



SCHOOL OF  
**Policy Studies**  
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# Transparency and surveillance as conflict management

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# What explains disputes pattern?

Agreements invoked in disputes, 2005-11

■ <b>AD 31</b>	↔	■ <b>SPS 7</b>
■ <b>SCM 27</b>		■ GATS 5
■ Safeguards 9		■ Customs 4
■ Agriculture 9		■ Rules of origin 3
■ TRIMs 8		■ TRIPS 3
■ TBT 8		■ Licensing 1

\*GATT invoked much more frequently, but not always as the main subject

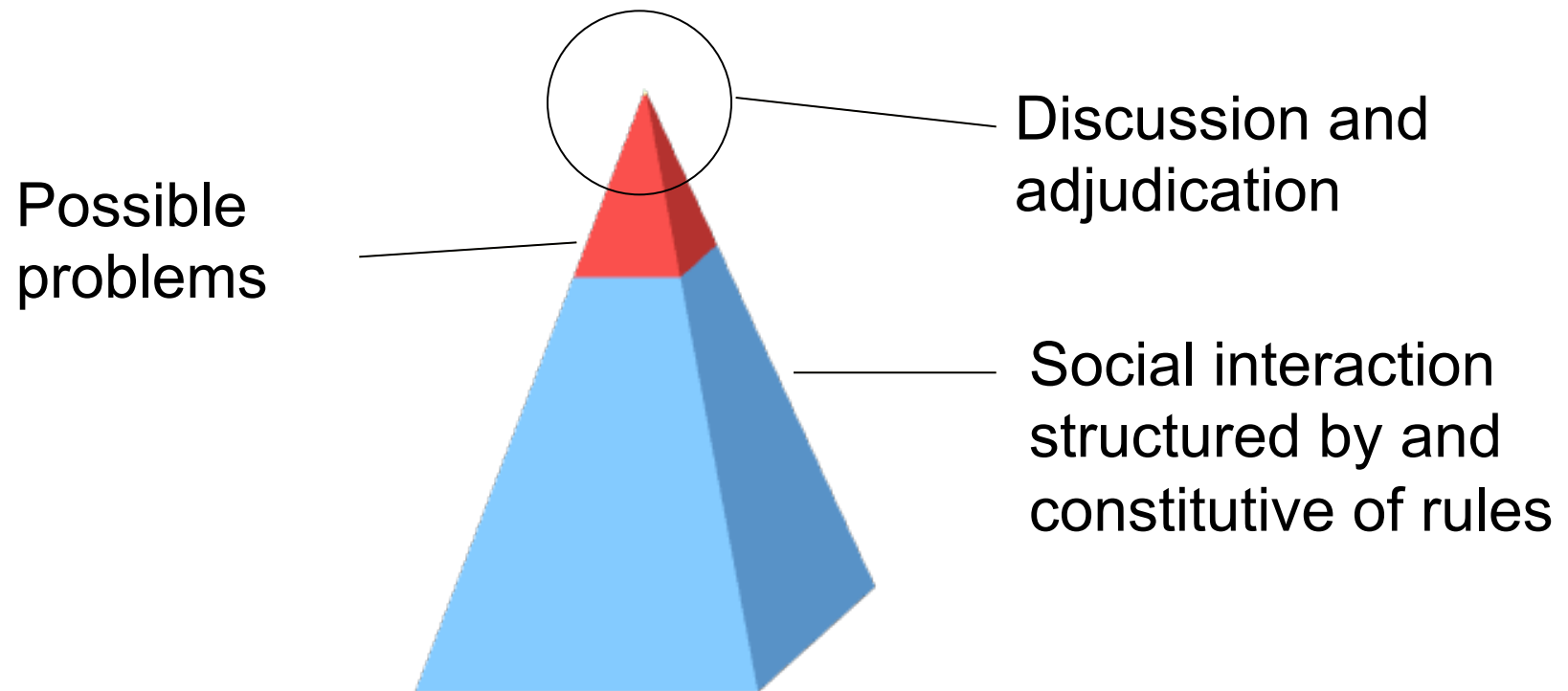
Source Leitner, Kara and Simon Lester, (2012) 'WTO Dispute Settlement 1995-2011: A Statistical Analysis,' Journal of International Economic Law 15:1 (March 2012), Table 5.

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## Institutional design matters

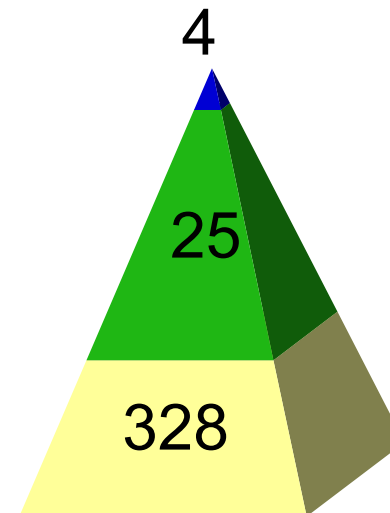
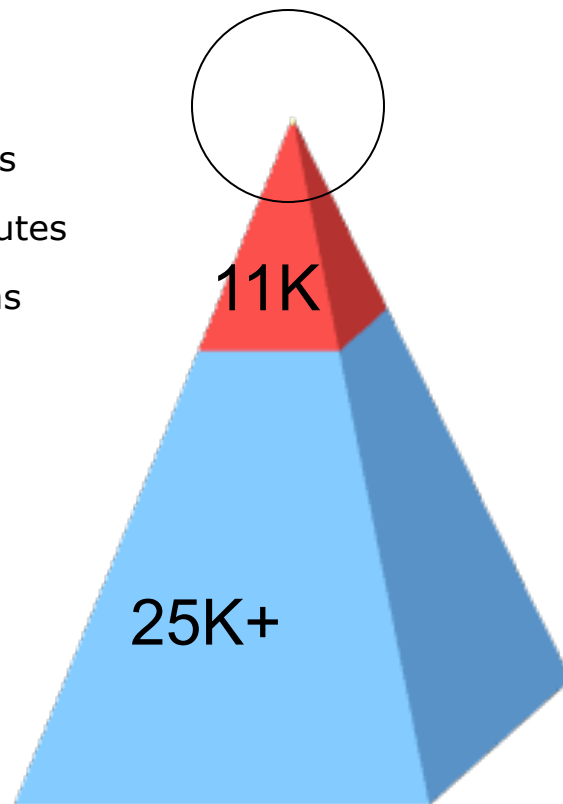
- Notification: “a transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other Members”
- Specific trade concern: “The [SPS] Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific [SPS] issues”(12.2)

# The Great Pyramid of the Legal Order



## SPS pyramid 1995 - 2011

- Appellate body reports
- Matters raised in disputes
- Specific trade concerns
- Notifications
- Informal interactions



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## Same pyramid in other committees?

- No “STC” in SPS 12:2, TBT 13:1
- Similar language: Agriculture 18:6, ASCM 25:8, and ILP 4; also TPR questions; RTA TM
- Standard Item 2 on Agriculture agenda
  - ❑ Many questions; same sorts of things as STC
  - ❑ Q&A now online
  - ❑ No analytic summaries as in SPS and TBT

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## How big are other pyramids?

- Counting less precise than SPS/TBT
  - ❑ Notification can be late, or incomplete
  - ❑ Members differ hugely in ability to ask questions
  - ❑ Databases differ on Q&A
- Hard to estimate universe of conflict
  - ❑ Number of issues actually raised may be a smaller share of of potential issues
  - ❑ Relation to disputes also hard to estimate

# What we are learning about the pyramid

- Most issues are not/need not be notified
- Most notifications occasion no questions
- Most disputes do not mention notifications
  - Only notify what will not cause dispute?
- Most disputes not preceded by questions in committee
- Example: 76 environmental STCs in TBT
  - 11 about matters not notified (China 4; U.S 2)
  - No STC on non-notification becomes dispute



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## Empirical focus on environment

- Clearly a source of conflict, which could get worse
- Obligations under many WTO agreements
- CTE database tracks notification; not discussed in CTE
- Hard to cross-reference notifications against questions to assess institutional design dimension

# Notification, STC, and disputes

Straight to Dispute	STC (or equivalent) then Dispute	Only STC (or equivalent)
<ul style="list-style-type: none"><li>• EC Sardines</li><li>• China solar panels</li><li>• China windpower equipment</li></ul>	<ul style="list-style-type: none"><li>• Canada Feed-in Tariff</li><li>• EC Ban on seal products</li><li>• Australia Tobacco</li></ul>	<ul style="list-style-type: none"><li>• Colombia biofuels</li><li>• Korea solar panels</li><li>• Eco design for air conditioners</li><li>• India E-waste</li><li>• France Grenelle 2</li><li>• EU REACH</li></ul>

# China Solar panels and wind power

- 10/11 U.S. reverse notification of 200 Chinese subsidies (G/SCM/Q2/CHN/42)
  - 8/12 U.S. questions solar in TPR (WT/TPR/S/264-05)
- 3/12 U.S. countervail
- 5/12 China launches dispute (WT/DS437/1)
- No notification
- Request for panel pending
- U.S. initiated wind dispute in 2010 (DS419 not DS449)
- 10/11 wind included in reverse notification
- China notified in 2011 (G/SCM/N/155/CHN)
  - Accepts logic of SCM
  - Measure no longer in force
- U.S. has not requested a panel

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## Some institutional design hypotheses

- STC and disputes respond to incomplete transparency or information asymmetry
- Cause of disputes
  - ❑ No notification, nor agreement on what to notify
  - ❑ Inadequate opportunities for surveillance
- STCs or equivalent arise because:
  - ❑ Notification not clear
  - ❑ Measure ought to have been notified
  - ❑ Notification requirement itself ambiguous

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## Why the differences between committees and processes?

- Notification and acceptance that a thing can be characterized in WTO terms
- Discussion [with capital-based experts] helps resolve ambiguity