

2007-01-08

Are Developing Countries Deterred from Using the WTO Dispute Settlement System?

Participation of Developing Countries in the DSM in the years 1995-2005
By Roderick Abbott

In a new ECIPE paper, the former Deputy Director General of the WTO, Roderick Abbott, presents new analysis on the participation of developing countries in WTOs dispute settlement mechanism. Abbott finds that around 80-90 developing countries have had no dispute participation at all and discusses the reasons for that passive attitude. Abbott concludes that there seems to be little in the WTO system in itself that needs correcting; it is rather problems of internal governance in developing countries, and a choice in favour of a bilateral approach, that explains their relative absence in dispute settlement.

The dispute settlement mechanism (DSM) is a cornerstone of the WTO and of world trade generally. It gives all members the possibility to bring forward a complaint, have it investigated and obtain a ruling. The DSM is of particular importance to small and developing countries as it provides a legal context for solving disputes rather than having them subjected to negotiations and, potentially, big-power politics.

But the participation of developing countries in dispute settlement is disturbingly low. The analysed data shows that five members account for nearly 60 % of all activities by the developing members. Furthermore, these five members together with another eight members account for over 80 % of developing-country activity in the DSM. This concentration on relatively few main users has been shown in earlier studies but Roderick Abbott underlines the 'absence from the game' of large numbers of developing members:

A small number of more advanced developing members have no substantial difficulty with the system, while a further group has established a record, albeit at a fairly low level of activity. For others, (the vast majority), the data is silent say Roderick Abbott.

What explains this absence? It has, for instance, been claimed by some groups and commentators that the DSM deters participation from developing countries as effective participation requires financial resources. But Abbott shows participation is a much more complex issue and that lack of resources does not explain absence from the game.

The factors relevant to participation in the dispute settlement process are many. A country's actual trade performance – what products it exports and how much it exports – have consequences for DSM participation: countries with a small amount of exports are less likely to encounter disputes than countries exporting large volumes. Some developing members have relatively few products to export, and in many cases their access to major markets is duty-free or benefits from tariff preferences, neither of which offer scope for any legal challenge. If there are difficulties, they can rather be due to specific measures in areas which are less easy to challenge in the DSM (such as technical barriers to trade or sanitary standards).

There is always a trade-off, when deciding whether to devote resources to a WTO challenge, between the importance of a barrier or of policies affecting the members' exports and the cost (in money terms and in human resources) of conducting a case. In many poorer members the administrative problems they face rather than the WTO system will be the determinant factor says Roderick Abbott.

Publication details

ECIPE Working Paper No. 01/07

*Are Developing Countries Deterred from Using the WTO Dispute Settlement System?
Participation of Developing Countries in the DSM in the years 1995-2005*

By Roderick Abbott

Roderick Abbott is a member of ECIPE's Steering Committee and Advisory Board, was a Deputy Director General of the World Trade Organization until late 2005. Prior to his position in the WTO, Mr Abbott was the Deputy Director General of DG Trade in the European Commission and Ambassador to Geneva.

Email: roderickabbott@compuserve.com

Press information: Anna Wilson anna.wilson@ecipe.org, Mobile +46 709263177

The report can be downloaded at www.ecipe.org