



Brazil's Participation in WTO Dispute Settlement

November 12, 2014

Pablo Bentes

Overview

- Brazil has participated as a Complainant in 27 Cases
 - Brazil has brought 10 cases against the United States and 8 against the European Union or its Member States
- Brazil has participated as a Respondent in 15 Cases
 - The European Union has brought 5 cases against Brazil, while the U.S. has brought 4.
- Brazil has participated as a Third Party in 87 Cases
 - At a similar level, Korea has participated in 88 cases and Australia in 85 cases as a third party.

Participation as a Complainant

- Only three jurisdictions have filed more WTO cases than the 27 brought by Brazil (US - 107, EU - 94, Canada - 34)
 - Only brought three cases since 2009, five since 2003
 - 16 of the 27 cases filed between 2000-2002
 - 21 of 27 cases have been filed against developed countries
 - Last two cases against developing countries (Indonesia and South Africa)
- Most recent case:
 - *DS484: Indonesia - Measures Concerning the Importation of Chicken Meat and Chicken Products*
- Notable cases:
 - DS267 – US – Upland Cotton
 - DS266 – EC – Export Subsidies on Sugar

Brazil Cases as a Complainant

- DS4: US - Standards for Reformulated and Conventional Gasoline
- DS69: EC - Measures Affecting Importation of Certain Poultry Products
- DS70 and DS71: Canada - Measures Affecting the Export of Civilian Aircraft
- DS112: Peru – CVD Investigation against Imports of Buses from Brazil
- DS154: EC - Measures Affecting Differential and Favourable Treatment of Coffee
- DS190: Argentina - Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil
- DS208: Turkey - Anti-Dumping Duty on Steel and Iron Pipe Fittings
- DS209: EC - Measures Affecting Soluble Coffee
- DS216: Mexico - Provisional Anti-Dumping Measure on Electric Transformers
- DS217: US - Continued Dumping and Subsidy Offset Act of 2000
- DS218: US - Countervailing Duties on Certain Carbon Steel Products from Brazil
- DS219: EC - AD Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil
- DS222: Canada - Export Credits and Loan Guarantees for Regional Aircraft

Brazil Cases as a Complainant (con't.)

- DS224: US - US Patents Code
- DS239: US - Anti-Dumping Duties on Silicon Metal from Brazil
- DS241: Argentina - Definitive Anti-Dumping Duties on Poultry from Brazil
- DS250: US - Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products
- DS259: US - Definitive Safeguard Measures on Imports of Certain Steel Products
- DS266: EC - Export Subsidies on Sugar
- DS267: US - Subsidies on Upland Cotton
- DS269: EC - Customs Classification of Frozen Boneless Chicken Cuts
- DS365: US - Domestic Support and Export Credit Guarantees for Agricultural Products
- DS382: US - AD Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil
- DS409: European Union and a Member State - Seizure of Generic Drugs in Transit
- DS439: South Africa - Anti-Dumping Duties on Frozen Meat of Fowls from Brazil
- DS484: Indonesia - Measures Concerning the Importation of Chicken Meat and Chicken Products

Map of Brazilian Participation in WTO Disputes

As a Complainant



Source: WTO

Participation as a Respondent

- Eight jurisdictions have had more or as many WTO cases brought against them as the 15 brought against Brazil
 - US - 121, EU - 79, China - 32, Argentina - 22, India - 22, Canada - 18, Australia - 15 and Japan - 15
- Only one case against since 2007, three since 2002
 - Five cases against in 1995-1996
 - 11 of 15 cases brought by against developed countries
- Most recent case:
 - DS 472: Brazil – Measures Concerning Taxation and Charges (EU)
- Notable cases:
 - *Brazil – Retreaded Tyres (EC)*
 - Brazil - Certain Measures Concerning Taxation and Charges

Brazil Cases as a Respondent

- DS22: Brazil - Measures Affecting Desiccated Coconut (Philippines)
- DS30: Brazil - Countervailing Duties on Imports of Desiccated Coconut and Coconut Milk Powder from Sri Lanka
- DS46: Brazil - Export Financing Programme for Aircraft (Canada)
- DS51: Brazil - Certain Automotive Investment Measures (Japan)
- DS52: Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector (United States)
- DS65: Brazil - Measures Affecting Trade and Investment in the Automotive Sector (US)
- DS81: Brazil - Measures Affecting Trade and Investment in the Automotive Sector (EC)
- DS116: Brazil - Measures Affecting Payment Terms for Imports (EC)
- DS183: Brazil - Measures on Import Licensing and Minimum Import Prices (EC)
- DS197: Brazil - Measures on Minimum Import Prices (US)
- DS199: Brazil - Measures Affecting Patent Protection (US)
- DS229: Brazil - Anti-Dumping Duties on Jute Bags from India

Brazil Cases as a Respondent (con't.)

- DS332: Brazil - Measures Affecting Imports of Retreaded Tyres (EC)
- DS355: Brazil - Anti-dumping Measures on Imports of Certain Resins from Argentina
- DS472: Brazil - Certain Measures Concerning Taxation and Charges (EU)

Map of Brazilian Participation in WTO Disputes

As a Respondent



Source: WTO

Participation as a Third Country

- Brazil's appearance as a third country participant in 87 cases is the eighth most.
 - Jurisdictions with higher participation as a third country:
 - Japan - 147, EU – 144, US - 117, China - 113, India - 101, Canada - 97, Korea – 88
 - Brazil participated as a third party in 9 cases in 2013 and 10 cases in 2012 , its highest yearly totals except for 11 cases in 2002.
 - Third Party Participation 2009-2012:
 - DS391: Korea - Measures Affecting the Importation of Bovine Meat and Meat Products from Canada
 - DS392: US - Certain Measures Affecting Imports of Poultry from China
 - DS394, DS395 and DS398: China - Measures Related to the Exportation of Various Raw Materials (US, EC and Mexico)

Participation as a Third Country (con't.)

- DS397: EC - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China
- DS405: EU - Anti-Dumping Measures on Certain Footwear from China
- DS406: US - Measures Affecting the Production and Sale of Clove Cigarettes (Indonesia)
- DS412: Canada - Certain Measures Affecting the Renewable Energy Generation Sector (Japan)
- DS420: US - Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea
- DS426: Canada - Measures Relating to the Feed-in Tariff Program (EU)
- DS430: India - Measures Concerning the Importation of Certain Agricultural Products from US
- DS431, DS432 and DS433: China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (US, EU and Japan)
- DS434, DS435 and DS 441: Australia - Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (Ukraine, Honduras and Dominican Republic)
- DS437: US - Countervailing Duty Measures on Certain Products from China
- DS447: US - Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina
- DS453: Argentina - Measures Relating to Trade in Goods and Services (Panama)

Trends in WTO Dispute Settlement

- Topics: NTBs (SPS/TBT), Local Content, Subsidies, Services
- Increased “judicialization”, as evidenced by:
 - Frequent PRRs
 - Jurisdictional Issues more frequent at panel and appeal stages
 - Appointment of Experts
- The rise of the economic evidence
- Increased use of Expert Evidence
- Frequent consultations under Article 13 of the DSU
- Staffing issues / protracted time-frames
- Decrease in the overall quality of panel reports

Trends in WTO Dispute Settlement (con't.)

- **At the Appellate Stage:**
- Longer timeframes – AB no longer informs circulation date at the outset of the proceedings
- Longer Reports
- Broad Discretion for the Adjudicator
- More deferential standard of review under Article 11 of the DSU
 - DSU 11 claims must stand on their own and not be subsidiary to application claims
 - Materiality Standard
 - Summary dismissal for failure to invoke DSU 11 if you're taking issue with Panel's weighing of the evidence
- Completion of Legal Analysis?
- Increased use of obiter dicta to imply pathway for implementation