



The political economy of dispute settlement: a case from Argentina

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Abstract

The WTO is playing a novel role in regional trade relations. Access to a multi-lateral dispute settlement system is helping to scrutinize and anchor lax(er) regional disciplines. Although accessible only to highly profitable sectors since it is too costly and time consuming, the WTO provides the intangible benefit of exposure. Pressure through exposure can help countries unable or unwilling to retaliate to obtain more favorable results than in bilateral or regional instances. In fact, WTO rulings act as a magnifying glass of countries' (WTO - incompatible) trade policies. In this picture, reputation, a high value asset to attract business and negotiate trade agreements, is thus at stake. A dispute between Argentina and Chile over variable levies for edible vegetable oils is a case in point.

I. The Problem in Context

After a tariff reclassification in 1999, the Chilean Price Band System (PBS) resulted in higher customs duties. In normal circumstances Argentina might have been able to absorb the drop in market share; but the restriction came in a very threatening international context for the sector. This is a flagship sector in Argentina: it gravitates heavily in trade and production and thus its interests cannot be dismissed lightly. As a result, the question became the first legally-handled dispute with a regional partner submitted to the WTO. Due to the number of co-terminus issues that peppered the relation between the two countries political shelving was always a risk.

Argentina is one of the top vegetable oil producers in the world. Total production, which basically includes soy, sunflower, peanut, olive, cotton, linen, corn, turnip, edible mixes and *tung* oils, amounted to about 5,283 thousand tons in 2001 (CIARA 2004). Nearly all domestic production is exported, with foreign sales swaying between 80 to 90% of total production. Low domestic consumption together with high productivity turns Argentina into the first world exporter of sunflower and soy oil, followed by Brazil and the United States. Indeed, the sector is a leading industry. Currently, exports of vegetable oil and fats represent about 28% of the value of total food exports and around 10% of the value of total exports.

Export performance has been erratic over the last 7 years due, mainly, to international market circumstances. Changes in both global demand and supply of grains led to a price drop in 1997-2001. On the demand side, South East Asia and Russia, two of the most important buyers were undergoing deep economic crisis and thus decreased purchases. On the supply side, the implementation of the deficiency loan system for soy in the US; the production of Round-up-Ready (genetically modified) soy; and a record harvest of sunflower and soy in two of the main world producers, namely Argentina and Brazil, contributed to increase global production of seeds. In particular, during the period 1999-2001 prices were 10% lower than those registered at the beginning of the decade and almost 40% below the 1997 peak (Schvarzer and Heyn 2002: 7). Locally, the collapse of prices meant that 7 factories closed. Even the biggest companies were struck: Molinos closed one of its plants and dismissed 270 employees.

The price drop affected the operation of the Chilean PBS: it resulted in the collection of *ad valorem* customs duties of up to 64.41% for oils and 60.25% for wheat flour in year 2000, thus crossing the ceiling binding set at 31.5% in the Uruguay Round. By then, the Chilean market was purchasing about half of Argentina's total exports of mixed oils (US\$ 26m). Sales of oil mixes to Chile soared while total exports to this market began to contract due to a fall in soy and sunflower that had been the object of safeguard measures. The Chilean market, despite its smallness (US\$ 80m), was strategic in the sense that geographical proximity translates into accessibility for small and big exporters alike. The animus of business to litigate was stoked when Chile reimbursed duties collected on a (subsequently lifted) safeguard to Bolivia but not to Argentina¹. Moreover, collective action

¹ This is a prime example of the *legal spaghetti bowl*. While the safeguard duties affected both Bolivian and Argentine products, Bolivia had recourse to a bilateral agreement with Chile with a binding dispute settlement system. As the ruling confirmed that the safeguard was not compatible with the Bolivia-Chile Agreement, and therefore duties had been illegally collected, Chile had to reimburse the duties.

was relatively easy to articulate given that production is highly concentrated. Pressure to take Chile's measures to the multilateral dispute settlement system mounted and finally the government decided to do so. The fact that the Andean Community also has a PBS in place attracted the interest of business to turn the result of the conflict into an exemplar action of broader regional consequence.

The multilateral legal incident

It was not until diplomacy and regional jurisdictional instances proved ineffective that the conflict escalated to the multilateral level. Argentina first submitted the conflict to the Administration Commission of the Mercosur-Chile Agreement (Economic Complementary Agreement 35, ECA35). Chile had made a commitment in ECA35 neither to include more products in nor to modify its PBS. After obtaining a favorable (though not binding) recommendation from the regional Group of Experts, Argentina decided to raise the issue at the WTO when Chile's reluctance to comply became obvious.

At the WTO, the dispute revolved principally around two issues:

1. Whether the PBS was a violation of GATT Article II (bound tariffs)
2. Whether the PBS was the kind of measure that should have been "tariffied" according to Article 4.2 of the Agreement on Agriculture (AA).²

The PBS applies to agricultural products. When a product subject to the PBS arrives to Chile, the custom official will impose the *ad-valorem* duty (8%) only when the Reference Price (RP) falls between the lower and upper thresholds of the PBS. The RP is not the price of that particular transaction but a price that the Chilean authorities determine each Friday using the lowest FOB price in so-called markets of interest³. The applicable RP for a particular shipment is determined with reference to the date of the bill of lading. Once the reference price for the shipment has been determined, the custom official proceeds to compare it to PBS thresholds. The PBS, in turn, is determined annually on the basis of FOB prices observed on particular international markets over the course of the preceding 60 months. Unlike the prices used for the composition of the PBS, the reference prices are not subject to adjustment for "usual import costs". If the RP is below the "floor", the custom officer will place specific duties to reach the floor. If the RP is above the floor, then the officer must reduce the duties up to the floor price.

Argentina argued that the PBS violated Article II(b) of the GATT 1994 on the grounds that by virtue of its structure, design and mode of application it potentially led to the application of specific duties in violation of the Chilean bound tariff. Argentina alleged that in practice the PBS resulted in the collection of *ad valorem* customs duties exceeding the bound ceiling tariff of 31.5%. In addition, Argentina considered the PBS a variable levy or a minimum import price inconsistent with the Agreement on Agriculture (AA) since Article 4.2 required that such measures be converted into ordinary customs duties.

In contrast, Chile argued that the PBS duties are ordinary customs duties and therefore not subject to tariffication. Chile argued that there are two separate conditions to be met for a

² According to Article 4.2, WTO members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties (there is a footnote listing measures) , except as otherwise provided for in Article 5 and Annex 5.

³ Markets of interest include Argentina, Australia, and Canada.

measure to be prohibited: it must be listed in Article 4.2 footnote 1⁴ and it must be requested by a member country. The PBS was not listed and no Member had ever requested tariffication. In addition, Chile argued that ECA 35 was signed after the Uruguay Round; since it explicitly allows the PBS⁵, Argentina cannot claim that the PBS is prohibited.

The panel found that the PBS was a measure of the kind which ha[s] been required to be converted into ordinary customs duties and that by maintaining it, Chile has acted inconsistently with the AA. The panel also found that PBS duties could be considered as "other duties or charges of any kind" imposed on or in connection with importation, under the second sentence of Article II:1(b). Since Chile did not record its PBS in the "other duties and charges" column of its Schedule, the panel found the duties were also inconsistent with Article II:(b) of GATT 1994.

The panel recommended Chile to bring the questioned measures into conformity with its multilateral obligations (April 2002)⁶. The route to this pronouncement was marked by an interactive, time-consuming and costly process of building legal arguments and finding economic data. The government juggled constantly to avoid issue-linkage and political tension with Chile while at the same time upholding the claim of business. In the section that follows, we present the main attributes and idiosyncratic characteristics of the actors involved and the way they interacted in this case.

II. The Players

The main players at the multilateral level were the government, in particular the Directorate for Multilateral Dispute Settlement (DISCO) at the Foreign Affairs Ministry, and the oil sector, in particular the Association of Argentine Edible Oil Industries (known by its Spanish acronym as CIARA). Other players included public officials in the Ministry of Economy, the law firm contracted to work on the Argentine side and the freshly inaugurated business think-tank, the Institute for International Agricultural Negotiations (Spanish acronym INAI). We first present the institutional/organizational features of the public sector, then the private sector's profile and finally how they interacted to build the case through the different forums and contexts.

The Public Sector

The process for requesting the government to pursue a trade dispute using the WTO Dispute Settlement Understanding has not been the subject to regulation. There are no standing operating procedures to deal with a claim stemming from business or any guidelines on how different government offices should cooperate to carry a case. There are no established proceedings for matters such as the window to which business must

⁴The measures listed therein are quantitative import restriction, variable import levy, minimum import price, discretionary import licensing, a non-tariff measure maintained through state-trading enterprises, a voluntary export restraint, or a similar border measure other than customs duties.

⁵ Article 24 "When using the Price Band System provided for in its domestic legislation concerning the importation of goods, the Republic of Chile commits, within the framework of this Agreement, neither to include new products nor to modify the mechanisms or apply them in such a way which would result in a deterioration of the market access conditions for MERCOSUR."

⁶Currently, Argentina is questioning Chile's (non-) implementation of the Report

direct this kind of claim; what evidence must support it; how the government must handle the claim in terms of administrative proceedings; or under which circumstances the government should advance the private sector's claims or not. In practice, the Ministry of Foreign Affairs puts together the cases and then upholds them internationally. While the decision to open a consultation (or to settle a dispute) always involves a political decision, the responsibility for its development, the coordination with business, the daily management of the dispute as well as the leading technical role pertains to DISCO. Since its creation in 1999, DISCO has managed 39 conflicts, including consultations, mutually agreed solutions and panels. Considering Argentina's negligible share of world trade, the number of cases is relatively high.

In contrast to the procedural void for WTO claims, the steps for business petitions are clearly stipulated within Mercosur's dispute settlement system. As the first step in a Mercosur controversy is usually a consultation through the Trade Commission (headed by the Ministry of Economy) if the conflict leads to the conformation of a Mercosur tribunal, Economy retains a leading role throughout the case.⁷

Interestingly enough, in the Mercosur-Chile Agreement, private sector petitions for dispute settlement are not contemplated. However, the legal officer that handles Mercosur disputes in the Ministry of Economy was also in charge for Mercosur-Chile, interacting with the private sector in the same manner as if it were a Mercosur case.

"I am a member of the Administration Commission of ECA35 and therefore I was fully acquainted with all the details. I am in charge of Mercosur cases. Given that the Foreign Affairs Ministry desk that oversees Mercosur-Chile relations does not have dispute settlement experience, it the Ministry of Economy took the lead in this case at this instance: My interaction with private sector was not impaired by the lack of a formal procedure for petition".⁸

A Flagship Sector

The industry is a flagship business. Firstly, foreign sales represent about 10% of total exports, in a context in which foreign currency is badly needed for complying with external payments. Production and commercialisation generate about 8.5% of total employment (Bertello 2004) Secondly, the concentration of plants (and its upstream and downstream activities) in powerful provinces allows the industry to carry additional clout. Finally, the fact that there are relatively few concentrated actors makes collective action relatively easy to articulate.

Locally owned companies concentrate most of the production. Cooperatives have lost market share while foreign owned plants have stepped up production capacity since 1994 and have notably increased their leverage within the sector. (Ferrugia and Guerrero 2000: 122-5). The main exporters are Cargill and Vicentin. In 2001 Aceitera General Deheza, Dreyfus and Bunge Argentina started to compete for the second rung with Vicentin. These five companies have gained market share rapidly, reaching more than 70% of the market today.

⁷ Usually, the experts of the Ministry of Economy that have prepared the case in previous instances are designated as Argentine representatives before the Mercosur Tribunal.

⁸ Dr. Marina García del Río, Legal Senior Adviser at the Ministry of Economy. Interview (June, 25, 2004).

The logic of collective action is essentially cooperative. As a business source noted:

“Generally, we consult and take steps to act together as Argentine companies in international conflict situations”⁹.

Companies articulate their demands through CIARA, which acts as broker and spokesperson and has a fluid and long-standing relationship with governments. CIARA was set up in 1980 with the objective of protecting and promoting the interest of the oilseed processing industry and, by now, it groups most of the vegetable oil and protein meal producers. When facing barriers in foreign markets, collective action is the first move. But once preliminary studies estimated the cost to be as high as U\$1m to initiate a case on soy, some companies opted out. At times a company decides to invest in the protection-seeking country rather than litigate, as was the case with anti-dumping duties in Peru.

In addition, INAI, the business think-tank provided technical assistance. The INAI has a small but highly qualified staff – a manager, two lawyers and one economist; it was originally created in 1999 by the three Grains Exchange Markets (Rosario, Bahia Blanca and Buenos Aires) with the aim of strengthening capabilities to deal with agricultural negotiations. Subsequently other organizations joined, CIARA being one of them.

Altogether, cohesiveness, “political muscle” and expertise were the three pillars on which business proceeded since the initiation of demands.

III. The Process and the Outcome

The conflict was first brought to a regional instance: the ECA35 Administration Commission. The legal officer at the Ministry of Economy in charge of Mercosur dispute settlement was responsible for oral presentations and submissions. She worked closely with CIARA to obtain data and articulate legal arguments. She highlighted that

“In this instance costs are very low because there is no need for an external law firm. It is also a very agile instance, taking into account that the problem started in March 1999 and by April 2000 there was a recommendation from the Group of Experts. Beyond the rightness of our arguments, key to our winning strategy was to appoint Mr. Sortheix as an expert¹⁰. He is internationally recognized as high level expert on customs classification. Although he did not chair the Group, his knowledge and experience made him a natural leader”.¹¹

The regional dispute system was out of the public eye (out of the media?) and at the same time it was both fast and low cost. However, Chile did not modify the reclassification. To the contrary, safeguards were applied in order to strengthen the legal bases of the increased protection. In respect to the resistance to comply

“We first believed that the reason had to do with the fact that the Mercosur-Chile dispute settlement system was not binding. We subsequently worked hard to

⁹ Interview 2nd June, 2004.

¹⁰ The Group of Experts is formed by one expert from Chile, another from Mercosur and the other – acting as President- from a non-Member country.

¹¹ Dr. Marina Garcia del Rio, interview (June, 25, 2004).

negotiate and pass a binding dispute settlement system. But after Chile's refusal to comply with the WTO's ruling I have come to believe that the political economy underpinnings of a conflict are as determining of compliance as the features of the institutional mechanism"¹².

The expectation that Chile would comply with the ECA35 Group of Experts recommendation was widely shared. CIARA was convinced because

"Chile has such a good reputation in international trade circles".¹³

In two meetings held at the Ministry of Foreign Affairs, Chilean self-righteousness came as a surprise to everyone. Banking on their own speckless reputation (and Argentina's tarnished record in this respect), the visiting team defiantly bragged that exporters would eventually come to accept the restriction and would not consider taking up the question in the multilateral arena.

To continue the story, after Chile's refusal to change the PBS, business urged the government through a public letter to find a bilateral solution with Chile. Although CIARA was already in contact with the Ministry of Foreign Affairs, a formal letter was sent out triggered by two other market shifts. Firstly and most importantly, India (Argentina's most important market) nearly doubled import tariffs on raw, sunflower and soy oil. This threatened sales to a market that purchased 20% of exports. Secondly, China (Argentina's third buyer) attempted to introduce non-trade barriers that practically implied the closing of the market. The letter, addressed to the Minister of Foreign Relations by the Director of CIARA, asked for "a rapid and energetic claim with the adoption of bilateral instruments necessary to neutralize the negative effects of these measures."¹⁴

Meanwhile, the government was urged by other priorities in its agenda with Chile: it was waiting for the Chilean Senate to ratify a Bilateral Mining Agreement. The treaty was of strategic economic importance because it was expected to lead to U\$S 10,000m investment along the Andean frontier and to duplicate mining exports of the two countries. CIARA thus feared that mining interests would overshadow their case. Pressure on the government was stepped up so as to take the case to the WTO. It also pulled strings across the Andes, requesting a meeting with the Chilean Minister of Foreign Affairs. But it was not until the signing of the mining agreement on 29 August 2000 that the government five weeks later went into action and requested consultations with Chile at the WTO on 5 October. Argentina requested the formal establishment of a panel in mid January 2001.

The decision to go to the WTO received a political push. According to a Ministry of Foreign Affairs official,

"There were two moments in which political drive was decisive. First, to request the establishment of a panel; second, during the panel process when some actors wanted to drop the case in favor of a mutually agreed solution. After a detailed technical explanation, authorities decided to continue the case".¹⁵

¹² Dr. Marina Garcia del Rio, interview (June, 25, 2004).

¹³ Raquel Caminoa from CIARA, interview (June 9 2004).

¹⁴ *La Nación*, 15th of June, 2000.

¹⁵ Interview (July, 14, 2004)

DISCO was responsible for dissecting and drafting the legal and economic arguments of the case. The workload to present the first brief on time was quite hefty for all the actors involved, but mainly for DISCO staff: four full-time and two part-time officials.¹⁶ CIARA and INAI experts collaborated reading drafts, but DISCO officers were the ones working up to 13 hours a day to get the things done on time. In addition, a public officer from the Secretariat of Agriculture was asked to join some meetings because “of his experience in dealing with Chileans”¹⁷. This recruitment was seen to be necessary because a mutually agreed solution is still highly possible during the first stage of the dispute.

The interaction between DISCO and the private sector was intense and constructive throughout the dispute. CIARA paid for running costs and for the fees of the law firm. The contribution of the law firm, providing a first draft for the demand and being available for specific consultations, was less useful than expected. Both public and private actors agreed that its contribution could have been more useful had the firm been hired to fine-tune all the submissions rather than being responsible for the first brief. In the initial stages of the procedure some of the arguments directly relate to facts and the pool of local expertise could have done the job.

“Only about 10% of their original ideas remained in the final paper. They were used as a general guide. As we proceeded it became obvious that the firm did not have much expertise on agricultural issues. I guess that the budget constraint was an obstacle at the time of selection.”¹⁸

One public official has noted that

“when interacting with the law firm one has to keep in mind that their interests do not coincide with the government. The law firms are tied to results while governments in addition have a systemic interest. When the government raises a case it also considers questions such as the impact on the AA, or the spill over of the case on general trading relations”.¹⁹

The cost of the law firm amounted to about U\$S 200,000, of which an important part pertained to the claim on the AA. CIARA provided data and information related to the sector and the INAI contributed in the building of arguments. In particular, the INAI performed the economic analysis of the working of the Chilean PBS and reviewed the legal arguments of the case, especially Article 4.2 of the AA.

“The contribution of the private sector in terms of people, provision of information and economic resources was impeccable. It cannot be replicated again except for one case. I can think of only one other Argentine sector with the same global interests and with the skills to follow, to facilitate all logistical aspects and to provide

¹⁶ According to the public officials involved, the workload was gigantic and the Ministry of Foreign Affairs offered them no incentive. The resolution of these disputes remains out of the range of those who decide promotions within the Ministry and salary is far below if market values.

¹⁷ Dr. Facundo Vila, Foreign Affairs Ministry, phone interview (June, 7, 2004). Accordingly, Lic. Jorge Iturriza said that “I think I was important because I was acquainted with the Chileans after the negotiation of the Mercosur-Chile Agreement.”

¹⁸ Dr. Facundo Vila, former lawyer at DISCO. Interview (June, 7, 2004)

¹⁹ Interview (July, 14, 2004).

and manage a data base".²⁰ (referring to another flagship sector, the producer of seamless pipes).²¹

The working dynamic for building the case included meetings between the officials of DISCO, representatives of CIARA and INAI's experts in which the drafts of the law firm were reformulated. Occasionally, there were other participants (such as the Secretariat of Agriculture or representatives from leading firms such as Molinos and Nidera). At the WTO, sessions could technically be held in any official language; but, after the initial presentations in Spanish led to a member of the panel yawning and dozing off, a decision was taken to switch to English. In the same line, an interviewee remarked that

"It is tiring and time consuming to wait for the translation in hearings. But more relevantly, translation of documents may take 10 days, so panelists turn up without time to read them. This is a disadvantage vis-à-vis documents submitted promptly in English by the defendant. Panelists know where their arguments are headed while they have no clue of ours, and this is a great handicap".²²

The Argentine delegation did not have external lawyers outside the room where sessions took place. By the second session the delegation started to feel they were winning the case: most of the questions were directed to Chile and the questions denoted that the concerns of the panel tended to be in line with the Argentine position. The general tone also seemed pushy when confronting the Chileans arguments.²³

But not all of the issues raised during the dispute were technical. Political calculations kept cropping out from all corners. First, business had to deal with those favouring diplomacy over litigation. Moreover, business feared that the President might withdraw the demand if Chile eliminated sanitary restrictions on beef. In order to avoid backsliding, the Grains Exchange and CIARA wrote a formal letter to the President backing the specialists and emphasizing that if the government dropped the dispute, it would seriously damage trade prospects. They argued that the WTO decision would pave the way to tackle similar conflicts with the European Union and the Andean Community²⁴. Eventually, the fact that the case was becoming a "*winning case*" helped to overcome other political calculations.

The struggle at home was mirrored in the WTO. The adoption of the panel recommendation (and the Appellate Body report) did not mean closing the issue. Chile has not complied so far and still has its PBS in place. In this sense, several actors coincided that the major flaw of the WTO is the reliance on unilateral retaliation. While some actors interviewed suggested financial compensations as an alternative, others emphasized trade compensations. However, some influential public officials have remarked that one must keep in mind the original objectives to assess overall results. When the case started, oils were subject to a 70% tariff. After the dispute, the maximum is 31.5% with a double assurance: a WTO ruling and a Chilean Congress law. In addition, vegetable oil was

²⁰ Facundo Vila, phone interview, (June, 7, 2004)

²¹ In this sense, other regional developing countries, such as Brazil and Venezuela, are following the same pattern in litigation, only taking up flagship sectors. Brazil has litigated against Canada defending EMBRAER, a world leader of small aircraft and has recently taken the US and the EU on sugar, poultry and cotton. Venezuela's case on environmental standards with the US was in defence of PDVSA that concentrates 80% of Venezuelan exports.

²² Interview (July, 14, 2004).

²³ Dr. Facundo Vila, interview (June,7, h, 2004)

²⁴ *La Nación*, (March, 18, 2002) 2002.

excluded from the PBS, and there is now an interpretation of how a variable levy minimum price works with considerable value as precedent.

True, for Argentina the tangible gain was the cap on Chilean tariffs as a result of the initiation of the WTO case²⁵. The gains were also intangible in terms of reputation. In this sense, perhaps the biggest loss to Chile might also be an intangible in relation to its reputation to comply. The WTO acted as a magnifying glass of country reputation.

IV Challenges Confronted in the Process

The government's principal challenges were twofold: to construct a (winning) case at the WTO with no financial resources and scarce human skills, while at the same time avoiding issue linkage so as not to over poison relations with a strategic regional partner. Business, in turn, had to articulate and sustain collective action; raise funds to cover the costs involved in litigation and absorb economic losses during the protracted proceedings. Both, government and business had to accept a new partnership if success was to be achieved.

The government strategy was to isolate this conflict from other bilateral issues and manage each in its own time. Such de-linking happened at least twice. First, at the time of signing the mining agreement in 2000 and second, in 2003 to isolate this case from the sanitary restrictions applied to Argentine beef. In addition, by relying on CIARA and INAI experts and, to a lesser extent, on the external law firm, DISCO was able to overcome its limited financial and technical resources. Still, DISCO officials stressed the colossal personal effort undertaken to comply with deadlines under the WTO dispute settlement, and the feeling that being a developing country implies always -if not a negative- at least a skeptical expectation on performance.

“If demanded, the international community doubts our capacity to defend ourselves and when acting as claimant our capacity to handle and lead the case.”²⁶

Litigation costs and collective action are usually two barriers for business. The fact that the vegetable oil sector is structurally concentrated in only a few hands allowed the litigation strategy to be followed with relatively low transaction costs. Ultimately, the fact that the sector is a global player was an important source of leverage over the domestic policy process.

At the time of influencing policy, business had to wade through a whirlpool of informal channels since there is no regulation or window to deal with petitions for multilateral trade dispute settlement. This institutional vacuum posed a dual risk: on the one hand it could have allowed the government to arbitrarily dismiss the business claim and, on the other hand it could have triggered an internal dispute among government agencies, ultimately impeding effective coordination of the case.

Last but not least, the WTO protracted process might have jeopardized Argentina's market share in Chile:

²⁵ In effect, a short time after the process began, Chile announced that the PBS would not result in a tariff higher than the one bound at 31.5%

²⁶ Interview with a Ministry of Foreign Affairs official (July, 14, 2004)

“When you are out of a market for about two years, it is extremely difficult to win back positions”²⁷.

Faced with no prospect for compensation and with an accumulated loss of U\$S 50m, both business and government agents considered the question of retaliating against Chilean products. But retaliation was an absolutely inadequate solution. From the business angle, retaliation could not offset the losses. From the government perspective, retaliation was prone to poison overall relations with Chile.

V. Lessons for Others

Recourse to the WTO dispute settlement instance is not for everyone nor is it an ordinary action that can be taken lightly. It is costly and time-consuming; it thus discriminates in favor of big business and countries. At the same time it has political repercussions, especially if used against a close partner. However, the Argentine experience indicates that the WTO does contribute to limit discretionary trade practices; it acts as an international magnifying glass of countries' trade practices. Moreover, it was perceived as a neutral third party on a regionally divisive issue.

In particular, main lessons left by this case are

- ✍ In terms of domestic institutional setting, the lack of clear and pre-established mechanisms to handle disputes is detrimental to all actors. While the private sector risks an arbitrary neglect or dismissal of its case, public agencies bear uncertainty about their competencies and decisions. The considerable cost and expertise required is a problem for developing countries. One feasible cost-effective solution would be to reallocate public officials to create a permanent and multidisciplinary corps of experts to handle trade disputes. In this way, experience and learning could be accumulated in the same agency and legal outsourcing would be limited to fine-tuning purposes and/or data collection when needed.
- ✍ In terms of business participation, a key element of their successful involvement was the sense of shared responsibility with the public sector for the final outcome. It would have been impossible to do the groundwork for the case without the provision of factual information, statistical data and financial collaboration from business.
- ✍ In terms of capacity building, the case was a shared learning experience among all actors. While business was able to assess with much more precision the costs and benefits of potential cases *post-Chile*, the confidence of public agents was propped up and they subsequently felt encouraged to take up litigation in the case of other products.
- ✍ In terms of bargaining strategy, the government's temporal de-linking of issues and taking them one at a time was crucial to avoid cross-sectoral pressures at home and issue linkage in the bilateral relation with Chile. In terms of the sector in question the master key was calculating beforehand the maximum and minimum losses the sector was able to forego.

²⁷ Interview with a business informant (confidential), (June, 2, 2004)

- ✍ In terms of the WTO process, beyond practical matters (such as the cost of the process, the need to present the case in English or the importance of having business representatives “next door”) an already well known problem became evident: the pointlessness of recourse to retaliation. In effect, if the offending measure is not reverted and the demanding country does not want to shoot itself in the foot to retaliate, it ends up empty-handed. Non-compliance and the low payoff of retaliation restrict the force of the exemplar action.

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