

Compliance with WTO rules in controversies involving public Health, environmental protection and other 'exceptions'

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When a World Trade Organization (WTO) member country is accused by another of implementing discriminatory trade measures, the affected country can ultimately trigger the WTO's Dispute Settlement Mechanism (DSM) to evaluate whether there was indeed a breach of multilateral trade rules. An example of a discriminatory trade measure is the imposition of unjustified tariffs on the importation of certain products made by a WTO member country. In certain cases, however, WTO members may bypass multilateral trade rules in a legitimate and justified manner. Those exceptions are indicated in Article XX of the General Agreement on Trade and Tariffs (GATT).

For instance, during the 1990s and 2000s, Brazil imposed restrictions on the importation of used and retreaded tyres¹ from the European Union (EU) based on the premise of protecting public health and the environment (tyres discarded inappropriately can accumulate rainwater and become a breeding ground for the reproduction of the mosquito that transmits dengue fever). When challenged at the WTO by the EU, Brazil invoked GATT's Article XX to try to justify its actions and establish compliance with WTO rules. The Article refers to an array of exceptional cases including, for instance, importation of gold and silver, and measures to protect public health, the environment and heritage of artistic, historical or archeological value, among others.

A recent scientific publication (Cezar 2020) explores the motives why certain disputes invoking GATT's Article XX take longer than others to be resolved. Certain controversies reach a conclusion in less than a year, while others drag on for a number of years. An analysis of the duration of trade disputes helps understand how defendants (countries challenged in the context of a WTO dispute) respond to DSM rulings. The publication is the first of its kind to explore, systematically and from a political perspective, disputes invoking GATT's Article XX. Another distinctive characteristic is that the publication uses set theory to explore the **combination** of conditions explaining the duration of 'exceptional' disputes: certain explanatory elements are useful only in association with other variables of interest.

From the standpoint of the international political economy literature on WTO compliance, the article explores the explanatory power of four variables. The first has to do with the mobilisation of civil society organisations (CSOs). The publication theorises that the greater the mobilisation of CSOs, the longer it takes until a country complies with WTO decisions involving GATT's Article XX. The second has to do with the domestic institutional framework: given that compliance with international rules can involve some measure of domestic policy change, the greater the number of institutional actors capable of vetoing such changes, the longer it takes until an agreement is reached among the interested parties.

These two elements are mostly domestic (from the perspective of the defendant country). There are, nevertheless, international variables that may help explain the duration of trade disputes. Therefore, the third explanatory variable concerns the bargaining power differentials among the disputant countries. Going back to the example provided in the first paragraph, to the extent that Brazil's trade is highly dependent on the EU, the Brazilian authorities may fear retaliation if European authorities disagree with the decisions taken in the framework of a trade dispute. Therefore, the Brazilian government may be prompted to take decisions in line with EU preferences.

The fourth element has to do with how serious a potential breach of multilateral rules is. The more serious the potential breach, the longer a dispute tends to last, given that the defendant needs to deal with a large number of accusations that may take years to be settled.

The results of the publication point to the complex and multifaceted character of disputes involving GATT's Article XX. There is no single explanatory element that individually determines the length of 'exceptional' trade disputes. In most cases, the length of disputes is explained by institutional characteristics associated with either the level of CSO mobilisation or the level of bargaining asymmetry of the disputants. The seriousness of the accusations (fourth explanatory variable) does not behave as expected and deserves more attention in future research. The analysis presents certain limitations, but the results are acceptable given the complexity of the topic.

One of the most interesting conclusions of the publication is associated with the mobilisation of CSOs. The results indicate that when CSOs are highly politically active, power asymmetries do not explain the length of a dispute involving GATT Article XX. Political actors may decide not to invest resources in certain fights when they consider that their chance of success is too slim. The results indicate that CSOs can influence WTO compliance, even when disputes are against powerful countries and even in the context of an organisation such as the WTO, one severely criticised for its democratic deficit. That influence depends, nonetheless, on the mobilisation of CSOs and on the institutional context at play in the defendant countries.

Reference:

Cezar, Rodrigo Fagundes. 2020. "Compliance in 'exceptional' disputes. A set-theoretical approach." *Revista Brasileira de Política Internacional* 63(1). <<http://dx.doi.org/10.1590/0034-7329202000103>>. Accessed 11 May 2020.

Note:

1. Companies may decide to import used tyres at a relatively low price to retread and resell them domestically at a higher price.