



**ARBITRATION IN  
CIS COUNTRIES:  
CURRENT ISSUES**  
Brussels, June 21, 2012





# **WTO DISPUTE SETTLEMENT AND THE CIS COUNTRIES**

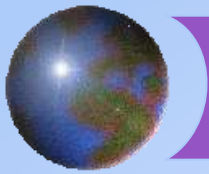
*Maria J. Pereyra*

Counsellor

Legal Affairs Division

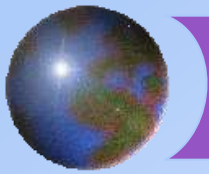
World Trade Organization

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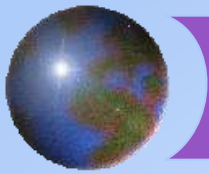
## *WTO Dispute Settlement System*

- ⊕ **Busiest “state-to-state court”** : 438 disputes in 17 years
- ⊕ The **“jewel of the crown”** of the WTO
- ⊕ Success due to:
  - ⊞ **Optimal performance** in resolving disputes through parties’ agreements or adjudication
  - ⊞ **WTO Members trust** the system:
    - high number of disputes
    - high compliance rate



## *Facts and Figures*

- ⊕ Performance
- ⊕ Nature of disputes
- ⊕ Complainants
- ⊕ Respondents
- ⊕ Agreements at issue
- ⊕ Disputes involving CIS countries

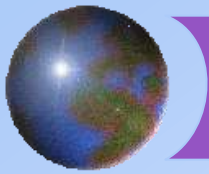


# *Performance*

- ⊕ **Number of disputes initiated:** **438**
- ⊕ **Panels established:** **190 (236 disputes)**
- ⊕ **Panels composed:** **163 (206 disputes)**
- ⊕ **Panel reports adopted:** **169**
- ⊕ **AB reports adopted:** **107**
- ⊕ **MAS reached or complaint withdrawn:** **20.5%**

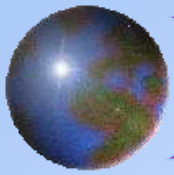
⊕ *ICJ (1945): 150 in 65 years*

⊕ *International Tribunal of the Law of the Sea (1996): 15*

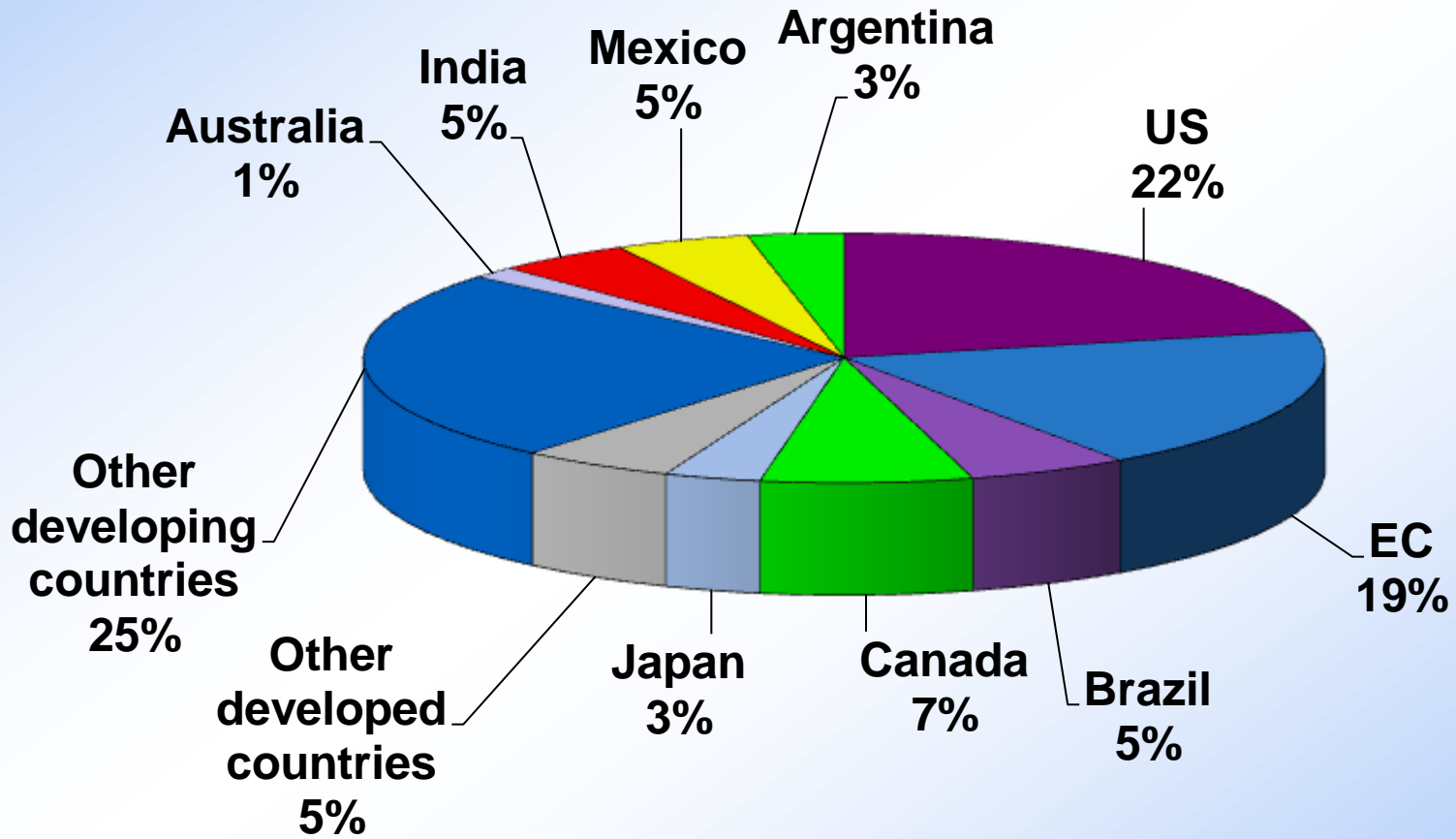


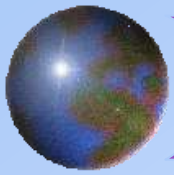
## *Nature of Disputes*

- ⊕ Disputes on technical trade issues of 'little interest' to the general public
  - *EC – Computer Equipment*
  - *EC – Bed Linen and US – Stainless Steel*
- ⊕ Disputes on politically sensitive issues generating much public attention
  - *US – Shrimp, Brazil – Retreaded Tyres; US - Tuna*
  - *EC – Hormones; EC – Asbestos and US/Canada – Continued Suspension*
  - *US – Gambling*
  - *EC – Bananas and EC – Tariff Preferences*
  - *EC – Airbus and US - Boeing*
  - *US – Clove Cigarettes*

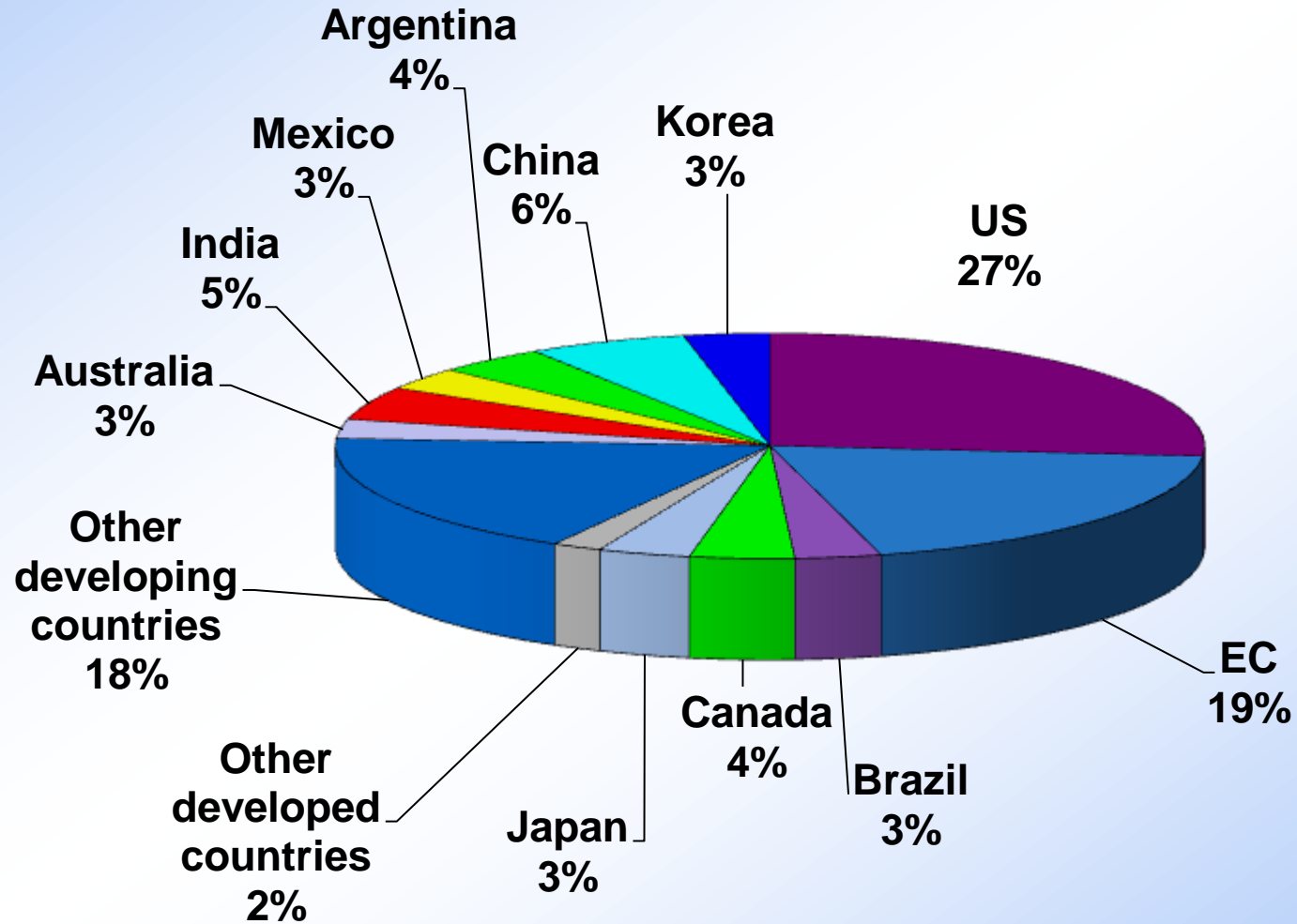


# *Complainants*

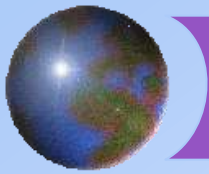




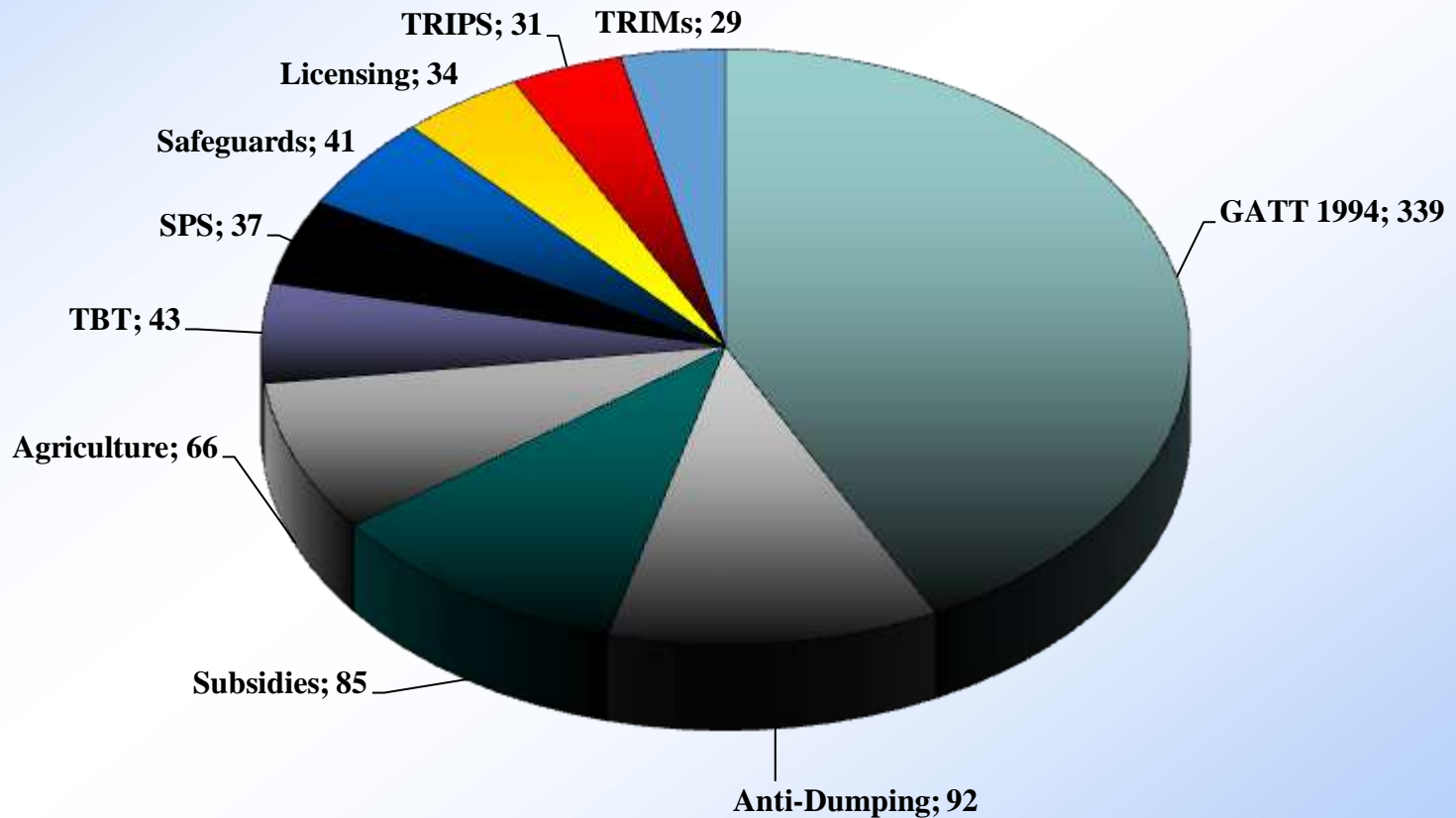
# *Respondents*

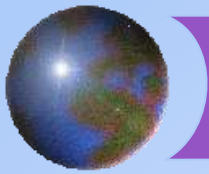






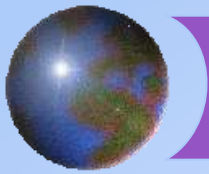
# *Agreement at Issue*





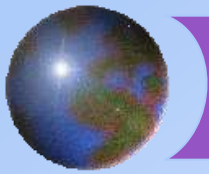
# *Disputes involving CIS Countries*

- ⊕ Three disputes initiated by **Ukraine**:
  - ⊞ Two against CIS countries (NT internal taxation):
    - *Armenia – Measures Affecting the Importation and Internal Sale of Cigarettes and Alcoholic Beverages*
    - *Moldova – Environmental Charge (panel established)*
  - ⊞ One against Australia (plain packaging):
    - *Australia – Certain Measures concerning Trademarks and other Plain Packaging Requirements applicable to Tobacco Products and Packaging*
  
- ⊕ One dispute initiated by **Moldova** against a CIS country (NT internal taxation):
  - *Ukraine – Taxes on Distilled Spirits (panel established)*



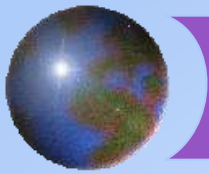
# *General Features*

- ⊕ Basic nature
- ⊕ Object and purpose
- ⊕ Jurisdiction
- ⊕ Institutions
- ⊕ Procedures
- ⊕ Implementation and enforcement



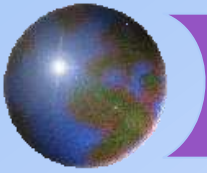
## *Basic Nature*

- ✦ **Rules-based, quasi-judicial** dispute settlement
- ✦ Only **open** to governments from **WTO Members**
- ✦ **No damages**, although high rate of compliance
- ✦ **Predictability** through a large body of jurisprudence



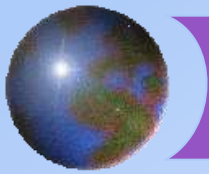
## *Object & Purpose*

- ⊕ Secure **positive solution** to a dispute
- ⊕ Preference for **mutually agreed solutions (MAS)**
- ⊕ Provide **security & predictability** to MTS
- ⊕ Preservation & clarification
- ⊕ Gap filling and rule-making?
- ⊕ Not add to or diminish rights and obligations



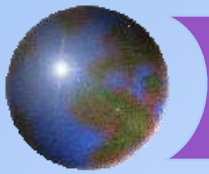
# *Jurisdiction*

- ✦ Scope of the jurisdiction
  - ✦ **Covered agreements**
  - ✦ Non-WTO agreements?
- ✦ Nature of the jurisdiction
  - ✦ Compulsory
  - ✦ Exclusive
  - ✦ Contentious



# *Institutions*

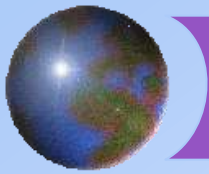
- ⊕ Dispute Settlement Body (DSB)
  - ⊞ Composition and meetings
  - ⊞ Key decisions ... by reverse consensus
- ⊕ WTO dispute settlement panels
  - ⊞ First instance *ad hoc* tribunals
  - ⊞ Establishment and composition
- ⊕ Appellate Body
  - ⊞ Permanent appeals tribunal
  - ⊞ 7 Members appointed by DSB



# *Proceedings*

- ✦ Steps in the proceedings
  - ✦ Consultations
  - ✦ Panel proceedings
  - ✦ Appellate review
  - ✦ Implementation/enforcement
- ✦ General features of the proceedings
  - ✦ Time-frame
  - ✦ Confidentiality/transparency





# *Implementation and Enforcement*

## ✚ Implementation

- ✚ Withdrawal/amendment of the measure
- ✚ Immediately
- ✚ Within a reasonable period of time (RPoT)

## ✚ Enforcement

- ✚ Compensation
- ✚ Suspension of concessions (retaliation)