

Deepening Rules-Based Trade Cooperation Under Existing Agreements

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Tough to find transparency cartoons..



- Citizens, firms, and other governments need a text, and analysis
- Even harder to make a joke out of WTO reform...

What's the problem for deepening cooperation?

- Negotiation of new rules slow
 - But rules don't implement themselves anyway
- Formal enforcement seems problematic
 - But dispute settlement is not the only tool
- WTO transparency ought to be an alternative
 - But reform of the deliberative function is needed

Basic proposition for WTO reform

- Discussion of specific trade concerns (STCs) can lead to clarification and even resolution of trade irritants before recourse to the procedures of the Dispute Settlement Body (DSB) need be considered.
 - Canadian 2018 discussion paper for the Ottawa Group (WTO 2018a)
- What is a “specific trade concern”?
- Why might they make a difference?

March 2019 Technical Barriers to Trade meeting

3.3.5 European Union - Chlorothalonil (pesticide active substance) [G/TBT/N/EU/625](#) (IMS ID 579⁸)

3.26. The representatives of the United States and Colombia raised concerns with the EU's measure on chlorothalonil. The full statements are contained in [G/TBT/W/607](#) and [G/TBT/W/600](#), respectively.

3.27. The representative of Guatemala expressed concern with respect to the measure notified in [G/TBT/N/EU/625](#) of 4 December 2018, with respect to the non-renewal of the approval of the active substance chlorothalonil, a substance generally used by some agricultural producers as a fungicide to control certain pests. Her delegation reiterated its belief that the EU should take a risk-assessment approach based on sufficient scientific evidence in determining control levels, particularly those established in the Codex Alimentarius. Guatemala considered that changes to agricultural practice required a more extensive process and that it was important to be adaptable in seeking alternatives as regards the use of pesticides. She pointed out that as these processes were lengthy, transitional periods should be set accordingly.

Not just SPS/TBT: Trade concerns widely discussed

Committee on Market Access

28 May 2019

WTO members discuss Brexit and Huawei's ban at Market Access Committee meeting

Trade-related Investment Measures (TRIMs)

6 June 2019

Local content measures scrutinized by WTO members in investment committee

Committee on Agriculture

Meeting on 25th -26th June 2019

Heated debates on over 200 questions, record number in agriculture policy review

Outline

1. Transparency as trade policy discipline
2. How does transparency work in WTO?
 - Notifications
 - Committee discussion
3. Reform proposals

First justification for transparency

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; **electric light the most efficient policeman**. Brandeis (1914)

- Knowing what is going on is first step in managing conflict

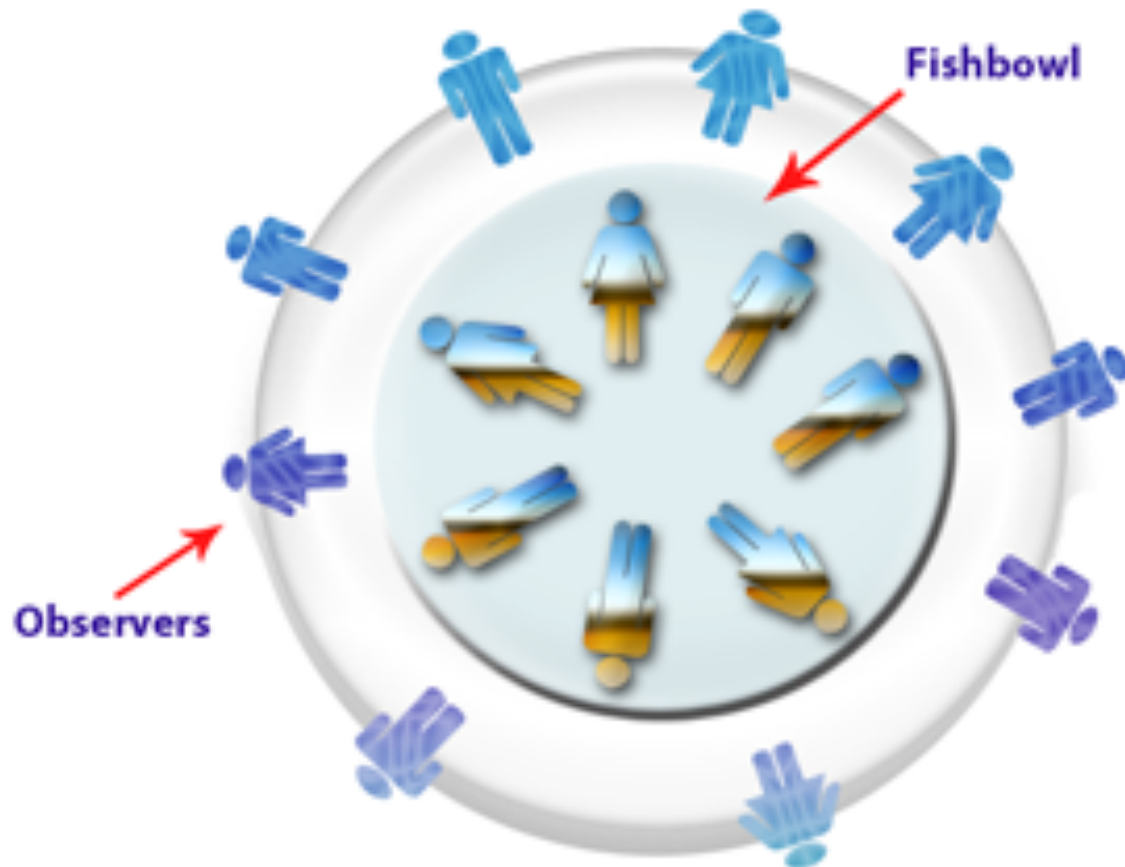
Second justification for transparency

...the essence of the rule of law lies in the fact that men affected by the decisions which emerge from social processes should have some **formally guaranteed opportunity to affect those decisions.**

Fuller (1963)

- Opportunity to talk about policy changes is second step in managing conflict

A caveat: just western principles?



- Chinese government resists **fishbowl** transparency (public can be a fly on the decision maker's wall)
- Also resists **reasoned** transparency (asking officials to provide reasons for their decisions)
Coglianese (2009)

Benefits of transparency mechanisms

1. Governments learn from and about what other countries do
2. Weak policies are exposed to the public, and investors;
3. Verification that differences in national law, policy, and implementation are consistent with obligations.
4. Reduced uncertainty helps everybody make better decisions

How does transparency work in WTO?

- In principle?
- In practice?

Three generations of WTO transparency

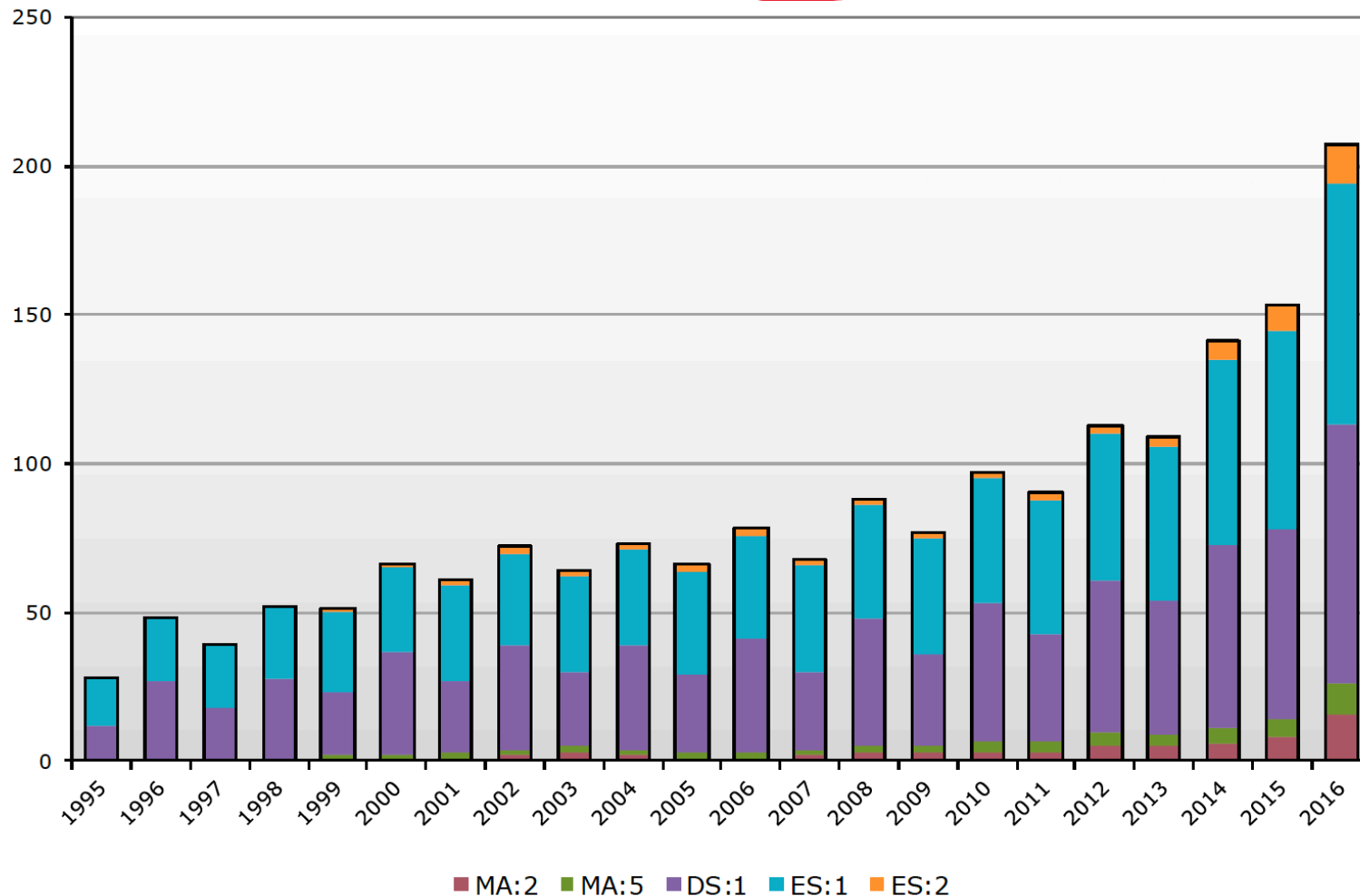
- “Right to know” since GATT 1947
 - Publication at home; notification in Geneva reduces information asymmetry
 - Sunlight as disinfectant, but not enough, thus:
- Monitoring and surveillance since the Tokyo Round
 - Chance to question, affect decisions, but only includes Members, thus:
- Reporting and engagement since 2002
 - e.g. various online databases, extensive website, publications
 - ePing to push notifications to firms
 - Wolfe (2013)

WTO notifications = “right to know”

“A transparency obligation requiring member governments to report trade measures to the relevant WTO body **if** the measures might have an effect on other Members.”

- Dozens and dozens of obligations
- Compliance varies by committee and by member

Chart 6.1 Total outstanding notifications per type of notification requirement per year (1995-2016)



Agriculture
WTO 2018b

Note: MA:2 - imports under tariff and other quotas, MA:5 - special SGs, DS:1 - domestic support, ES:1 - export subsidies, ES:2 - total exports.

Source: WTO Secretariat.

Who are the weak notifiers in agriculture?

Table 6.3 Average compliance with notifications by region (1995-2016)

Region	Average compliance (%)
Africa	49
Asia	65
CIS, including associate and former member States	67
Europe	78
Middle East	65
North America	97
South and Central America and the Caribbean	69
WTO Members	62

Source: WTO Secretariat.

SCM notifications also weak

Table 6.1 Status of subsidy notifications^a

New and full subsidy notification (due on 30 June of the years shown)	1995	1998	2001	2003	2005	2007	2009	2011	2013	2015	2017
	% share of total										
Members that notified subsidies	50	39	44	45	47	48	48	47	47	46	41
Members that made a "nil" notification	25	16	15	14	13	11	17	20	18	16	11
Sub-total notifying Members	75	55	59	59	60	59	65	67	65	62	52
Members that did not make any notification	25	45	41	41	40	41	35	33	35	38	48

a As at 19 October 2018.

Source: WTO Secretariat.

WTO (2018b)

Compliance also varies by type of notification

- A **one-time** obligation, say of the existence of an enquiry point, means finding out what your policy is, and notifying it.
- **Ad hoc** ex ante notifications, for example of a proposed new animal health regulation, are also relatively straightforward.
- Some **regular** ex post notifications require being able to monitor your own policy every year, which can be harder when the responsible authority is not the trade ministry.

Wolfe 2018

Why do Members not notify?

- Trade officials lack knowledge about domestic programs
- Domestic officials may not think in WTO terms
 - Lack of clarity on what to notify
 - Complex templates
- Fear of public criticism, and/or disputes
- Inability to see information as a public good
 - Transparency relies on Members **wanting** to be good citizens

When is notification more likely?

- Evident benefits: providers of information must see how doing so helps them meet their own objectives.
 - Notification is not merely an obligation
 - If countries do not think they are learning about themselves in preparing a notification, then notification is merely a burden
- Notification easier when same agency is the authority for a measure, is responsible for notification, and is the user of the results in WTO
 - We see this virtuous circle in the SPS committee, but not in Council for Trade in Services



WORLD TRADE
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Page: 1/3

General Council
Council for Trade in Goods

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**PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN
NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS**

COMMUNICATION FROM ARGENTINA, AUSTRALIA, CANADA, COSTA RICA, THE EUROPEAN UNION,
JAPAN, NEW ZEALAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN
AND MATSU, AND **THE UNITED STATES**

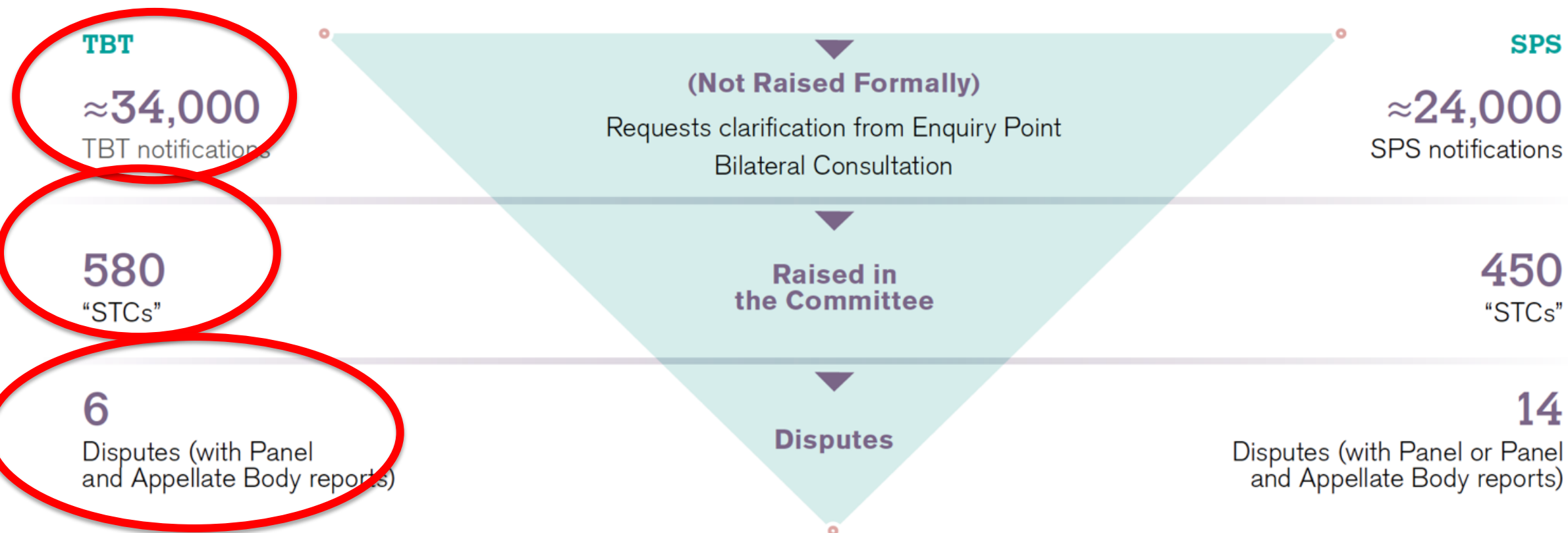
Coercion won't improve notification

- Proposal suggests consideration of both systemic and specific improvements that can help Members improve compliance with notification obligations—no substance.
- Mostly coercive so going nowhere
 - China will never accept it
 - Possible sanctions actually inhibits transparency improvements
- Better for committees to ask what info is needed for their work and do they get it
see Wolfe (2018)

Monitoring and surveillance mechanisms

Principle	Examples
General clarity in domestic trade policy	Trade Policy Review Mechanism - country reviews - Annual report on trading environment WTO (2018b)
Peer review Seek clarification Ask about what should have been notified Seek changes in a measure	Committee review - “specific trade concerns” formal in SPS/TBT; growing use in other bodies. Questions similar
Third party adjudication Formal complaints of breaches of the rules	Dispute settlement system

SPS and TBT as benchmark—the inverted pyramid



Source: WTO.

Note. Data valid as of March 2019.

WTO and OECD, 2019

Four takeaways from the inverted pyramid

1. Publicity (Brandeis): Huge number of SPS/TBT notifications
2. Discussion (Fuller):
 - STCs seek clarification; can lead to modification/withdrawal of a measure
 - Can signal support of an aggrieved domestic interest without a dispute
3. Formal procedures, good databases means we know about these committees
- 4. Dispute settlement is at the tip of the pyramid**
 - Great many more STCs than disputes
 - Disputes are not the universe of WTO conflict management*

* not a new idea: see Horn, Mavroidis and Wijkstrom, 2013

Pyramid metaphor should apply across WTO

- All agreements have permissive language similar to TBT Art. 13.1:
 - The Committee shall afford Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives...

Two questions:

1. What happens in practice?
2. Who participates?

WTO Body	Review of notification compliance	Extensive detail on “concerns” in minutes	Q&A Document Series	Database of STCs or Q&A
SPS	detailed	√	-	√
TBT	detailed	√	-	√
AoA	basic	√	-	√
Market Access	basic	✗	√	✗
TRIPS	basic	✗	√	Pending
TRIMs	detailed	√	√	✗
ADP	detailed	√	√	✗
SFG	detailed	√	√	✗
ILP	detailed	√	√	✗
ITA	✗	✗	√	✗
SCM	basic	√	√	✗
ROO	basic	✗	✗	✗
TFA	detailed	√	✗	✗
Customs	basic	✗	✗	✗
CTS	✗	✗	✗	✗
GPA	Very basic	[some in Ann. report]	✗	✗
CTG	-	√	-	Pending

√ has

✗ does not have

(Subject to verification)

Source: Wolfe 2019

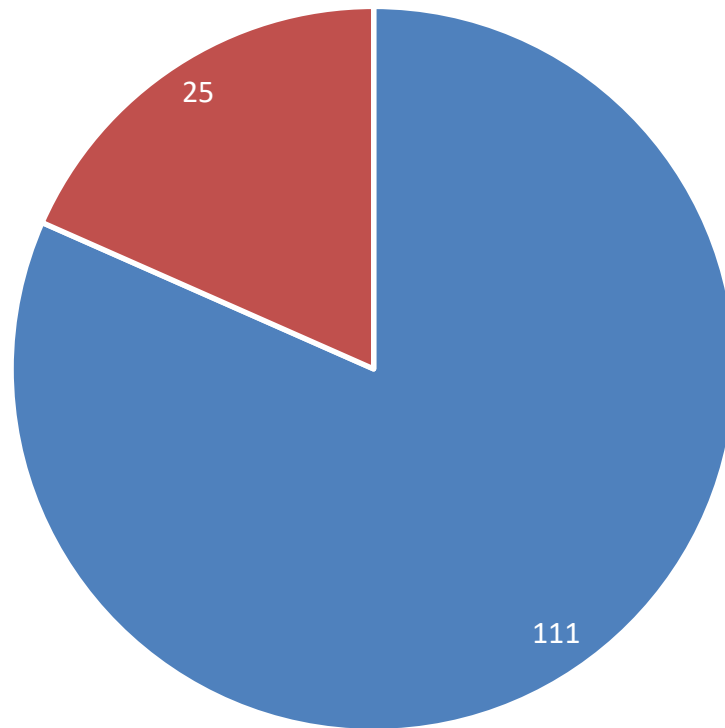
Implications

- Many bodies have something that looks like an STC
 - Common terms: “questions”, “consultations”, “issues”, as well as “concerns”
- But practice is uneven
 - Related to type & number of notifications? Whether delegates from capitals?
- Few committees have a searchable database
 - No quantitative data to create comparable pyramids
- Lots of room for improvement on the form of STCs

Who participates in STCs?

- Scholars know a lot about which Members participate in SPS and TBT
- I am trying to learn more about participation in other bodies
- Start with dispute settlement system as a baseline

Participation in DS proceedings: Complainants

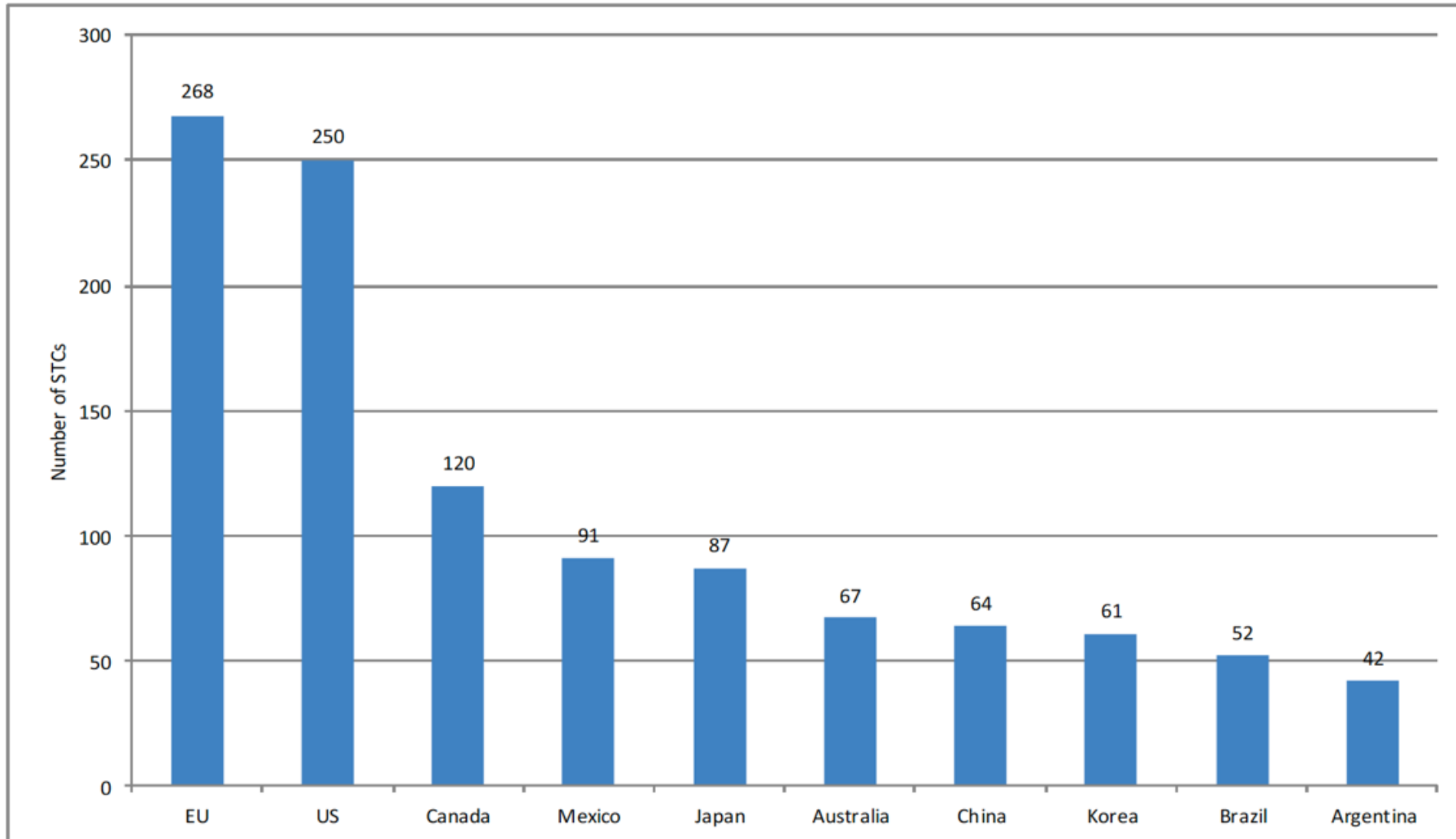


■ No complaint ■ At least one complaint

- 25 Members have acted as complainants in 2017-2019 (111 did not)
- The 25 Members account for 80% of world exports

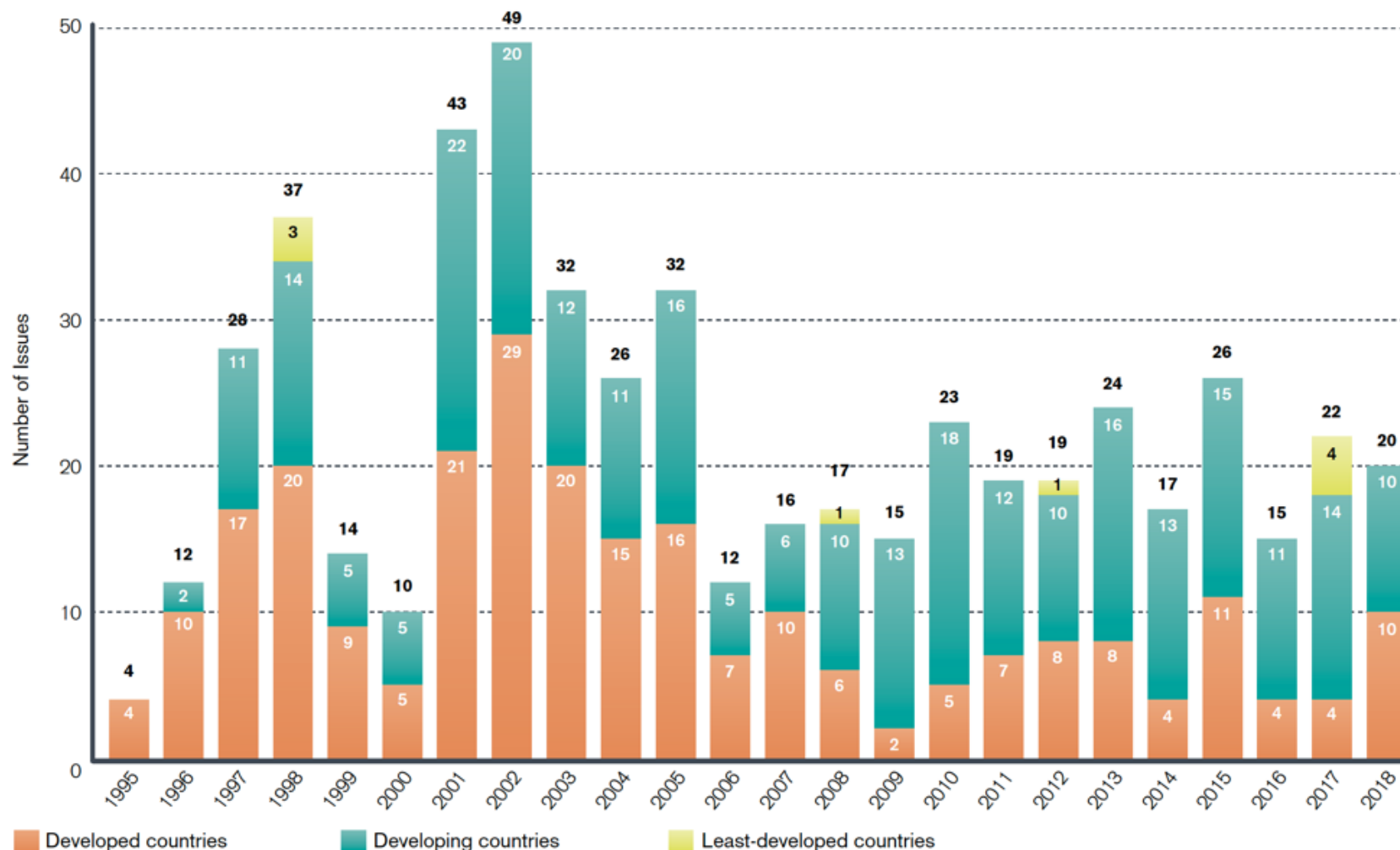
(Note: We count the EU28 as one member in our measures of participation in the DSU)

Chart 22: Ten Members that raised most new STCs during 1995-2018



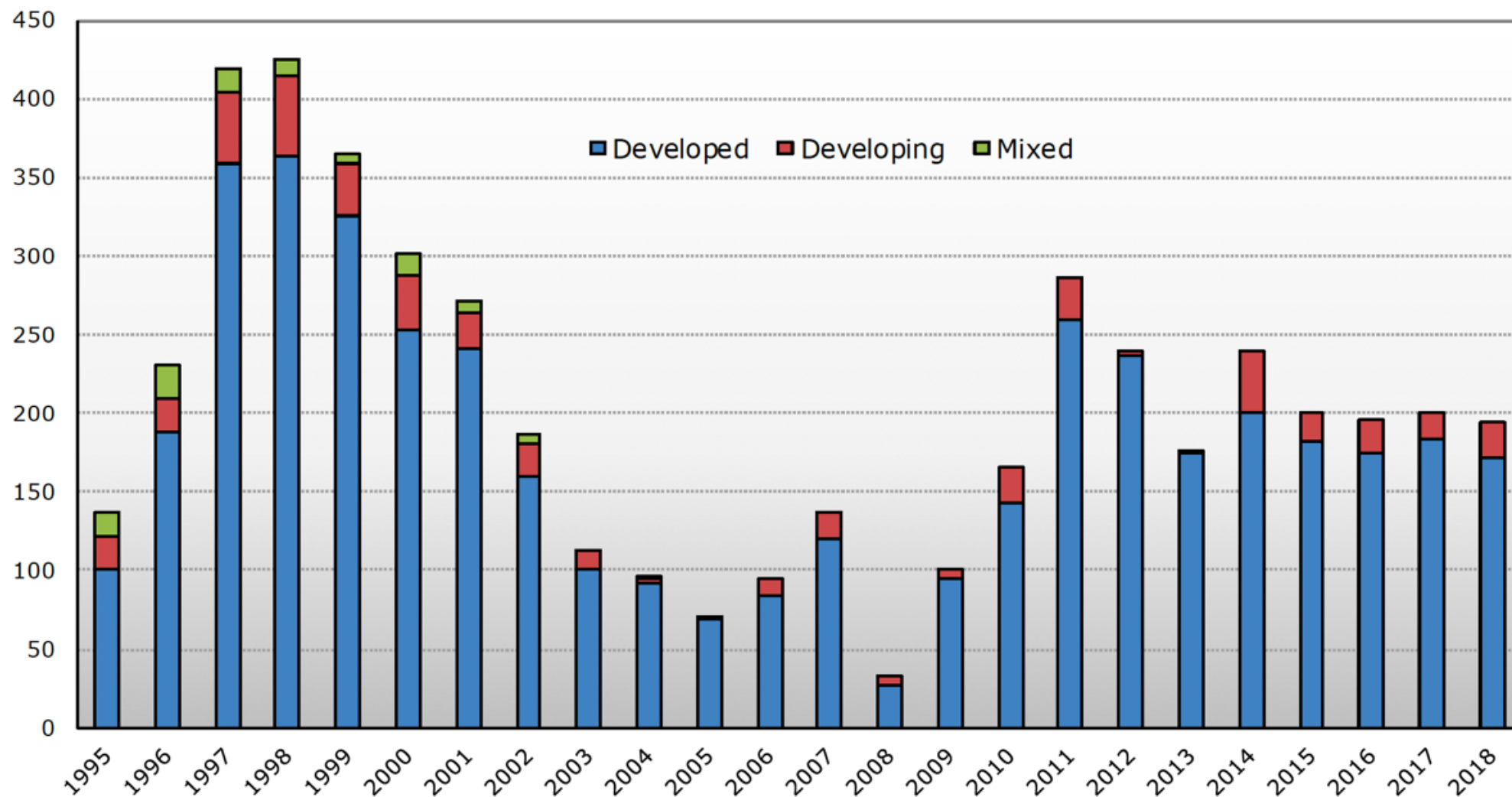
Source: WTO 2019

Figure 5.6: Number of new SPS STCs raised by members from 1995 to 2018



Developing countries raise slightly more SPS STCs than developed countries but pattern similar to TBT

Chart 6.4 Number of questions raised per type of Member^a



Questions in
the
Agriculture
committee


WTO (2018b)

Why so few frequent flyers?

- Large literature on dispute settlement constraints
- Glass house syndrome
- Do developing countries lack capacity to analyze e.g. notifications?
 - Countries with sophisticated alert systems and good internal coordination receive more comments from industry, and from other ministries
 - Hence launch more disputes and raise more STCs than other Members
- Would improved WTO procedures help?


But first: does this page work?

- Reaction this morning suggested few businesses know about it or use it
- Kind of buried—need to know it's there to find it
- Not a lot of information asked for on the form



Is a trade barrier holding back your export business?


Register a trade barrier and let the Trade Commissioner Service help you.



Goods

Trade barriers include any policies and regulations that prevent you from trading goods. Barriers can include tariffs, labelling requirements and local content requirements.


Register a trade barrier



Services

Barriers that can affect trade in services include regulations that discriminate against foreign services suppliers, requirements for specific types of legal entities, such as joint ventures, restrictions on the number of foreign services suppliers, requirements for a commercial presence, lack of transparency, and restrictions on obtaining a licence.

Register a trade barrier



Agriculture and Agri-Food

Sanitary and phytosanitary measures, tariffs, labelling requirements and other similar rules can affect the potential to export Canadian agriculture and agri-food products.

3 Register a trade barrier



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Page: 1/3

General Council

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PROCEDURAL GUIDELINES FOR WTO COUNCILS AND COMMITTEES ADDRESSING TRADE CONCERNS

DRAFT GENERAL COUNCIL DECISION

Communication from Albania; Australia; European Union; Hong Kong, China; Republic of Korea; Republic of Moldova; New Zealand; Norway; Panama; Qatar; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Turkey; and Ukraine

Objectives of the 777 proposal

- Council and committee meetings offer possibility **to discuss and resolve concerns** with trade-related measures
- Desiring to strengthen the ability of regular WTO councils and committees to facilitate the effective resolution of such concerns by equipping them with **horizontal procedural guidelines**, taking into account the specific rules set by individual councils and committees;

777 proposal: easy parts

- Paras 1-5 concern timelines and other meeting arrangements
- Paras 6-7 encourage use of written questions and answers
 - Important for efficient use of committee time
 - Transparency for other Members, or firms, having same concern
 - Can facilitate work of small Geneva delegations who need to consult capitals, which in turn helps capitals learn

777: Integrated database

Para 8. The Secretariat will establish and manage a database on trade concerns in which **all WTO documents pertaining to trade concerns** are recorded, including written questions and replies, relevant minutes of meetings and relevant notifications. The database will contain **a search facility** to make all documents related to a particular trade concern easily accessible.

- A better, integrated database is vital
- Public facing element also need improvement:
 - Firms search by markets and products not by committee let alone
STC



777: will it improve participation?

Para 15. A developing country Member encountering difficulties to respond to a trade concern or to implement these Procedural Guidelines is encouraged to request assistance from the WTO Secretariat.

- Developing countries also need help to know they have a concern worth raising
- It is capitals that need help to formulate a concern, and to respond to concerns of others

One big idea in the end

- Both **information** and **discussion** are necessary
 - To bring disciplines to life
 - To deepen cooperation
- Reform is needed to make both work better
 - Ottawa Group is on the right track, but efforts to improve participation are also needed

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