

Litigation for Sale:  
Private Firms and WTO Dispute Escalation

Ryan Brutger  
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**Puzzle: There are many trade barriers. Which are contested?**

- Who monitors compliance with international trade law?
- How do formal & informal rules affect dispute escalation?

## **Overview of Argument**

- Firms act as fire alarms, providing information and resources
- Governments update beliefs and have lower costs
- Formal rules allow governments to act as gatekeepers

# Theory of Dispute Escalation

## **Firm**

Inside Information:

- Legal strength and value of potential cases
- Firms have advantage in:
  - Identifying the presence of a trade barrier
  - Accessing facts to build the case

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*Governments generally dont systematically monitor what other governments are doing ... Sometimes **the actions arent detectable, except by those actors directly facing the measure** (International Trade Attorney, Egypt, 2021).*

# Theory of Dispute Escalation

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### Inside Information:

- Legal strength and value of potential cases
- Firms have advantage in:
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*We really need to talk with individual companies because what we need is confidential and proprietary information (Assistant for WTO and Multicultural Affairs, United States Trade Representative, 2021)*

# Theory of Dispute Escalation

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- Contribute when expected benefits outweigh costs
- Fact finding, legal preparation, litigating

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*Industry has to prove its a serious issue, the damage is quite high, and if we request a consultation, we are probably going to win. They have to convince METI or else they wont move ...*

*(Ministry of Economy, Trade, and Industry, Japan, 2021).*



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*Industry has to prove its a serious issue, the damage is quite high, and if we request a consultation, we are probably going to win. They have to convince METI or else they wont move ... Usually we [the government] pay 30% and the rest, 70% is usually paid by industry. (Ministry of Economy, Trade, and Industry, Japan, 2021).*

# Theory of Dispute Escalation

## Government


### Legal Strength:

- Seek “slam dunk” cases - legal strength is top priority (USTR Author Interview)
- Negative spillovers if dispute is lost --

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*Winning WTO cases is great, but **if you lose, you're probably worse off than if you never brought it at all** (Warren Maruyama, USTR General Counsel 2007-2009).*

# Theory of Dispute Escalation

## Government

### Legal Strength:

- Seek “slam dunk” cases - legal strength is top priority (USTR Author Interview)
- Negative spillovers if dispute is lost --

### Value:

- Remove highly distorting barriers
- Economic considerations among most important factors

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### Value:

- Remove highly distorting barriers
- Economic considerations among most important factors

### Externalities:

- Avoid diplomatic costs
- Gain support from domestic constituents

# Firm and Government Model

- Firms only contribute above a threshold for strong cases  
⇒ signal is credible
- Comparative Static:  
↑ Distortion ⇒ ↑ Probability case initiation

# Multiple Firm Model

## Multiple Firms & Heterogenous Preferences

- Existence of  $N \geq 2$  firms in an industry.
- $i \in N$  has  $V_i$  utility for the case, where  $V_i = \tau(0) - \tau(1)$

Contribution game, incomplete information, and discrete public good (Menezes et al, 2001)

# Multiple Firm Model

## Perfect Bayesian Equilibrium Results

Dominant Firm Capacity & Value:

- If cost is low enough a single firm will contribute
- $\uparrow$  value and capacity of dominant firm  $\Rightarrow \uparrow$  Pr(case initiation)



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Product-specific barriers:

- Product-specific barriers reduce collective action problem

# Empirical Implications

**Firm selection  $\Rightarrow$  product-specific barriers**

## **Firm selection $\Rightarrow$ product-specific barriers**

*The collective action problem is an important one. We see that right now in Europe with respect to half a dozen different sectors (Counsel for WTO Disputes 2021).*

## **Firm selection ⇒ product-specific barriers**

*The collective action problem is an important one. We see that right now in Europe with respect to half a dozen different sectors (Counsel for WTO Disputes 2021).*

*When there is a product specific barrier “normally there is one company that cares a lot and takes the lead” (International Trade Lawyer, 2021).*

## **Government selection $\Rightarrow$ broad/systemic barriers**

*Government preference is “to go after **structural and systemic issues**. Typically these would be issues **that affect multiple industries** (International Trade Attorney, 2021)*

## **The Data: Foreign Trade Barrier Dataset**

- Potential disputes in the National Trade Estimate (NTE) reports  
1995 - 2004 (Davis, 2012)
- Range of barriers: non-tariff barriers, regulations & standards

## **Firm Level Data:**

- Financial data from Compustat
- Firms classified within industries based on ISIC Rev.3 4-digit code

# Empirical Analysis

## **Dependent Variable**

- Dispute initiation

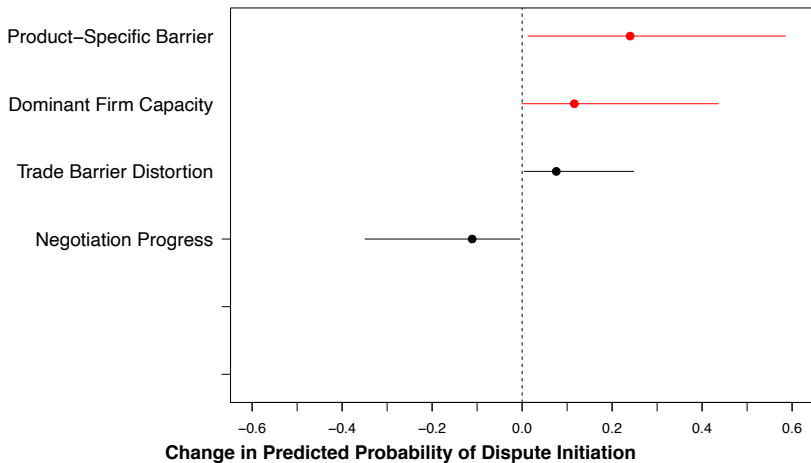
## **Explanatory Variables**

- Product-Specific Barrier
- Dominant Firm Capacity: Earnings of top-earning firm
- Distortion: Indicator for significant market closure

## **Control Variables**

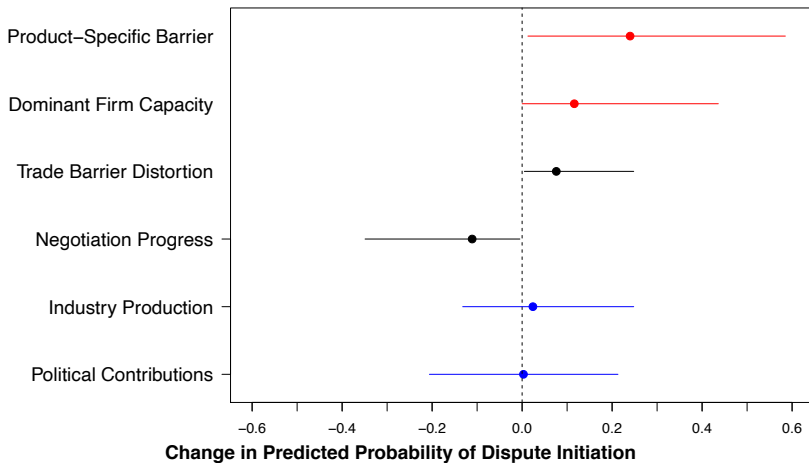
- Progress: Level of progress toward resolving dispute

## Random Effects Logistic Regression of WTO Dispute Initiation





## Random Effects Logistic Regression of WTO Dispute Initiation



## Theoretical Contributions:

- Counter to “protection for sale,” firms promote liberalization
- Firms act as fire alarms – monitoring/enforcing trade law  
⇒ Explains high success rate of WTO complainants
- Who is represented at the WTO?
  - Bias in favor of large firms
  - Participation of high and low income countries

**Thank You**

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- Avg. Firm Table
- Avg. Firm Pred.
- RE Dom. Full
- RE Avg. Full
- Dom. Firm Pred. Prob.
- LPM Full
- FE Year
- Election Effects
- Constant Sample
- MPIA
- Bell South
- EF Game
- EF Sep Equil.
- Equil. Contr.
- Neg. Precedent
- Interviewees
- Budget
- Info Provision - 1
- Info Provision - 2
- Counter
- Complexity
- Avocados

# Average Firm Capacity

## Random Effects Logistic Regression

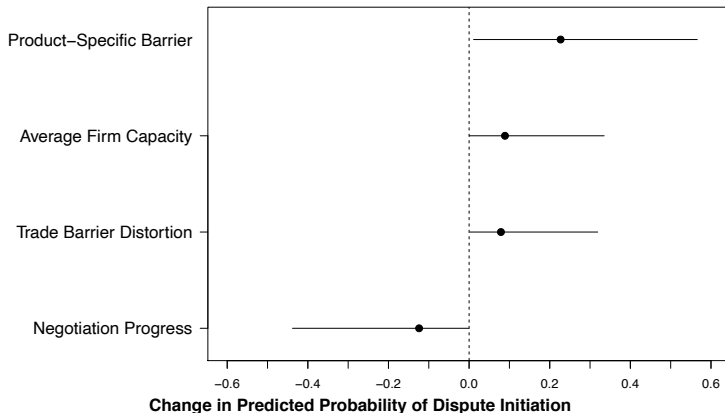


	Model 1	Model 2	Model 3	Model 4	Model 5
Product-Specific Barrier	1.361***	1.158**	1.462***	1.290**	1.699***
Average Firm Capacity	0.0006**	0.0007**	0.0006*	0.0008*	0.0008*
Trade Barrier Distortion	2.105***	1.925**	1.940**	2.068***	1.741**
Negotiation Progress	-1.136**	-0.978**	-1.180***	-.984**	-0.969**
Trade Barrier Duration	-0.214	-0.193	-0.214	-0.223*	-0.084
Country Dummies		✓			✓
Trade Flow			✓		✓
Industry Production			✓		✓
Political Contributions				✓	✓
Active 301				✓	✓
N	1635	1635	1418	1624	1407

\*\*\* $p < 0.01$ , \*\* $p < 0.05$ , \* $p < 0.1$

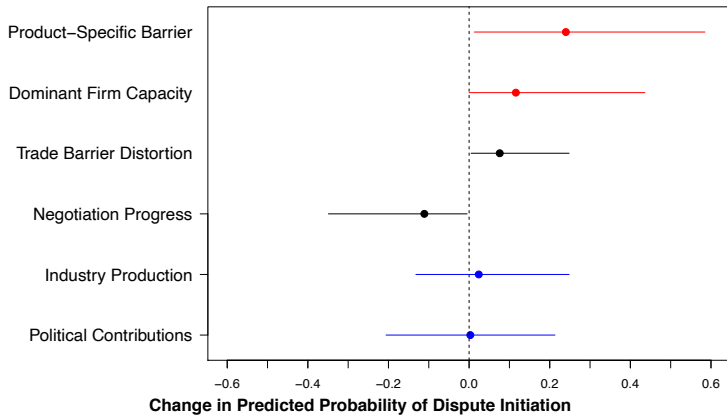
# Average Firm Capacity

## Random Effects Logistic Regression of WTO Dispute Initiation



Estimates and confidence intervals are calculated using a quasi-bayesian simulation that samples 2000 times from a distribution based on the coefficients and variance derived from a random effects logistic regression. Changes in predicted probabilities represents a shift from one standard deviation below the mean to one standard deviation above the mean of the variable, or a shift from 0 to 1 for indicator variables.

## Random Effects Logistic Regression of WTO Dispute Initiation





$$\text{logit}(\text{Pr}(\text{dispute}_{ibt} = 1|X)) = \beta_0 + \beta_1 \text{product.specific}_b + \beta_2 \text{dominant.firm.capacity}_{it} + \beta_3 \text{distortion}_b + \beta_4 \text{progress}_{bt} + \beta_5 \text{duration}_{bt} + u_i$$

Where  $u_i \sim N(0, \sigma^2)$  and  $X$  is a vector of explanatory variables

## Dependent Variable

- Dispute initiation

## Explanatory Variables

- Product-specific barrier: Barrier affects a single product
- Dominant Firm Capacity: Earnings of top-earning firm
- Distortion: Indicator for significant market closure

## Control Variables

- Progress: Level of progress toward resolving dispute
- Duration: Length of time barrier is reported in the NTE

## RE models for Dominant Firm Capacity:

	Model 1	Model 2	Model 3	Model 4	Model 5
Product-Specific Barrier	1.531***	1.317**	1.698***	1.460***	1.840***
Dominant Firm Capacity	0.330**	0.331**	0.334**	0.343**	0.320*
Trade Barrier Distortion	2.234***	2.084***	2.048***	2.246***	1.914**
Negotiation Progress	-1.185***	-0.980**	-1.174***	-1.042**	-0.922*
Trade Barrier Duration	-0.227*	-0.203	-0.227*	-0.234*	-0.0999
Industry Political Contributions		-0.0138			0.0249
Industry Production		-0.0111			0.165
US Exports to Trade Partner			0.183		-2.283*
Active 301			1.966***		2.090**
EU				0.870	1.849
Japan				0.659	0.468
Mexico				1.394	1.086
Korea				0.320	-3.650
NonOECD				-0.118	-5.407
Constant	-8.949***	-8.355*	-13.72**	-9.485***	46.45
Observations	1635	1407	1635	1635	1407

\*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$

Random effect models calculated using xtlogit with STATA14. Random intercepts calculated for groups at the industry level, defined as the ISIC3 4 digit industry. Canada is the omitted comparison. P-values are calculated using a two-tailed test.

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Product-Specific Barrier	1.361***	1.158**	1.462***	1.290**	1.699***
Average Firm Capacity	0.000638**	0.000711**	0.000609*	0.000777**	0.000772*
Trade Barrier Distortion	2.105***	1.925**	1.940**	2.068***	1.741**
Negotiation Progress	-1.136**	-0.978**	-1.180***	-0.984**	-0.969**
Trade Barrier Duration	-0.214	-0.193	-0.214	-0.223*	-0.0837
Industry Political Contributions		0.0494			0.126
Industry Production		-0.160			-0.111
US Exports to Trade Partner			0.198		-2.445*
Active 301			1.930***		1.923*
EU				0.925	1.671
Japan				0.546	0.0638
Mexico				1.398	0.790
Korea				0.299	-4.272
NonOECD				-0.300	-6.157
Constant	-6.263***	-4.796	-11.34*	-6.660***	55.30
Observations	1635	1407	1635	1635	1407

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## OLS models for complete sample:

	Model 1	Model 2	Model 3	Model 4	Model 5
Product-Specific Barrier	0.0236***	0.0208***	0.0242***	0.0242***	0.0241***
Dominant Firm Capacity	0.00344***	0.00337***	0.00286**	0.00337***	0.00293**
Trade Barrier Distortion	0.0204***	0.0199***	0.0185***	0.0204***	0.0197***
Negotiation Progress	-0.0101***	-0.00919**	-0.0107***	-0.0104***	-0.0102**
Trade Barrier Duration	-0.00141	-0.00141	-0.00158	-0.00115	-0.000357
Industry Political Contributions		-0.00167			0.000324
Industry Production		0.00206			0.00155
US Exports to Trade Partner			0.00233		-0.0276**
Active 301			0.0473***		0.0362***
EU				0.0110	0.0167
Japan				0.00889	-0.00397
Mexico				0.0344**	0.00411
Korea				0.00414	-0.0497**
NonOECD				-0.000194	-0.0688**
Constant	-0.0242**	-0.0223	-0.0779	-0.0301**	0.661**
Observations	1635	1407	1635	1635	1407

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Dominant Firm Capacity	0.00344***	0.00337***	0.00286**	0.00337***	0.00293**
Trade Barrier Distortion	0.0204***	0.0199***	0.0185***	0.0204***	0.0197***
Negotiation Progress	-0.0101***	-0.00919**	-0.0107***	-0.0104***	-0.0102**
Trade Barrier Duration	-0.00141	-0.00141	-0.00158	-0.00115	-0.000357
Industry Political Contributions		-0.00167			0.000324
Industry Production		0.00206			0.00155
US Exports to Trade Partner			0.00233		-0.0276**
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# Year Fixed Effects

## Year Fixed Effects Logistic Regression

	Model 1	Model 2	Model 3	Model 4	Model 5
Product-Specific Barrier	1.685***	1.613***	0.1.444***	1.852***	1.882***
Dominant Firm Capacity	0.432**	0.467**	0.439**	0.377**	0.358*
Trade Barrier Distortion	2.321***	2.344***	2.222***	2.128***	2.000***
Negotiation Progress	-1.404***	-1.303***	-1.083**	-1.371***	-1.066**
Trade Barrier Duration	-0.085	-0.069	-0.020	-0.112	-0.066
Country Dummies		✓			✓
Trade Flow			✓		✓
Industry Production			✓		✓
Political Contributions				✓	✓
Active 301				✓	✓
N	1260	1260	1093	1252	1085

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Country Dummies		✓			✓
Trade Flow			✓		✓
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## Random Effects Logistic Regression



	Model 1	Model 2	Model 3	Model 4	Model 5
Election Year	1.147**	1.205**	0.910*	1.108***	1.101*
Product-Specific Barrier	1.478***	1.613***	0.1.360**	1.652***	1.858***
Dominant Firm Capacity	0.352**	0.467**	0.341**	0.327**	0.346**
Trade Barrier Distortion	2.248***	2.344***	2.090***	2.010***	1.901**
Negotiation Progress	-1.130**	-1.303***	-1.047**	-1.294***	-1.057**
Trade Barrier Duration	-0.264**	-0.069	-0.228*	-0.232*	-0.107
Country Dummies		✓			✓
Trade Flow			✓		✓
Industry Production			✓		✓
Political Contributions				✓	✓
Active 301				✓	✓
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# RE with Constant Sample

	Model 1	Model 2	Model 3	Model 4	Model 5
Product-Specific Barrier	1.329**	1.352**	1.325**	1.526**	1.840***
Dominant Firm Capacity	0.330**	0.360**	0.340**	0.296*	0.320*
Trade Barrier Distortion	2.089***	2.093***	2.117***	1.925**	1.914**
Negotiation Progress	-0.982**	-0.918*	-0.925**	-1.073**	-0.922*
Trade Barrier Duration	-0.202	-0.212	-0.211	-0.201	-0.0999
EU		0.809			1.849
Japan		0.371			0.468
Mexico		1.307			1.086
Korea		0.209			-3.650
NonOECD		-0.137			-5.407
US Exports to Trade Partner			0.148		-2.283*
Industry Production			-0.00794		0.165
Industry Political Contributions				-0.00725	0.0249
Active 301				1.660**	2.090**
Constant	-8.719***	-9.353***	-12.39	-8.464**	46.45
Observations	1407	1407	1407	1407	1407

\*  $p < .1$ , \*\*  $p < .05$ , \*\*\*  $p < .01$

<b>1</b>	Counsel for WTO Disputes, Canada	<b>14</b>	Legal Advisor to Ministry of Finance, Japan	<b>27</b>	International Trade Attorney, China
<b>2</b>	International Trade Attorney, Morocco	<b>15</b>	International Trade Attorney, United States	<b>28</b>	Assistant General Counsel, United States Trade Representative
<b>3</b>	International Trade Attorney, Australia	<b>16</b>	International Trade Attorney, Russia	<b>29</b>	International Trade Attorney, Belgium
<b>4</b>	International Trade Attorney, Brazil	<b>17</b>	International Trade Attorney, United States	<b>30</b>	Senior Official familiar with WTO and Airbus-Boeing Dispute
<b>5</b>	WTO Secretariate Attorney	<b>18</b>	International Trade Attorney, United States	<b>31</b>	Ministry of Economy, Trade, and Industry Official, Japan
<b>6</b>	US International Trade Commission Attorney	<b>19</b>	Assistant General Counsel, United States Trade Representative	<b>32</b>	Associate Trade Attorney
<b>7</b>	United States Trade Representative Official	<b>20</b>	General Counsel, Ministry of Mexico	<b>33</b>	Associate Trade Attorney
<b>8</b>	International Trade Attorney, United States	<b>21</b>	Ambassador, Brazil	<b>34</b>	Trade Official, European Commission
<b>9</b>	International Trade Attorney, European Union	<b>22</b>	Department of Commerce Official, United States	<b>35</b>	Trade Attorney
<b>10</b>	WTO Panelist	<b>23</b>	International Trade Attorney, Colombia	<b>36</b>	Trade Official
<b>11</b>	International Trade Attorney, Hong Kong	<b>24</b>	Trade Official, United States Trade Representative	<b>37</b>	General Counsel, United States Trade Representative
<b>12</b>	International Trade Attorney, Switzerland	<b>25</b>	WTO Adjudicator	<b>38</b>	Trade Official, United States Trade Representative
<b>13</b>	International Trade Attorney, Egypt	<b>26</b>	Assistant for WTO and Multicultural Affairs, United States Trade Representative		

## Negative Precedent

“If the U.S. pursues an overly aggressive reading of a certain WTO article and loses, it not only allows the challenged country to carry on with its policy but **could open the door for other countries to craft similar measures** that might not have come into effect if not for the adverse decision on the books.”

*John Veroneau, USTR General Counsel 2003-2005*

“Winning WTO cases is great, but **if you lose, you’re probably worse off than if you never brought it at all**, because the decision is going to get waved in your face every time you try to raise the issue again in the future, whether it’s in a bilateral, WTO or [free trade agreement] context.”

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# Budget Constraint

The USTR is the most resourced, and they can't staff cases, they don't have the resources. There is so much going on that they can't think about starting cases on their own... The US don't admit they don't have the resources, but they don't (International Trade Attorney, European Union, 2021).

The ministry is always struggling how to allocate within the budget. I think some ministries try to get budget from industry, and request from industry to pay the fees. Basically, the budget of the ministry is very limited (Legal Advisor to Ministry of Finance, Japan, 2021).

The cost of cases has been increasing year over year. In the early years of the WTO the reports were relatively short, but recently the cases are 100s of pages long. So I think the cost has been increasing. Government budget has increased, but industry has had to play a larger role (Ministry of Economy, Trade, and Industry Official, Japan, 2021).

With regard to budget constraints and legal knowledge, if we go back to Bananas and think of Ecuador. They weren't a rich country... Ecuador was not particularly well resourced... and they must have had assistance to mount that challenge... I think the gambling case in Antigua would be another such case (International Trade Lawyer, Hong Kong, 2021)

There's a significant budget and resource constraint on governments. One of the important roles the trade agencies play is as a filter... Ironically, the USTR's budget is tiny relative to other countries...USTR views themselves as the marines, "the few the proud" (International Trade Attorney, China, 2021).

Sometimes it's a resource constraint. Governments have to be putting out lots of fires, so it's hard to dedicate resources on a full time or focused basis to prepare for written submissions and complete that type of analysis (International Trade Lawyer, Colombia, 2021).

There are times when the government says I can't do it myself because they don't have funds or don't have legal capacity... We can scale countries roughly based on GDP with larger countries being more sophisticated, and they will have more/stronger views about what is important and what is systemic. With smaller countries, the government tells industry it's fine to bring the case as long as they pay for it, and government just signs their name to it (International Trade Lawyer, United States, 2021).

The budget constraint is very real. ... The steel industry for example. Government tells them to just pay for the case and lawyers (General Counsel, Ministry of Mexico, 2021).

# Information Provision - 1

Market operators are always a reality check because they face the day to day business... Governments generally don't systematically monitor what other governments are doing. Maybe USTR and maybe the EC does so to some extent, but that radar screen still has problems... Sometimes the actions aren't detectable, except by those actors directly facing the measure (International Trade Attorney, Egypt, 2021).

The government would rely on the industry or commercial entity to complain to it, so I think the private sector involvement is absolutely basic to the whole system (International Trade Attorney, Hong Kong, 2021).

If you're a poor and understaffed country, you don't even know if you're facing barriers hurting your firms (US International Trade Commission Attorney, 2021).

Outside of the US and Europe everyone relies on the private sector to bring information about the case... But generally, even in Europe, the law firm is supposed to bring the facts to the European Commission (International Trade Attorney, Russia, 2021)

We need to hear from industry to know there's a problem. We have the National Trade Estimates Report, which is a mix of things we've heard from industry and also things we've been monitoring... USTR will sometimes have companies come to them, and we need the firm to bring data to show the problem really exists, the magnitude of the problem (Assistant for WTO and Multicultural Affairs, United States Trade Representative, 2021).

Private companies are involved because they know the market. The government doesn't know what happens. For TRIMS and TRIPS measures, the private firms are always involved and generally pay part or all of the lawyers fees (International Trade Attorney, Belgium, 2021).

What happens in the majority of cases, maybe not all but certainly in the great majority, the commercial entity feels it's not getting a fair deal and presents its complaints to its own government (International Trade Attorney, Egypt, 2021).

It's not uncommon for a company, especially very large companies, to approach the law firm and say "were having this issue in this market, can we do something about it" and then approach USTR to address the trade barrier (International Trade Attorney, Brazil, 2021).

# Information Provision - 2

Whether the EC, or member states, or the UK, they frankly do not have the expertise, the man power, or the technical expertise on cotton, tires, aircraft, etc. So you need to have that very close cooperation. We have been educating the Europeans on aircraft over 15 years. What are the models, the number of seats, how are they financed, the R&D, the lead times for R&D, etc. You cannot expect the government to know these details (Senior Official familiar with WTO and Airbus-Boeing Dispute, 2021).

Generally it's up to the commercial entity to persuade the government it has the case, and it has to present some facts to back up its claim. It's not essential in all WTO cases to show adverse effects, but in some cases its important to present the adverse trade effects (International Trade Attorney, Hong Kong, 2021).

Industry helps with the fact finding and resources for the case. Sometimes, the governments only job is to be present at the meetings, and the attorneys paid for by the industry do all the speaking (Ambassador, Brazil, 2021).

One of Private industry's main contributions is financial resources and product specific knowledge. Say you have a relatively simple case on national treatment, you still need lots of specific knowledge and private industry is best placed to have that info, and can be very helpful in developing the factual record (International Trade Attorney, Brazil, 2021).

In the avocado case against Costa Rica, the government didn't want to start the case against Costa Rica. The government thought the case wouldn't meet the minimum standard of prima facie. So [redacted] had to write a memo to explain that [redacted] would gather all the information later. The industry retained outside council to start the case, and it is now ongoing (General Counsel, Ministry of Mexico, 2021).

Governments tend to look for expertise from private firms. We interact very early with our clients, and government may request early memos on market access issues. They might ask for help collecting information about the measure itself, the legislation or regulation. It may involve working with local counsel to understand the domestic regime (International Trade Lawyer, Colombia, 2021).

We really need to talk with individual companies because what we need is confidential and proprietary information (Assistant for WTO and Multicultural Affairs, United States Trade Representative, 2021).

For USTR, more often providing technical information is the most important... USTR can often handle the legal case, but they rely on the technical information about how the market works, and support and partnership [from private firms] in developing arguments (Assistant General Counsel, United States Trade Representative, 2021).



# Counter Lobbying

I did not personally ever see cases saying “don’t bring this case” (Assistant General Counsel, United States Trade Representative, 2021).	No firms don’t counter lobby. Never heard of firms counter lobbying (Department of Commerce Official, United States, 2021)
No I haven’t seen that a firm ever comes forward and asks the government not to bring a case, that someone else wants to bring (International Trade Lawyer, Egypt, 2021)	So no, there has been no cases I’m familiar with where firms lobby against the case (International Trade Lawyer, United States, 2021).
I have not seen any case of counter lobbying by an industry or association or firm, but I guess it could happen (International Trade Attorney, China, 2021).	Counter-lobbying doesn’t happen when bringing cases, but the government will consider the different stakeholders they have to deal with (Senior Official familiar with WTO and Airbus-Boeing Dispute, 2021).
It’s the government who is reluctant. So no, industries don’t lobby against (International Trade Lawyer, United States, 2021).	Can’t think of any instances of counter lobbying (Assistant General Counsel, United States Trade Representative, 2021).

# Case Complexity

Cases have become more complex both legally and factually. Legally, because there is so much case law. The fact is there's a lot of case law now, so with every issue you have to look at a string of cases... Even where it's a novel issue, you try to find cases that support your position and that is more complex than what would have occurred earlier. Factually cases have become more complex as well. Cases now provide experts and expert reports (International Trade Lawyer, Colombia, 2021).

It's become overly legalized that even the most well-resourced countries can't do it well without outside help from private firms (International Trade Attorney, European Union, 2021).

The WTO process has become more litigious as the WTO has been basically unable to write and interpret new rules. The panel processes have become more fact intensive undoubtedly (WTO Panelist, 2021).

Things have generally become more complex and technical over the years. Trade barriers used to be the tariffs, but that's not usually the biggest issues anymore (Assistant for WTO and Multicultural Affairs, United States Trade Representative, 2021).

When the first cases started, the cases were very basic. Now they are thousands and thousands of pages. It's become crazy now. Everything goes to the experts. It's more difficult now with arbitrators chosen for the specific case. Now we have people bringing huge files of economic analysis. Some of these cases have 100s of lawyers now (General Counsel, Ministry of Mexico, 2021).

There are certain trends in WTO. The first is the increasing complexity of the cases, which has implications for the time it takes to resolve the issue and the expertise you need to mobilize (International Trade Lawyer, Egypt, 2021).

The cases have absolutely become more complex. It's not just the "low hanging fruit" was picked first, but the case process and the AB have become much more complex over time (WTO Adjudicator, 2021).

The cost of cases has been increasing year over year. In the early years of the WTO the reports were relatively short, but recently the cases are 100s of pages long. So I think the cost has been increasing. Government budget has increased, but industry has had to play a larger role (Ministry of Economy, Trade, and Industry Official, Japan, 2021).

# Multi-Party Interim Appeal Arbitration Arrangement

## **Blocking of AB members, undermined appeals process**

Countries formed the MPIA in March 2020

- 10 arbiters appointed
- More than 50 countries are members
- Supersedes AB & applies to future disputes between members
- Countries that are not members opt-in on ad hoc basis

WTO dispute settlement is still active

- 9 cases initiated in 2021
- 7 cases initiated in 2022
- 12 disputes in the MPIA

## **2015 Costa Rica blocks Hass Avocados from Mexico**

- Concern re: Sun Blotch disease
- Other countries impose similar restrictions

**Mexico did not believe case passed “prima facie analysis”**  
(Mexico, General Counsel 2021).

- Private firm did the “heavy lifting” to convince government
- Government used arguments prepared by private firm

## **2017 dispute was initiated**

- Mexico wins claim in 2022 - 474 page panel report