

THE COUNTRIES OF LATIN AMERICA AND THE CARIBBEAN AND TRADE DISPUTES: AN ANALYSIS

Trade dispute settlement has acquired great importance in the context of the multilateral, bilateral and regional agreements to which the countries of the region belong, as it is a central element of their strength, credibility and stability. This article analyses the participation of Latin America and Caribbean countries in the dispute settlement procedures of the World Trade Organization (WTO), the South American Common Market (MERCOSUR), the Andean Community, the Central American Common Market (CACM) and the North American Free Trade Agreement (NAFTA).

The author of this article is Sebastián Sáez, of the ECLAC Division of International Trade and Integration. For more information, please contact Sebastián Sáez, Sebastián.Sáez@cepal.org

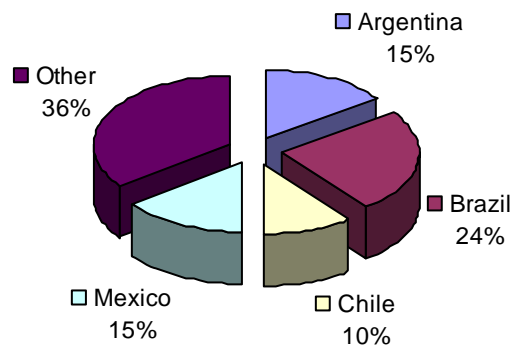
Latin America and the Caribbean in WTO disputes¹

Since WTO was established, the settlement of trade disputes has played a significant role in countries' agendas, attracting attention from experts, academics and civil society in general.

¹ All the statistical data used in this article comes from the *Integrated Database of Trade Disputes for Latin America and the Caribbean* (IDATD), available in Spanish at <http://badicc.eclac.cl> and in English at <http://idatd.eclac.cl>. The data corresponds to information available as at March 2007.

Since WTO entered into force in 1995 until the present day, the countries of Latin America and the Caribbean have participated in 86 disputes of a total of 361 (24%).²

**Figure 1: Latin American and Caribbean countries in WTO disputes: 1995-2007
(Percentages)**

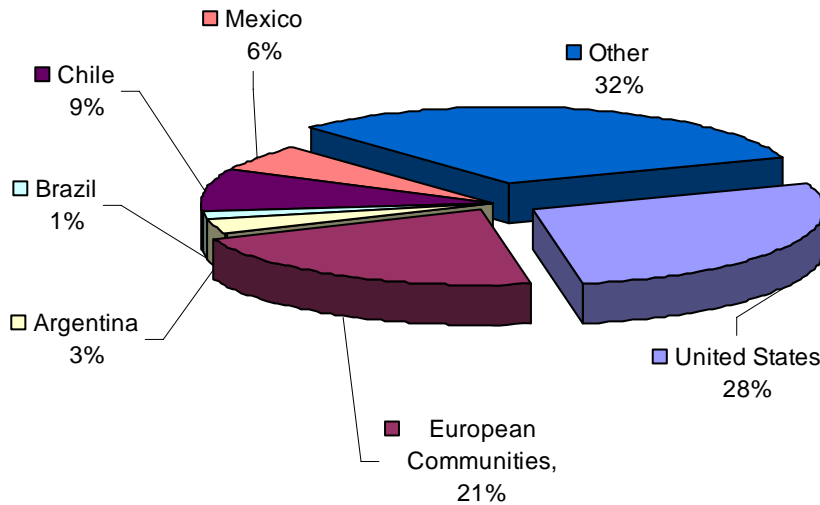


Four countries of the region account for 64% of the cases submitted to WTO by Latin American and Caribbean countries: Argentina, Brazil, Chile and Mexico (see figure 1). The remaining 36% is divided among other countries, particularly those of Central America, and just one country of the English-speaking Caribbean.

The countries against which the largest number of complaints have been brought are in general those with the highest levels of trade (see figure 2).

² A dispute is defined as a request for consultation, independently of the stage that is reached in the proceedings. In the case of the other systems analysed, this term refers to the first stage of the proceedings. The methodology used in gathering and ordering the data can be consulted at <http://www.badicc.eclac.cl>.

Figure 2:
WTO members that have been named as respondents by Latin American and Caribbean countries: 1995-2007 (Percentages)



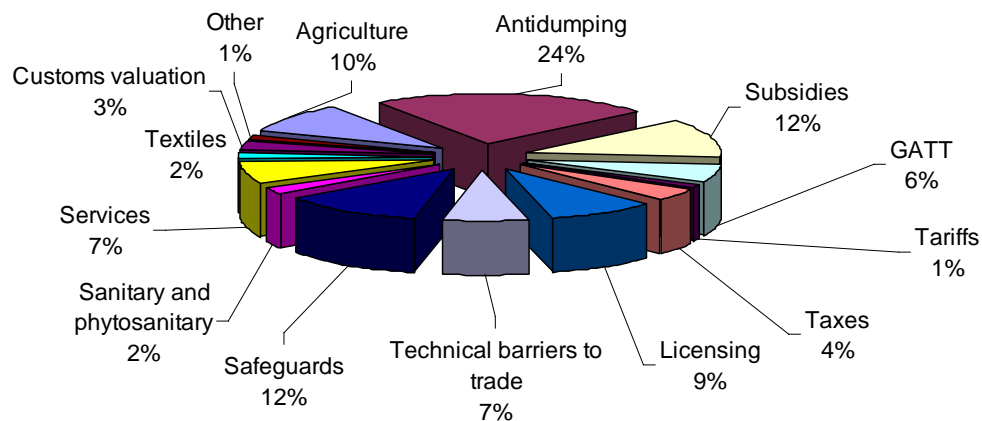
The WTO members against which Latin American and Caribbean countries have brought the greatest number of cases are the United States of America (27%) and the European Union (18%): their main trade partners. It is interesting that the percentages mentioned are very similar to those indicating the proportion of total complaints submitted to WTO in which these two members are respondents: 27% and 16% respectively (see IDATD).

Furthermore, disputes among Latin American and Caribbean countries are being settled within the framework of WTO, despite the fact that they have their own subregional mechanisms. This has been the case for Argentina and Brazil, which have participated in three WTO disputes.

Figure 3 shows the subjects of disputes submitted to WTO by Latin American and Caribbean countries. The General Agreement on Tariffs and Trade (GATT) has only been counted when the dispute refers exclusively to this agreement. Nevertheless, WTO members normally invoke GATT provisions that are associated with a dispute on a specific subject. For example, if there should be a dispute regarding taxes, it will normally be associated with a GATT provision - national treatment. Likewise, a dispute over sanitary and phytosanitary measures

can be associated with a GATT provision. If GATT was counted each time it was invoked in a WTO dispute, this agreement would dominate the system in terms of subjects analysed by the dispute settlement system, accounting for some 38% of the total.

Figure 3: Subjects referred to by Latin American and Caribbean countries in their WTO disputes: 1995-2007



With regard to the specific subjects on which the countries of Latin America and the Caribbean have focused their complaints to WTO, the most important issues relate to unfair competition (anti-dumping measures and countervailing duties), with 36% of the total. Following this are agreements on safeguards and agriculture, with 12% and 10% respectively. GATT individually accounts for 6% of the subjects analysed in complaints submitted by Latin American and Caribbean countries to WTO (IDATD).

Table 1: Issues of interest to Latin America and the Caribbean in the context of the World Trade Organization (WTO)

Agricultural products and foodstuffs account for almost 40% of the total of products and services which have been a cause of concern to the countries of the region in the context of WTO. This is to be expected in the light of the pattern of exports from those countries and it also shows which countries are the most active in the system (table 1). It must be noted that disputes over agricultural products do not refer exclusively to the Agreement on Agriculture, but also to subjects related to the application of safeguards, subsidies and countervailing duties, import licensing and even services (for example, the banana case).

Latin American and Caribbean countries are also interested in changing policies. Table 1 shows that disputes relating to issues that are “broad or non-specific in scope” represent 10.5% of the total. These disputes refer to those measures relating to trade policies in general, rather than policies relating to a specific product or service. This may encompass laws, regulations or decisions affecting a broad spectrum of products or services. For example, the dispute concerning the United States *Continued Dumping and Subsidy Offset Act of 2000* (Byrd Amendment) appears under this category.

	WTO	
		%
Agricultural and marine		
Agricultural products and foodstuff	33	38.4
Marine products	6	7.0
Manufacturing		
Steel and related	12	14.0
Cement	5	5.8
Vehicles and related	1	1.2
Textiles, clothing and footwear	2	2.3
Paper and wood	1	1.2
Pharmaceutical products	0	0.0
Chemicals and plastics	1	1.2
Services	2	2.3
Broad or non-specific in scope	9	10.5
Other	14	16.3
TOTAL	86	100.0

Trade disputes in the region

Outside of the disputes brought before WTO, subregional integration schemes have been highly active in dispute settlement over the last 17 years. These were largely strengthened as a regional response to the establishment of WTO. Mechanisms have been established in the context of the renewal of existing integration schemes (for example, the Andean Community, the Community of Caribbean States (CARICOM) and CACM) or the construction of new ones, such as MERCOSUR.³

³ Although CARICOM has a full dispute settlement system, no cases have been recorded. In the case of CACM, the system in force is very recent and there have been only seven cases.

Table 2: Disputes in MERCOSUR: 1993-2006

COMPLAINANTS	RESPONDENTS					
	Argentina	Brazil	Paraguay	Uruguay	Various respondents	Total
Argentina	----	167	14	43	4	228
Brazil	122	----	16	26	2	166
Paraguay	31	25	----	12		68
Uruguay	24	23	5	----	4	56
Various complainants	5	7	3	9	----	24
Total	182	222	38	90	10	542

Since MERCOSUR was established in 1991, there have been 542 disputes among its members, which reflects a high level of activity in the system. Argentina and Brazil account for the largest percentage of disputes, both as complainants, with 42% and 30.6% respectively, and respondents, with 33.6% and 41% respectively. Bilateral disputes between Argentina and Brazil also dominate the system's agenda, accounting for 53% of the total. This is not surprising in the light of the significant level of bilateral trade. Nevertheless, most of the complaints were submitted during the early years of MERCOSUR between 1995 and 2001, when 85% of the cases were recorded, (see IDATD for details).

The Andean Community's dispute settlement system is one of the oldest in the region and has various unique features. Firstly, this integration scheme has a General Secretariat with legal personality, with a number of powers in relation to common trade policy, such as being able to submit a complaint against Andean Community member countries. Secondly, natural and legal persons can directly submit complaints against Andean Community member countries for failing to comply with Andean Community rules. Lastly, cases can be brought among private citizens for anti-competitive practices.

Table 3: Disputes in the Andean Community: 1974-2006

COMPLAINANT	RESPONDENT								
	General Secretariat	Bolivia	Colombia	Ecuador	Peru	Venezuela (Bol.Rep.of)	Various members	Private Sector	Total
General Secretariat	----	13	40	65	39	44	----	----	201
Bolivia	----	----	1	1	2	1	2	1	8
Colombia	----	0	----	14	9	16	22	----	61
Ecuador	----	0	5	----	1	2	12	----	20
Peru	----	3	3	3	----	5	11	----	25
Venezuela (Bol.Rep.of)	----	0	4	3	1	----	5	----	13
Various members	----	----	----	----	----	----	----	----	0
Private sector		2	14	5	6	9	7	4	47
Total	0	18	67	91	58	77	59	5	375

Table 3 contains data relating to disputes among Andean Community members, including disputes that originated in the former Andean Pact, from 1980 onwards.⁴ The table reflects the active participation of the General Secretariat (former Board of the Cartagena Agreement) as the complainant against members of the integration scheme. This is a result of its responsibility to ensure that members comply with their obligations. This active work by the Secretariat may explain the relatively low level of disputes among members, which although significant (34%), is much less than the 54% of cases brought by the General Secretariat. Cases brought by the private sector represent 12.5% of the total. Ecuador and the Bolivarian Republic of Venezuela account for about 45% of the total cases in terms of respondent countries.

Comparative analysis of disputes

An analysis of the data from the dispute settlement systems included in the database as a whole indicates that the subjects covered recur in the various forums (see table 4). The issues most considered by the WTO dispute system are linked to unfair competition, including anti-dumping measures and countervailing duties in the case of subsidies. Issues relating to the application of the Agreement on Agriculture are in second place, followed by those related to safeguards and GATT.⁵

As table 4 demonstrates, the majority of cases heard by NAFTA⁶ refer to issues relating to unfair competition – dumping practices or subsidies – and the way in

⁴ Includes a 1974 dispute.

⁵ In this case, only disputes referring exclusively to GATT are considered.

⁶ NAFTA entered into force in 1994, but the data stored in the IDATD database includes disputes dating back to 1989 in the context of the Canada-United States Free Trade Agreement.

which countries offset their negative effects. Corrective measures for these practices (anti-dumping and countervailing duties, respectively) are normally requested by industries that use these arguments to seek protection against outside competition.

Table 4: Comparative analysis of disputes

TOPIC	WTO		MERCOSUR		NAFTA		Andean Community		CACM	
		%		%		%		%		%
Agriculture	58	11.8	1	0.2	0	0.0	0	0.0	---	---
Tariffs	9	1.8	89	16.4	1	0.6	56	14.9	---	---
Unfair competition	146	29.7	40	7.4	164	94.3	29	7.7	---	---
Government procurement	4	0.8	4	0.7	0	0.0	0	0.0	---	---
GATT	35	7.1							---	---
Taxes	25	5.1	93	17.1	0	0.0	92	24.5	---	---
Investments	25	5.1	0	0.0					---	---
Licensing	35	7.1	28	5.1	0	0.0	9	2.4	---	---
Rules of origin	5	1.0	23	4.2	0	0.0	5	1.3	1	14.3
Technical barriers	33	6.7	62	11.4	1	0.6	2	0.5	---	---
Other non-tariff measures	0	0.0	113	20.8	1	0.6	30	8.0	---	---
Intellectual property	9	1.8	0	0.0	0	0.0	17	4.5	---	---
Safeguards	35	7.1	3	0.6	1	0.6	81	21.6	---	---
Sanitary and phytosanitary	30	6.1	59	10.8	2	1.1	35	9.3	5	71.4
Services	15	3.0	0	0.0	1	0.6	14	3.7	1	14.3
Textiles	16	3.3	0	0.0	0	0.0	0		---	---
Customs valuation	12	2.4	15	2.8	0	0.0	4	1.1	---	---
Not classified	---	---	14	2.6	3	1.7	1	0.3	---	---
Total	492	100	544	100	174	100	375	100	7	100

Note: In order to be able to compare the various systems, the WTO agreements are used as reference points for thematic classification. Some agreements have specific provisions for agriculture and textiles and others do not. Various schemes tackle the same type of subjects covered by WTO and some go beyond them. In the latter case, such subjects have not been included in the comparison. For example, NAFTA contains provisions relating to investments, labour and the environment. These disputes have not been included in the database or this table. Some of the figures do not match with other tables, since some subjects may have been counted twice. For example, in a WTO dispute, it is not simply a particular agreement that is invoked but provisions of other agreements as well. For example, a dispute relating to the Agreement on Agriculture could include complaints concerning GATT provisions or the agreement on licensing. Something similar occurs in the case of MERCOSUR.

In some cases, owing to a lack of data, cases could not be classified under a single specific topic and in others, the classification is approximate, in accordance with the information available.

However, there is the question of why there are so few disputes on other subjects covered by this agreement, with the exception of subjects relating to investments, which have not been analysed. Part of the explanation lies in the fact that subsequent to NAFTA negotiations, WTO entered into force, covering similar subjects (except investments, greater commitments in services and

competition policies). This is an effective and less expensive dispute settlement mechanism, since the WTO Secretariat provides the participants with the necessary infrastructure and also has an appellate body.

In the case of MERCOSUR and the Andean Community, there are various common subjects of discussion. Firstly, disputes relating to tariff application which are normally associated with the period when the common market is formed – the first five years – and bilateral rebate programmes.⁷ In second place are disputes relating to domestic taxes and their discriminatory effects on trade (national treatment) which coincide with the period of disputes over tariffs. Lastly, in both schemes there are a significant percentage of disputes included under “other non-tariff measures”, although this is more frequent in the case of MERCOSUR. Many of these disputes refer to the way in which agencies regulate trade, whether directly or indirectly: many refer to discretion, delay or lack of transparency in decisions. In the Andean Community, disputes relating to the application of safeguards play a significant role.

Table 5 provides a comparative analysis of what type of products, services or more general aspects are the most controversial. In all cases, agricultural products and foodstuffs lead the field. In NAFTA, products made from steel and its derivatives occupy a significant place. In WTO, the Andean Community and MERCOSUR, there are frequent disputes over “trade policies”. This is reflected in the percentage of disputes over measures that are “broad or non-specific in scope”. In contrast, NAFTA disputes relate to more specific products or categories. With regard to MERCOSUR, the “other” category is also significant since it reflects the diverse nature of bilateral trade and in some cases, difficulties with the information available.

⁷ See the statistical tables included in the database: <http://badicc.eclac.cl:8080/controversias/index.jsp>

Table 5: Sectors/subjects of interest in trade disputes

PRODUCTS/SERVICES/SUBJECTS	WTO		MERCOSUR		Andean Community		NAFTA	
		%		%		%		%
Agricultural and marine								
Agricultural and foodstuffs	118	32.7	182	33.6	126	33.6	31	17.8
Marine products	18	5.0	4	0.7	3	0.8	3	1.7
Manufacturing								
Steel and similar	34	9.4	17	3.1	16	4.3	68	39.1
Cement	5	1.4	2	0.4	0	0.0	14	8.0
Vehicles and similar	22	6.1	17	3.1	11	2.9	0	0.0
Textiles, clothing and footwear	22	6.1	28	5.2	7	1.9	3	1.7
Paper and wood	11	3.0	10	1.8	16	4.3	14	8.0
Pharmaceutical products	8	2.2	7	1.3	7	1.9	0	0.0
Chemicals and plastics	2	0.6	31	5.7	30	8.0	3	1.7
Services	6	1.7	3	0.6	15	4.0	1	0.6
Broad or non-specific in scope (1)	57	15.8	126	23.2	97	25.9	1	0.6
Other	58	16.1	115	21.2	47	12.5	36	20.7
TOTAL	361		542		375		174	

Note: (1) This refers to those disputes referring to laws, regulations, decisions, etc., that have a general effect on trade or an indeterminate group of products or services.

SOME CONCLUSIONS

This analysis has used the data supplied by the *Integrated Database of Trade Disputes for Latin America and the Caribbean* (IDATD) from the ECLAC Division of International Trade and Integration. This database offers access to detailed data on disputes heard by WTO and the subregional integration schemes of the Americas. The data indicate that the dispute settlement systems have been widely used by the Latin American countries, and less so by the Caribbean countries. In terms of subjects of interest, issues related to unfair competition and agriculture have evoked greatest interest in WTO disputes. In the case of the Andean Community and MERCOSUR, issues relating to tariffs, domestic taxes and other non-tariff measures account for a significant percentage of the total number of disputes. In terms of products of interest, agricultural products and foodstuffs have led the field. Nevertheless, challenges to general policies also account for a significant proportion of the issues drawn to the attention of dispute mechanisms.