

# WTO Dispute Settlement

## Lessons Learned from SPS Jurisprudence

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# What and Why

- Aim for safe trade
- Measures need to be based on something fair and rational
- Avoid unjustified barriers
- A process to avoid and resolve differences
- NO WTO POLICE!!!

# WTO Jurisprudence

- WTO Dispute Settlement Body
- Legal process – interpretation of the text
- Binding results with two possible solutions:
  - Change measures
  - Damaged party exacts compensation

**Five examples**  
Hormones in beef  
Apple varietal testing  
Salmon  
Fire blight apples  
GMOs

# Dispute Settlement Trivia

- GATT (1947-1994): 101 cases (avg. 2/yr)
- WTO (1995 – 2015): 393 cases (28/yr)
- United States:
  - 106 cases respondent
  - 92 cases complainant
- European Community:
  - 79 cases respondent
  - 92 cases complainant
- United States-European Community:
  - 31 cases of EC complaining against the US
  - 19 cases of the US complaining against the EC

# Hormones

- US and Canada challenged EC ban on beef treated with growth hormones
- EC claim: necessary for food safety
- US/CN claim: no evidence of harm
- Panel and Appellate body found in favor of US/CN
- Settled with retaliation at US\$116M/yr and CDN\$11.3M/yr.

# Hormone Case Findings

- EC measure not based on standards
- EC measure not based on risk assessment
- Violated Art 5.5 – ALP was inconsistent with comparable risks
- EC did not invoke provisional measure; precautionary measure not recognized

# Apple Varietal Testing

- US challenged Japan on requiring testing of each variety of fruit for the efficacy of MBr fumigation treatment for codling moth
- US Claim: not scientifically justified
- Panel and Appellate Body found in favor of the US
- Settled by changing the measure

# Varietal Case Findings

- No rational relationship between the scientific evidence and the measures
- Japan did not actively seek information to evaluate provisional measures
- Overly trade restrictive
- Non-transparent (not published)



# Salmon

- Canada challenged Australia on ban of fresh/frozen salmon
- Australia claim: pathway for fish diseases
- Canada claim: low likelihood
- Panel and Appellate Body found in favor of Canada
- Settled by changing the measure

# Salmon Case Findings

- Not based on a proper risk assessment – no relation of measure to evidence
- ALOP inconsistent with comparable risks
- Overly trade restrictive
- Distinguished possibility as a probability

# Fire Blight Apples

- US challenged Japan's measures against apples because of fire blight
- US claim: mature, symptomless apples are not a pathway
- Panel and Appellate Body found in favor of the United States
- Settled by changing the measure

# Fire Blight Case Findings

- Insufficient evidence that fruit is a pathway in contrast to much evidence against Japan's measure
- Risk assessment did not consider other possible measures including proposals by the US

# GMOs

- United States, Canada, and Argentina challenged EC moratorium on the approval of Biotech products
- Claim: unjustified measure
- Panel found the moratorium was not a measure but an approval procedure that created an undue delay
- No appellate body review
- Unsettled – parties agreed to arbitration

# GMOs Case Findings

- A moratorium is an approval procedure (under Annex C)
- A general moratorium caused undue delay – insufficient justification
- No record that there was insufficient evidence for risk assessment, thus maintaining the moratorium in the absence of a risk assessment was not legitimate

# Key Issues

- Perform a PRA
- Observe rational relationship
- Follow-up on provisional measures
- No precautionary measures
- Don't use approval procedures as a de facto prohibition
- Observe transparency
- Consider options

# Resources

- Analytical Index (by Agreement text)

[http://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/sps\\_e.htm](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/sps_e.htm)

- Dispute Settlement Homepage

[https://www.wto.org/english/tratop\\_e/dispu\\_e/disps\\_settlement\\_cbt\\_e/c1s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disps_settlement_cbt_e/c1s1p1_e.htm)





**Challenge to change or  
change to avoid challenge.**