

IS THE WTO DISPUTE SETTLEMENT PROCEDURE FAIR TO DEVELOPING COUNTRIES?

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The World Trade Organization’s Dispute Settlement Procedure has been described as the “crown jewel” of the multilateral trading system, having been highly effective in settling a large number of disputes—without it, the results might have been much worse. Any WTO member can file a complaint against a trade practice of another member that it believes to be in violation of WTO agreements. The Dispute Settlement body then makes a ruling on the dispute. Finally, if the respondent is found guilty by the Dispute Settlement body, the respondent may either bring its practices into compliance or face authorized retaliatory trade measures by the complainant.

But is the Dispute Settlement Procedure fair to developing countries, or is there some bias in favor of powerful countries? If potential retaliatory measures by a WTO member are unthreatening to a potential offender, then does the potential offender ignore rules? Do other factors, such as political power, bias which members benefit from the Dispute Settlement Procedure?

One approach to investigate potential bias looks at the final outcomes of disputes, asking: **do developed countries tend to ignore the Dispute Settlement body’s recommendations when facing complaints from developing countries?** Investigations with this approach have found some empirical evidence of bias against developing countries, but samples of disputes are small.

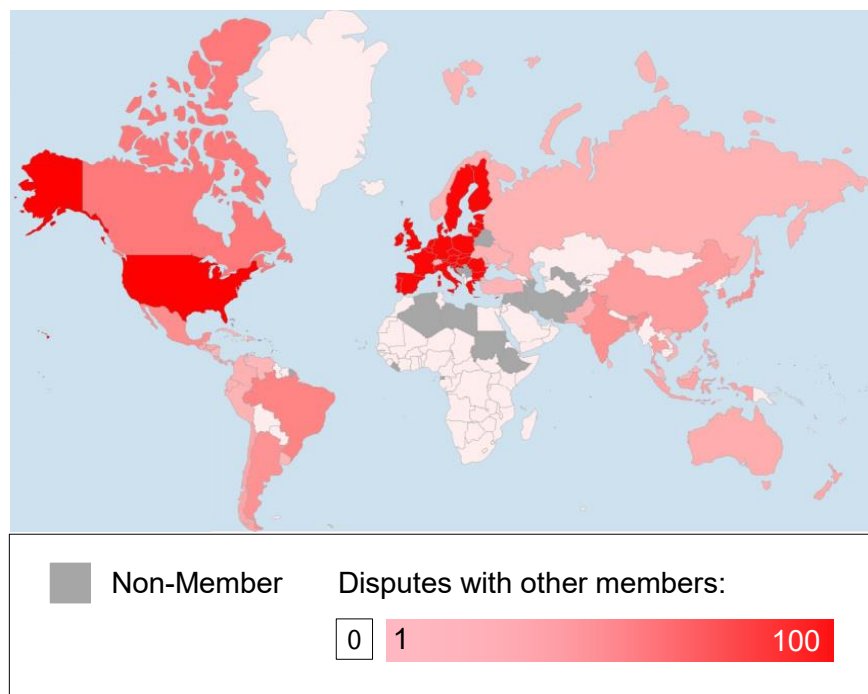
Another approach to investigate bias looks at Dispute Settlement body rulings, asking: **does the WTO’s panel of experts tend to rule against developing countries?** An investigation found that threat of retaliatory measures and asymmetric power did not bias rulings, but that countries with better legal capacity – usually more developed countries – were more likely to win disputes.

We take a different approach, looking at which members file complaints to ask: **given that members may not even file complaints if they expect to lose, do developing countries avoid filing complaints because they lack power?**

Box 1: Dispute Settlement Cases from 1995–2014

- Low-income countries were never involved in disputes.
- Over 4 in 5 disputes involved at least one high-income or upper-middle-income country.
- Over 3 in 5 disputes concerned animals and animal products, vegetable products, or foodstuffs.
- Disputes averaged 3.5 years, and longer if the respondent was a high-income country.

Figure 1: World Trade Organization



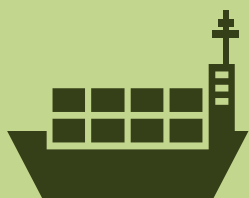
Source: World Trade Organization, 2015

If the Dispute Settlement Procedure is “rules-based” – that is, members do not expect outcomes to be based on power – then we would expect the number of filings that a member is involved in to accurately reflect the trade issues it faces. We might also expect that there is some fixed cost associated with trade litigation, so that filing a complaint is only worth it to a member if the value of trade for the potential violation is sufficiently large – meaning that complaints are unlikely to be filed for product trade flows with low value. This implies that the costs of litigation are more likely to be prohibitive for violations faced by members with smaller economies. And indeed – our analysis shows that **WTO members’ number of complaint filings is related to the number of products they trade, their number of trading partners, and the monetary value at stake.**

If the Dispute Settlement Procedure is “power-based,” then we might expect the number of filings by a member to be positively related to things like their legal capacity to deal with disputes, their ability to retaliate effectively if the respondent is found guilty, and low ability of the respondent to retaliate outside of the process by withdrawing financial aid or preferential treatment.

So, is the WTO Dispute Settlement Procedure fair to developing countries? Yes, mostly. Fear of losing financial aid from potential respondents does not appear to be a threat to potential complainants. However, **countries with low capacity to inflict economic damage on a potential respondent through authorized retaliatory measures are unlikely to file a complaint.** This discourages small and poor countries from filing complaints against larger and richer countries.

Furthermore, members are more likely to file if they have greater legal capacity, allowing them to deal with the challenge of costly litigation. **Limited legal capacity, which can arise from financial and human capital barriers, can put developing countries at a disadvantage.** The Advisory Centre on WTO Law was established by WTO members in 2001 to address this issue, and membership in the Centre plays a role in whether a developing country is likely to file a complaint.



Low capacity to effectively retaliate through authorized trade measures can discourage countries from filing complaints.



Insufficient legal capacity may prevent some developing countries from filing a complaint.

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