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# Dispute Resolution in International Trade

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**ABSTRACT**

Antidumping laws and associated trade remedies are the most often employed policy instruments by a few of the largest importing countries in the World Trade Organization system to impose trade restrictions on other countries. Trade remedies like this are also often the focus of WTO dispute resolution action, since Panel and Appellate Body decisions have almost invariably determined that some element of each examined remedy was in conflict with WTO commitments. Still up for debate, however, is why conflict resolution doesn't address additional solutions.

This study provides the first empirical examination of the connection between trade remedies and WTO dispute resolution by focusing on the variables that affect WTO members' decisions about whether to officially challenge U.S. trade remedies that were implemented between 1992 and 2003. We provide evidence that the size of the economic market at issue and the capacity to react under possible sanctions permitted under the Dispute Settlement Understanding are not the only considerations that impact the decision to officially oppose a policy at the WTO. Additionally, we discover that if the affected foreign industry's government can respond right away by initiating a reciprocal antidumping investigation and action of its own, it is less likely to petition the WTO on its behalf. This supports the theory that potential complainants would choose reciprocal antidumping over WTO litigation.

**Keywords:** Trade Disputes, WTO, GATT, Antidumping, Countervailing Duties, Trade Remedies, Retaliation

## 1. Introduction

Within the GATT/WTO framework, antidumping and other national trade remedy legislation, such safeguards and countervailing tariffs, have a precarious place.[1] Under a number of GATT and WTO agreements, national governments have been given explicit permission to enact such laws, provide channels by which workers and/or domestic industries can file petitions, and utilize the provisions of trade remedy legislation to restrict competition from harmful imports. Even so, negatively impacted trading partners frequently ask for formal dispute settlement panels to be established in order to assess whether trade remedies are, in theory, consistent with a member's WTO duties. Table 1 shows how disputes pertaining to trade remedies accounted for approximately half of all WTO disputes initiated between 1999 and 2004 when measured by only including the requests for consultations received under the WTO's Dispute Settlement Understanding (DSU).

Compared to the early years after the WTO's founding, when trade remedies accounted for less than one in seven disputes, there has been a noticeable shift in the focus of litigation.[2] Given the relative transparency of these policies and the cross-country growth of antidumping use in particular, it is perhaps not unexpected that challenges to antidumping, countervailing duties, and safeguards account for such a big portion of WTO dispute settlement cases.[3] According to Zanardi (2004), for instance, governments implemented more than 1,000 antidumping measures following more than 1,600 investigations in just the years 1995–2001.

Moreover, nearly every trade remedy case that the Appellate Body has decided on involves at least one feature that WTO dispute panels have found to be inconsistent with WTO policy (Durling, 2003; Sykes, 2003). Lastly, it is critical to emphasize that the track record of successful WTO challenges is not attributable to learning hurdles that relatively inexperienced "new users" of trade remedy procedures may encounter.[4] On the other hand, developed

[1] Heckman, James J. (1979). “Sample Selection Bias as a Specification Error,” Econometrica 47: 153-161

[2] Hansen, Wendy and Thomas J. Prusa (1996). “Cumulation and ITC Decision-Making: The Sum of the Parts is Greater Than the Whole,” Economic Inquiry 34: 746-69.

[3] Greene, William H. (2000). Econometric Analysis (4th edition) New Jersey: Prentice Hall

[4] Busch, Marc L. and Eric Reinhardt (2000). “Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes,” Fordham International Law Journal 24(1): 158-172.

nations with a history of using trade remedies—that is, nations with the most seasoned bureaucratic agencies handling trade remedy investigations and access to potentially sophisticated legal (and economic) analysis—have been the focus of the majority of successful legal challenges to trade remedies. It follows that the measures that are successfully being challenged are imposed by nations whose trade remedy laws act as templates that nations that are just starting out with the creation of their own legislation and investigative processes quickly copy.

According to this viewpoint, the more pertinent research question is: Why have so few of these applied trade remedies actually been challenged at the WTO, considering the relatively transparent process through which a trade remedy action is implemented, the growing frequency with which trade remedies are applied globally, and the fact that nearly all challenged measures that proceed to a Panel and/or Appellate Body decision are found to have some inconsistency with WTO standards?4 What elements determine a negatively impacted nation's choice to initiate a formal dispute at the DSU in order to legally contest a trade remedy that has been imposed? This article represents the first attempt to empirically explore factors that influence WTO members' choices on whether to file a formal WTO dispute in order to contest an imposed trade remedy. The fact that not every imposed trade remedy is contested at the WTO implies that governments should do the math and only adopt measures where the anticipated benefits of a WTO dispute exceed the anticipated costs. If the importing country were to remove the remedy, the extent of the restored import market access, in conjunction with the likelihood of market access restoration, would jointly determine the estimated gain.[5]

The likelihood that the respondent would abide by Panel and/or Appellate Body rulings supporting a successful challenge determines the probability of restored market access; compliance may also be a result of a credible threat from the complainant to retaliate by withdrawing concessions with DSU approval. However, the predicted costs of pursuing a case can also include the political-economic costs of contesting the nation imposing the remedy through formal international dispute settlement, in addition to the resource costs of litigation. Lastly, if the lawsuit sets a precedent that forces the complaint to alter how it seeks trade remedies in its own import markets, there can also be a procedural cost.

## 2. International Trade Dispute Resolution

Before beginning a transaction, signing a contract, issuing a purchase order, a letter of intent, etc., the parties usually agree on the dispute resolution procedure. As a result, disagreements may be addressed and resolved in the agreed-upon country's courts in accordance with its established legislation or by means of arbitration and mediation. A court or arbitrator conducting a dispute trial has its own legal procedures, and based on the intricacies and pitfalls of the legal option selected, an award or decree is rendered. This may then be implemented in the nation where it is to be carried out.

Whether it's mediation, securing an award, a decree, or the execution of one, LEGALLANDS has the necessary knowledge, expertise, and network to handle such dispute resolution mechanisms in international trade transactions. For all types of international disputes, including sales and purchases of goods and services, joint ventures and collaborations, technology transfers, government contracts, e-commerce, banking and payment settlements, third-party guarantees, and many more, our skilled professional team can study, interpret, and research legal and lobbying strategies, negotiate, formulate, draft contracts & suits & claims & petitions, etc.

## 3. International Public Disputes & International Private Disputes:

**International Public Disputes**

International public conflicts are ones that occur between countries because, in some situations, a deal reached by certain countries may impose that legislation on other countries against their will. These conflicts pertain to human rights law, international criminal law, maritime law, the law of war, refugee law, and the law enshrined in international treaties.

In certain situations, countries provide a common court or tribunal the authority to settle international conflicts. In order to resolve the conflict, these countries agree to submit issues to these courts or tribunals, who are tasked with using the sources of international law (as well as any codifications or common law obtained by those courts or tribunals).

## 4. Delineation of Alternative Dispute Resolution Procedures & Our Practice Area

**Legal Notice:**

We possess the necessary abilities to draft legal notices for the recovery of unpaid debts, contract enforcement, etc., through jurisdictional commercial and civil courts, as well as to appoint arbitrators in the event that a trade and commercial contract between the parties contains an arbitration clause.

Legal Approach: We are able to do research on the laws of different nations in order to develop a legal strategy for trade recovery and dispute resolution based on the questions and concerns expressed by our clients.

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[5] Durling, James P. (2003). “Deference, But Only When Due: WTO Review of Anti-Dumping Measures,” Journal of International Economic Law 6(1): 125-153.

## 5. Alternative Dispute Resolution, Litigation, Criminal Proceedings & General Lobbying:

1. **Alternative Dispute Resolution – Arbitration, Mediation, Negotiation Etc.:**

Unless specifically required by the statutes of the relevant jurisdictions, the conduct of proceedings shall be governed by the provisions of the existing Trade Agreement or Contract signed between the parties that provide for the resolution of disputes through Alternative Dispute Resolution (ADR) mechanisms such as Arbitration, Mediation, or Negotiation at the first instance instead of Litigation proceedings, providing a seat for the conduct of proceedings and the manner of choosing Arbitrator(s) or Mediators.

Contractual provisions that specify the process to be followed in such actions are permitted under Indian legislation, which also provide the settlement of disputes via alternative dispute resolution (ADR) processes. According to Indian law, courts have very little authority to reopen arbitration awards or mediation agreements. Similar clauses are seen in other international jurisdictions where there is little room for intervention with the finality of arbitration awards or mediation settlements.

Applicability of the Arbitration Clause: An arbitration clause that specifies the process for selecting the arbitrator and the location of the arbitration proceedings is included in trade contracts and agreements. Legallands will help the client enforce the clause in accordance with the terms and conditions stated. If the parties cannot agree on an arbitrator for the dispute resolution, the Judicial Authority will appoint an alternative arbitrator based on jurisdiction after the necessary application has been filed with the Hon'ble authorities.

Assistance and Representation in Dispute Resolution(S): At LEGALLANDS, we assist in the settlement of all trade and commercial disputes between people and organizations both domestically and internationally, such as in the jurisdictions of India, the United Arab Emirates, Russia, Europe, the United States, etc. The parties may then appear, represent themselves, and resolve the matter before the Arbitration Forum or any other forum of their choosing.

Acquiring Honors

Through the court system or alternative dispute resolution procedures like mediation or arbitration, we represent parties in arbitration proceedings to file claims, suits, petitions, complaints, etc., obtain decrees or awards anywhere in the world, and in the manner of proceedings, whether virtual or physical, obtain awards for the parties.

Implementation of Awards

• IN INDIA: Using the Indian legal system, we assist parties in enforcing different arbitration awards or decree execution. Furthermore, in accordance with Indian laws that accept international awards, we represent parties to enforce judgments or decrees that may have been made elsewhere in the globe.

• IN OTHER countries: In order to enforce verdicts or decrees in other countries, such as the USA, UAE, UK, Europe, Japan, Russia, etc., we also hire competent counsels, attorneys, and solicitors in those jurisdictions..

## 6. Significance of the study

It was, therefore, important to be aware if international mechanisms for the resolution of trade disputes proved effective and what challenges exist in this regard, especially within the WTO's Dispute Settlement Understanding.[6] From this point of view, understanding the dynamics as to how disputes are initiated, managed, and resolved within the scheme of global trade remains critical for policymakers, international businesses, and developing nations. This study provides critical insights into the role of trade remedies, namely antidumping and countervailing duties, first in the impact on global trade relations and second in the incidence in disputes. Furthermore, by focusing on factors that influence a country's choice between formal litigation and alternative measures, the research focuses light on some of the economic, legal, and political factors underlying global trade dynamics. This will be a contribution toward developing effective dispute resolution, making it possible for developing countries to break through the barriers and utilize the mechanism, and creating a more equitable and transparent international trade system.

## 7. Conclusion

Whether or not the WTO's institutional architecture and dispute resolution procedure were intended to manage significant litigation over nationally-imposed trade remedies, trade remedy issues are already a major area of concern. One implication of the current global trend in the administered use of contingent trade policy protection is that, in the absence of significant institutional reform or changes in governmental attitudes, the way the DSU

[6] Feenstra, Robert C., John Romalis and Peter K. Schott (2002). “U.S. Imports, Exports and Tariff Data, 1989 to 2001.” NBER Working Paper No. 9387, November.

settles disputes over antidumping, countervailing duties, and safeguards will play a significant role in determining, at the very least, how successful the WTO has been overall in the multilateral trading system. [7]

Challenges to nationally imposed trade remedies over imports, and specifically the imposition of trade remedies by the United States, account for a significant and growing portion of the recent dispute resolution caseload. We have shown that a few common economic factors, such as the amount of imports lost due to the trade remedy, the foreign nation's ability to react, and the scope of the trade remedy, influence the decision to file a lawsuit against U.S.-imposed remedies.

However, we specifically report on two other results that may raise some red flags. First, the evidence suggests that, rather than trying to persuade its government to file a dispute at the WTO on its behalf, an adversely affected foreign industry may, if it is able to do so, turn to a reciprocal (and retaliatory) antidumping measure against the protected U.S. industry, seeking the removal of the U.S. trade remedy measure. Furthermore, there is proof that foreign exporters with lower levels of diversification are less inclined to contest trade remedies in the United States. This could pose a problem if the exporters have a lower likelihood of being able to "deflect" their lost shipments to third markets in the event that a trade remedy prevents them from operating in the United States.[8]

We acknowledge that our technique has several limitations and that there are several outstanding concerns that may warrant further investigation. First, only U.S. trade remedies are the subject of our analysis. Although it makes sense to start an empirical inquiry into the issues mentioned here, it would be helpful to know whether other remedy-imposing nations could benefit from the lessons acquired from the experience of opposing US remedies. Furthermore, our method prevents us from looking into another crucial issue: why does the US contest so few trade remedies imposed by other countries that target its exporters, particularly in light of the fact that its exporters are the third most targeted group of producers in global antidumping cases? Third, our econometric conclusions are based on a relatively limited number of pooled observations, whose lack of independence may give rise to further statistical problems, even if we have attempted to precisely describe significant features of the data. However, this is only the beginning, and our findings do hint to some intriguing trends in the underlying data that merit more investigation in the future.

[7] Rauscher, B. J., Fox, O., Ferruit, P., Hill, R. J., Waczynski, A., Wen, Y., ... & Strada, P. (2007). Detectors for the James Webb Space Telescope Near-Infrared Spectrograph. I. Readout Mode, Noise Model, and Calibration Considerations. *Publications of the Astronomical Society of the Pacific*, *119*(857), 768.

[8] Prusa, Thomas J. (2001). “On the Spread and Impact of Antidumping,” Canadian Journal of Economics 34(3): 591- 611.