committee.

STCs SUPPORTED BY INDIA IN THE SPS COMMITTEE⁶⁴

Title	Members maintaining the measure	First date raised	Status
Notifications regarding import requirements on meat and eggs	Switzerland	1/9/1998	Resolved
Restrictions on imports of tropical fresh fruit	Australia	1/3/2000	Not reported
Import restrictions on durian	Australia	1/11/2000	Not reported
Restrictions on imports of mangoes	Japan	1/6/2003	Resolved
Notification on maximum tolerance levels for Ochratoxin A in coffee	Germany, European Union	1/10/2003	Partially resolved
Directives on residual pesticide tolerance and inspection methods for tea	European Union	1/3/2005	Partially resolved
Application and modification of the Regulation on Novel Foods	European Union	1/3/2006	Not reported
MRLs applied to sesame	Japan	30/06/2011	Not reported

⁶³ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, November 5, 2015.

⁶⁴ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, November 5, 2015.

STCs SUPPORTED BY INDIA IN THE SPS COMMITTEE ⁶⁴			
Title	Members maintaining the measure	First date raised	Status
Revised proposal for categorization of compounds as endocrine disruptors	European Union	25/03/2014	Not reported

C. STCS RAISED IN THE TBT COMMITTEE

India has been a concerned party in only 13 STCs that have been raised in the TBT Committee, a tiny 3% of the 473 TBT STCs identified by the TBT Information Management System.⁶⁵ The numbers indicate that India's use of the TBT Committee as a forum to diffuse trade concerns is lower than its use of the SPS Committee. India has raised or supported 30 STCs in the SPS Committee, as opposed to only 12 in the TBT Committee.

India's 13 STCs have primarily been focused on the European Union, as 11 of the 13 TBT STCs raised by India involved that trading partner. The other two STCs of concern to India were related to measures maintained by the United States and, in India's most recent STC, Brazil. The STC relating to the United States (on contaminants in fuel containers) was raised once in 2008 and did not appear again in the TBT Committee, while the concern with Brazil (registration of medical devices) was just raised in June 2014.⁶⁶

As noted in the previous sections, since the WTO's TBT database does not report if an STC has been resolved, the methodology similar to that in the paper by Horn *et al.*, to determine if a STC can "be reasonably assumed to be resolved"⁶⁷ was used. Out of the 13 STCs in which India is a concerned party, six have been raised at a TBT Committee meeting since the start of 2013 and therefore can be classified as still unresolved. Of those six, three were launched after the start of 2013, leaving three STCs, all involving the European Union, that were raised prior to the start of 2013 that cannot reasonably be assumed to have been resolved.

⁶⁵ WTO TBT Information Management System, <http://tbtims.wto.org> (as of November 5, 2015).

⁶⁶ WTO TBT Information Management System, <http://tbtims.wto.org>.

⁶⁷ Henrik Horn, Petros C. Mavroidis & Erik N. Wijkström, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees*, Research Institute of Industrial Economics, IFN Working Paper No. 960, 29 (2013).

The oldest of the unresolved STCs is a concern raised by 34 countries regarding the European Union's REACH regulation for the registration of chemicals in the European Union. The STC on REACH was originally raised in March 2003 and has been subsequently raised at 34 additional TBT Committee meetings, including as recently as June 2014.⁶⁸ The second of the three longstanding unresolved STCs also involves the European Union, but only three members (China, Ecuador and India) have indicated that they are concerned with it directive that traditional and herbal medicines be subject to the standard authorization procedure for all medicines.⁶⁹

The third of these unresolved STCs involves a French environmental regulation and was originally raised in June 2011 and subsequently discussed in seven additional TBT Committee meetings.⁷⁰

India has been the complainant in a pair of WTO Dispute Settlement cases that have cited the TBT Agreement in the dispute's request for consultations. One of the cases was *European Communities — Restrictions on Certain Import Duties on Rice* (DS134), which was discussed in the previous subsection on SPS STCs, and the other was *Argentina — Measures Affecting the Import of Pharmaceutical Products* (DS233), which similarly has also not moved beyond the consultations phase of the DS process.⁷¹

One STC raised or supported by India in the TBT Committee is maintained by Brazil: Higher Risk Medical Devices Good Manufacturing Practice (GMP) Certification, first raised in the Committee in June 2014.

Source: WTO TBT Information Management System.

Following is the list of 13 STCs that India has raised or supported in the TBT Committee.

⁶⁸ WTO TBT Information Management System, <http://tbtims.wto.org/web/pages/edition/stc/SpecificTradeConcern.aspx?ID=185400>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ WTO Dispute Settlement: Dispute DS233, *Argentina – Measures Affecting the Import of Pharmaceutical Products*, Current status, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds233_e.htm.

STCs RAISED OR SUPPORTED BY INDIA IN THE TBT COMMITTEE⁷²

Title	Members maintaining	First date raised
Marketing standards for eggs	European Union	6/10/2000
Draft law aiming at promoting socially responsible production	European Union	30/03/2001
Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH)	European Union	20/03/2003
Regulation on Classification, Labelling and Packaging of Substances and Mixtures (ATPs and CLP)	European Union	5/7/2007
Napropamide	European Union	5/11/2008
Detection of contaminants in fuel containers	United States	5/11/2008
Directive 2004/24/EC on traditional herbal medicinal products	European Union	23/06/2010
Law on "Provisions concerning the marketing of textile, leather and footwear products"	European Union	3/11/2010
Loi No. 2010-788: The National Commitment for the Environment (Grenelle 2 Law)	France, European Union	15/06/2011
Directive 2011/62/EU of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products	European Union	20/03/2012
Testing requirement on import of steel cutlery products	European Union	30/10/2013
Higher Risk Medical Devices Good Manufacturing Practice (GMP) Certification	Brazil	18/06/2014
Withdrawal of equivalence for processed organic products	European Union	04/11/2015

⁷² Chart generated by the WTO TBT Information Management System, <http://tbtims.wto.org>, November 5, 2015.

Additionally, during a TBT Committee meeting in June 2014 the Chairman reported that India had withdrawn the following STC from the meeting agenda, suggesting that the STC had been resolved prior to the meeting:

- Argentina – Non-acceptance of 200 Grade Stainless Steel.⁷³

D. STCS RAISED IN THE SCM COMMITTEE

India has been much more involved as a complainant in WTO Dispute Settlement cases that have cited the SCM Agreement than in raising potential subsidy issues at the SCM Committee. A reason for this is that India's participation in cases relating to the SCM Agreement have had more to do with application of countervailing duty laws and regulations than with subsidies provided by other countries. In fact, all five of the cases which India has launched that are related to the SCM Agreement have dealt with the application of AD or CVD laws and regulations in the United States and the European Union.⁷⁴

To date, India has only raised one issue in the SCM Committee relating to a specific trade concern of another country, and it was largely in response to a similar issue being raised against India. In February 2013, the United States filed a request for consultations – *India – Certain Measures Relating to Solar Cells and Solar Modules* (DS456) – relating to India's domestic content requirements for solar cells and modules.⁷⁵ Just two months later, India raised concerns at the SCM Committee meeting in relation to various sub-federal local content requirements in programs to promote renewable energy in the United States.⁷⁶ The United States responded to India's questions in 2014 and both Russia and India have asked that the issue remain on the SCM agenda and that the two countries will file follow-up questions with the United States.⁷⁷

⁷³ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 June 2014*, G/TBT/M/63 (Sep. 19, 2014).

⁷⁴ The five DS cases are: *United States – Anti-Dumping and Countervailing Measures on Steel Plate from India* (DS206), *United States – Continued Dumping and Subsidy Offset Act of 2000* (DS217), *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties* (DS345), *European Communities – Expiry Reviews of Anti-dumping and Countervailing Duties Imposed on Imports of PET from India* (DS385), and *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436).

⁷⁵ WTO Dispute Settlement: Dispute DS456, *India – Certain Measures Related to Solar Cells and Solar Modules*, Current status, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.

⁷⁶ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 22 April 2013*, G/SCM/M/85, at 16 (Aug. 5, 2013).

⁷⁷ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 28 October 2014*, G/SCM/M/91 (Mar. 4, 2015).



A. INTRODUCTION

Of the surveyed WTO Members, Mexico is among the least active in its use of the WTO SPS Committee as a mechanism for raising and addressing STCs. Possibly as a consequence of Mexico's limited engagement in the SPS Committee process, it has been significantly less successful in resolving STCs through this mechanism. None of the 10 STCs that Mexico has raised in the SPS Committee have been resolved, or even partially resolved. However, success rates have been higher for the STCs that Mexico has supported. Of 18 STCs supported by Mexico in the SPS Committee, seven, or 39%, have been resolved or partially resolved.

Conversely, Mexico has been more active in the TBT Committee and has addressed its STCs by combining non-litigious and litigious mechanisms for the resolution of trade disputes. As discussed below, anecdotal evidence suggests that Mexico has been successful in resolving STCs in at least two instances, while at the same time Mexico has been a complainant in two of the four formal WTO disputes to address TBT measures to date. Before the SCM Committee, Mexico focused almost exclusively on Chinese subsidies, and there is no anecdotal evidence that such STCs have been resolved.

B. STCS RAISED IN THE SPS COMMITTEE

Mexico has raised or supported a total of 28 STCs related to SPS issues.⁷⁸ Four of those concerns, or 14%, have been resolved. Three, or 11%, have been partially resolved. As mentioned above, all of the STCs that have been reported as resolved or partially resolved were supported – rather than raised – by Mexico. For the remaining 21 STCs that Mexico has raised or supported, or 75%, the outcome is not reported, according to WTO data.

Mexico has raised (as opposed to supported) a total of 10 SPS-related STCs.⁷⁹ For all 10 of those concerns, or 100%, the outcome is not reported. Below is a chart listing the ten STCs that Mexico has raised in the SPS Committee. None of them are maintained by Brazil.

⁷⁸ WTO SPS Information Management System, <http://spsims.wto.org>.

⁷⁹ *Id.*

STCs RAISED BY MEXICO IN THE SPS COMMITTEE⁸⁰

Title	Members maintaining the measure	First date raised	Status
Restrictions on melons	United States	1/11/2002	Not reported
Slaughter of imported breeding cattle	Bolivia	1/3/2005	Not reported
Restrictions on imports of chicken meat	Guatemala	1/3/2005	Not reported
Restrictions on the transit of avocados	Guatemala	1/3/2005	Not reported
Suspension of importation of live poultry and poultry carcasses	Thailand	1/10/2005	Not reported
Hygiene standard for distilled spirits and integrated alcoholic beverages	China	25/02/2009	Not reported
Import restrictions on pork products due to influenza A/H1N1	Bahrain, Kingdom of, Armenia, China, Gabon, Indonesia, Jordan, Suriname	23/06/2009	Not reported
Import restrictions on poultry and poultry products	Ukraine	30/03/2011	Not reported
Proposed rule for user fees for agricultural quarantine and inspection services	United States	26/03/2015	Not reported
Temporary suspension of the issuing of phytosanitary import certificates for avocados	Costa Rica	15/07/2015	Not reported

Mexico has supported other WTO members in voicing 18 STCs.⁸¹ Four of those concerns, or 22%, have been resolved. Three, or 17%, have been partially resolved. For the remaining 11 STCs, or 61%, the outcome is not

⁸⁰ Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, November 4, 2015.

⁸¹ *Id.*

reported. Below is a chart listing the 18 STCs that Mexico has supported, and their status. None of them are maintained by Brazil.

STCs SUPPORTED BY MEXICO IN THE SPS COMMITTEE ⁸²			
Title	Members maintaining the measure	First date raised	Status
Protected zones	European Union	1/3/1997	Not reported
Rules on "specified risk materials" in products of animal origin	European Union	1/10/1997	Not reported
Gelatin imports	European Union	1/10/1997	Partially resolved
Maximum levels for certain contaminants (aflatoxins) in foodstuffs	European Union	1/3/1998	Resolved
Ban on hormones in animal production	Indonesia	1/11/2002	Resolved
Restrictions on honey imports	European Union	1/6/2003	Resolved
Proposed regulation on maximum residue levels of pesticides	European Union	1/6/2003	Not reported
Notification on maximum tolerance levels for Ochratoxin A in coffee	Germany, European Union	1/10/2003	Partially resolved
Implementation of ISPM 15	Certain Members	1/10/2003	Partially resolved
Deviation from international standard for wood packing material	Spain, European Union	1/10/2004	Resolved
EurepGAP requirements for bananas	European Union	1/6/2005	Not reported
Application and modification of the Regulation on Novel Foods	European Union	1/3/2006	Not reported
Artificial colour warning labels	European Union	17/03/2010	Not reported
2009 Food Safety Enhancement Act	United States	29/06/2010	Not reported

STCS SUPPORTED BY MEXICO IN THE SPS COMMITTEE⁸²

Title	Members maintaining the measure	First date raised	Status
MRLs applied to sesame	Japan	30/06/2011	Not reported
Regulations on cadmium in cocoa	European Union	19/10/2011	Not reported
European Union Court of Justice ruling regarding pollen derived from GMOs	European Union	19/10/2011	Not reported
Revised proposal for categorization of compounds as endocrine disruptors	European Union	25/03/2014	Not reported

C. STCS RAISED IN THE TBT COMMITTEE

Mexico has voiced concern over 69 STCs in the TBT Committee, and directly raised 14.⁸³ Mexico became much more active in the TBT Committee after 2009, a period in which it shifted its focus from STCs imposed by the European Union to STCs maintained by emerging economies, particularly in Latin America. Below is a chart listing the 69 STCs that Mexico has raised or supported in that Committee.

⁸² Chart generated by the WTO SPS Information Management System, <http://spsims.wto.org>, August 8, 2015.

⁸³ WTO TBT Information Management System, <http://tbtims.wto.org>.

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
Regulation on Asbestos	France, European Union	14/02/1997
Directive 2002/95/EC on the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)	European Union	31/03/1999
Regulation on Certain Wine Sector Products	European Union	1/10/1999
Restrictions on the use of Certain Phthalates in Toys	European Union	25/02/2000
Dolphin-Safe Tuna Labelling Requirement	United States	25/02/2000
Draft Law aiming at Promoting Socially Responsible Production	European Union	30/03/2001
Register of Domestic Manufactures and Importers of Textile Clothing	Venezuela	17/10/2002
Amendment to Regulation on Sardines	European Union	20/03/2003
Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH)	European Union	20/03/2003
Bioterrorism Act	United States	20/03/2003
Country of Origin Labelling	United States	21/06/2002
Wireless Local Area Network Products with WAPI functions	China	23/03/2004
MERCOSUR Regulation on Definitions Relating to Alcoholic Beverages other than Fermented	Argentina	1/7/2004
Fire Performance of Construction Products	European Union	15/03/2006

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
International Conformity Certification Programme (ICCP)	Saudi Arabia	15/03/2006
Regulation on Identification and Quality Standards of Ethyl Alcohol and other Spirits	Brazil	1/7/2008
Country of Origin Labelling Requirements for Certain Imported Fruit	Korea	1/7/2008
Novel foods	European Union	5/11/2008
Requirements to combat illegal logging	United States	5/11/2008
Draft Decree Establishing Provisions to Promote the use of Biofuels	Colombia	18/03/2009
Test report and certificate of conformity for industrial products including tyres, steel products and automobile components	Ecuador	18/03/2009
Green Paper on Agricultural Product Quality Policy	European Union	18/03/2009
Mandatory Certification for Steel Products	India	18/03/2009
Beef	Korea	18/03/2009
Health Products	Brazil	25/06/2009
Regulation for Food Industry Promotion Act	Korea	25/06/2009
Food and Drugs Cosmetic Act	United States	25/06/2009
Bill C-32 amendment to Tobacco Act	Canada	5/11/2009
Country of Origin Labeling for Dairy	United States	5/11/2009
Health warnings for alcoholic beverages	Thailand	24/03/2010
Food registration and notification procedures	Brazil	24/03/2010

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
Alcoholic Beverages	Brazil	24/03/2010
Alcoholic Beverages	Viet Nam	23/06/2010
us - Foreign Manufacturers Legal Accountability Act	United States	3/11/2010
Proposal for a Council Regulation on the Indication of the Country of Origin of Certain Products Imported from Third Countries (SEC(2005)1657)	European Union	3/11/2010
Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives	Brazil	24/03/2011
Disposition (Portaria) n° 371, December 29th 2009 and Annex; INMETRO approves Conformity Assessment Requirements for Security of Electronic Appliances	Brazil	24/03/2011
Food Safety Modernization (FSMA) Public Law 111-353	United States	24/03/2011
Tobacco Plain Packaging Bill 2011	Australia	15/06/2011
Alcohol Labelling: The Alcoholic Drinks Control (Licensing) Regulations, 2010: Legal Notice No. 206: 2010	Kenya	15/06/2011
Commercial Truck Diesel Emissions Regulation (Resolution 2604, 24 December 2009)	Colombia	15/06/2011
Draft Supreme Decree Approving the Regulations Governing the Labelling of Genetically Modified Foods	Peru	10/11/2011
Issue with respect of honey containing pollen from genetically modified maize MON810, Ruling from ECJ	European Union	10/11/2011
Law on hygienic production of milk and milk products and the regulation of their sale	El Salvador	10/11/2011

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
Draft on Technical Regulation of Alcohol Drinks Safety (published on 24 October 2011)	Russia	20/03/2012
Draft of the Technical Regulation "Categorization of Alcoholic Beverages"	Dominican Republic	20/03/2012
Regulations relating to liquor production and trading	Viet Nam	13/06/2012
Draft modification to the technical regulation HK.00.05.52.4040 on food categories, published on 9 October 2006	Indonesia	13/06/2012
Proposal to introduce plain packaging of tobacco products in New Zealand	New Zealand	27/11/2012
Warning regulations on alcoholic beverages	Israel	27/11/2012
Proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96	Chile	6/3/2013
Tobacco products, nicotine containing products and herbal products for smoking. Packaging for retail sale of any of the aforementioned products	European Union	6/3/2013
Act to Promote Healthy Eating Among Children and Adolescents	Peru	17/06/2013
Ministry of Health Regulation 30/2013 on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods	Indonesia	17/06/2013
Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment	European Union	17/06/2013
Resolution No. SENAE-DGN-2013-0300-RE relating to post entry control of imported alcoholic beverages	Ecuador	30/10/2013

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
Draft Communiqué on Warning Messages Placed on Containers of Alcoholic Beverages; and, Draft Regulation Amending the Regulation on Procedures and Principles Concerning Domestic and Foreign Trading of Alcohol and Alcoholic Beverages	Turkey	30/10/2013
Proposed Motor Vehicle Safety Regulatory Requirements (RTE INEN 034)	Ecuador	19/03/2014
Resolution No. 116 of the Foreign Trade Committee of Ecuador of 19 November 2013 and Technical Regulation of the Ecuadorian Standardization Institute RTE INEN 022 on the labelling of processed and packaged food products	Ecuador	19/03/2014
Cosmetic products	Ecuador	19/03/2014
Recycling Triman Mark: "Draft Decree on a common set of symbols informing the consumer about recyclable products subject to a system of extended producer responsibility associated with waste sorting instructions"	France, European Union	19/03/2014
Draft Notification of the Alcoholic Beverages Control, Re: Rules, Procedure and condition for Labels of Alcoholic Beverages, issued under B.E.	Thailand	18/06/2014
Draft Ministry of Commerce, Industry and Tourism Decree "Restructuring the National Quality Subsystem and amending Decree No. 2269 of 1993"	Colombia	18/06/2014
Draft Technical Regulation of the Ecuadorian Standardization Institute (PRTE INEN) No. 189: "Labelling of alcoholic beverages"	Ecuador	18/06/2014
Draft Technical Resolution n° 69, 9 September 2014, Regarding the Requirement of Describing the Chemical Composition, in Portuguese, in the Label of Personal Hygiene Products, Cosmetics and Perfumes	Brazil	5/11/2014

STCs RAISED OR SUPPORTED BY MEXICO IN THE TBT COMMITTEE⁸⁴

Title	Members maintaining	First date raised
Equivalence Agreement N° 14.241 with the European Union regulations	Ecuador	5/11/2014
Draft Technical Regulation of the Ecuadorian Standardization Institute (RTE INEN) No. 047: "Metal cable tray, electrical conduit and trunking systems") - WITHDRAWN - see below	Ecuador	5/11/2014
(PRTE INEN) No. 111: Energy efficiency. Clothes dryers. Labelling	Ecuador	5/11/2014
Emergency Technical Regulation (RTE) No. 088: "Surface tension agents", of the Ecuadorian Standardization Institute (INEN) G/TBT/N/ECU/117	Ecuador	18/03/2015

As with previous surveyed WTO Members, it is difficult to determine whether a WTO Member has satisfactorily resolved any of the STCs above because, the WTO TBT database does not designate any of such STCs as "resolved" or "partially resolved". Instead, the status of all STCs raised in the TBT Committee is "not reported". However, in 2014 the TBT Committee began to include a "Withdrawn Concerns" section to its meeting minutes, and Mexico happens to be among the several countries to have withdrawn STCs to date.

For Mexico this first occurred during the TBT Committee meeting on June 18-19, 2014, when the Chairman reported that Mexico withdrew two STCs from the agenda: "Ecuador - Emergency Technical Regulation of the Ecuadorian Standardization Institute (RTE INEN) No. 088: "Surface tension agents" (G/TBT/N/ECU/117)"; and "Ecuador - Cosmetic products (G/TBT/N/ECU/111 G/TBT/N/ECU/116)."⁸⁵ However, it appears that they have both re-emerged as issues as they were both mentioned by the representative from Mexico during the June and March 2015 TBT Committee meetings.

Second, during the TBT Committee meeting in June 2015, the Chairman reported that Mexico withdrew the STC, "Ecuador- Draft Technical Regulation of the Ecuadorian Standardization Institute (RTE INEN) No.47: Metal Cable Tray, electrical conduit and trunking systems", from the agenda.⁸⁶

⁸⁴ Chart generated by the WTO TBT Information Management System, <http://tbtims.wto.org>, November 4, 2015.

⁸⁵ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 June 2014*, G/TBT/M/63 at 2 (Sep. 19, 2014).

⁸⁶ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 17-18 June 2015*, G/TBT/M/66 at 2 (Sep. 17, 2015).

The fact that Mexico withdrew this STC from the TBT Committee meeting agenda suggests that it may have been resolved to Mexico's satisfaction prior to the meeting.

Seven STCs raised or supported by Mexico in the TBT Committee are maintained by Brazil:

- Regulation on identification and quality standards of ethyl alcohol and other spirits
- Health products
- Food registration and notification procedures
- Alcoholic beverages
- Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives
- Disposition (Portaria) n° 371, December 29th 2009 and Annex; INMETRO approves conformity assessment requirements for security of electronic appliances
- Draft Technical Resolution n° 69, 9 September 2014, regarding the requirement of describing the chemical composition, in Portuguese, in the label of personal hygiene products, cosmetics and perfumes.

Source: WTO TBT Information Management System.

Looking at WTO disputes which cite the TBT Agreement in the request for consultations, Mexico has been the complainant in three such cases:

- *Argentina – Measures Affecting the Importation of Goods* (DS446) (consultations requested in August 2012). Mexico did not voice concern over the measures behind "*Argentina – Measures Affecting the Importation of Goods*" during TBT Committee meetings.⁸⁷
- *United States – Certain Country of Origin Labelling Requirements* (DS386) (consultations requested in December 2008). Mexico did express concern over the United States' country of origin labeling requirements in TBT Committee meetings.⁸⁸
- *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381) (consultations requested in October 2008). It appears that Mexico voiced concern over at least one of the measures that triggered DS381 in TBT Committee meetings,⁸⁹ because

⁸⁷ According to the WTO TBT Information Management System, <http://tbtims.wto.org>.

⁸⁸ See, e.g., Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 March 2009*, G/TBT/M/47, para. 236-37 (Jun. 5, 2009).

⁸⁹ See, e.g., Committee on Technical Barriers to Trade, *Minutes of the Meeting Held on 6 October 2000*, G/TBT/M/21, para. 21 (Oct. 31, 2000).

the United States notification on tuna labelling that Mexico mentions in meetings cites 50 CFR Part 216, and Mexico's request for consultations in DS381⁹⁰ also cites 50 CFR Part 216, among other measures.⁹¹

The analysis above suggests that at least two of the STCs raised by Mexico during TBT Committee meetings were not satisfactorily addressed there, because Mexico ultimately requested consultations. It also indicates that one trade issue that resulted in a request for consultations was not broached by Mexico during TBT Committee meetings.

D. STCS RAISED IN THE SCM COMMITTEE

According to publicly available SCM Committee meeting notes, as of this writing there is no indication that Mexico has ever unequivocally stated during an SCM Committee meeting that a country's actions were inconsistent with its WTO obligations.⁹² However there have been several instances where Mexico raised concerns in the Committee. Analysis of SCM Committee meeting notes shows that the country for which Mexico has raised the most concerns for is China.⁹³ Most recently, during the meeting held on October 26-27, 2011, in the context of a review of China's implementation of the SCM Agreement, Mexico criticized China's maintenance of subsidies, as well as its export restrictions.⁹⁴ Mexico stated that "although [China] had successfully eliminated certain subsidies since accession, concerns remained that China continued to keep in place a significant number of subsidies both for production and export with the aim of according benefit to enterprises in the local market and rendering them more competitive in international markets." The strength of Mexico's concerns about China is reflected in the fact that of the five cases brought by Mexico that cite the SCM Agreement in the request for consultations, three of them are against China.⁹⁵

⁹⁰ *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products: Request for Consultations by Mexico*, WT/DS381/1 (Oct. 28, 2008).

⁹¹ Committee on Technical Barriers to Trade, *Notification*, G/TBT/Notif.00/5 (Jan. 10, 2000) (the United States notification).

⁹² Mexico's submissions and notifications to the SCM Committee were not examined – only SCM Committee Meeting minutes were examined. Instances where Mexico discussed the questions it had for another WTO Member during an SCM Committee meeting – but did not raise a "concern" – are not included in this analysis.

⁹³ See Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 27 October 2005*, G/SCM/M/54, para. 29 (Mar. 20, 2006); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 25 October 2007*, G/SCM/M/63, para. 39 (Apr. 7, 2008); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 29 October 2008*, G/SCM/M/66, para. 67 (Apr. 14, 2009); Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 26 and 27 2011*, G/SCM/M/79, para. 67-69 (Feb. 2, 2012).

⁹⁴ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 26 and 27 2011*, G/SCM/M/79, para. 67-69 (Feb. 2, 2012).

⁹⁵ These three cases are: *China – Measures Relating to the Production and Exportation of Apparel and Textile Products* (DS451) (consultations requested October 2012); *China – Grants, Loans and Other Incentives* (DS388) (consultations requested December 2008); and *China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments* (DS359) (consultations requested February 2007). The other two cases launched by Mexico are: *United States – Countervailing Duties on Steel Plate from Mexico* (DS280) (consultations requested January 2003); and *United States – Continued Dumping and Subsidy Offset Act of 2000* (DS234) (consultations requested May 2001).

Besides China, Mexico also voiced concerns over the Byrd Amendment legislation maintained by the United States during the SCM Committee meeting held on November 7, 2000.⁹⁶ Several months later, in May 2001, Mexico – together with Canada – requested consultations with the United States over the Byrd Amendment.⁹⁷

⁹⁶ Committee on Subsidies and Countervailing Measures, *Minutes of the Regular Meeting Held on 7 November 2000*, G/SCM/M/26, para. 68 (Mar. 30, 2001).

⁹⁷ *United States – Continued Dumping and Subsidy Offset Act of 2000* (DS234) (consultations requested May 2001).



A. INTRODUCTION

It is not surprising that the United States is one of the most frequent Members to raise (and support) STCs as a means to resolve trade barriers. Due to the United States' heavy involvement in the creation of the WTO system, the significant resources of its trade staff (including the United States' large delegation in Geneva), and its focus on the removal of trade barriers that impact its exports, it is logical that the United States would be proponent of the use of STCs to resolve trade barriers. The United States' use of STCs has been an effective means of diffusing (potential) barriers beyond bilateral engagement, but short of the resource-intensive and time-consuming dispute settlement process to try and resolve trade barriers.

B. STCS RAISED IN THE SPS COMMITTEE

The United States has raised or supported a total of 124 STCs related to SPS issues.⁹⁸

There has only been one STC maintained by Brazil that the United States has raised in the SPS Committee, and it has been resolved: Restrictions on imported wheat, first raised in March 1997.

Source: WTO SPS Information Management System.

The United States was an early adopter of using STCs to try and resolve trade barriers within the SPS Committee. Of the first 32 STCs raised in the first two years of the SPS Committee the United States either raised or supported the STC in 19 cases (or 60% of all STCs in the first two years.) In fact, the United States raised 18 of those 19 STCs and just supported in one instance in the first two years. The United States has consistently raised STCs since the WTO's establishment; raising at least one STC every year since 1995 (with two exceptions -- 2000 and 2009). The period of the United States' highest involvement, in terms of STCs raised, came from 2002 to 2005; in this four year period the United States raised 33 STCs (averaging 8 STCs each year over that four year period).

⁹⁸ WTO SPS Information Management System, <http://spsims.wto.org>.

There have been two STCs maintained by Brazil that the United States has supported (as opposed to raised) in the SPS Committee: Pest risk assessments for imports of plant origin, first raised in November 2002 (status not reported); and Notification G/SPS/N/BRA/74 and G/SPS/N/BRA/75 on BSE-related measures, first raised in April 2003, which has been resolved.

Source: WTO SPS Information Management System.

The United States has been a significant driver of the STCs raised in the SPS Committee. Of the 396 SPS STCs identified in the WTO SPS Information Management System, the United States has raised 85 (or 21%) of the STCs – the highest number raised by any Member. Beyond the fact that the United States has larger resources in Geneva than many of the other WTO Members, one of the reasons that the United States is heavily involved in raising and supporting SPS STCs is that it has been an effective means of resolving trade concerns. Of the 124 SPS STCs raised or supported by the United States, according to the WTO SPS Information Management System, there has been a resolution in 43 instances and partial resolution in 15 others. This level of success in diffusing potential trade concerns (46% of the SPS STCs raised or supported by the United States are resolved or partially resolved) is slightly higher than the overall rate for SPS STCs raised or supported by all Members (including the United States). Out of all 396 STCs identified, 176 (44%) have been resolved or partially resolved, whereas for the 124 STCs raised or supported by the United States, 58 (47%) are resolved or partially resolved.

The STCs that the United States has raised in the SPS Committee have been relatively evenly spread out between four of the five country groupings that are identified (and defined) in the paper by Horn *et al.*, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees*.⁹⁹ The United States has raised or supported 32 STCs alleged to be maintained by the European Union, and 23 STCs from the five BRICS countries. Additionally the United States has raised or supported 35 STCs alleged to be maintained by the remaining developing countries and 34 STCs from the remaining industrialized countries.¹⁰⁰

There have been 43 WTO dispute settlement cases that cite the SPS Agreement in the request for consultations; the United States has been the

⁹⁹ Henrik Horn, Petros C. Mavroidis & Erik N. Wijkström, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees* 34, Research Institute of Industrial Economics, IFN Working Paper No. 960 (2013). The United States has not raised or supported an SPS STC against a least developed country, as defined by Horn *et al.*

¹⁰⁰ There is overlap because some STCs are maintained by more than one country. Additionally, for some STCs the maintaining countries are not named by the chart generated by the WTO SPS Information Management System.

complainant in 11 of those cases.¹⁰¹ Prior to the lodging of a formal WTO complaint under the DSU, nine of those cases were first raised by the United States as an STC before the SPS Committee. These include some of the earliest DS cases, *Korea – Measures Concerning the Testing and Inspection of Agricultural Products* (DS3), and *Korea – Measures Concerning the Shelf-Life of Products* (DS5), and *Australia – Measures Affecting the Importation of Salmonids* (DS21). The United States has been very successful in these cases, resolving eight of the nine STCs that were eventually involved in DS cases.

C. STCS RAISED IN THE TBT COMMITTEE

The United States has raised or supported 198 STCs in the TBT Committee, 40% of the 490 STCs that are catalogued in the WTO TBT Information Management System in the 1995-2015 period.¹⁰² Only the European Union, which has expressed concern with 224 STCs has a higher involvement in the TBT Committee.

Due to the fact that the WTO's TBT database does not report if an STC has been resolved, a methodology similar to that used in Horn *et al.*, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees*, to determine if a STC can “be reasonably assumed to be resolved”¹⁰³ was used. In order to categorize an STC as reasonably resolved, the STC cannot have been raised at a TBT Committee meeting in the last two years (since the start of 2013). Out of the 198 STCs in which the United States has expressed concern, 68 of those STCs have been raised or discussed at a TBT Committee meeting since the start of 2013. Out of those 68 STCs, 23 (34%) were originally raised prior to the start of 2013. While this only provides a rough approximation of the resolution of the TBT STCs, it can reasonably be assumed that a significant portion of the TBT STCs in which the United States has raised concern could be assumed to be resolved.

Additionally, during two TBT Committee meetings the Chairman reported that the United States withdrew two STCs from the meeting agendas, suggesting that the STCs were resolved prior to those meetings:

- European Union – Directive 2009/28/CE, Renewable Energy Directive (EU-RED);¹⁰⁴ and
- Taiwan– Amendment to Legal Inspection of Toy Commodities.¹⁰⁵

There have been 51 WTO disputes that have cited the TBT Agreement in the dispute's request for consultations; of those 51 cases the United States has

¹⁰¹ World Trade Organization, Disputes by agreement, https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#.

¹⁰² WTO SPS Information Management System, <http://tbtims.wto.org>.

¹⁰³ Henrik Horn, Petros C. Mavroidis & Erik N. Wijkström, *In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees* 29, Research Institute of Industrial Economics, IFN Working Paper No. 960 (2013).

¹⁰⁴ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 18-19 June 2014*, G/TBT/M/63 (Sep. 19, 2014).

¹⁰⁵ Committee on Technical Barriers to Trade, *Minutes of the Meeting of 17-18 June 2015*, G/TBT/M/66 (Sep. 17, 2015).

been the complainant in nine instances.¹⁰⁶

There have been 10 STCs maintained by Brazil that the US has either raised or supported in the TBT Committee:

- Labelling Disciplines for Food Products Containing GMOs
- Decree on Beverages and Spirits
- Registration requirements for medical devices
- Toys
- Regulation on Identification and Quality Standards of Ethyl Alcohol and other Spirits
- Wines
- Health Products
- Alcoholic Beverages
- Instructions for Registration for Labels of Imported Products of Animal Origin
- ANVISA Enforcement of CATEC Technical Opinions 4, 5, 6 and 7 of 21 December 2010

Source: WTO TBT Information Management System.

D. STCS RAISED IN THE SCM COMMITTEE

The United States is the most active WTO Member in the SCM Committee. In addition to the thousands of technical questions and clarifications that the United States has asked of other Members, the United States has also used the SCM Committee to highlight specific trade concerns that it has with other Members' notifications (or lack thereof). While the SCM Committee does not track STCs like the SPS and TBT Committees do, a review of the SCM Committee meeting minutes reveals that the United States has highlighted over a dozen specific potential issues with other Members' subsidization programs at the SCM Committee meetings.

The United States has identified specific SCM concerns as to programs in Argentina, Canada, China, the European Union, India, Japan and Korea. In the early years of the SCM Committee, the United States raised concerns with potential Korean government support for Korean manufacturers that violated the SCM agreement – the United States raised issue with Korean support to Hanbo Steel (originally raised in 1997), Hyundai Electronics (originally raised in 2001) and to the Korean paper industry (originally raised in

¹⁰⁶ World Trade Organization, Disputes by agreement, https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22#.

2003). The United States was able to use these opportunities gain clarification on the programs, information which could then be used in domestic countervailing duty investigations. This was the case in the DRAMs CVD case that was brought against Korea in November 2002 after the issue was originally raised in the SCM Committee.¹⁰⁷

The most important action that the United States has taken within the SCM Committee has not been in relation to raising specific trade concerns as described above but has been in its efforts to combat non-notification of potential subsidy programs by China, and to a lesser extent, India. Following China's accession to the WTO, the SCM Committee held annual transitional reviews annually for ten years, during these review the United States delegation often questioned China on its lack of compliance with its obligations to notify its subsidy programs to the WTO.

¹⁰⁷ Department of Commerce, International Trade Administration: Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 67 Fed. Reg. 70,927 (Nov. 27, 2002).

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