



Resolving agricultural trade issues and disputes through the WTO: practical advice to agribusiness

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Overview of presentation:

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- ❑ **Identifying WTO issues in agricultural trade**
- ❑ **Advantages and disadvantages of seeking recourse to the WTO**
- ❑ **Choosing the right instrument to address a trade dispute**
- ❑ **Importance of internal coordination**
- ❑ **WTO Agricultural disputes**
- ❑ **Conclusions**

Introduction

- ❑ **WTO Member countries here today have negotiated for access to agricultural markets of other countries**
- ❑ **Not self-enforcing: requires action by government**
- ❑ **Governments typically act only when pressured by their own industry**
- ❑ **Agribusiness should be active in determining and addressing barriers to market access**

Introduction

- ❑ **WTO provides a rules-based system: means for agribusiness to protect and enhance market access**

Identifying a trade issue

- ❑ **Reduction of access to a foreign market should be assessed in light of WTO rules**
- ❑ **Agribusiness will want to work closely with government and counsel to identify whether reduction of access by a foreign country is illegal**
- ❑ **Important to assess measures impeding access both at the border and internally**

Identifying a trade issue

- ❑ **Key issue will be loss of competitive advantage in foreign market**
- ❑ **Assess reasons for this: could be the result of discrimination**
- ❑ **Can challenge discrimination and other violations under WTO rules**

Advantages of seeking recourse to WTO

- ❑ **WTO dispute settlement has been extremely successful**
 - ❑ **Binding, effective, credible system**
- ❑ **WTO rules can also provide basis for effective negotiations**
 - ❑ **Negotiations based on rules rather than power politics**

Disadvantages of seeking recourse to WTO

- ❑ **Resource-intensive for industry and governments**
- ❑ **Can be time consuming and costly – but this has be weighed against extent of loss of market access**
- ❑ **System is currently facing challenges**
- ❑ **Litigation is the last resort**
- ❑ **But there are many WTO tools other than litigation**

Choosing the right instrument: Negotiations

- ❑ **Rules-based system can provide advantage for smaller countries negotiating with larger ones**
- ❑ **Bilateral negotiations remain an option at all times: before, during, or after a dispute.**
- ❑ **Maximizes control over outcome.**

Choosing the right instrument: WTO Committees

- ❑ **WTO Members can raise complaints before Committees: this is a well-established procedure.**
- ❑ **Full range of committees covering trade, including in agriculture**
- ❑ **Can be effective in applying multilateral pressure on another WTO Member.**

Choosing the right instrument: : Trade Policy Review Mechanism

- ❑ **TPR mechanism provides for periodic, multilateral review of the full range of trade policies by each WTO Member.**
- ❑ **Frequency of review depends on share of world trade.**
 - ❑ **Most countries on a 6 year cycle.**
- ❑ **Can be used to maximize attention and pressure on illegal practices**

Choosing the right instrument: : WTO Consultations

❑ **WTO Consultations**

- **First step in a dispute**
- **Intended to facilitate diplomatic discussion and resolution of the dispute – has not performed this role in practice.**
- **Consultations within 30 days.**
- **60 days from Consultations to Panel Request.**

Choosing the right instrument: : WTO dispute settlement

- ❑ **Important features of the WTO dispute settlement system:**
 - ❑ **WTO Panels have compulsory jurisdiction over all WTO Members.**
 - ❑ **WTO Panel and Appellate Body decisions, once adopted, are binding.**

Choosing the right instrument: : WTO dispute settlement

- ❑ **State-to-state dispute settlement system.**
 - ❑ **Private companies cannot bring their own cases – but are usually active behind the scenes in any dispute.**
- ❑ **Three independent experts serving on panel.**
- ❑ **Standing Appellate Body to review errors of law.**
- ❑ **System has high degree of confidence among WTO Members.**

Internal coordination

- ❑ **For agribusiness to pursue a WTO complaint, full internal coordination is needed between industry and government**
- ❑ **Governments may have broader agendas**
- ❑ **Governments also have limited resources: reliance on industry**

Agricultural disputes

- **Wide range of disputes covering agriculture, including:**
 - **Food safety: Food safety measures found to be WTO-inconsistent include:**
 - **Russia's EU-wide ban on live pigs and pork products:**
 - **Infected wild boars found in Estonia, Latvia, Lithuania and Poland, but Russia closed its borders to imports of pigs from the entire EU.**
 - **No risk assessment.**

Agricultural disputes

- ❑ **Wide range of disputes covering agriculture, including:**
 - **Food safety: Food safety measures found to be WTO-inconsistent include:**
 - **EU ban on hormone-treated beef from USA and Canada**
 - **EU ban on genetically-modified food products**

Agricultural disputes

- **Wide range of disputes covering agriculture, including:**
 - **Distribution networks: Korea’s “dual retail system” for beef (requiring imported beef to be sold in separate stores) found to violate the WTO Agreement**

Agricultural disputes

- **Wide range of disputes covering agriculture, including:**
 - **Subsidies: WTO has a range of rules limiting subsidies to agricultural producers and exporters.**
 - **Subsidies found to violate the WTO agreements include:**
 - **US subsidies to cotton**
 - **EC subsidies to sugar**
 - **Canadian subsidies to milk producers**

Agricultural disputes

- **Wide range of disputes covering agriculture, including:**
 - **Import licensing for food: Indonesia' use of import licensing for food products found to constitute an impermissible import restriction.**

Conclusions

- ❑ **Agricultural trade has led to some of the most difficult WTO disputes.**
- ❑ **The system is strong and effective, and can be used to keep foreign markets open.**
- ❑ **Agribusiness should remain vigilant in ensuring that other countries do not limit market access through illegal measures.**

Questions?

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