

# Examples of Resolving Disputes in the WTO/SPS Committee

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Andrew Stephens  
Senior Trade Law Advisor

(these comments do not reflect the views of  
USAID or the U.S. Government)



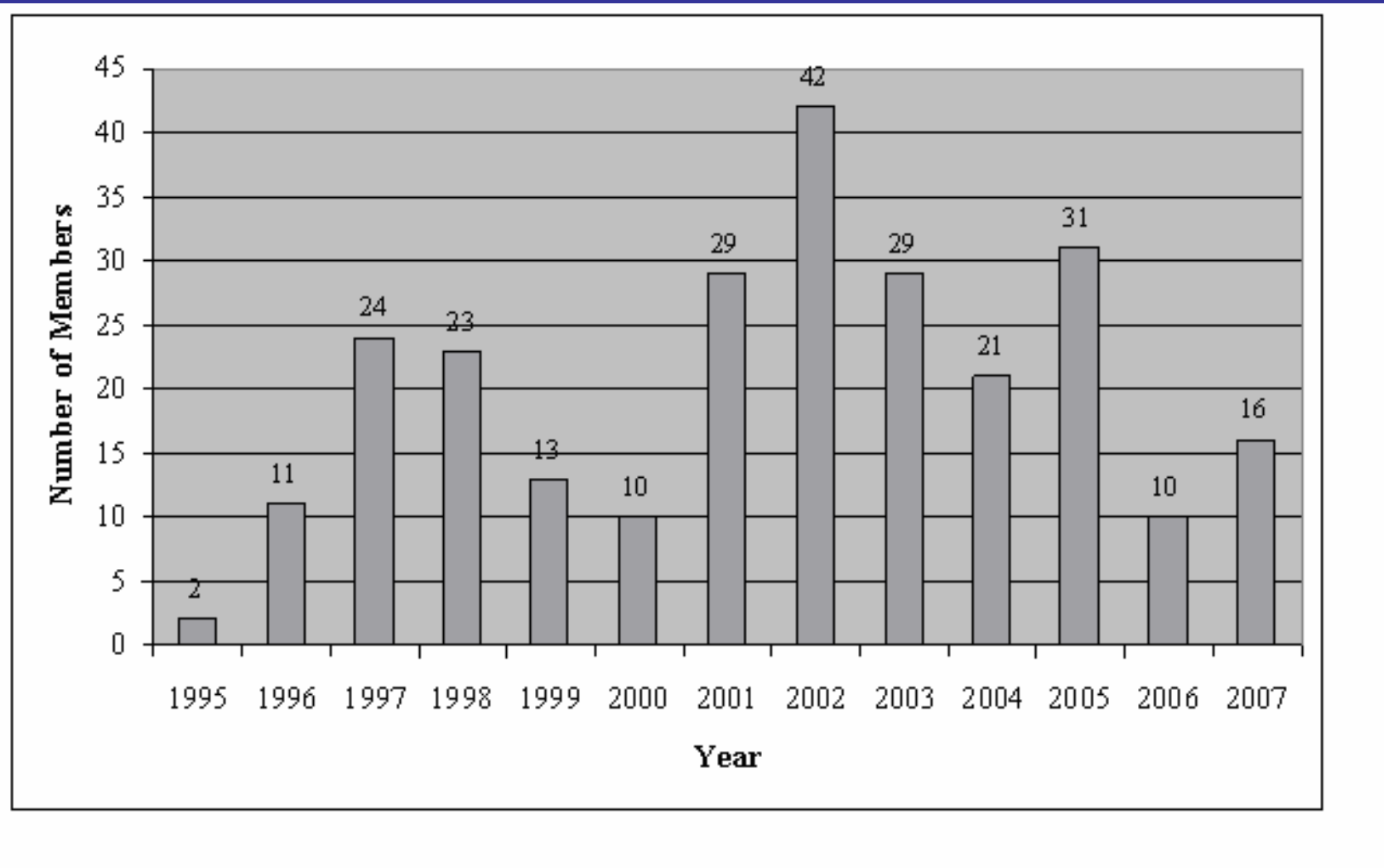
- WTO SPS Committee is a useful forum for Governments to resolve SPS trade barriers.
- Members have raised 261 SPS-trade concerns between 1995-2008.
- 75 issues reported as resolved, 168 not-resolved, 18 have “partial solution.”

■ Source: WTO Document [G/SPS/GEN/204/Rev.8](#)

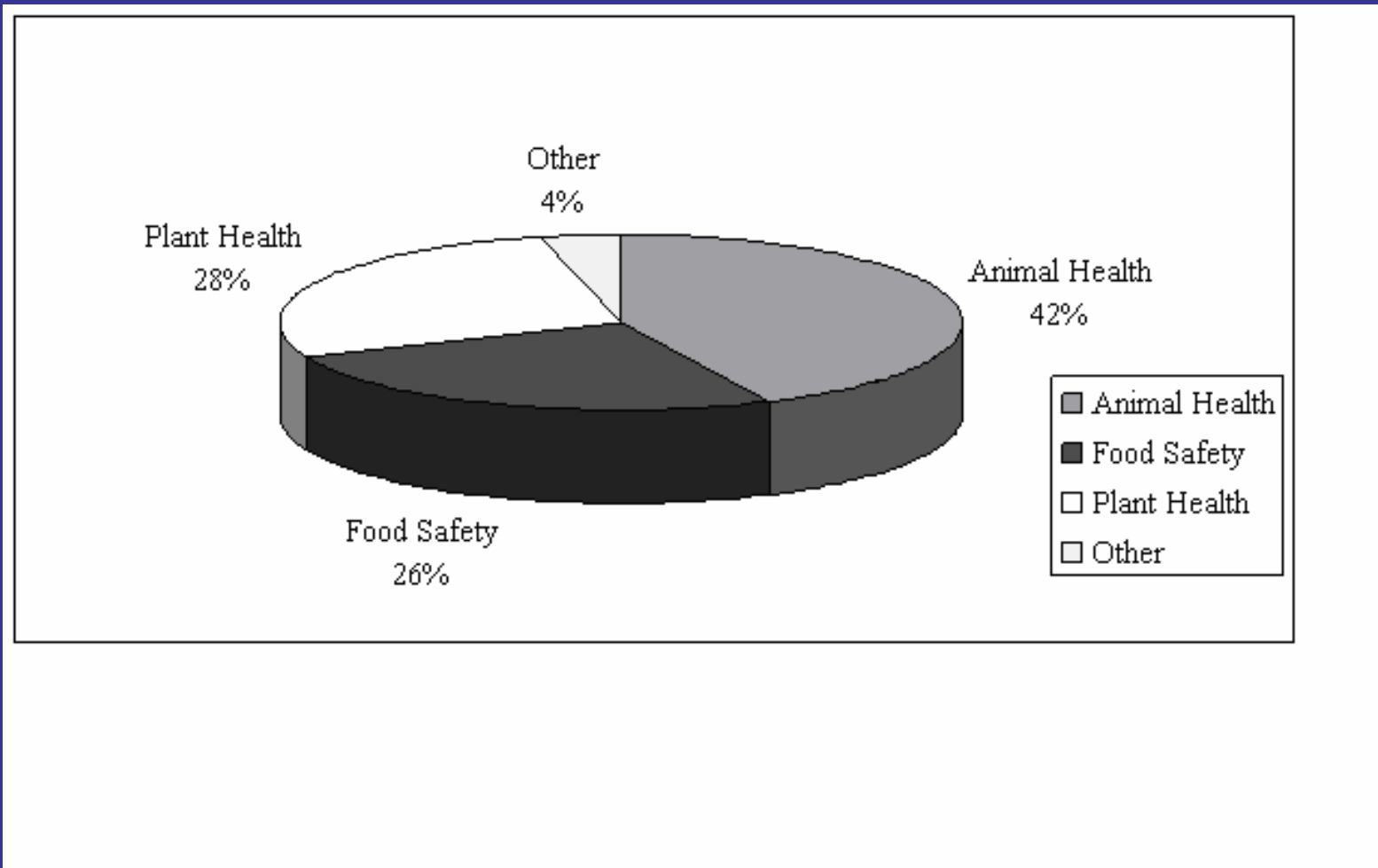




# Number of Issues Raised Annually

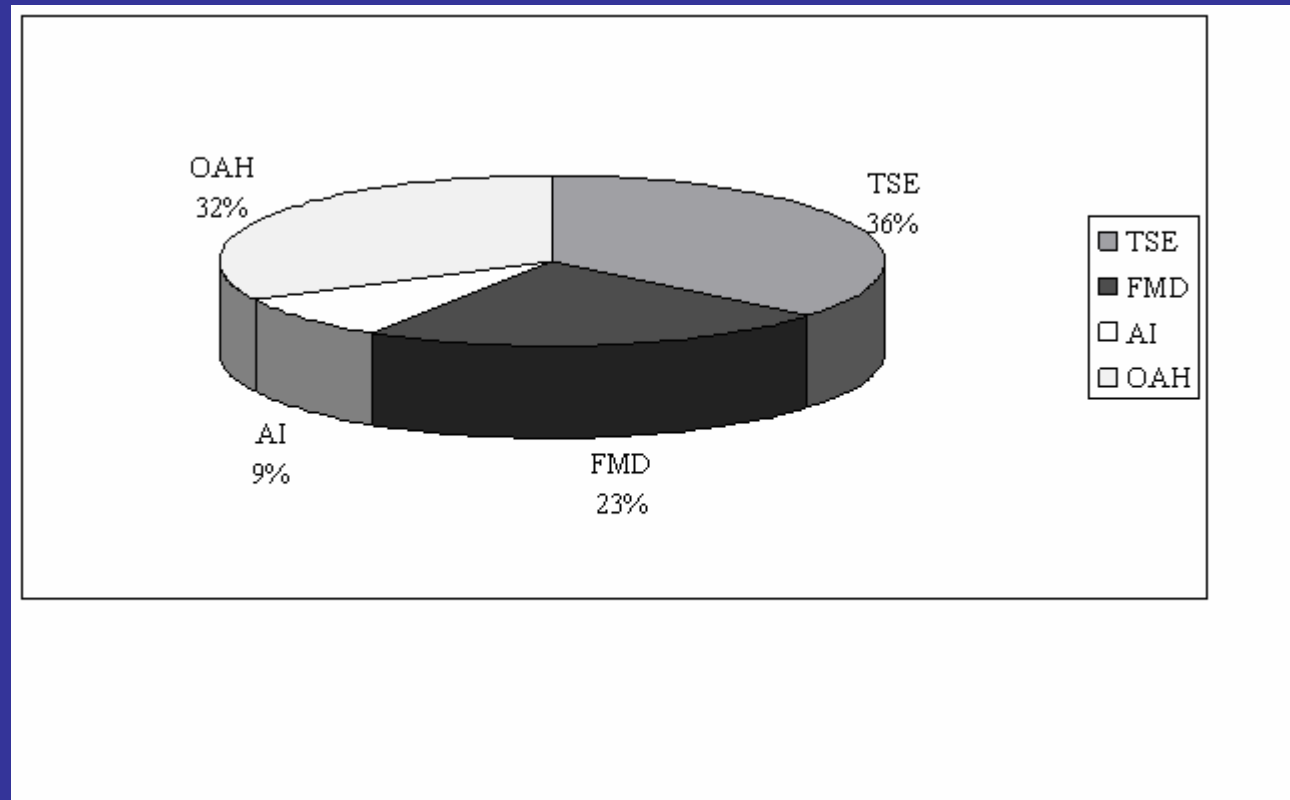


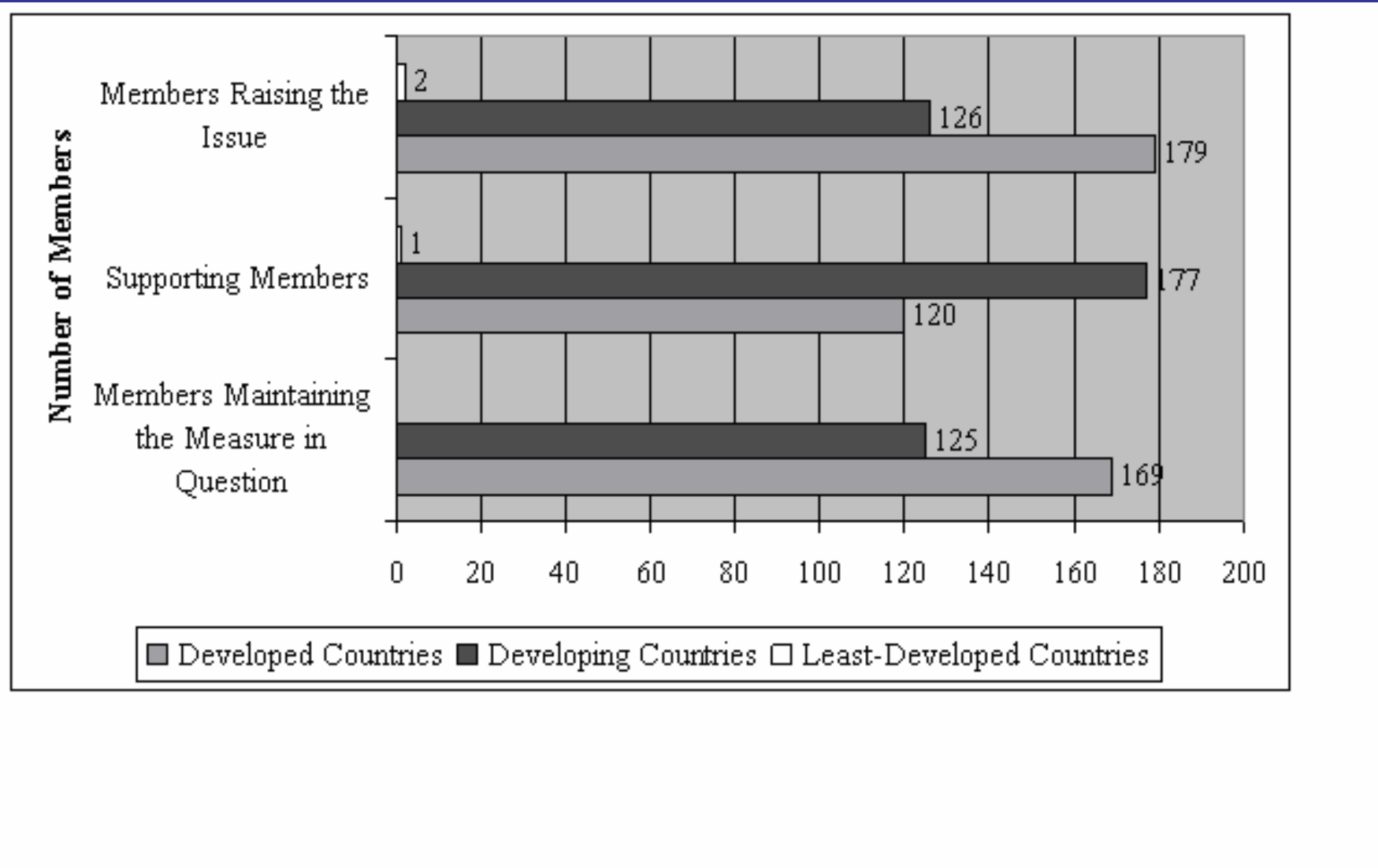
# Animal Health Issues Predominate



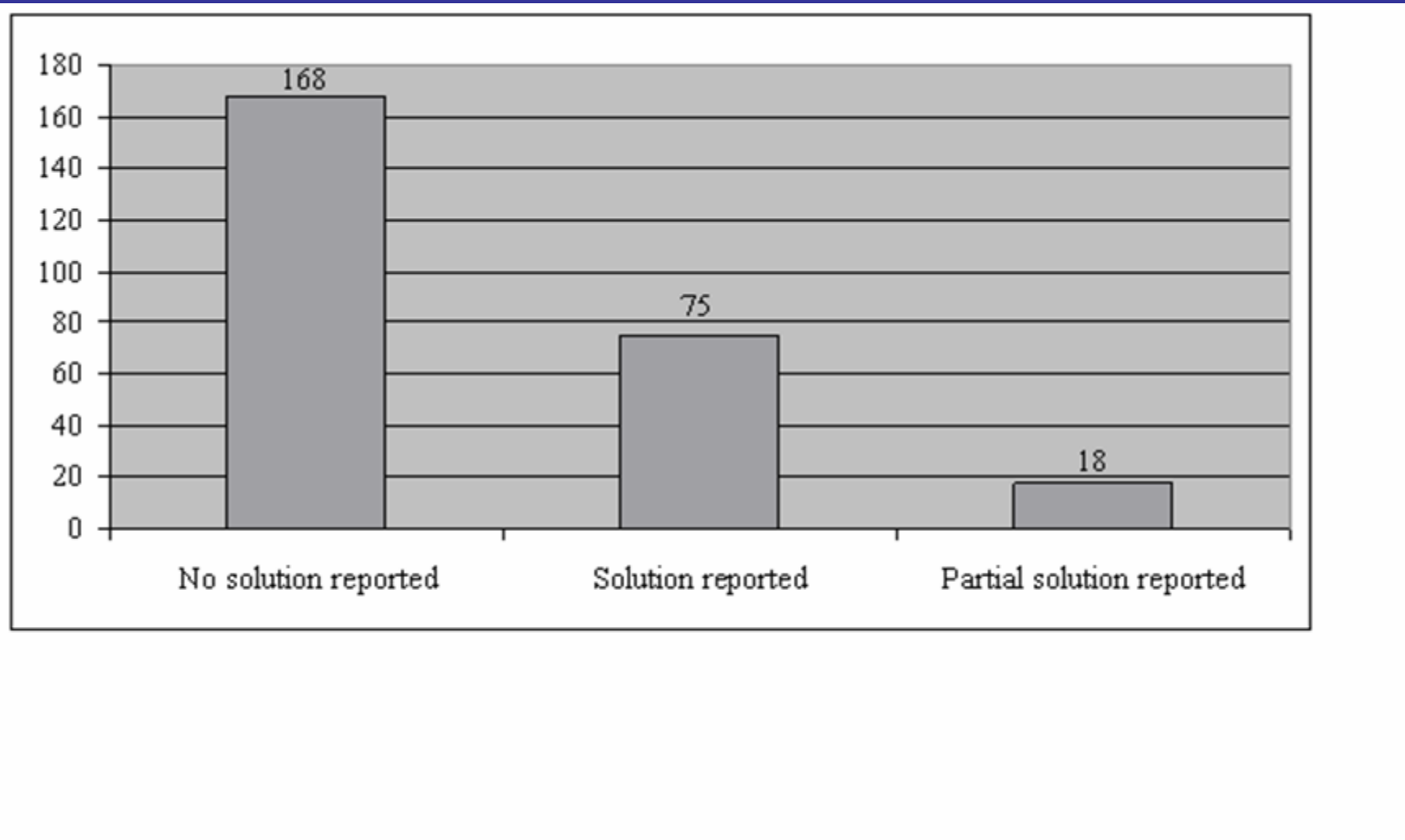
Of animal health: BSE and FMD = more than 50%

- BSE = 36%, FMD 23%, AI 9%





# Since 1995: Majority of Issues are Unresolved



# WTO-SPS Case Study: Australian Prawns

- In WTO document G/SPS/N/AUS/204/Add.1, Australia notified WTO members of new import requirements for prawns.
- Thailand expressed concern about these requirements at the next WTO SPS Committee meeting in Geneva.
- Vietnam has also expressed concern in written comments to Australia Biosecurity



- On 24 July 2007, Australia Biosecurity announced revised interim quarantine measures for prawns and prawn products for human consumption, implementing the Import Risk Analysis (IRA) of November 2006.



- Under these rules, all imported prawns must be:
- Produced in a country or zone disease freedom;  
or
- removal of the head and shell and testing for WSSV, YHV; or
- a high level of processing for uncooked prawns, for example crumbed prawns, or pastries or dim sum-type products; or
- cooking product (core temperature of 85c).



# What are Vietnam's Options?

1. Comply with new Regulations, e.g., peel and test, fully cook, or establish a certified disease-free production zone.
2. Negotiate alternative risk management systems.
3. Request WTO dispute consultations



# Each option is problematic

1. Complying with current Regulations is costly and/or reduces the marketability of product.
2. Negotiating alternative risk management protocols is time consuming and requires scientific data to support your proposal.
3. Litigating before WTO is lengthy, expensive, and no guarantee of success.



## Option 2: Negotiate Alternative Protocols

- Negotiating an alternative risk management protocol probably makes most sense.
- The authors of the Import Risk Assessment suggested several options they may consider.
- In 2007 comments, exporters requested no restrictions (logically), rather than proposing alternatives.



# Quotes from IRA Authors:

- “The IRA team recognised that there may be other treatments and other new technologies or other combinations of measures that may provide the required level of risk reduction for the pathogenic agents identified as requiring risk management. These would be evaluated on a case-by-case basis.”



# Quotes from IRA Authors:

- “Among the alternatives that may be accepted in principle are measures such as compartment freedom or stock freedom accreditation schemes.
- These would need to be assessed on a case-by-case basis, but BA would consider proposals from exporting countries or other stakeholders if appropriate data on the nature of the alternative risk management measure are provided.”



- “The option of testing off-shore would need to be considered on a case-by-case basis, taking into account the ability and capacity of the overseas Competent Authority to audit and provide assurance that the required testing standards and the validity of the test itself have been met to the satisfaction of Australian government authorities.”
- “Given uncertainty about the sensitivity of available tests for prawn pathogens, this option alone is not expected to reduce the likelihoods of entry and exposure sufficiently to reduce the overall risk to an acceptable level, but may be effective in combination with other measures.”



## Quotes from IRA Authors:

- “Those seeking to propose alternative risk management measures should provide a submission for consideration. Such proposals are welcome and should include supporting scientific data that explain the extent to which the alternative measures would achieve Australia’s ALOP.”



## Question: Does this case remind you of Australia Salmon?

- In 1999, Canada won a WTO challenge to Australia's requirement that salmon fish be imported only in "consumer ready" form (e.g. skinless fillets).
- The WTO ruled that this specified processing was not justified by the risk assessment and that there were "less restrictive to trade" options Australia could use to achieve its appropriate level of protection (ALOP).



Question: Does this case remind you of Australia Salmon?

Answer: It is unclear how similar these cases are. Australia has clearly grounded its policies in the recommendations of the risk assessment (unlike the Salmon case), Exporters need more data to present compelling case that the risks are low and there are less trade restrictive alternatives that meet the ALOP.



# Advice for further dialogue

- The 2007 Comments to Australia from Exporters did not appear to be tightly coordinated.
- Any proposal for an alternative protocol should be coordinated with other exporters.
- A coalition of exporters could share the responsibility and expense of preparing scientific data to support your proposal.
- Seek technical assistance and joint research with Australia on alternatives.
- Recognize that this is a long-term project.

