



What makes countries initiate WTO disputes on food-related issues?

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ABSTRACT

This paper analyses relevant determinants for the probability to initiate a dispute on policy measures under the World Trade Organization (WTO) dispute settlement system. The empirical analysis differs from existing assessments by focusing on agro-food-related disputes and provides a more in-depth analysis of specific country and sectoral characteristics not considered in previous studies. Contrary to recent analyses of overall trade disputes, the results show that some determinants such as legal capacity and monetary means are not statistically significant. Own protectionist behaviour, endured protectionism, and the duration of WTO membership, however, could be identified as relevant determinants with the expected direction of impact.

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Introduction

The dispute settlement system of the World Trade Organization (WTO) was set into force as a part of the WTO agreement on January 1, 1995. It is the device for the resolution of conflicts arising between Members over the interpretation of their commitments under the regime of the organization. Dispute settlement must be self-enforcing, i.e. from the consultation to the potential compliance phase all actions are driven by Members. Referred to as the “central pillar of the multilateral trading system” (World Trade Organization, 2007a) the design of the WTO dispute settlement system is central to the debate on institutional reforms of the WTO and has also been under negotiation at the current WTO Doha round. A major desire is to make the settlement system more effective and to allow for the appropriate consideration of developing countries' demands. Reform proposals span a wide field from tightening time frames regarding panel proceedings over more effectively dealing with compliance and compensation procedures to assistance for developing countries ensuring their equality of opportunity (Petersmann, 2003). However, the understanding of the factors that drive the system is required for targeted improvement.

The question addressed in this paper is, therefore, which Members' characteristics explain their activity as complainants in WTO food-related trade disputes. Compared to previous empirical studies, this investigation provides an in-depth analysis of food-related

disputes and considers new potential determinants that may supplement the understanding of what drives the use of the dispute settlement system. The empirical investigation is based on a dispute distribution model developed and employed by Horn et al. (1999).

This paper is organised as follows: after a short description of the WTO dispute settlement's features and the food-related case-load of the investigation period, a survey on existing empirical studies is provided. The model specification, including a discussion of considered determinants, is described in the next chapter. Statistical implementation and estimation results are subsequently presented before concluding.

Facts and figures on WTO dispute settlement

All Members are provided with equal right to seek adjudication through the WTO dispute settlement system. Acceptable reasons for filing a complaint are a trading partner's measures that nullify the benefits or impair the attainment of any objective of one or more of the WTO agreements. The system's rules and procedures generally are administered by the General Council, i.e. the plenary meeting of the WTO at the level of governmental officials, which turns itself into the Dispute Settlement Body when adjudicating trade disputes. Dispute settlement procedures are stricter under the WTO compared to those in force under its predecessor GATT 1947. This is due to the elimination of blocking or delaying tactics through the adoption of time limits for all stages of adjudication, the implementation of standard terms of reference for panels, and an improved mechanism for enforcement of compliance with panel rulings (Hoekman and Kostecki, 2001). This is in particular owing to the implementation of the so called ‘negative consensus’,

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which means that a panel is established, a panel report adopted, or the complainant authorized to trade related retaliation unless the DSB decides by consensus to reject.²

The consequences of this reform are reflected by economists' notion of the new multilateral trading system as a more "rules-oriented" compared to the more "power-oriented" system of the GATT 1947 (e.g. Jackson, 1997; Petersmann, 1997; Trebilcock and Howse, 1999). However, there exists empirical evidence on the relevance of power-based relationships between Members (e.g. Besson and Mehdi, 2004; Bown, 2004a), thereby challenging that the new system adequately considers the economic inequalities of its Members.

In the area of food-related disputes, 147 cases have been initiated over the period from January 1, 1995 to June 30, 2006.³ Regarding country participation the figures on current and previous food-related WTO disputes reveal that the majority of cases are related to the economically advanced countries. Table 1 shows the participation pattern by development classification of the United Nations (2008) for the period January 1, 1995 to June 30, 2006.⁴ The Members of the European Communities are not separately captured in the statistic, thus reducing the number of WTO Members to 134 instead of 149.⁵

Representing 23% of the WTO membership, the group of developed countries are the most active users with 66% of all initiated food-related disputes. Thirty four percent of all disputes are initiated by the large group of developing countries. The group of least developed countries⁶ accounts for about 24% of WTO Members, but they did not use the system at all for food-related issues. This is remarkable since food sector related exports generally represents a substantial share in their export structure.

As there exists no established principle for the assignment of the developed or developing status in the United Nations system, a pattern which more precisely defines the economic status refers to the World Bank classification of income levels⁷. Table 2 depicts the initiation pattern related to per capita income groups.

High income Members initiated 62% of all food-related disputes. Members of the Upper middle and Lower middle income groups account for about 25% of all initiated disputes, whereas Members of the Low income group are almost completely absent. The United States and the European Union dominate the High income group, followed by Canada, Australia and New Zealand. Brazil, Chile, Ecuador, Philippines and Thailand in the Middle income groups, and India in the Low income group are examples for comparatively active users of the system.

As is evident from the brief description above, the WTO dispute settlement system's rules themselves do not discriminate between Members and offer equal opportunities for dispute initiation. Therefore, it is of some interest to investigate what are the major determinants for observing this pattern of dispute initiation across

Table 1

Food-related dispute initiations by development classification until June 30, 2006. Source: Own compilation based on World Trade Organization (2007b) and United Nations (2008).

Group	No. of members	Share in membership	No. of disputes	Share in disputes
Developed	31	0.23	97	0.66
Developing	71	0.53	50	0.34
Least developed	32	0.24	0	0
Total	134		147	

Table 2

Food-related dispute initiations by per capita income classes until June 30, 2006. Source: Own compilation based on World Trade Organization (2007b) and World Bank (2008).

Per capita income class	No. of members	Share in membership	No. of disputes	Share in disputes
High income	25	0.19	91	0.62
Upper middle income	30	0.22	20	0.14
Lower middle income	36	0.27	31	0.21
Low income	43	0.32	5	0.03
Total	134		147	

countries and whether other than the most prominent attribute "income" may influence a Member's decision to file a complaint.

Empirical analyses on general dispute initiation

A few empirical assessments on the WTO initiation of disputes exist considering various determinants, agreements referred to, and roles in a dispute (complainant, defendant, co-complainant and interested party). Table 3 depicts their investigation period, dispute coverage, main issue of analysis and the models used. Table 4 comprises the detected influences of determinants under previous investigations.

Horn et al. (1999) mark the first empirical investigation by using a binomial dispute distribution model. According to their analysis the dispute initiation pattern is to a large extent reflected by the pattern of export diversity and value. GDP did not reveal a significant influence, but a country's legal capacity shows a slight positive influence on its probability to complain. Besson and Mehdi (2004) find empirical evidence that legal capacity matters with respect to a country's likelihood to win disputes. This supports the conclusion of Busch and Reinhardt (2003) that early settlements of developing countries, i.e. in the consultation stage or in the Panel stage before a ruling, are missing due to the lack of legal capacity.

The self-enforcing nature of the dispute settlement system has been the starting point for Bown (2004a, 2004b, 2005): A focus lies on costs of running a dispute and a country's retaliation power to finally enforce compliance by penalty tariffs on imports of the condemned party. Bagwell and Staiger (2000) and Dam (1970) state that the retaliation threat always has been a central component of the GATT system. The success of this power is linked to the countries' relevance as trade partner and there exists also theoretical support that the retaliation threat is not uniformly distributed over Members and that imbalances relating to trade volume and market size shows influence on their force under trade disputes. Bown (2002) demonstrates that a country's capacity to influence its terms-of-trade determines the credibility of its retaliation threat which is confirmed as well by Johnson (1953) and Kennan and Riezman (1988).

² The 'Understanding on Rules and Procedures Governing the Settlement of Disputes' is laid down in Annex 2 of the 'Marrakech Agreement Establishing the World Trade Organization' from April 15, 1994.

³ These 147 cases refer to nine different agreements related to issues on food, see Footnote 8.

⁴ The developing status according to the WTO is based on members' self-declaration and not on verified economic attributes.

⁵ The European Communities comprised 15 Members until April 30, 2004. Disputes of its 10 new Members from May 1, 2004 on are captured separately and not assigned to the EC in Table 1.

⁶ Thirty two of currently 150 WTO members are classified as least developed countries. The identification of their status by the United Nations is dependent on the following economic criteria: (1) a low per capita income criterion, (2) a human resource weakness criterion and (3) an economic vulnerability criterion (United Nations, 2007).

⁷ Per capita income classification according to the World Bank (2008): Low income: \$875 or less, Lower middle income: \$876–3465, Upper middle income: \$3466–10,725, High income: >\$10,726.

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