Transparency and surveillance as conflict management

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What explains disputes pattern?
Agreements invoked in disputes, 2005-11

- AD 31
- SCM 27
- Safeguards 9
- Agriculture 9
- TRIMs 8
- TBT 8
- SPS 7
- GATS 5
- Customs 4
- Rules of origin 3
- TRIPS 3
- Licensing 1

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

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

Possible problems

Discussion and adjudication

Social interaction structured by and constitutive of rules
SPS pyramid 1995 - 2011

- Appellate body reports: 4
- Matters raised in disputes: 25
- Specific trade concerns: 328
- Notifications: 11K
- Informal interactions: 25K+

Total: 26,632
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
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 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
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

<table>
<thead>
<tr>
<th>Straight to Dispute</th>
<th>STC (or equivalent) then Dispute</th>
<th>Only STC (or equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EC Sardines</td>
<td>Canada Feed-in Tariff</td>
<td>Colombia biofuels</td>
</tr>
<tr>
<td>China solar panels</td>
<td>EC Ban on seal products</td>
<td>Korea solar panels</td>
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<tr>
<td>China windpower equipment</td>
<td>Australia Tobacco</td>
<td>Eco design for air conditioners</td>
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<td>India E-waste</td>
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<td>France Grenelle 2</td>
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<td>EU REACH</td>
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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
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
Why the differences between committees and processes?

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