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BRAZIL'S STRATEGY IN THE WTO'S DISPUTE SETTLEMENT MECHANISM: FULL LITIGATION, SUSPENSION OR SETTLEMENT?

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Ondergetekende Margaux Kersschot, student Master na Master Internationale Betrekkingen en Diplomatie, verklaart dat deze thesis volledig oorspronkelijk is en uitsluitend door haarzelf geschreven is. Bij alle informatie en ideeën ontleend aan andere bronnen, heeft ondergetekende expliciet en in detail verwezen naar de vindplaatsen.

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1.INTRODUCTION

> 'Because trade plays so important a role in our lives, and because trade is made possible by the political institution that structures trade relationships, understanding the political dynamics of the world trade system is vital.' (Oatley, 2010: 22)

The World Trade Organization (WTO) is a powerful international organization, even though it disposes of only a small secretariat. It is important to understand the dynamics inside this organization, because of the influence it has in the global spectrum. This research will focus on the factors that lead to the enforcement of measures by rulings of a panel or the Appellate Body. The settlement of disputes is important for the relations between Member States inside the organization:

> 'The best international agreement is not worth very much if its obligations cannot be enforced when one of the signatories fails to comply with such obligations. … Settling disputes in a timely and structured manner is important. It helps to prevent the detrimental effects of unresolved international trade conflicts and to mitigate the imbalances between stronger and weaker players by having their disputes settled on the basis of rules rather than having power determine their outcome.' (World Trade Organization, 2004a: 1)

The Dispute Settlement Mechanism (DSM) provides this important function of enforcement of international trade commitments. It was constituted in Annex II of the Agreement establishing the WTO, the Understanding on Rules and Procedures Governing the Settlement of

Disputes (in short Dispute Settlement Understanding or DSU). Shaffer (2005) argues that it is necessary to investigate the WTO's dispute settlement, because it does not only affect the economic situation of individual companies, but also countries' 'terms of trade'. (p. 26) When one looks at the trade in agricultural products, for example, the outcomes of disputes will have a significant influence on the world and its population. Some farmers will win by further liberalization, others will lose. In any case, a lot is at stake, for the world price of food shall most probably adapt to the new situation. In Brazil, for example, the agro-industry has a lot of interest in the liberalization of agricultural products. The country has filed a couple of complaints concerning the unfair treatment of Brazilian agricultural products.

When a dispute is initiated in the WTO's Dispute Settlement Mechanism, this does not necessarily lead to full litigation of that complaint, as the litigation process is not always completed. Bush and Reinhardt (2000) state that 'one little known fact about GATT/WTO is that fully three-fifths of all disputes end prior to a panel ruling, and most of these without a request for a panel even being made.' (pp. 1-2) It may therefore be useful to distinguish the different stages in the litigation process before continuing.

The procedure requires the following steps. Firstly, there is the 'initiation'. The way to officially mount a dispute is by submitting a 'request for consultations'. Secondly, the complainant and respondent are obliged to hold 'consultations'. This means that they have to at least try to find a mutually agreed solution (MAS) before a panel will be established. When the parties find it impossible to reach a solution, the complainant can ask for the establishment of a panel. The panel's decision is binding for the parties. Appeal is nevertheless possible by means of the Appellate Body. After all these steps, the ultimate one remains, namely that the losing party has to implement the decision. When this does not occur, the

other party (usually the complainant) may proceed to imposing countermeasures or retaliation. In this litigation process, the next 6 stages can thus be distinguished:

Step 1: initiation and consultations

Step 2: establishment (after request) and ruling of a panel

Step 3: implementation or no implementation of the ruling

Step 4: ruling of the Appellate Body

Step 5: implementation or no implementation of the ruling

Step 6: retaliation in case of no implementation

As mentioned above, when a complaint is filed in dispute settlement, this does not mean it will necessarily lead to a panel ruling. Lawrence (2003) distinguishes three possible outcomes:

> 'If a defendant is found to have nullified its commitments, the agreement would no longer provide reciprocal benefits. How could the agreement be rebalanced? There are three ways: (1) the defendant could eliminate the regulation and comply with the agreement; (2) the defendant could grant the plaintiff another concession (compensation); or (3) the plaintiff could withdraw concessions to the defendant (suspension of concession[1]).' (p. 26)

The second option consists out of a negotiated solution where the defendant offers compensation to Brazil, which does not necessarily need

[1] This, in other words, means that the plaintiff can retaliate if the defendant does not comply.

to be in the same area as the complaint. For example, when Brazil requests consultations on a case concerning agriculture, the respondent could offer to promote the access to its market for Brazilian industrial goods. The following hierarchy in these three options can be discerned. The WTO seeks the first solution, namely having the defendant comply with the agreement. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is to be preferred. If the withdrawal of the offending measure is impracticable, compensation in the form of other concessions can be provided. Suspending concessions or other obligations is to be seen as a last resort. (Lawrence, 2003: 26)

RESEARCH QUESTION & OVERVIEW OF THE LITERATURE

When there is no such ruling in a case, both parties may have solved the problem between themselves by negotiating a solution. Is there a reason why some cases are solved by full litigation and why others are not? What motivates this choice in litigation?

To specify this central question, I have decided to apply it to Brazil and to focus solely on this country. Brazil is a WTO Member State that has been keen to use the DSM and that has even booked a number of successes. The country has invested in the elaboration of an administration that is specialized in the WTO and in the rules outlined in the DSU. The authors Shaffer, Ratton Sanchez & Rosenberg (2006) state that 'Brazil's success with WTO litigation using a public-private partnership model has enhanced its credibility in WTO circles, which, in turn, has arguably strengthened its hand in settlement negotiations conducted in the shadow of a potential complaint or full litigation.' (p. 53) The purpose of this research is to clarify the next empirical finding: why does Brazil, with its specialized administration, in certain cases choose to proceed to full litigation whereas in other cases it opts to settle or suspend it? Is

there a strategy behind these choices? The country's growing importance on the international level and in the World Trade Organization makes it all the more interesting to investigate it. The WTO Member State has a leading role in the Doha-negotiations as it is the leader of the G-20, the group that aligns developing countries. Another advantage is my knowledge of Portuguese, which in turn facilitates access to sources in this language.

In the existing literature about dispute settlement, researchers have already focused on finding out what influences the choice for initiating a dispute. More than ten years ago, Busch and Reinhardt (2000) already elaborated a theory on settlement bargaining of disputes in the WTO (covering disputes from 1948 through 1999). Guzman and Simmons (2002, 2005) analyzed what causes disputes to move from the consultations to the panel stage and examined the selection of defendants. De Bièvre and Poletti (2011) have looked into how preferences of import-competing and export-oriented sectors change in the shadow of (weak) law and how this influences countries' choice between negotiation and litigation in dispute settlement. Chad Bown (2009) examined the full WTO caseload of data, searching for patterns in the 388 disputes that were initiated between 1995 and 2008. As mentioned above, Shaffer et al. (2006) discovered how Brazil turned itself into a successful developing country in the WTO, and Shaffer (2005) also explains why developing country use of the DSM is important. Carlos Cozendey (s.d.), who was the head of the Economic Department of the Brazilian Foreign Relations Ministry, reflects on how the DSM relates to Brazil's foreign policy. Daniel Arbix (2008) focused on explaining what causes Brazil to initiate disputes, but did not look past the initiation stage to ask why and when the country chooses for full litigation. This is exactly what I intend to discover. This research can be situated between the

works of Bown (2009) that investigated factors leading to full litigation and Arbix (2008) that searched for influences in Brazil's choice to initiate disputes.

METHODOLOGY

This research will direct its focus on the disputes Brazil initiated in the DSM. The working method will consist out of three main phases.

First of all, I will try to find all the disputes Brazil mounted and the way they were solved. Which option did Brazil choose: obtaining a panel (and an Appellate Body) ruling, settling for a mutual agreement, or suspending the proceedings?

Then, I will try to discover what influences the decision for the different ways of settling disputes, by making a typology according to different hypotheses and different types of cases. Possible explanations can be found in, for example, the defendant's nature or in sector characteristics. I will attempt to discover whether in certain disputes, for example the disputes where Brazil faces a strong opponent, Brazil will incline more towards full litigation or not. When does Brazil consider a ruling from the Dispute Settlement Body (DSB) to be either necessary or desirable? I will also examine whether the choice is influenced by the characteristics of different sectors. Do disputes relating to one sector tend to be litigated more often than cases concerning another sector? Will cases be handled differently when they touch upon agriculture, services or industry?

Finally, I will see whether the disputes, broken down according to the hypotheses, manifest a specific pattern in time. Hopefully the findings will then allow to create a general overview of the factors involved in Brazil's decision making.

2. HOW TO EXPLAIN BRAZIL'S BEHAVIOR IN DISPUTE SETTLEMENT: HYPOTHESES

There are three main hypotheses that will guide the research in this master thesis. The first one states that the nature of the defendant is an important element that Brazil takes into account when it is considering how to solve a dispute. It is believed, for example, that when a defendant is traditionally a rich country (with a high GDP), this country will find a way to impose its will on the Brazilian negotiators and avoid the possibility of an adverse ruling by negotiating. The second hypothesis also takes the nature of the complainant into account: what is the power of Brazil's threat with WTO-retaliation? The power of the threat varies according to the defendant: if the latter is very powerful, the threat will be 'smaller'. If the defendant is a poor country, the threat of retaliation is something to seriously reckon with, since retaliation will have a large impact on the economy. These two hypotheses will be subjected to an empirical test, before moving on to the last hypothesis. The third hypothesis sees certain characteristics of sectors as a determinant in the Brazilian government's decision to pursue in litigation, and will also be tested empirically.

2.1 HYPOTHESIS I: THE NATURE OF THE DEFENDANT

The choice for full litigation depends on the nature of the defendant in the case. It is expected that Brazil will follow through the whole procedure when the respondent is a weak opponent in the DSM. When Brazil finds itself against a strong opponent, the country will be more inclined to try negotiating a settlement or to suspend the proceedings. Guzman and Simmons (2005) argue that (politically) weak countries may be deterred from filing a dispute for fear of retaliation of the would-be defendant. (p.

559) Bown's (2009) approach also provided evidence that the potential respondent country's capacity to engage in extra-WTO counterretaliation influences a country's dispute initiation and participation decision. (p. 97) This fear can also matter when a plaintiff has to decide whether it will continue litigation or not. Lawrence (2003) mentions that members can buy off plaintiffs with compensation before a judgment to avoid incurring an obligation imposed by the DSB. (p. 47) Before elaborating this into further detail, I address the matter of defining strong and weak defendants.

When is a respondent strong or weak? When Brazil initiates a case against a rich country, I believe this to be a strong opponent. The link between rich as strong, and poor as weak is easily made: a rich country can use a lot of resources to win (the sometimes costly) disputes in the WTO. It is more likely that they have a good delegation in Geneva, are able to pay expensive specialized lawyers, have experience in dispute settlement, etc. The subject will be settled or suspended more quickly than when Brazil is facing a poor country, which will thus be considered a weak opponent. It is important to use an adequate classification of rich, strong countries versus poor, weak countries. There are several ways to make a distinction, here the terms 'developed countries' and 'developing countries' will be applied. There is no universal definition of these terms, even though they are frequently used. In this paper, the importance is to make a classification between countries that constitute a strong opponent for Brazil in dispute settlement and those that are easy to win from.

To avoid confusion about the definitions of developing and developed countries, this work is based on the next elaboration of the concepts. The CIA fact book appendix provides us with precise definitions of 'developing countries' and 'developed countries':

'developing countries (is) a term used by the International Monetary Fund (IMF) for the bottom group in its hierarchy of advanced economies, countries in transition, and developing countries; IMF statistics include the following 126 developing countries: (…) Argentina, (…) Brazil, (…) Mexico, (…) Peru, (…) Turkey (…).'

'developed countries (…); includes the market-oriented economies of the mainly democratic nations in the Organization for Economic Cooperation and Development (OECD), (…) high-income countries, (…) industrial countries; generally have a per capita GDP in excess of $15,000 (…) the DCs include: (…) Canada, (…) Turkey[2], (…) US.'[3] (CIA, 2011)

Why would Brazil switch to settlement negotiations or suspension in a case against a powerful state? There are two reasons. Firstly, rich countries have more resources to offer compensation to Brazil in exchange for suspension of the case. Secondly, a rich Member State has the capabilities to pressure Brazil by using its power, in terms of the size of its market and its attractiveness as an export market. It can pose a serious threat of 'extra-WTO counter retaliation', and can pressure Brazil in various ways. Chances are higher that rich defendants are important

[2] Turkey appears in both definitions. I have looked at the GNI per capita of Turkey. The GNI per capita is the new way of looking at countries' wealth used by the World Bank (similar to GDP). Since Turkey's GNI per capita for 2009 was $8,720 according to the World Bank site, and the GNI per capita of Brazil ($8,040) and Mexico ($8,960) were close to it, I decided to put Turkey in the same category of 'developing country'. (World Bank Group, 2011a)

[3] The European Union (or before the EU existed, the European Communities) is treated as 'one country' in the WTO. In the list of cases there is one exception concerning the seizure of generic drugs in transit against the 'EU and a Member State (The Netherlands)'. It turns out the case falls under EU competence, so it will not be necessary to look at the Netherlands separately. The European Union has a GNI per capita of $34,351, which is sufficient for placing it in the category of developed countries. (World Bank Group, 2011b)

trading partners of Brazil, that they have a lot of influence on the Brazilian economy, etc. Rich countries thus have more ways to force Brazil to settle for negotiations, instead of litigating.

An instrument powerful countries can use is the threat of issue linkage. If, for example, the US would find itself as a respondent in a case initiated by Brazil, I expect the US to offer Brazil the next choice: either Brazil does not proceed to full litigation (and negotiates a solution) or the US threatens to hurt Brazil by issue linkage in other domains. Brazil may prefer to keep a good, friendly relationship with the US over litigation, which could encourage the US to boycott the Brazilian economy in other ways. An example of such a threat of issue linkage can be a threat to withdraw development aid or technical assistance. A number of World Bank (IBRD and IDA) projects are still running in Brazil, like for example, the *Rio de Janeiro Metropolitan Urban and Housing Development*, and the *Federal University Hospitals Modernization Project*. (World Bank Group, 2011c) The EU and the US also have cooperation and assistance programs in Brazil.[4] Another threat is to halt other kinds of cooperation, for example, to stop cultural projects or cooperation in the field of education. One could also start boycotting negotiations with Brazil in other international forums and international organizations. For example, one could stop supporting Brazilian viewpoints in the UN, WIPO, Kyoto, or in other networks.

Hence, I believe Brazil will incline relatively more to negotiation when the defendant is powerful and can either threaten Brazil into negotiations or make a good offer to settle the dispute.

[4] For examples of these programs I refer to the following websites: Europe Aid Development and cooperation of the European Commission (2010): http://ec.europa.eu/europeaid/where/latin-america/country-cooperation/brazil/brazil_en.htm and USAID – Brazil (2011): http://www.usaid.gov/locations/latin_america_caribbean/country/brazil/

These dynamics are difficult to prove, because little documentation is to be found. Nevertheless, I do think this is a plausible outcome in some cases and under certain conditions. When a case is suspended, for example, perhaps the topic was linked to another issue and there was no need to further litigate the dispute. An example of cases where I believe this to be plausible, are the two cases against the European Union (then still called the European Communities) concerning coffee. In Europe, the GSP regime included coffee, and therefore hurt Brazilian exporters. Maybe Brazil did not want to hurt the less developed countries that were gaining from the GSP system with a DSB ruling. Brazil filed two complaints about coffee, and both were suspended. I find it very plausible that the EU threatened Brazil or offered compensation in another issue area, so that Brazil would not pursue in litigation.

2.2 Hypothesis II: The Nature of the Complainant

Brazil can always threaten with WTO retaliation ('suspension of concessions' in juridical terms) in a credible way. The power of the threat the member state has posed, on the contrary, depends on whether Brazil is facing a developed or big country, or a developing or small country. A difference in defendant leads to a variation in the credibility of Brazil's threat. A powerful threat of retaliation consists in being able to apply the DSB's accepted level of retaliation to specifically chosen sectors, so as to eliminate all trade in these sectors. This is the most effective way to hurt the violator. In Lawrence's (2003) words 'in the end therefore the system is based on the persuasion of power rather than the power of persuasion'. (p. 7) I expect that when Brazil has a lower credibility in retaliation, when it is up against a strong defendant, it will prefer to negotiate. The strong opponent may not be impressed by the threat and not intend to imply a ruling by the DSB afterward. Whenever the respondent is only weak,

Brazil will be more convincing in its threat with retaliation. Hence, the country will prefer full litigation as the chances that the other party will comply with the ruling are relatively high. It may be useful to examine some of the implications of WTO retaliation into greater detail, before testing these hypotheses.

ALLOWED WTO RETALIATION

Retaliation is a threat with a certain action, without actually having to execute the action itself. Because there is an element of fear incorporated in the threat, the other country will implement the decision or the action because it is afraid that otherwise the retaliatory measure will be used. Lawrence (2003) explains how retaliation works:

> 'Suppose, for example, a tenant rents an apartment on a month-to-month basis (without making a security deposit) and then fails to keep up on the rent payments. The landlord responds by evicting the tenant. (…) To be sure, the tenant is more likely to pay the rent knowing that eviction is an option; the threat of eviction induces compliance. But eviction is clearly not a surefire method of ensuring compliance, and the tenant may prefer eviction to paying the rent.' (p. 31)

The 'suspension of concessions' is a measure allowed by the WTO's DSM and operates in a similar fashion. In this case, when a party that has lost a dispute is not implementing the panel or Appellate Body ruling, the winning country can use retaliation because it suffers from the still ongoing violation of the other Member State. The threat with this WTO retaliation is only useful when the defendant is not planning to implement

the changes asked for. Limão, N. and Saggi, K. (2006) explain why tariff retaliation is permitted in the WTO. Firstly, they argue that the threat of retaliation might encourage members to comply with WTO rules. For in the absence of any fear of foreign retaliation, members would be tempted to raise their trade barriers whenever so urged by their import lobbies. Since domestic exporters would not suffer from retaliation, they would have little incentive to counter lobby to keep the local market open. Secondly, the authors state that tariff retaliation may allow an injured country to obtain partial compensation by either improving its terms of trade (which happens if it is large enough to affect world prices) or by benefitting those import-competing sectors that are favored due to political economy considerations. Therefore, tariff retaliation helps enforce cooperation and/or enable compensation in trade agreements. (p.1)

Retaliation, however, is not necessarily an easy measure to enforce, because there are also negative consequences for the country that exerts retaliation. It is costly to impose and disadvantages a country's own consumers because imports become more expensive. Furthermore, to induce effective retaliation, it should have a significant impact on the defendant (if the defendant does not export to Brazil it will not be hurt by retaliatory measures).

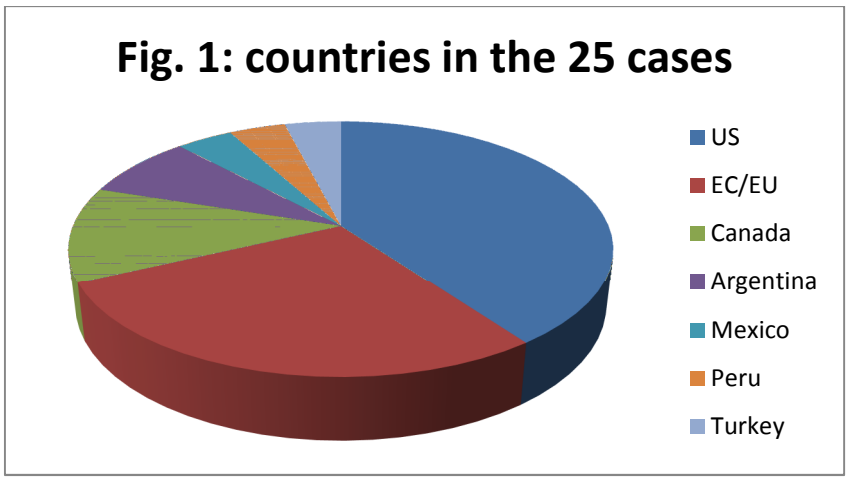
After having explained the first hypotheses concerning the nature of de defendant and the complainant, it is time to subject them to an empirical test. The list of all cases initiated by Brazil between 1995 and 2011 (Annex I) shows that a large number of complaints were filed against strong opponents, especially against the United States and the European Communities/European Union (EC/EU). At first sight, it remains impossible to distinguish a clear pattern in this list of disputes. Some of the cases against weak defendants were litigated, but not all. The same goes for disputes against strong opponents: some were litigated, some were

settled and some remain still 'in consultations' (which means they were suspended). Now, it is time to discover whether these two hypotheses have any influence on the decision making process when it comes to litigation in the DSM.

2.2.1 Empirical Test I: Testing the First Two Hypotheses

When looking at the list of disputes Brazil initiated, a first finding is that most of the cases are mounted against rich, strong countries. Especially the US and the EC/EU are often targeted in dispute settlement by Brazil.

Figure 1 shows that ten out of twenty-five cases were initiated against the United States, they make up for 40% of the total number of cases. Seven disputes were started against the EC/EU (28%) and three against Canada (12%). In two cases Brazil aimed at Argentina (8%) and in 1 case Peru (4%). The two last disputes were against Mexico (4%) and against Turkey (4%). Nearly 20 out of the 25 disputes Brazil initiated (80%), happened to be against strong defendants, whereas only 5 cases (20%) targeted weak opponents.



Source: author's compilation from WTO (2011).

The next question to ask is: were the cases against the strong opponents mostly litigated or negotiated? Table 1 shows the number and percentage of cases that were litigated or not (which means they were settled or suspended). Here, we will only take into account nineteen out of the twenty cases Brazil started against developed countries, because one dispute concerning the 'Seizure of Generic Drugs in Transit' (against the EU and a Member State – the Netherlands) is still in the procedural stage of consultations.[5] Out of the nineteen cases that Brazil initiated against developed countries, eleven were fully litigated (57.9%) whereas eight (42.1%) were not.

Table 1: number of cases litigated against developed and developing countries

Cases:	Full litigation	Settlement/suspension
Developed countries	11/19 (57.9%)	8/19 (42.1%)
Developing countries	1/5 (20%)	4/5 (80%)

Source: author's compilation from WTO (2011).

Remarkably, nearly fifty-eight percent of the disputes where Brazil targeted strong opponents were fully litigated, contrary to the expectation formulated above, that those cases were less likely to be pursued in litigation. Furthermore, four out of the five disputes in which developing countries had to defend themselves, were solved by other means than litigation, namely by settlement (mutually agreed solution) or by

[5] The available info only contains: 'This was followed by a second round of consultations on 13-14 September 2010.' (European Commission, 2011b) There is no mention of a report that circulated and it is still too soon to decide that the case was suspended. The interview with Marcus Ramalho (Geneva, 29/04/2011) confirmed that this dispute has not been solved and that the litigation-negotiation process is still taking place.

suspension of litigation. Only one mutually agreed solution was found in these four disputes, namely in the case against Argentina about the 'Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil' (DS190). Brazil suspended the litigation procedure three times: in the case 'Provisional Anti-Dumping Measure on Electric Transformers (DS216)' against Mexico, in the dispute 'Anti-Dumping Duty on Steel and Iron Pipe Fittings (DS208)' against Turkey, and against Peru concerning the 'Countervailing Duty Investigation against Imports of Buses from Brazil (DS112)'.

The empirical findings show that Brazil is inclined not to litigate weak defendants (instead of strong respondents), contrary to what was expected. This is a clear refutation of the first hypothesis. The opposite statement seems true in the case of developing countries: Brazil prefers to suspend litigation or to find a mutually agreed solution with developing countries rather than with developed countries. Full litigation is relatively more frequent when Brazil faces a developed country. Eleven disputes were fully litigated (57.9%), whereas eight (42.1%) were not. The statement that the country prefers to negotiate with strong opponents, because they can offer compensation or because Brazil fears they may threaten with issue linkage, is wrong when taking into account these empirical findings.

Here, one could omit the case DS71 against Canada about 'Measures Affecting the Export of Civilian Aircraft', which contains exactly the same complaint as the one Brazil made the same day. That one was filed as DS70 and attacks the same 'Measures Affecting the Export of Civilian Aircraft'. The only difference between these two was the article under which Brazil filed the complaint. Then, eighteen disputes against developed countries remain, of which eleven (61.1%) were litigated and seven (38.9%) were not. A result that leads to the same conclusion that

Brazil's preference, when it faces developed countries, is found in litigation.

Next, one can examine whether there are differences between these developed countries. A look at the size of their markets shows that the three developed defendants have big economic markets. In the ranking of countries by Gross Domestic Product, the European Union is the biggest market, with a GDP of 16,414,697 US dollar (IMF, 2010), followed by the United States, with a GDP of 14,119,000 US dollar. Canada, number ten on the list, has a GDP of 1,336,068 US dollar (World Bank Group, 2011d).

In the three cases against Canada, Brazil opted for full litigation in two disputes. As mentioned before, for the dispute DS71 (about aircraft) it is difficult to know whether it was Brazil that chose not to litigate, or whether this was a decision of the DSB to only address the other (and almost the same) case DS70. One can state that Brazil prefers to sue Canada, rather than to negotiate a settlement, even though the number of examples is limited. The reason for this tendency may, however, be found in other factors. Canada, for example, also started a number of disputes against Brazil concerning aircraft.

Sixteen of the Brazilian complaints were against the two biggest markets in the world. Five out of the ten disputes against the US were litigated and five were not. Out of the six cases against the European Union that have an outcome at the time of writing[6], four were litigated and two were not. It occurs that Brazil has a tendency to litigate the EU relatively more than the US. Next question to ask is why disputes against the EU are relatively more solved by a DSB ruling: is the EU less inclined

[6] Remember that the non-terminated case against the EU (DS409) is left out of this part of the analysis.

to offer compensation to Brazil than the US? Or is the European market more closed and therefore still very attractive if Brazil could open it up?

One could assume that the EU-market is still protected by fairly high tariffs, and that Brazil possibly is trying to forge an opening in this market by way of the DSM. Checking the tariffs that Brazilian exporters face on the European market may help to lift a little corner of the veil, namely to know whether these have been lowered by the EU. For now, it suffices to only look at the goods mentioned in the disputes Brazil started against the EU: poultry (and 'frozen boneless chicken cuts'), sugar, coffee, and malleable cast iron tube or pipe fittings.

First of all, a look at the coffee tariffs shows that in 2002[7] Brazilian exporters were subjected to tariffs on coffee of 11.5%. Europe did not lower tariffs on coffee, yet in 2011 Brazil has to pay only 8%, which is the tariff for the countries of the General System of Preferences (GSP). These were the two cases against Europe that Brazil did not fully litigate. The European Union offered compensation and let Brazil into the GSP, so that Brazil did not feel the need to further litigate the case, as from then onward it could benefit from the GSP. Next, when one looks at the import tariffs concerning iron, one notices that the definitive anti-dumping duty on imports from Brazil has disappeared.[8] Probably, the EU decided to delete the specific category that imposed anti-dumping duties on Brazil, to implement the DSB's ruling in the case. Then, the two fully litigated disputes about poultry are 'Measures Affecting Importation of Certain

[7] Data before 2002 are not accessible on the website I used. I chose to use this website anyway because of its user friendliness and it clearly shows the tariffs Brazilian exporters face (and not for all others, because these may be different). Furthermore, the site also displays information on other trade barriers like quota and anti-dumping duties, which is not provided by other sources. Only export subsidies are not shown, they are an indirect barrier to trade. (European Commission, 2011a)

[8] Strangely, the category '7307191010 - Threaded malleable cast iron tube or pipe fittings' is not available for the years after 2002. Hence, for the 2011 data, I had to use the more generic category '73071910 - Tube or pipe fittings of malleable cast iron'. A search for the second, more generic, category in the year 2002 shows exactly the same tariffs as for the year 2011.

Poultry Products' (DS69) and 'Customs Classification of Frozen Boneless Chicken Cuts' (DS269). The tariff results do not show any clear evolution concerning 'frozen boneless chicken cuts'.[9] For the sugar case, I also did not find any results in the tariffs. This case did fight European export subsidies, which are not shown in the results. (European Commission, 2011a)

What has been demonstrated by this section is that Brazil did not litigate the EU in the two coffee cases, because the EU offered compensation (by including Brazil in the GSP). Brazil will thus, in case of the EU, push through unless it gets compensated. This probably also counts for the US (and other) cases, and the latter was more willing or able to grant compensation to Brazil. A possibility here is that internal restrictions make it difficult for the EU to offer compensational measures. One may argue that Brazil's strategy in Dispute Settlement, when facing strong defendants, is to always litigate unless satisfactory compensation has been offered by the respondent. Nevertheless, it is too soon to make a general conclusion, for other influences may be involved in the choice to continue litigation. Now it is time to try examining other possible explanations that may lead Brazil toward litigating or negotiating the solution to a dispute. In the following section, I will examine whether certain sector characteristics influence the choice in litigation.

2.3 Hypothesis III: Sector Characteristics

The choice for full litigation can depend on sector characteristics. Some sectors in Brazil are considered to be more important than others, and there is a hierarchy to be made between these sectors. When an

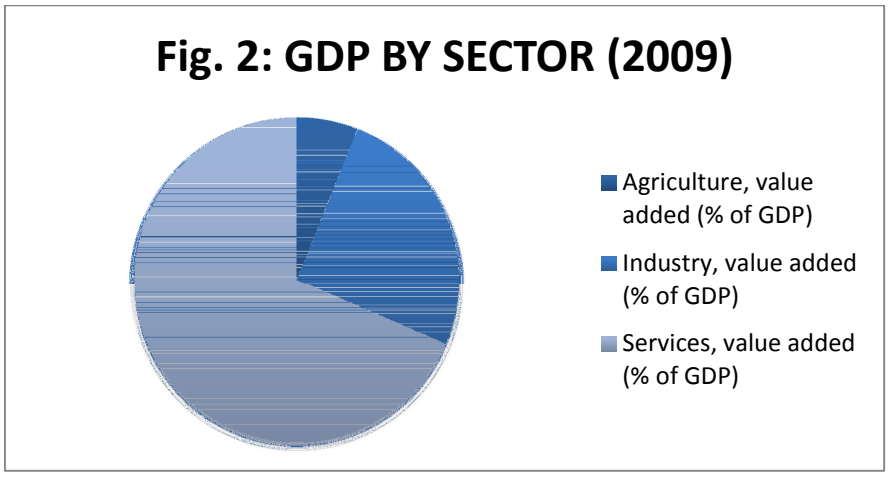
[9] Here, the more specific classification was used, 'poultry' is too general a category and cannot be inserted in the input form.

important sector is hurt by a member state that breaks the rules, Brazilian policymakers are expected to prefer full litigation. In this research, two ways to identify sectors' importance will be used. One way is to distinguish a hierarchy according to sector size in Brazil's economy. The government is then expected to choose full litigation when the disputes affect an important sector, because a big part of the economy is hit and the dispute touches upon many Brazilians. Another method is to categorize sectors according to their capacity to pressure the Brazilian government, by looking at their political organization and mobilization. Does the sector organize itself and try to influence the government's decisions? Here, the best organized sector will be the most important one. The government will incline toward litigating these disputes because sectors themselves push for completing the trial. A question that can immediately arise is why would strong lobbying entail the completion of the litigation procedure? Negotiations by governments can be seen as part of a 'two-level game'. When there is an intensive lobby pressure, the government is bound by a strict mandate and has a strong position in negotiations on the international level, because of the paradox of weakness. Putnam (1988) mentions 'the paradoxical fact that institutional arrangements which strengthen decision-makers at home may weaken their international bargaining position, and vice versa.' (p. 460) This means, that when a government is weak domestically (for example because pressure groups have a lot of influence in policy making), it cannot accept deals on the international level that may upset these domestic players. Hence, the government has little margin to negotiate internationally, and cannot sign any agreement that deviates too much from its strict mandate. The international deal will otherwise not be ratified at home and thus be of no use anyway. (Putnam, 1988; Schelling, 1960) In case of strong pressure, I believe the Brazilian government will therefore be inclined to fully litigate disputes. When there is little domestic lobby pressure, the Brazilian government has more freedom and a less

precisely defined mandate on the international level. Then I believe the government will prefer to let the topic arise in negotiations.

Before an assessment of whether sector characteristics really influence the choice for full litigation can be made, it is necessary to define and classify the sectors. In the following sections, first a ranking of importance will be made according to the sizes of sectors in Brazil's GDP, and then according to the sectors' capacity to organize.

2.3.1 Sectors Classified by Share in GDP



Source: European Commission – DG Trade (2011c: 1)

A standard classification of three main sectors will be used, which was also found in the consulted documents. Brazil's main sector is the service sector, it accounts for 68.5 percent of the economy. Complaints concerning the service sector are thus qualified as very important to Brazil and I assume they will often be fully litigated. Conflicts relating to the GATS (General Agreement on Trade in Services) are examples of disputes in the service sector. The second biggest sector is the industry sector, with a share of 25.4 percent in the Brazilian economy. This one is medium important, and will probably show up in the dispute cases, but less than

the conflicts about services. Examples of disputes concerning the service sector are conflicts resulting under the GATT 94 (General Agreement on Tariffs and Trade). The agriculture sector appears to be less important in the Brazilian economy, it accounts for only 6.1 percent of the total GDP. Disputes against violations of the 'Agreement on Agriculture' relate to this sector.

Three expectations arise from these findings. One is that the largest number of fully litigated cases will probably concern the service sector, because it is the largest sector in the Brazilian economy. When Brazil finds a country that violates the GATS, it will prefer full litigation over settlement or suspension. The second expectation is that fewer cases concerning the industry sector, the second biggest sector, will be litigated relatively to disputes about services. A smaller part of the economy is affected, so Brazil will feel less obliged to proceed to full litigation. The third expectation is about disputes relating to the agricultural sector. This is a small sector in Brazil's GDP, compared to the other two. The government may direct its attention more to the other sectors, for here only 6.1 percent of the economy can be hurt. Possibly, the government may not want to risk its friendship with other countries over a sector that touches upon few Brazilian citizens.

2.3.2 Sectors Classified by Political Organization

Shaffer et al (2006) conclude that the Brazilian success in the WTO's DSM exists partly because of a public-private partnership that gathers all the specific knowledge and resources. (p. 45) Moreover, Bown and Hoekman (2005) and Bown (2009) use a six-step approach to the WTO's extended litigation process, which departs from a firms' perspective. The third step they distinguish in this process is the one where firms have to convince the government to pursue their case at the WTO. In this phase,

Bown (2009) states 'it may be necessary to organize many firms to engage the government collectively to act on their mutual behalf.' (pp. 112-114)

These private actors influence the choice between litigation, settlement and suspension, because they work closely together with the government in this partnership, and because they lobby their preferences. When firms are disadvantaged because another country violates WTO rules, they will try to pressure the government to find a solution. These firms will probably not be satisfied with just the initiation of a dispute, they will also try to influence the final outcome as much as they can. The private sector will make sure it gets benefits out of the dispute. When one looks at how politically important sectors are in a country, the collective action problem and the level of consolidation of sectors are important. These concepts will therefore be elaborated in further detail in the next subdivision.

COLLECTIVE ACTION

Oatley's (2010) definition of a collective action problem states it 'applies to instances in which the action of a number of individuals is required to achieve a common goal. The problem arises because people will not voluntarily invest time, energy or money to achieve a common goal, but will instead allow others to bear these costs. That is, each free rides on the efforts of others (…) the goal is therefore not achieved.' (p. 382) The author also explains what influences the collective action problem, and why certain groups with common interests manage to organize themselves and others do not. One aspect he mentions is the size of the group. The larger the group with a common interest, the larger the incentive to free ride for individuals and the more difficult it becomes to organize the group. In small groups each individual contribution has a bigger impact on the outcome, which reduces the incentive to free ride

and enhances the group's capability to organize itself. Producers are more likely to organize than consumers, according to the author. (Oatley, 2010: 18)

To find out exactly how the different sectors in Brazil are consolidated, would be an impossible work for a master thesis. It was therefore decided to make an ad hoc assessment based on the available literature.

THE ORGANIZATION OF BRAZILIAN SECTORS

An overview of the organized (business sector) interests in Brazil's trade policy should suffice for this research. When looking at political organization, a different picture emerges from the one based on sector size.

Brazil's sectors are represented in a single entity, the *Coalizão Empresarial Brasileira* (Brazilian Business Coalition, CEB), which was founded in 1997. It was decided to depart from the sectorial approaches of the past. The CEB focuses singly on trade negotiations and, for the first time, brings together agricultural, industrial and service sectors. Nevertheless, the former players are still of importance, the CEB still reflects the same levels of consolidation of the three basic sectors as before. The industrial sector is grouped in the powerful National Industry Confederation (CNI) and hosts, or even dominates, the CEB. In the CNI, protectionist interests coexist with expanding export-oriented interests. (Shaffer, 2005: 38-40)

The agriculture sector is also effectively organized. The OECD (Organization for Economic Co-operation and Development, 2008) argues that 'most strikingly, Brazil's agricultural sectors (such as sugar, corn, beef, poultry, soya and cotton) have become strongly export-oriented as a result of trade liberalization, and are correspondingly much better

organized and mobilized; They have even created a research institute devoted to trade negotiations.' (p. 134) Marconini (2005) also mentions that the significant impact of the agricultural sector on the negotiations cannot be underestimated, for it has organized itself over and beyond the various organizations that already represented it. But, the strong mobilization of agricultural interests also made it more difficult to reach a common private sector position on a number of aspects: both the industry and service sectors have strong hesitations about moving forward with trade liberalization in some quarters. (p. 11)

The OECD (2008) furthermore concludes that Brazil's service sectors, in contrast, are weakly organized and have no national representation. (p. 134)

A classification according to the organization of sectors leads to the following hypotheses: disputes relating to the well-organized agricultural and industrial sectors will be more likely to end in full litigation, rather than by settlement or suspension. Especially the agriculture sectors seems to push through its wishes, for it even created a research institute that can affect perceptions. The sector interests are explicitly known, and the government needs to take them into account. To create certainty (and to avoid the interest groups from complaining) about a case, the government will litigate it, and will know the final solution within (more or less) sixteen months. It will be able to communicate this directly to the sectors. Furthermore, one could think that if the Brazilian government could not win the case in litigation, it is not to be blamed, because the decision was made by a legitimate 'court', the DSB. Disputes relating to services will not be judged by the DSB, the government may as well negotiate solutions for no strong organization is pressuring it. Or, as mentioned above, because the governments' hands are tied by the domestic pressure

of powerful sectors it will litigate whenever an offer of compensation deviates too much from the sectors' wishes.

2.3.3 Empirical Test II: Sectors in the Brazilian Disputes

First of all, it is necessary to mention how I decided to categorize the disputes themselves. Many of them refer to regulation, for example on anti-dumping. I chose to categorize all the cases where a product was mentioned under the sector to which the product belongs. For example, the case concerning 'Anti-Dumping Duties on Silicon Metal from Brazil' against the United States (DS239) is classified under the industry sector. One could state that the case attacks a regulatory measure in the US, but it contains restrictions on certain industrial goods from Brazil. It is also the Brazilian industrial sector that would gain from winning this dispute.

Whenever this method did not suffice to categorize a case, I based my classification on two other aspects. First, I checked which agreement was violated according to Brazil. As mentioned above, if there is an (alleged) violation of the GATT 94, this relates to the industry sector. When the Agreement on Agriculture is mentioned, the agriculture sector is affected. Infringements of the GATS refer to the service sector. This classification still does not cover all the disputes. Brazil's complaint that another country had violated the subsidies agreement serves as an example. Hence, another method to classify the remaining cases was necessary.

Whenever this was still not providing a clear distinction between sectors, I used the WTO's tariff download facility that classifies goods in only two large categories, namely agriculture or NAMA (Non Agricultural Market Access). For example: in the database, if one searches for tariffs concerning agriculture, one can find 'cotton, not carded or combed' and 'cotton, carded or combed'. When looking for tariffs that are showed under

'NAMA', the following categories appear: 'cotton sewing thread, whether or not put up for retail sale', 'cotton yarn (other than sewing thread)', and 'woven fabrics of cotton'. (WTO, 2011a) Accordingly, I assigned the 'Subsidies on Upland Cotton' case against the US to the agriculture sector, and the dispute against Argentina about the 'Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil' to the industry sector. This database was of great help identifying the fine line between different stages of the manufacturing process.

The case against the US concerning the 'Continued Dumping and Subsidy Offset Act of 2000' (also known as the 'Byrd Amendment') was classified as an industry case. Some authors find it a problematic case to categorize because it touches upon American legislation (e.g. Bown, 2009 and Arbix, 2008). Nevertheless, one of the violations Brazil invokes in this dispute is the GATT 94. Moreover, Cozendey (s.d.) mentions that Brazil's effort in DSM resulted in significant gains in disputes that involved dynamic Brazilian exporting sectors, like the iron and steel sector. The author then refers to the Byrd Amendment and the American safeguards on certain iron and steel products. (p. 1) The director of the economic department of the Foreign Relations Ministry sees the case as a victory for the Brazilian iron and steel sector. I therefore conclude that, in Brazil, this sector was the one behind the initiation of the case, which makes me able to classify it as a case concerning the Brazilian industry.[10]

[10] Note that this does not imply that in the other complainants it was also the industry sector that was pushing for the dispute. Since I only look at Brazil, this does not pose a problem.

Table 2: List of cases according to sectors

	Number	Case	Initiated	Outcome: full litigation or negotiations?	Agr./ind./service sector
1	DS4	US — Standards for Reformulated and Conventional Gasoline	10 April 1995	Full litigation	Ind.
2	DS69	EC — Measures Affecting Importation of Certain Poultry Products	24 February 1997	Full litigation	**Agr.**
3	DS70	Canada — Measures Affecting the Export of Civilian Aircraft	10 March 1997	Full litigation	Ind.
4	DS71	Canada — Measures Affecting the Export of Civilian Aircraft	10 March 1997	Suspended	Ind.
5	DS112	Peru — Countervailing Duty Investigation against Imports of Buses from Brazil	23 December 1997	Suspended	Ind.
6	DS154	EC — Measures Affecting Differential and Favourable Treatment of Coffee	7 December 1998	Suspended	**Agr.**
7	DS190	Argentina — Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil	11 February 2000	Started litigation but MAS	Ind.
8	DS208	Turkey — Anti-Dumping Duty on Steel and Iron Pipe Fittings	9 October 2000	Suspended	Ind.
9	DS209	EC — Measures Affecting Soluble Coffee	12 October 2000	Suspended	**Agr.**
10	DS216	Mexico — Provisional Anti-Dumping Measure on Electric Transformers	20 December 2000	Suspended	Ind.

11	DS217	US — Continued Dumping and Subsidy Offset Act of 2000 (Complainants: Australia; Brazil; Chile; EC; India; Indonesia; Japan; Korea, Republic of; Thailand)	21 December 2000	Full litigation	Ind.
12	DS218	US — Countervailing Duties on Certain Carbon Steel Products from Brazil	21 December 2000	Suspended	Ind.
13	DS219	EC — Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil	21 December 2000	Full litigation	Ind.
14	DS222	Canada — Export Credits and Loan Guarantees for Regional Aircraft	22 January 2001	Full litigation	Ind.
15	DS224	US — US Patents Code	31 January 2001	Suspended	/
16	DS239	US — Anti-Dumping Duties on Silicon Metal from Brazil	18 September 2001	Suspended	Ind.
17	DS241	Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil	7 November 2001	Full litigation	**Agr.**
18	DS250	US — Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products	20 March 2002	Mutually Agreed Solution	**Agr.**
19	DS259	US — Definitive Safeguard Measures on Imports of Certain Steel Products	21 May 2002	Full litigation	Ind.
20	DS266	EC — Export Subsidies on Sugar	27 September 2002	Full litigation	**Agr.**
21	DS267	US — Subsidies on Upland Cotton	27 September 2002	Full litigation	**Agr.**
22	DS269	EC — Customs Classification of Frozen Boneless Chicken Cuts	11 October 2002	Full litigation	**Agr.**

23	DS365	US — Domestic Support and Export Credit Guarantees for Agricultural Products	11 July 2007	Suspended	**Agr.**
24	DS382	US — Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil	27 November 2008	Full litigation	**Agr.**

Source: author's compilation from WTO.

Thirteen out of the twenty-four cases concern the industry sector and ten are about agriculture. The service sector is not unambiguously present in any of the cases. One can argue that the 'Patents code' case (DS224) concerns services. This is a possibility, but the dispute can be assigned to other sectors as well. On the WTO website the words 'any invention' are used (World Trade Organization, 2010).

Six cases concerning the industry sector were fully litigated, another six disputes were suspended, and one was solved by a mutually agreed solution. If the case DS71 is again omitted, out of the twelve remaining disputes six cases were litigated and six were not (with the MAS included). Out of the ten agriculture cases, six were fully litigated and four were not. The difference between litigated and non-litigated cases is small. Still, it is possible to distinguish a small tendency, namely that more of the agriculture cases are fully litigated relatively to the industry disputes.

One conclusion that can be drawn is that the political importance of a sector provides in whether cases appear in dispute settlement. Sector size in the Brazilian economy is of no relevance for cases to show up in litigation. The strongly organized agricultural and industrial sectors lobby for initiating certain disputes. The biggest sector in terms of Brazilian GDP,

services, is only scantly organized and is not even present in any dispute in the WTO.

Another preliminary finding is that it looks like the better organized the sector is, the more likely its cases will be fully litigated. It appears that Brazil is slightly more inclined to fully litigate agriculture disputes relatively to industrial disputes. The evidence however is not sufficiently strong to be certain about this pattern, and to draw firm conclusions. The idea that the government wants to create 'certainty' for the sector does not seem to play a decisive role in the choice for litigation. I believed that the government may want to prefer a judgment to solve the case within a more or less certain time period (whereas negotiations can go on infinitely), for time may be of importance to the private sector. Moreover, this could give the government an argument that the judgment was made by an independent panel, and that it is not to be blamed if the outcome is not positive for the sector. If one looks at the dates the fully litigated cases were solved, however, it appears that the standard period of time for the litigation (sixteen months) is not often respected. For example, the dispute against the EC concerning 'Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil' was initiated in the year 2000, but the panel report only circulated in 2003 and was finally implemented in 2004. Even in litigation the process can take longer than officially announced, so the likeliness that this plays a role is small. Furthermore, the government and private sector not only work closely together when initiating a dispute, but also during the litigation process. According to Shaffer, Ratton Sanchez & Rosenberg (2008), the firm Petrobras hired an external law firm to work with the Brazilian diplomats in the preparation of written submissions and communications to the Panel and Appellate Body (DS4). They also mention that 'The Canada-Aircraft and Brazil-Export Financing Programme for Aircraft cases, involving the firms Embraer and Bombardier, were landmark cases in terms of the intensity with which

Brazilian officials worked with law firms that Embraer hired in a public–private partnership for WTO litigation.' (pp. 457-458)

2.4 Conclusion

To summarize, the empirical data has shown that the first two hypotheses are clearly refuted, and even demonstrated that Brazil prefers the opposite, namely to litigate rich countries and to settle or suspend in case of weaker opponents. I believe a reason can be found in the fact that weaker opponents give in more quickly to Brazil, whereas as the EU or the US are not prepared to give in that quickly, obliging Brazil to carry on. A closer look at the cases against Europe in fact showed that Brazil did pursue in litigation when no (credible) offer by the EU was made, like in the coffee cases where Brazil got accepted into the GSP. But that is only a conjecture.

The second empirical test demonstrated the significance of organized sectors in the WTO's DSM. The facts showed that it is not the size in GDP of the sector that counts because Brazil's largest sector did not really appear in any disputes. A slight tendency toward full litigation exists in the case of the agricultural sector; the findings concerning the industry sector do not manifest the same pattern. The hypothesis that the more important the sector is to Brazil, the more likely the case will be fully litigated seems to be only slightly confirmed by the data. As both the industry and agriculture sectors are well organized, I expected a large number of these cases to be fully litigated by the Brazilian government, so that the government could create certainty for the sectors and avoid being criticized for the outcome (because it is an independent court's decision). The cooperation between private sector and government continues during litigation and the process often takes longer than sixteen months. This means that the government does not need to justify its actions to the

private sector and that litigation is not necessarily faster. This entails a conjecture that, if we keep in mind the first conclusion that Brazil will pursue litigation unless there is an offer from the defendant, the sector will probably only accept a negotiated solution if this also provides benefits for the sector itself. Whenever no solution of this kind is offered, the case will probably be pursued in litigation.

After having formulated and tested these three hypotheses, it can be useful to search whether an evolution in time for the litigation of disputes can be distinguished. The next section will examine whether the time context plays a role in litigation, and whether there are differences in the countries Brazil targeted and the sectors involved in disputes over the years.

3. THE THREE HYPOTHESES IN A TIME PERSPECTIVE

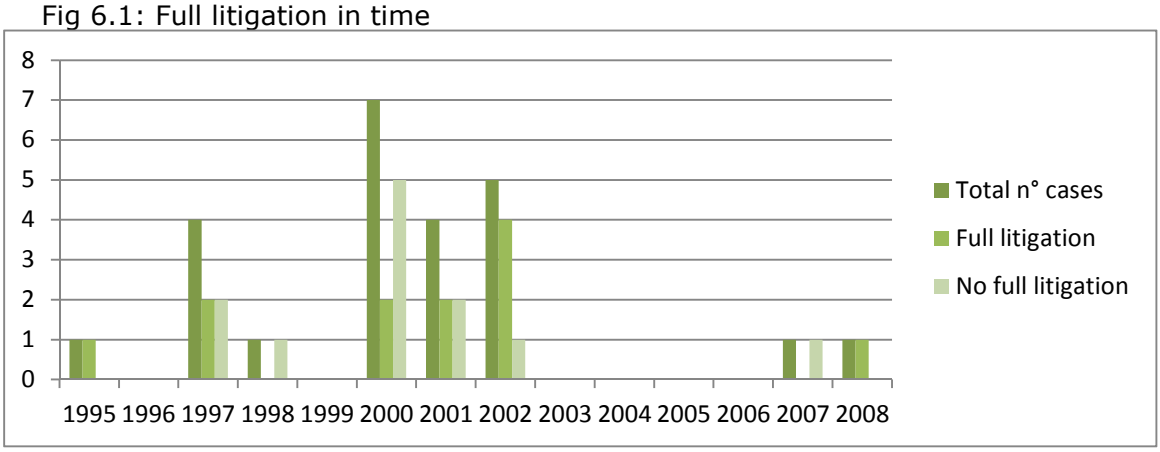
After having distinguished some tendencies in the Brazilian choice for litigation by way of the former hypotheses, one may wonder whether an evolution in time can be discovered. Then, this time-context for litigation can be linked to the findings of the two empirical tests, which may reinforce conclusions. Daniel Arbix (2008), who investigates what influences Brazil to initiate disputes in the DSM, also looks at when cases targeted developed countries and which sectors were involved. Sadly, the author does not explicit the criteria used for categorizing cases, and which disputes were assigned to which category. He only mentions the difficulty of classifying them and having left out three cases concerning gasoline, 'defesa comercial' ('commercial defense', which includes dumping for example) and intellectual property. It remains unclear how he classified the different cotton cases. I thus decided to add data for the last years and to use the same classification of sectors as in the second empirical test. The author moreover does not investigate the litigation pattern. I thus based the figures 6.2 and 6.5 on Arbix' working method, after which I each time will try to deepen the analysis to the pattern of litigation.

First, I checked how many cases were started each year from the beginning of the WTO (in 1995) until 2008, when the last of the currently 'resolved' disputes was initiated (fig. 6.1). Then I added how many of these cases were litigated and how many were not.[11] The year 2000 is by far the year in which Brazil filed the most complaints, followed by the year

[11] One could also argue that it would be wise to look at the dates the disputes were solved, for this could also influence the litigation pattern. It is however impossible to discover when exactly the decision to suspend a case found place. I have tried this, but could only find precise closure dates for the litigated cases and the disputes terminated by a MAS.

2002. Strangely, after 2002 Brazil initiated no more cases until 2007. In the existing literature, authors explain the lack of cases in these years by the fact that Brazil was bargaining and litigating over compliance of the multiple disputes filed earlier. Another argument is that Brazil became increasingly involved in the Doha Round negotiations, which caused a general decline in WTO dispute settlement activity in those years, as countries focused their resources and attention on the negotiations. (Arbix, 2008: 679; Schaffer et al, 2008: 457-458) There was also a general understanding that countries (hostile to agricultural policies) would avoid mounting new disputes while negotiations were ongoing as a means to facilitate such negotiations. (De Bièvre & Poletti, 2011, p. 31) Nevertheless it remains remarkable, for a large amount of new Brazilian disputes were expected. Also, in the Uruguay Round, the US did exactly the opposite by initiating many cases to pressure the other members to give in during the negotiations.

Fig 6.1: Full litigation in time



Source: author's compilation from WTO.[12][13]

But what can be found on the popularity of litigation as a means of resolving conflicts in dispute settlement? According to the data in fig 6.1,

[12] The two MAS were reached in the years 2000 and 2002.

[13] If one prefers to omit the case DS71 again, one should deduct a non-litigated case for the year 1997.

five disputes initiated in 2000 were either suspended or mutually agreed upon, whereas in only two disputes Brazil completed the litigation procedure. In the following year, 2001, the country litigated two cases and also suspended two disputes. 2002 was another busy year for the Brazilians when they initiated five disputes, out of which four were fully litigated. A shift took place between the years 2000 and 2002 that made Brazil change strategies from less to more litigation. Why did this switch in Brazilian behavior occur?

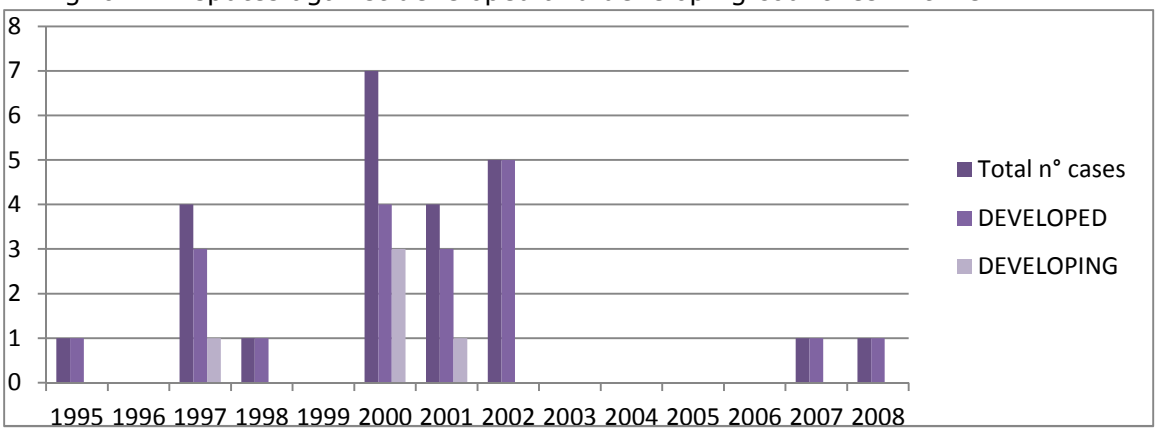
In the next section, I will discuss whether the decision not to litigate in 2000 can be linked to the hypothesis concerning defendant characteristics. If, for example, Brazil suspended a lot of cases in 2000, could this be because it targeted a lot of developing countries in that period? And if it litigated relatively more in 2002, did Brazil choose to attack stronger respondents? Afterward, I will try to discover a relationship with the sectors-hypothesis. Did Brazil, for example, litigate more in 2002 because the cases concerned the strongly organized agriculture sector?

3.1 Litigation of Strong and Weak Defendants in Time

Figure 6.2 shows how many cases were initiated against developed and developing countries for each year during the period from 1995 until 2008. Three out of five cases against developing countries were initiated in the year 2000. In 1997 and 2001 Brazil also filed a complaint against developing countries. After 2001 no more disputes targeted weak defendants. Developed countries are popular targets, especially in the

years 1997[14], 2001 and 2002, when an overall increase in filed complaints took place. The year 2000 counts three cases against developing countries.

Fig. 6.2: Disputes against developed and developing countries in time

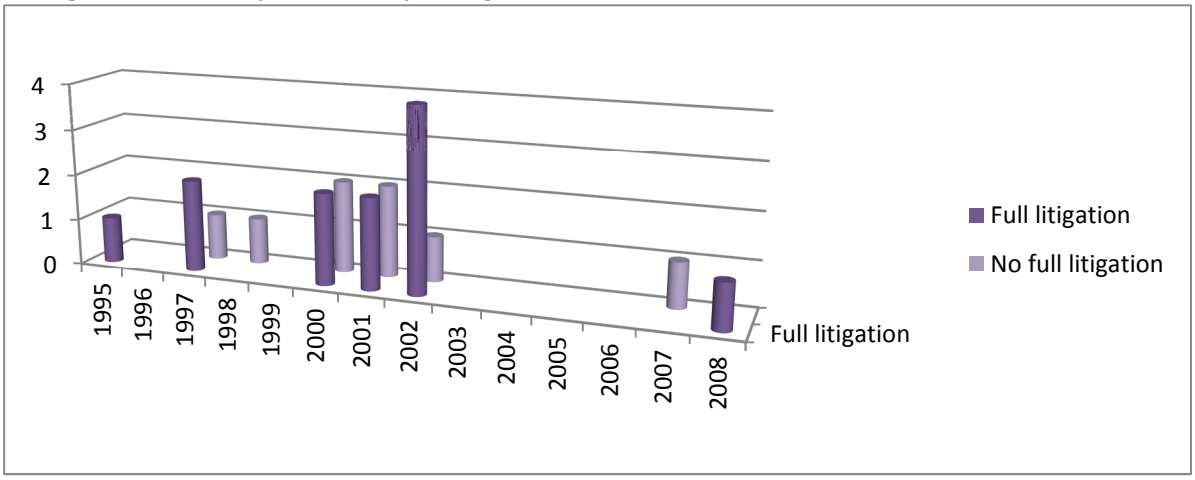


Source: author's compilation from Arbix and WTO.

The general pattern can be compared to these data. In 2000, five out of seven cases were not litigated. Fig. 6.2 depicts that in the same year three cases were initiated against developing countries. When taking into account the finding that Brazil almost never litigates cases against developing countries, one could argue that this plays a role in why Brazil chose not to litigate many cases in the year 2000. Three non-litigated cases (out of five) can be explained by this reasoning.

[14] Leaving out dispute DS71, one of the cases against developed countries for 1997 should not be taken into account.

Fig. 6.3: Developed country's litigation in time



Source: author's compilation from WTO.

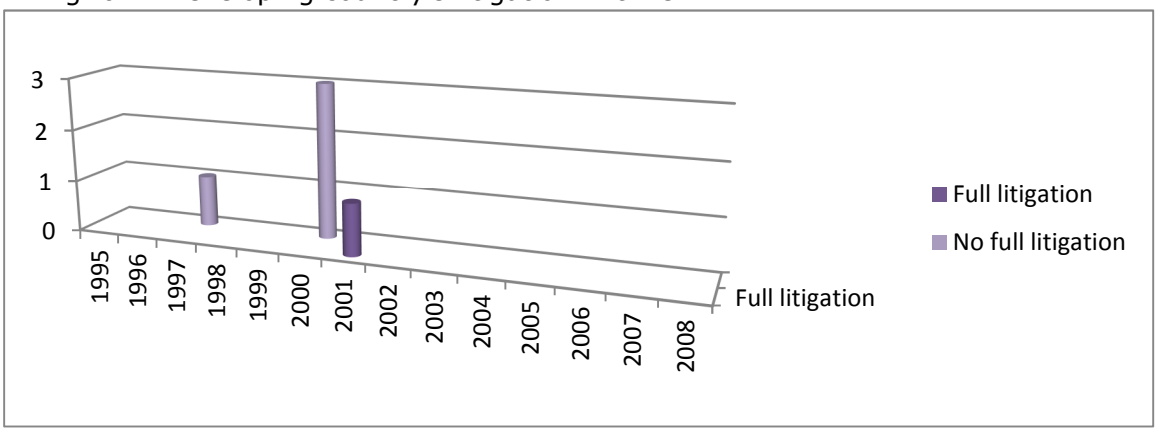
The next question to address is to find out whether some sort of 'litigation pattern' for disputes against strong and weak defendants can be found in the data. I first checked for each year how many disputes against developed countries were litigated. The results are displayed in fig. 6.3. Brazil relatively preferred to litigate strong opponents in the year 2002. Also the year 1997 stands out again, with a relative tendency toward litigation over suspension and negotiation.[15] The other years do not show a clear preference. Which events in 1997 and 2002 pushed Brazil toward litigating relatively more often?

As concluded above, Brazil does not always prefer to litigate strong defendants, this was a small tendency found, but not distinct enough to draw conclusions. I did discover, however, that Brazil litigates the EU relatively more than the US, and that Brazil got compensated (by being allowed to join the GSP) in the two non-litigated disputes against the EU. If Brazil initiated a lot of cases against the EU in 2002, this could explain why the country litigated almost every case in that year. A comparison of the figures with the list of disputes shows that three of the cases in 2002

[15] If the case DS71 is omitted again, this pattern becomes even clearer, because it constitutes the only non-litigated case in 1997.

were initiated against the US and only two against the EC/EU. One case against the US was not fully litigated and two were. Therefore it currently remains impossible to distinguish any explanation to find a clear answer to the question why Brazil preferred litigation in 2002.

Fig. 6.4: Developing country's litigation in time



Source: author's compilation from WTO.

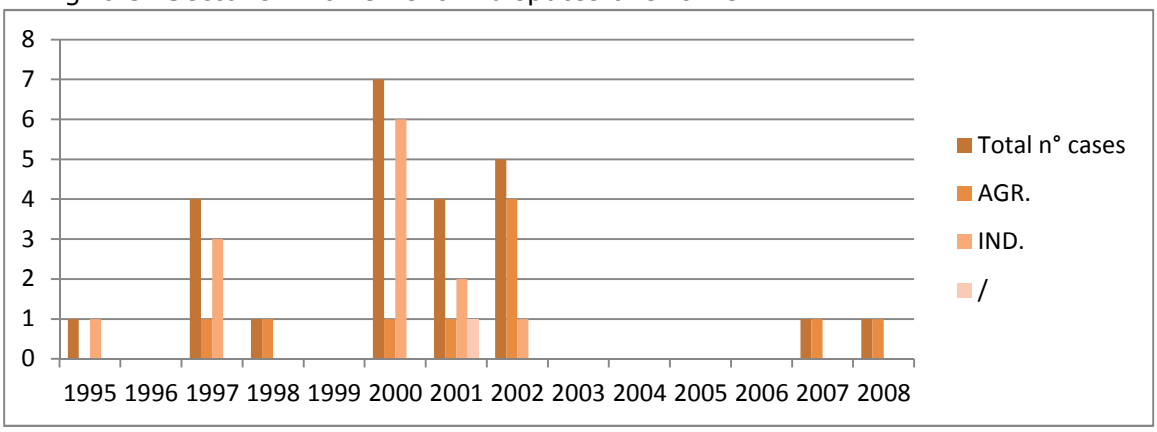
Weak opponents were targeted by Brazil especially in the year 2000, as fig. 6.4 depicts. These cases were suspended or solved by a MAS. It was in the year 2001 that the only dispute against a weak opponent (Argentina) was fully litigated. After 2001 Brazil did not initiate any more disputes against developing countries. Here, the year 2000 clearly stands out. As already mentioned above, the sudden increase in disputes against developing countries also explains why Brazil did not litigate very much in the year 2000, since the country tends not to litigate weak defendants. The following questions remain, namely to discover why Brazil targeted developing countries almost only in the year 2000, and for which reason it does not fully litigate these cases. One could also argue that maybe Brazil did not initiate disputes against developing countries after 2001, because it became aware that these will probably be suspended anyways. Consequently, Brazil may as well negotiate a deal immediately (and tell the developing country that it is better to cooperate at once or that a

complaint will be filed). This saves Brazil from incurring even the first costs of the litigation procedure (namely setting up a formal complaint and identifying the legal issues).

3.2 Litigation of Sectors in Time

In this section, a time pattern that can be linked to the hypothesis about sector characteristics is searched for. Can a relation be found between a sector and the fact that in the year 2000 the majority of cases were not litigated, or that in 2002 Brazil did prefer litigation? The data on the number of cases that were initiated for each year and to which sector they relate to were gathered. A first remarkable time pattern displayed in fig. 6.5 is that until 2002 there are few cases concerning the agriculture sector, to be precise there are four in a time span of seven years. In 2002 Brazil started four agricultural disputes in one single year. After that year there were only two more disputes initiated and they both concern the agriculture sector. The industry sector is represented in the first seven years, before 2002. In 1997, three out of four disputes were about the industry sector, and in 2000, even six out of seven cases related to this sector.

Fig. 6.5: Sector's involvement in disputes over time



Source: author's compilation from Arbix and WTO.

Why did the industry sector become less present in the number of initiated cases and why did the agriculture sector gain importance in dispute settlement? Arbix (2008), in his article on dispute initiation, gives two main reasons for the almost equality in the number of industry and agriculture cases. One is the coming into force of the Agreement on Agriculture. A second explanation can be found in the use of the 'requests for consultations' as a lever in the Doha negotiations, according to Arbix. These disputes touch upon central Brazilian requisites: cuts in the tariffs on agriculture products, the elimination of export subsidies, and stronger controls on domestic subsidies. The EU and US resist the most to these requests, and they are also the main targets in eight of the nine agriculture disputes Brazil initiated. (p. 678-679) Moreover the author argues that the increase in requests related to the new agriculture rules also corresponds to the expiration of the Peace Clause, which put a brake on disputes in this field.[16] (p. 678) The author does not look at the evolution in years though, which would have denunciated a problem in his conclusion: the agriculture disputes were namely mounted before the expiry of the peace clause.

First question to tackle here is thus why the agriculture sector gained so much importance in 2002. The WTO Agreement on Agriculture was negotiated during the Uruguay round from 1986 until 1994. The commitments were phased in over a six years period starting from 1995 (for developing countries the period was 10 years). (WTO, 2011b) If one bears this in mind, one can argue it is no wonder that agriculture disputes did not show up sooner, since the rules only came into effect in 2001 (and in 2005 for developing countries). If one adds a year for a complainant to detect transgressions of the agreement and to prepare a request for consultations, 2002 seems to be the first year in which agriculture

[16] Original quotation: 'O aumento das demandas relativas às novas regras agrícolas da OMC corresponde também ao término da Cláusula da Paz, que refreava contenciosos nesse campo.' (Arbix, 2005: 678)

disputes really could have taken place. There is however a problem, the Peace Clause', which Daniel Arbix evokes. What is this so called Peace Clause exactly? De Bièvre and Poletti (2011) explain that this clause, also known as Article 13 of the Uruguay Agreement on Agriculture (URAA), constituted a protection for countries that comply with the URAA rules. The contradiction lies in the relationship between the URAA, which de facto legitimizes exports subsidies and other trade distorting domestic support, and the Subsidies and Countervailing Measures Agreement (SCM) that prohibits export subsidies and other measures. If a country thus complies with the rules concerning subsidies in the URAA, for example, this does not entail compliance with the SCM. Article 13 actually protected these states from being challenged in dispute settlement under the SCM. Furthermore, the authors explain that the Peace Clause had an expiration date, the end of 2003, opening up the possibility for potential complaint. From 2004 on, WTO member states could successfully challenge agricultural domestic and export subsidies by activating the DSM. (p. 19-20)

Why would Brazil initiate complaints concerning agriculture in 2002, when the peace clause had not expired? Matthew Porterfield (2006) examines one case arguing:

> 'Although the Upland Cotton dispute involved subsidies that were provided from 1999 to 2002—prior to the expiration of the Peace Clause—the Panel and Appellate Body held that the Peace Clause did not protect the domestic support subsidies from challenge under the SCM Agreement because the level of support provided to producers of upland cotton during those years exceeded the level provided in 1992.' (p. 1012)

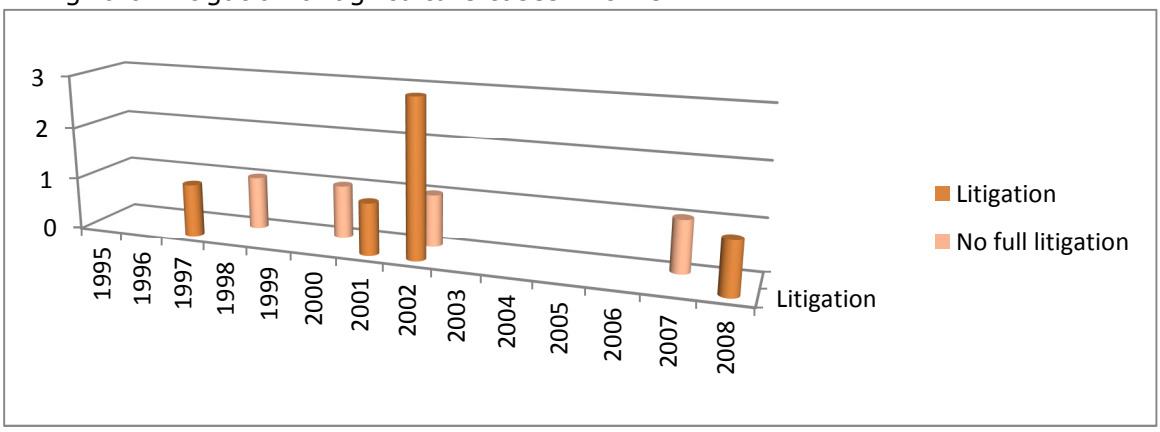
Swinbank (2005) explains the reason for the Sugar-case against Europe (DS266): 'the sugar panel concluded that the EU had exceeded its quantity commitment on subsidised sugar exports, and its budgetary outlay commitment, therefore nullifying or impairing benefits of other WTO Members.' (p. 9) So, one important element is that the US and the EU did not respect the limit of export subsidies that could be provided under the URAA. The export-subsidies for sugar moreover caused serious prejudice and were therefore deemed inconsistent with WTO rules. Therefore the Member States were not protected by the Peace Clause, and Brazil could mount disputes. The Upland cotton case against the US, and the Sugar dispute against the EU (both started in 2002) proved that after the expiry of the Peace Clause there were legal grounds to successfully mount cases against all export subsidies of the same kind (not only the amount exceeding the commitments). This explains why Brazil initiated agriculture cases before the expiry of the Peace Clause, but it remains difficult to grasp the exact role of this clause in the initiation of the disputes. Bown's (2009) analysis depicted that the expected increase in agriculture disputes after 2003 did not occur in general. (pp. 75-76) Brazil, a country with very offensive agriculture interests nonetheless, constitutes no exception. Something else must have acted upon this situation. I believe the Brazilian government may have wanted to make a clear statement and position itself as a strong member that cannot be neglected in the WTO. By the initiation of these disputes, I think the government not only responded to pressure from the agriculture sector, but also used them as a warning against other countries not intending to take the URAA commitments and Brazil's voice in the Doha Round seriously. After having manifested a tough stance in 2002, Brazil may have paused in the initiation of disputes to show its positive attitude in the Doha negotiations (I refer again to the general consensus among countries not to initiate disputes during the Doha negotiations, as a means to facilitate these negotiations).

The second question is why did the industry sector's importance fade out? Did the Brazilian government's attention get diverted by finally having possibilities in the area of agriculture? Or did the agriculture disputes take too many resources and time so that there were no left for other initiatives? Maybe the industry sector by 2002 had already achieved its goals in dispute settlement, or did it for some other reason feel no need to continue mounting new disputes? As concluded above, the organization of sectors influences decision making more their relative sizes in the Brazilian economy. One could thus also ask whether this sudden decrease in industry cases could have occurred because of different domestic dynamics concerning the organized sectors in Brazil. A plausible explanation lies in the fact that, as mentioned above, the CNI combines both export-oriented and import-competing interests. Possibly, the industry sector switched strategies, due to a changing economic position (for example by the appreciation of the real). Because of the real's appreciation, importing goods from other countries are becoming cheaper (whereas Brazilian goods become more expensive). The sector may have found itself in a more import-competing position and therefore started focusing on lobbying for protection. According to The Economist (2011), Brazil's leaders find themselves in an uncomfortable position vis-à-vis cheap Chinese manufacturing imports due to the strong real, which frustrates domestic producers. The industry could have started lobbying for anti-dumping duties against cheap Chinese goods, for example. A glance at the numbers for Brazil in the Global Antidumping Database may explain more. Remarkably, during the first seven years of the WTO, from 1995 until 2002, Brazil imposed twelve anti-dumping measures on goods from China. Only one measure (anti-dumping against mushrooms from China) does not relate to the industry sector. Between 2003 and 2010, the number of anti-dumping measures augmented to thirty-two impositions against Chinese goods. None of these concern agriculture products, they mainly concern the industry: steel, Christmas ornaments, glasses, etc.

The year 2006 alone accounts for eleven new measures against China, nearly as much as were imposed during the first seven years. (Bown, 2010) One can argue that the industry turned its focus to lobbying for new anti-dumping measures instead of lobbying for the initiation of disputes. It would be interesting to link research on the recent evolution of the Brazilian economy and sectors to the policy-preferences that they lobby for, and how this affects the country's behavior in dispute settlement.

Next step is to find out again what the litigation pattern will demonstrate, as we did for the first hypotheses.

Fig. 6.6: Litigation of agriculture cases in time

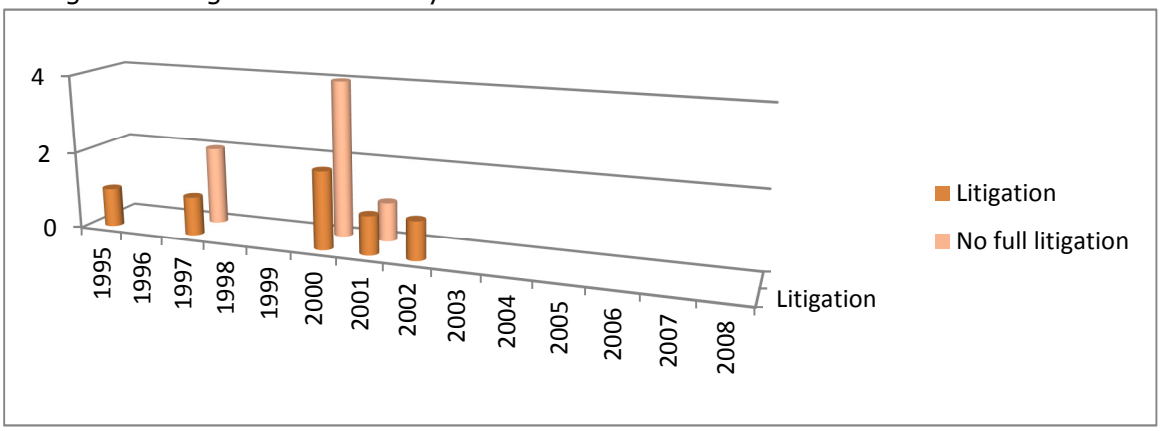


Source: author's compilation from WTO.

I joined the data for litigation of agriculture disputes into the same time span (fig. 6.6). Only in the year 2002 there is a distinct preference toward full litigation. The preliminary conclusion made above stated that the organization of Brazilian sectors is of importance when the country initiates cases. Beforehand, a small tendency toward full litigation was discovered for agriculture disputes. For the year 2002, this tendency is clearly present. Brazil fully litigated three out of four cases on agriculture that were initiated in 2002. The tendency for that year is so outstanding that it is probably the reason why a general tendency was discovered in

the first place. Omitting the year 2002 would neutralize this tendency, after which one could only state that Brazil fully litigates around half of the agriculture cases. Does the organization of the agriculture lobby also play a role in the effects on litigation that year? Or was Brazil happy about the progress in agriculture and determined the make sure the rules would be applied? A last option is that the other parties were just not willing or able to offer compensation and to negotiate in the field of agriculture.

Fig. 6.7: Litigation of industry cases in time



Source: author.

A look at the litigation pattern for industry cases (fig. 6.7) shows that in the year 2000 four cases were not litigated. In the second empirical test, I did not discover a clear preference when Brazil's disputes concern the industry sector. In general, around half of the cases were litigated. But in the year 2000 we do find a preference toward settlement and mutually agreed solutions. Why does the year 2000 stand out yet again?

First of all, three of these cases were against developing countries. As noted above, weak opponents are not likely to be fully litigated by Brazil. So, three cases can be explained by the (reversal) of the other hypothesis on weak defendants. Without the disputes against the developing countries, three remain, out of which two were fully litigated and one was not.

This figure does reinforce the relative tendency found between agriculture and industry disputes. The second empirical test demonstrated that agriculture cases are more often litigated relatively to industry disputes. This tendency is accounted for if one looks at the years 2000 and 2002. It results that in 2000, the year with a lot of industry cases, these disputes were rather suspended or solved by a MAS, whereas in 2002, when a lot of agriculture cases were initiated, these ended rather by way of full litigation. As mentioned above, the two cases concerning coffee were not fully litigated because the EU offered compensation to Brazil. This leads to the idea that the industry sector accepts compensation more easily than the agriculture sector. Why would the industry sector accept compensation in issue areas and the agriculture sector not? Or were there no offers of compensation when agriculture was put into question, and can the need to litigate be found in the fact that the developed countries did not want to compensate for this (in the year 2002)? It would be very interesting here, not only to look at the sectors in the complainant, but to also investigate the organization of sectors in the defendant country. For example, Carvalho de Azevêdo (2010) mentions that the cotton lobby in the US is very powerful and that when there is no new Farm Bill coming up to change agriculture policies, it can become very difficult to adapt legislation. He cites this problem even as a reason for why the US did not comply with the DSB's ruling in the Cotton case. (p. 90)

3.3 Conclusion

Placing the data in a time perspective showed a few new interesting elements and developments of the Brazilian litigation pattern which has changed over the years. In general, around half of the cases are fully litigated. In the years 2000 and 2002 a big increase in disputes Brazil initiated took place. In 2000 they were mostly suspended or solved by a

MAS. In 2002, however, the opposite trend can be distinguished, they were mostly solved by a panel or Appellate Body ruling. A few patterns were found, namely that in 2000 a lot of disputes were related to the industry sector. Also, three of these disputes targeted weak opponents, which are not often fully litigated. In 2002 there were, on the contrary, a lot of agriculture cases and Brazil faced a strong respondent in all of them. The combination of weak and industry, and strong and agriculture seems to influence Brazil's decision in litigation. One possibility is to see what happened in the years 2000 and 2002 to find out what other factors may have played a role in dispute settlement. Were there any developments in Brazil internally?[17] What about the dynamics inside the WTO itself?

If one looks at cases against developing countries, only one out of four cases was fully litigated. Brazil targeted Argentina in one agriculture case. Maybe this case was litigated exactly because it concerned agriculture, and that this was the reason for Brazil to litigate a weak defendant. The first hypotheses can explain four of the cases, the third hypotheses may explain the exceptional case.

Other considerations can also play a role in Brazil's choice to litigate. The Doha Round of negotiations may also influence Brazil's decision in dispute settlement. The domestic constraints that the defendant faces may also have an effect. These countries have to face their own domestic pressure groups. When they have to change regulation because of losing a dispute on the international level, they have to explain themselves. This may be an interesting topic for further research.

[17] For example, the creation of the 'Coordenação-Geral de Contenciosos' (CGC) of the foreign relations ministry in 2001 could have influenced the increase of disputes in 2002.

4.CONCLUSION

This research has permitted to discover a number of factors that play a decisive role when Brazil has to choose between full litigation, and suspension or settlement.

The first empirical test refuted the first hypotheses and demonstrated that Brazil almost always negotiates when developing countries are under attack, and that cases against developed countries are relatively more often fully litigated. This leads to the conjecture that weak opponents give in more quickly to avoid incurring the costs of the procedure and of having to implement a ruling, whereas strong opponents do not. Marcus Ramalho (Interview in Geneva, 29/04/2011) states that Brazil always prefers negotiated solutions over litigation, and that whenever the switch is made to suspend the dispute settlement procedure, political power plays a role again in the bargaining game. When there is thus no credible offer of negotiations (when the defendant does not want to give in or offer enough to satisfy the sector involved), Brazil will pursue in litigation where all parties are equal, in spite of the country's general preference to negotiate solutions.

Moreover, the test demonstrated that there are also differences between the developed respondent cases: the EC/EU is relatively more often fully litigated than the US. The two suspended cases against the EC/EU were solved because the EU offered compensation (namely admitting Brazil to also profit from the GSP). This entails that the US is either relatively more willing, or institutionally more capable of making compensation offers. This finding opens the path to further research. I believe that for the EU it is harder to formulate a common position, because many players with differing interests (the Member States) are

involved and can oppose decisions. For example, France is a strong supporter of the CAP and will be a tough negotiator when the EU wants to change it. Other countries, like the UK for example, have less agriculture interests and may actually prefer to adapt the system to WTO rules. Another possibility is that elections also play a role: when Bush wanted to win over the 'swing states', he gave in to the cotton sector's demands in order to win the presidential elections. Hence, there are a number of research possibilities for the future, where one can take the institutional characteristics of the defendant into account.

The second empirical test showed that governments respond to well-organized sectors to initiate and to litigate cases in the WTO. Sectors want to open up markets and avoid incurring more losses due to country's regulations or activities that are in violation of the WTO's rules. The economic importance, in terms of sector size in GDP, does not influence the decision. On the contrary, Brazil's smallest sector in size litigated the most cases. This sector is very well organized, which demonstrates the importance of political organization. Achieving political power is not merely about economic factors, namely how much money a sector earns and how many people it involves; it is most certainly about how organized the sectors are to lobby their preferences.

Certainty to quickly find a solution does not really play a role in Brazil's decision for full litigation. The government will not pursue litigation to be able to quickly communicate the DSB's decision, and to make sure the sector cannot blame it for a negative outcome. When sectors are involved in dispute settlement, they work closely together with the government to mount their dispute. After the initiation, they keep cooperating, sectors mainly want market access or compensation for their losses and are willing to invest (in law firms etc.) to get this compensation. The government thus has no need to legitimize its actions to the sector, as

these are co-decided. Therefore it is also unlikely that an offer of compensation in another issue area (issue-linkage) will be accepted.

The Upland Cotton case (DS267) serves as a nice example of these findings. Brazil, for now, did not impose retaliation because in the end the US government came with an offer. The US will yearly transfer 147,3 million dollar to a fund supporting the Brazilian cotton sector. This preliminary agreement is due to expire in 2012, together with the current US farm bill, which will permit the US to adapt its regulation. (Carvalho de Azevêdo, 2010: 89, Elsig and Stucki, 2011: 11) The outcome of this case also poses new problems and questions. In the case concerning Upland Cotton Brazil and its cotton sector got satisfied, but what about other cotton-exporting countries? If non-satisfaction of sectors leads to political mobilization, then one should see the African cotton-exporting countries appearing in dispute settlement. Unless if their cotton producers did not even survive the harsh competition. Elsig and Stucki (2011) mention that 'A study by an IMF economist estimated that overall (US) subsidies in 2001/2002 led to a loss of exports for West African countries valued at around $250 million', and that 'an Oxfam study posited a direct link between the world cotton crisis and US subsidies'. (p. 11) Two West-African countries, Chad and Benin, were involved as third parties in the dispute on Upland Cotton. What did the preliminary agreement between the US and Brazil do for them? Nowadays, the US is not only supporting its own cotton producers, it is also sending money to the Brazilian cotton sector. One could ask who possesses the power resources in this conflict and who controls the Agriculture Committee in Congress. The West African countries are severely hurt by the US non-compliance and receive no compensation at all. The two authors conclude these Member States refrained from filing disputes out of fear the US would withdraw its Official Development Assistance and other bilateral aid (for example food aid). (Elsig & Stucki, 2011) One could seriously question this US policy concerning cotton and agriculture. For what is the use of sending aid to

these West-African countries, when in the meantime you eliminate their exporting sectors?

Shedding a light on the evolution of Brazil's litigation pattern exhibited a few interesting developments. The years 2000 and 2002 were very remarkable, not only was there a sudden increase in the number of initiated cases, they also showed a very different pattern. Whereas in 2000 Brazil suspended most of the cases, in 2002 it was determined to pursue them in full litigation. The data also demonstrated that Brazil did not initiate a lot of agriculture cases after the expiry of the Peace Clause, as was nevertheless expected. Brazil has very offensive agriculture interests and did litigate a number of agriculture disputes, but even before the Peace clause had expired. One reason can be found in the fact that the US and EU did not respect the limits of export subsidies in the Agreement on Agriculture. Another reason is that the Doha Development Round, started in 2001, played a role in Brazil's behavior. According to Arbix (2008) Brazil increased its bargaining power by using disputes as a lever in negotiations. (p. 678-679)

To answer the question why the industry sector's importance faded out, there are a number of possibilities to investigate into greater detail. One can ask, for example, whether this sudden decrease in industry cases could have occurred because of different domestic dynamics concerning the organized sectors in Brazil. A plausible explanation lies in the fact that, as mentioned above, the CNI combines both export-oriented and import-competing interests. The industry sector may have switched its strategy, due to a changing economic position. For example, the strong real increased import penetration in Brazil. This could have induced the industry sector to start focusing more on protecting itself, by lobbying for anti-dumping duties (against cheap Chinese goods for example). A peek at the anti-dumping database showed that Brazil imposed many anti-

dumping restrictions on China in the seven years from 2003 until 2010, a lot more than in the first seven years of the WTO (from 1995 until 2002). It would be interesting to link research on Brazilian behavior in dispute settlement to the recent evolution of the Brazilian economy and sectors, and the policy-preferences that are lobbied for.

After having determined a number of factors Brazil keeps in mind during litigation, I believe another research possibility is to apply these to non-Brazilian cases.

One of the last points I wanted to emphasize, is that politics cannot be underestimated in the choice for litigation. The climate of negotiations inside the WTO (in the Doha Round), and even outside the WTO, acts upon the choice for suspension or litigation. Brazil will not fully litigate a dispute when this can adversely affect negotiations. An example is that Brazil did not execute the allowed WTO retaliation against Canada (concerning Aircraft). The country did not want to ruin the climate for negotiations they were holding in another forum (the OECD), because these would likely end with a satisfactory solution for both parties. (Marcus Ramalho, interview in Geneva, 29/04/2011; Cozendey, s.d., p. 11)

As a general concluding remark, I would like to mention that in the consulted literature, I found there were two main approaches to investigate the DSM's dynamics. One consists of searching for patterns in the full caseload of disputes (mainly found in the English literature). Another approach is to focus on a certain country, like Brazil, or on specific cases (found in the Portuguese literature and in Shaffer's work). By combining both elements, I could fruitfully bridge a gap between the literature in English and in Portuguese, which both address different aspects of the WTO's dispute settlement mechanism.

5.BIBLIOGRAPHY

Books and articles

ARBIX, D. (2008), 'Contenciosos Brasileiros na Organização Mundial do Comércio (OMC): Pauta Comercial, Política e Instituições', in *Contexto Internacional - Rio de Janeiro*, 30, 3: 655-699.

BLUSTEIN, P. (2009), *Misadventures of the Most Favored Nations,* New York: Public Affairs, 344 p.

BOWN, C. & HOEKMAN, B. (2005), 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector', in *Journal of International Economic Law*, 8, 4: 861-890.

BOWN, C. (2009), *Self-enforcing Trade: Developing Countries and WTO Dispute Settlement*, Washington D.C.: Brookings Institution Press, 282 p.

BUSCH, M. & REINHARDT, R. (2000), 'Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes', in *Fordham International Law Journal*, 24, 1: 158-172.

CARVALHO DE AZEVÊDO, R. (2010), 'Reflexões sobre o contencioso do algodão entre o Brasil e os Estados Unidos', in *Política Externa*, 19, 2: 81-91.

COZENDEY, C. (s.d.), 'O sistema de Solução de Controvérsias da OMC: para além dos contenciosos, a política externa', manuscript, 19 p. [Downloaded on 24/04/2011 from Itamaraty - Ministério das Relações Exteriores, http://www2.mre.gov.br/cgc/Artigo_Contenciosos_OMC_Diretor_DEC.pdf]

DE BIÈVRE, D. & POLETTI, A. (2010), 'Cooperation in the shadow of WTO law: how legal vulnerability encourages issue linkage', Conference paper, 23 p.

DE BIÈVRE, D. & POLETTI, A. (2011), 'Cooperation in the Shadow of WTO Law: Why Legal Vulnerability Leads WTO Members to Prefer Negotiations Over Litigation', manuscript, 51 p.

ELSIG, M. & STUCKI, P. (2011), 'Low-income developing countries and WTO litigation: Why wake up the sleeping dog?', in *Review of International Political Economy*, iFirst, 25 p.

GILLIGAN, M. (1997), *Empowering Exporters: Reciprocity, Delegation, and Collective Action in American Trade Policy*, Michigan: The University of Michigan Press, 186 p.

GUZMAN, A. & SIMMONS, B. (2002), 'To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the World Trade Organization', in *Journal of Legal Studies* 31, 1: 205-235.

GUZMAN, A. & SIMMONS, B. (2005), 'Power Plays and Capacity Constraints: The Selection of Defendants in WTO Disputes', in *Journal of Legal Studies,* 34: 557-598.

HOEKMAN, B., HORN, H. & MAVROIDIS, P. (2008), 'Winners and Losers in the Panel Stage of the WTO Dispute Settlement System', Conference paper, 28 p.

HOEKMAN, B. & MAVROIDIS, P. (2007), *The World Trade Organization. Law, economics and politics,* Oxford: Routledge, 143 p.

HOLMES, P., ROLLO, J. & YOUNG, A. (2003), 'Emerging trends in WTO dispute settlement: back to the GATT?', in *Policy research working paper 3133*, Washington D.C.: World Bank, 30 p.

HORN, H., MAVROIDIS, P. and NORDSTRÖM, H. (1999), 'Is The Use Of The WTO Dispute Settlement System Biased?', CEPR Discussion Paper no. 2340, London: Centre for Economic Policy Research, 30 p.

KONOLD, D. (2010), 'Farm Interests as Bargaining Chips: France in the EU-Mercosur Free Trade Negotiations', in *Journal of Public Policy,* 30, 3: 321-343.

LAWRENCE, R. (2003), *Crimes & Punishments? Retaliation under the WTO*, Washington D.C.: Institute for International Economics, 108 p.

LIMÃO, N. & SAGGI, K. (2006), 'Tariff retaliation versus financial compensation in the enforcement of international trade agreements', in *Policy Research Working Paper Series 3873*, World Bank, 32 p.

MARCONINI, M. (2005), 'Trade Policy-Making Process in Brazil', Project paper, 12 p.

OATLEY, T. (2010), *International Political Economy*, New York: Pearson Education. 420 p.

OECD (2008), *Globalisation and Emerging Economies, Brazil, Russia, India, Indonesia, China and South Africa*, s.l.: OECD publishing, 453 p.

PERDIKIS, N. & READ, R. (2005), *The WTO and the Regulation of International Trade: Recent Trade Disputes between the European Union and the United States*, Cheltenham: Edward Elgar Publishing Limited, 295 p.

PETERSMANN, E. (1997), 'The GATT/WTO dispute settlement system: international law, international organizations and dispute settlement', in *Nijhoff Law Specials 23*, London: Martinus Nijhoff Publishers, 368 p.

POLETTI, A. (2010), 'Drowning Protection in the Multilateral Bath: WTO Judicialisation and European Agriculture in the Doha Round', in *The British Journal of Politics and International Relations*, 12, 4: 615-633.

PORTERFIELD, M. (2006), 'US Farm Subsidies and the Expiration of the WTO's Peace Clause', in *Journal of International Economic Law*, 27, 4: 999-1042.

PUTNAM, R. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games' in *International Organization*, 42, 3: 427-460.

ROETT, R. (2010), *The New Brazil*, Washington D.C.: Brookings Institution Press, 178 p.

SCHELLING, T. (1960) 'An Essay on Bargaining', in *The Strategy of Conflict,* Cambridge: Harvard University Press. pp. 21-52.

SHAFFER, G. (2005), 'Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed, and its Impact on Bargaining', ICTSD paper, 33 p.

SHAFFER, G., RATTON SANCHEZ, M. & ROSENBERG, B. (2006), 'Brazil's Response to the Judicialized WTO Regime: Strengthening the State through Diffusing Expertise', ICTSD paper, 66p.

SHAFFER, G., RATTON SANCHEZ, M. & ROSENBERG, B. (2008), 'The Trials of Winning at the WTO: What Lies Behind Brazil's Success', in *Cornell International Law Journal*, 41, 2: 383-501.

STEINBERG, R. (2002), 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', in *International Organization*, 56, 2: 339-374.

SWINBANK, A. (2005), 'The Evolving CAP, Pressures for Reform, and Implications for Trade Policy', Conference Paper, 17 p.

WORLD TRADE ORGANIZATION (2004a), *A Handbook on the WTO Dispute Settlement System*, Cambridge: Cambridge University Press. 234 p.

WORLD TRADE ORGANIZATION (2007), *WTO Dispute Settlement: One-Page Case Summaries 1995 – September 2006*, Geneva: WTO Publications, 144 p.

WORLD TRADE ORGANIZATION (2009), *The Doha round texts and related documents,* Geneva, 171 p. (work in progress)

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (2003), *Dispute Settlement: World Trade Organization; 3.5 GATT 1994*, Geneva, 89 p.

ZANGL, B. (2008), 'Judicialization Matters! A Comparison of Dispute Settlement Under GATT and the WTO', in *International Studies Quarterly*, 52, 4: 825-854.

Websites:

Bown, C. (2010), *Global Antidumping Database*, http://econ.worldbank.org/ttbd/gad/

Brandão, C. (2010) *Brazil and the Doha Round 2010,* http://www.manhattanccglobal.org/common/News/articles/detail.cfm?QID=7297&classification=news&clientID=11002&topicID=0

Brandão, C. (2010) Brazil-US – Public consultation on the retaliation in Intellectual Property – Official, http://brazilcenter.blog.com/2010/03/17/public-consultation/

CIA (2011), *CIA Factbook Appendix,* https://www.cia.gov/library/publications/the-world-factbook/appendix/appendix-b.html#D

European Centre for International Political Economy (s.d.), *World Trade Organization*, http://www.ecipe.org/research-areas/world-trade-organisation

European Commission – DG Europe Aid Development and cooperation (2010), *Brazil*, http://ec.europa.eu/europeaid/where/latin-america/country-cooperation/brazil/brazil_en.htm

European Commission – DG Trade (2011a), *Export Helpdesk*, http://exporthelp.europa.eu/index_en.html

European Commission – DG Trade (2011b), *WTO Dispute Settlement: Cases involving the EU,* http://trade.ec.europa.eu/wtodispute/show.cfm?id=500&code=2

European Commission – DG Trade (2011c), *Brazil,* http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113359.pdf

International Centre for Trade and Sustainable Development (2011), *Brazil Calls for WTO to Discuss Relationship between Trade and Exchange Rates, http://ictsd.org/i/news/bridgesweekly/106926/*

Ministério das Relações Exteriores, (s.d.), http://www.itamaraty.gov.br/

Organization of American States' Foreign Trade Information System (2010), http://www.sice.oas.org/DEFAULT_e.ASP

República Federativa do Brasil (2010), *Portal do Brasil* http://www.brasil.gov.br/?set_language=pt-br

The Economist (2011), *Foreign exchange: Unwelcome appreciation for Brazil*, http://www.economist.com/blogs/freeexchange/2011/04/foreign_exchange

USAID (2011), *Brazil*, http://www.usaid.gov/locations/latin_america_caribbean/country/brazil/

World Bank Group (2011a), *Indicators : GNI per capita,* http://data.worldbank.org/indicator/NY.GNP.PCAP.CD/countries/1W-BR?display=default

World Bank Group (2011b), *Data for the European Union*, http://data.worldbank.org/region/EUU?display=default

World Bank Group (2011c), *Brazil – Active Projects*, http://web.worldbank.org/external/default/main?menuPK=322374&pagePK=141143&piPK=141103&theSitePK=322341

World Bank Group (2011d), *World development indicators database - Gross Domestic Product 2009,*

http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf

World Trade Organization (2004b), *Doha work programme: Decision adopted by the General Council on 1 august 2004*, http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

World Trade Organization (2010), *DISPUTE SETTLEMENT: DISPUTE DS224 : United States — US Patents Code,* http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds224_e.htm

World Trade Organization (2011a), *Tariff download facility,* http://tariffdata.wto.org/ReportersAndProducts.aspx

World Trade Organization (2011b), *Agriculture*, http://www.wto.org/english/tratop_e/agric_e/agric_e.htm

6.ANNEX I

List of WTO disputes: Brazil as a complainant

	Number	Case	Initiated	Outcome: full litigation or negotiations?
1	DS4	US — Standards for Reformulated and Conventional Gasoline	10 April 1995	Full litigation
2	DS69	EC — Measures Affecting Importation of Certain Poultry Products	24 February 1997	Full litigation
3	DS70	Canada — Measures Affecting the Export of Civilian Aircraft	10 March 1997	Full litigation
4	DS71	Canada — Measures Affecting the Export of Civilian Aircraft	10 March 1997	Suspended
5	DS112	Peru — Countervailing Duty Investigation against Imports of Buses from Brazil	23 December 1997	Suspended
6	DS154	EC — Measures Affecting Differential and Favourable Treatment of Coffee	7 December 1998	Suspended
7	DS190	Argentina — Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil	11 February 2000	Started litigation but MAS
8	DS208	Turkey — Anti-Dumping Duty on Steel and Iron Pipe Fittings	9 October 2000	Suspended
9	DS209	EC — Measures Affecting Soluble Coffee	12 October 2000	Suspended
10	DS216	Mexico — Provisional Anti-Dumping Measure on Electric Transformers	20 December 2000	Suspended
11	DS217	US — Continued Dumping and Subsidy Offset Act of 2000 (Complainants: Australia; Brazil; Chile; EC; India; Indonesia; Japan; Korea, Republic of; Thailand)	21 December 2000	Full litigation

12	DS218	US — Countervailing Duties on Certain Carbon Steel Products from Brazil	21 December 2000	Suspended
13	DS219	EC — Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil	21 December 2000	Full litigation
14	DS222	Canada — Export Credits and Loan Guarantees for Regional Aircraft	22 January 2001	Full litigation
15	DS224	US — US Patents Code	31 January 2001	Suspended
16	DS239	US — Anti-Dumping Duties on Silicon Metal from Brazil	18 September 2001	Suspended
17	DS241	Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil	7 November 2001	Full litigation
18	DS250	US — Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products	20 March 2002	Mutually Agreed Solution
19	DS259	US — Definitive Safeguard Measures on Imports of Certain Steel Products	21 May 2002	Full litigation
20	DS266	EC — Export Subsidies on Sugar	27 September 2002	Full litigation
21	DS267	US — Subsidies on Upland Cotton	27 September 2002	Full litigation
22	DS269	EC — Customs Classification of Frozen Boneless Chicken Cuts	11 October 2002	Full litigation
23	DS365	US — Domestic Support and Export Credit Guarantees for Agricultural Products	11 July 2007	Suspended
24	DS382	US — Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil	27 November 2008	Full litigation
25	DS409	EU and a Member State — Seizure of Generic Drugs in Transit	12 May 2010	Ongoing

Source: Author's compilation from WTO.