3
Brazil: Dispute Settlement and Conclusions

Introduction

The previous chapter introduced the Brazilian trade context and, by focusing on Brazilian trade liberalization efforts, discovered strong empirical support for Argument 1, which links the dominance of economic interests in an EP policymaking situation with the strategic choices of substitution and simple use. Additionally, evidence in the previous chapter underlined the importance of examining the impact domestic factors have on Brazilian trade policy decisions, particularly in reference to where the Brazilian government pursues its trade policy goals.

This chapter will expand the empirical focus to include Brazilian trade dispute settlement activities. Brazil’s growing participation in global trade has significantly raised the likelihood of its encountering unfavorable trade policies from its chosen trade partners. As a result, the resolution of such conflicts has necessarily played a major role in Brazilian trade policy in recent years (Cross 2006, 191–193). Furthermore, dispute settlement has become particularly prominent in Brazilian trade policy as the Brazilian government has seen court battles—particularly at the WTO’s DSB—as a way to “defend its major export interests in the agricultural field” (Davey 2005, 42) in the absence of progress in liberalization negotiations.

This chapter will examine Brazil’s trade dispute settlement strategies by testing Arguments 1 and 2 in three case studies, each featuring a different strategic forum choice by the Brazilian government. This is followed by a discussion section evaluating the findings of the case studies in reference to the research framework employed here. Finally, the concluding section summarizes the findings for the Brazilian case.
Dispute settlement

As mentioned, dispute settlement has assumed a key role in the broader Brazilian trade policy since the start of the Doha Round. Some disputes, such as the sugar dispute between Brazil and the EU or the cotton dispute between Brazil and the US, have been widely linked with Brazil’s EP aspirations. In these situations, experts underline the political motivations for both the decision to address the partner’s unfavorable trade policies at all and the decision to do so in a particular forum (Rios 2010; Roett 2011). Other disputes, for example, the dispute between Brazil and Argentina over non-automatic import licenses, are offered in contrast as examples of Brazil’s pragmatic trade policy (discussed in Chapter 1). Under this scenario, experts note Brazil may attempt to resolve the case in one forum only to appeal to another—using the same, already prepared legal arguments—as a “non-official appellate body” should the first forum fail to resolve the dispute to Brazil’s approval (Tang 2010).1 Thus, it seems important to know not only what these different types of cases have in common, but also under what conditions the Brazilian government is likely to pursue resolution of its various trade disputes in specific trade dispute settlement forums.

The relationship between the independent variables of political ideas and economic interests and the dependent variable of the Brazilian government’s strategic decisions vis-à-vis trade dispute resolution will be examined in the three case studies which follow. The simple use case study discusses the Brazilian decision to challenge US cotton subsidies within the WTO’s DSB in a legal process which lasted from 2002 to 2010. The substitution case discusses the bilateral dispute between Brazil and Argentina between 2008 and 2011 over the imposition of non-automatic import licenses as well as Argentina’s failure to release products for export in a manner acceptable to Brazil. Finally, the reform case addresses Brazil’s participation in the negotiations between 2001 and 2012 to reform the WTO’s DSU.

DS267: Brazil v. US Upland Cotton

Context and preliminary comments

Active for over eight years, DS267, officially titled “United States—Subsidies on Upland Cotton,” is one of the longest ongoing cases in WTO history. The case was initiated by Brazil with a formal request for consultations on September 27, 2002. Three rounds of bilateral consultations failed to produce a solution, leading Brazil to formally request a panel with the WTO DSB in February 2003. Brazil’s complaint was