

WTO Dispute Settlement and the Appellate Body Crisis: Detailed Survey Results

WTO Dispute Settlement and the Appellate Body Crisis: Detailed Survey Results

Authors

Matteo Fiorini, European University Institute

Bernard Hoekman, European University Institute

Petros Mavroidis, Columbia Law School

Maarja Saluste, European University Institute

Robert Wolfe, Queen's University

Contact

Dr Christian Bluth
Project Manager
Global Economic Dynamics
Bertelsmann Stiftung
Telephone +49 5241 81-81329
Mobile +49 173 73 42 656
christian.bluth@bertelsmann-stiftung.de
www.ged-project.de

Introduction

This report accompanies the working paper “WTO Dispute Settlement and the Appellate Body Crisis: Insider perceptions and Members’ revealed preferences.” It presents the results of an on-line, anonymous survey of views on the operation of the WTO dispute settlement process and the role of the Appellate Body in particular. The data were collected in mid-2019. The survey instrument was sent to all WTO delegations with the request to complete the questionnaire and to forward it to the relevant team in capitals. In addition to WTO delegations, the survey was also sent to legal practitioners, the International Chamber of Commerce (ICC), the Pacific Economic Cooperation Council (PECC), and the WEF (World Economic Forum), in all cases with a request to pass on the survey to others engaged in or concerned with WTO dispute settlement. A total of 168 responses were received. Overall only 25% of WTO Members responded to the survey, defined as a response by a government official based in Geneva or in the capital, counting the EU as one. Additional information on survey design and participation is provided in the text of the working paper.

Descriptive analysis of survey responses

For each question with a “yes-no” answer structure, we report below percentage shares of yes (green) and no (red) responses by type of professional affiliation (numbers of respondents by professional affiliation taking each question are reported in parentheses). We do so for the whole sample and for 4 different subsets of the population:

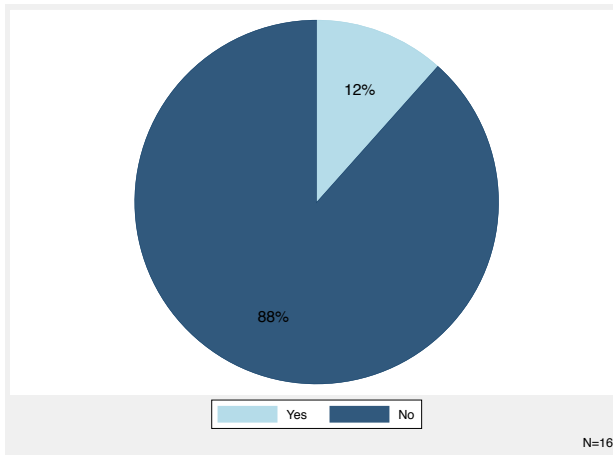
1. those respondents affiliated with an organization/institution in a high income country;
2. those affiliated with an organization/institution in a middle or low income country;
3. respondents that declare to be responsible for/involved in WTO DS cases;
4. those that declare not to be responsible for / involved in DS cases.

Income thresholds used to define the first two of the categories listed above are based on 2019 thresholds from the World Bank. For the categories based on the nationality of organizations/institutions we exclude those respondents with a professional affiliation to an International Organization in those (rare) cases where they specified a precise nationality for their organization. In each panel (at the bottom-right corner) we specify the total number of respondents answering the respective question within the relevant empirical population (N).

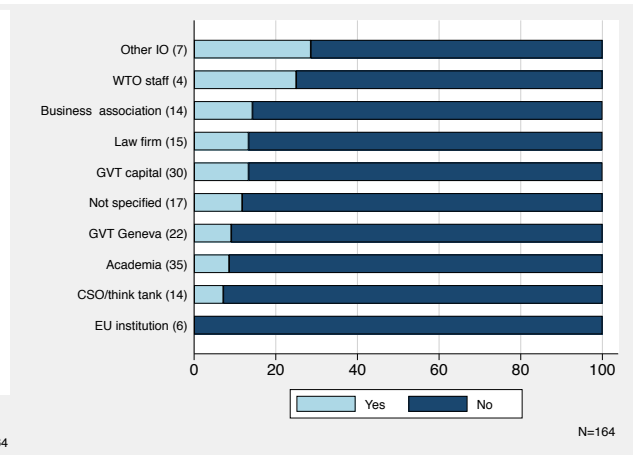
The same approach has been followed for the question with a different answer structure (question 22).

Question 1

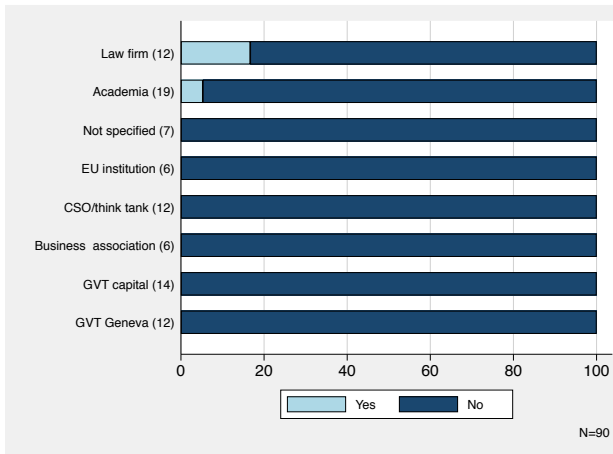
The Appellate Body impasse largely concerns the EU and the US, so we are staying out of it.



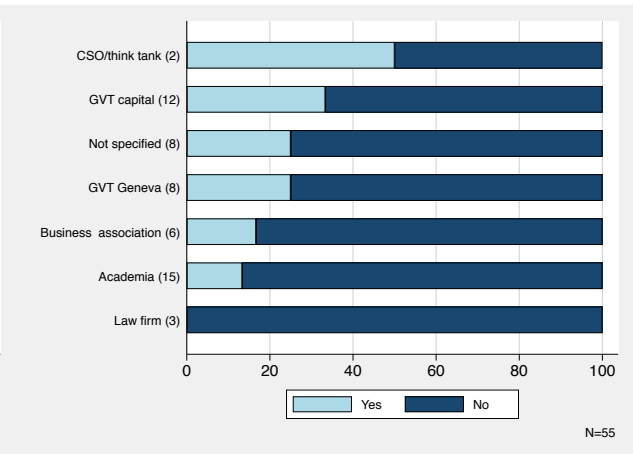
(a) Whole sample



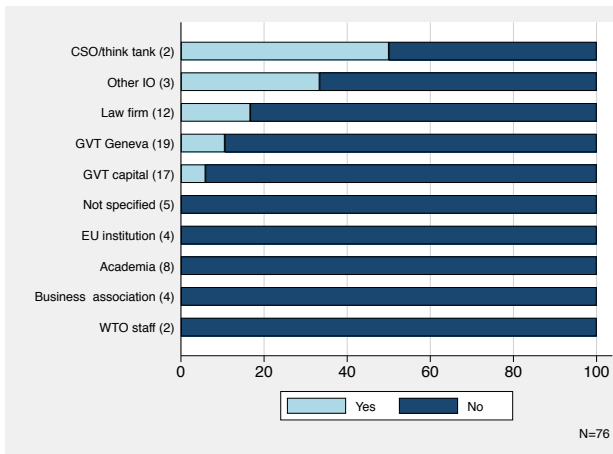
(b) Whole sample



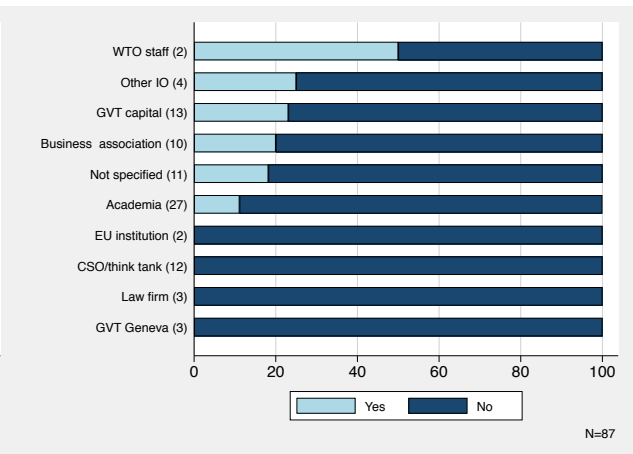
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



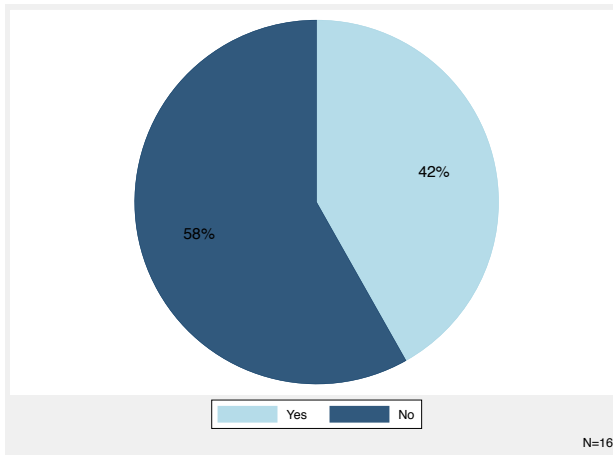
(e) Respondents involved in DS cases



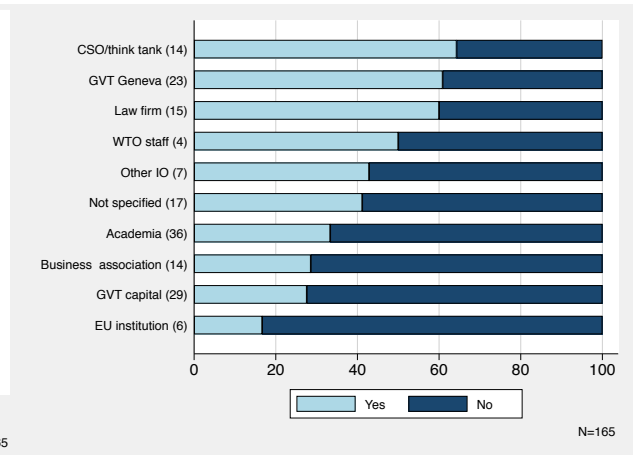
(f) Respondents not involved in DS cases

Question 2

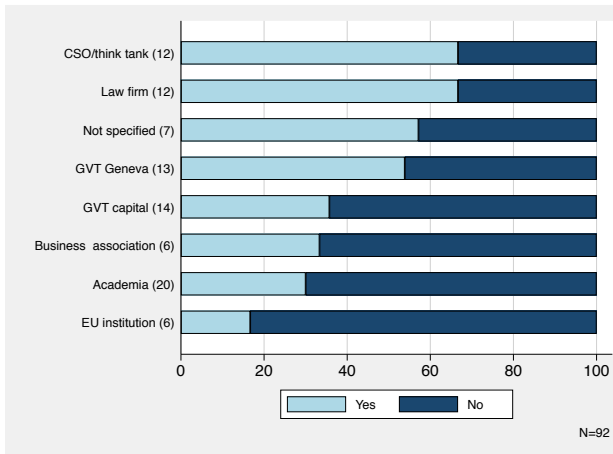
Has the Appellate Body gone beyond its boundaries?



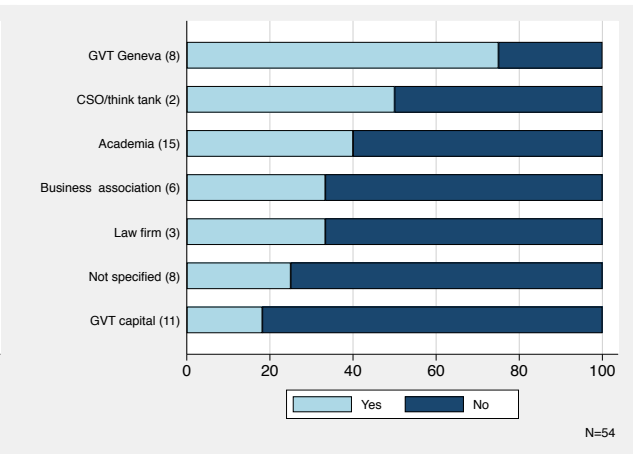
(a) Whole sample



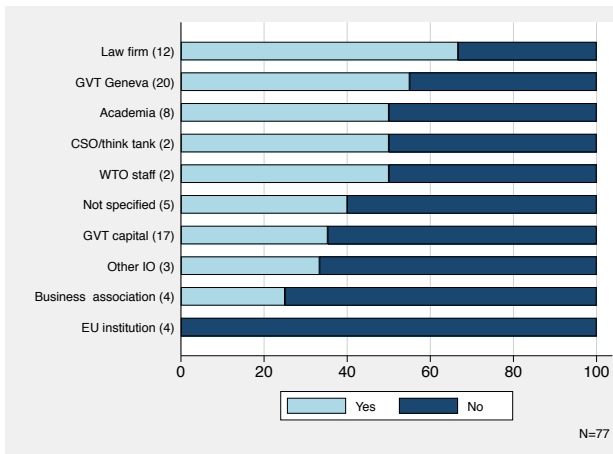
(b) Whole sample



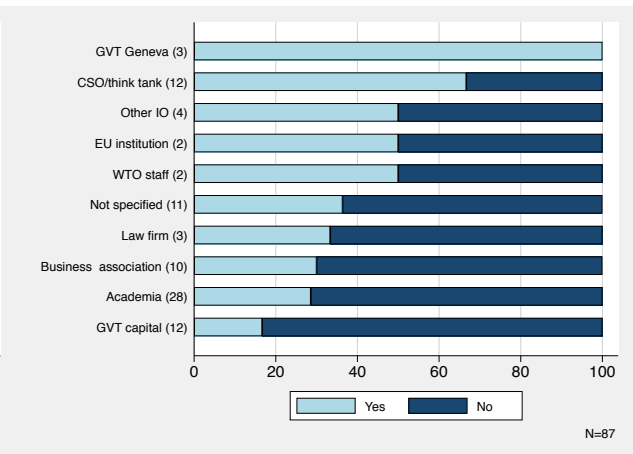
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



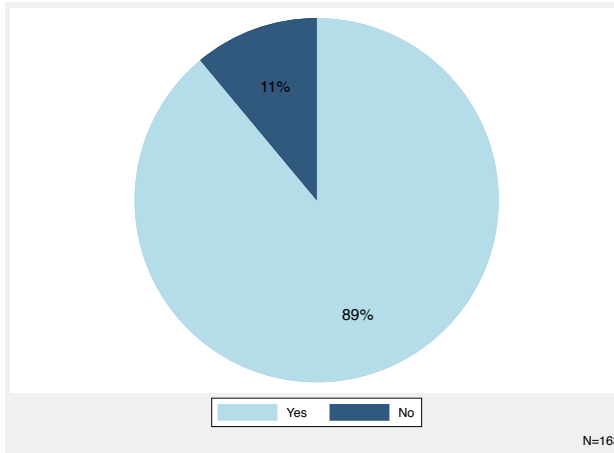
(e) Respondents involved in DS cases



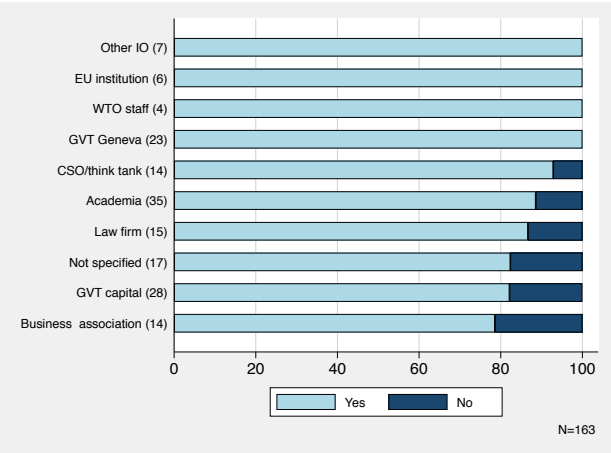
(f) Respondents not involved in DS cases

Question 3

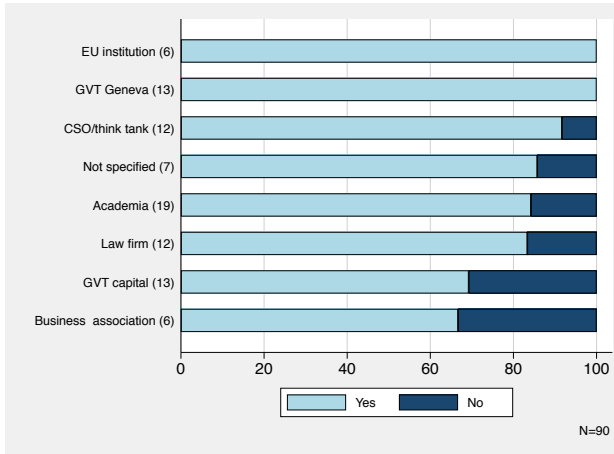
WTO adjudicators should exercise extraordinary circumspection and care in interpreting WTO obligations



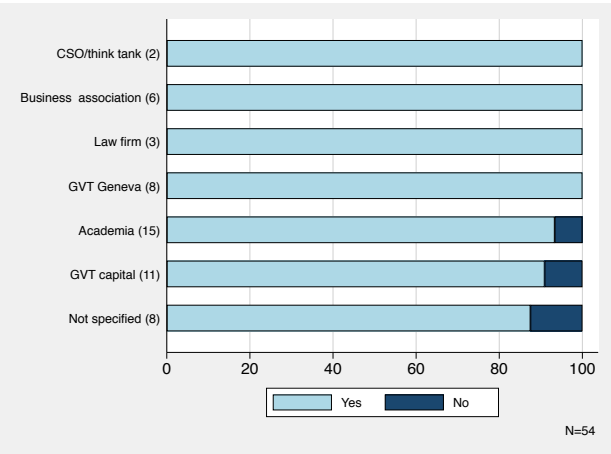
(a) Whole sample



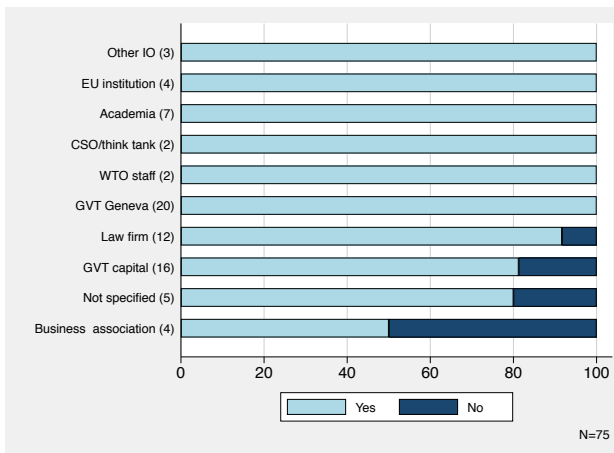
(b) Whole sample



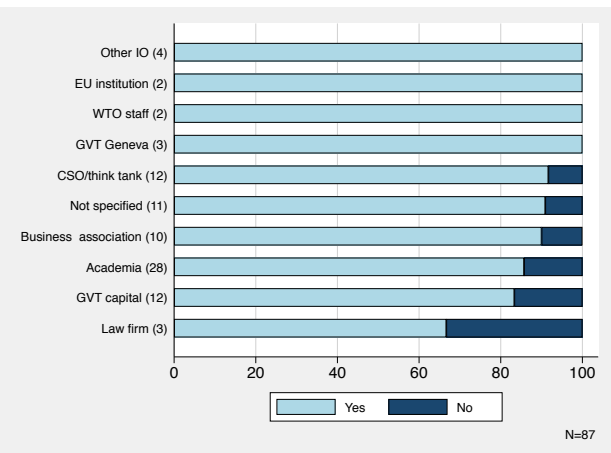
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



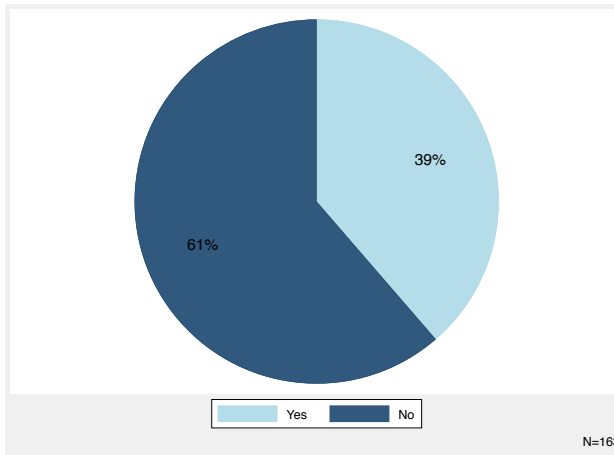
(e) Respondents involved in DS cases



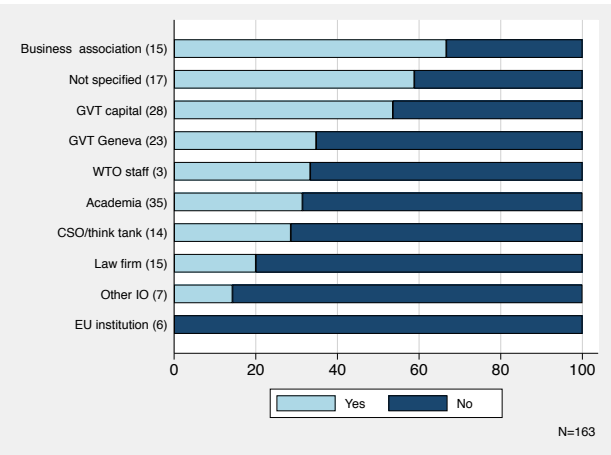
(f) Respondents not involved in DS cases

Question 4

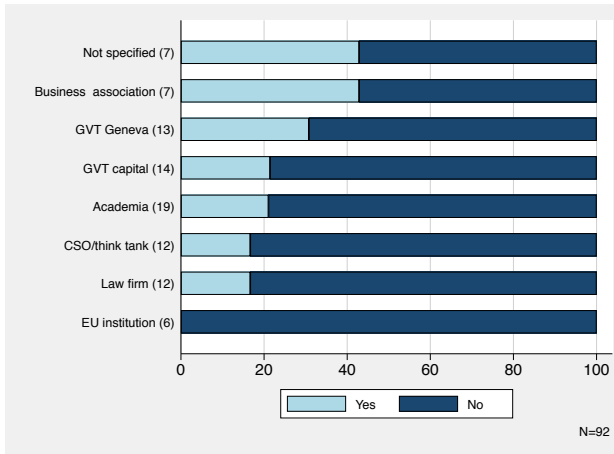
We prefer bilateral consultations rather than using a “court” in an inter-governmental agreement context



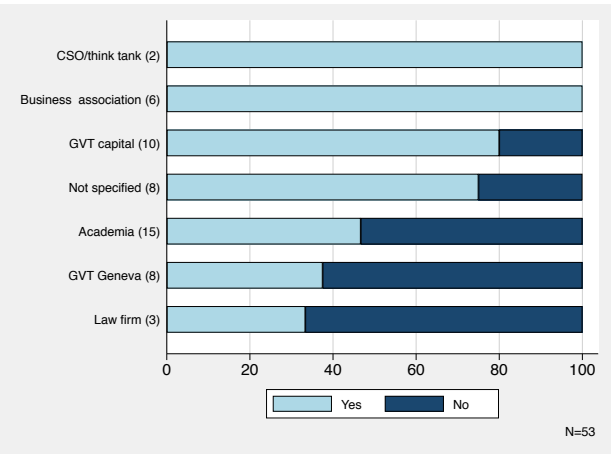
(a) Whole sample



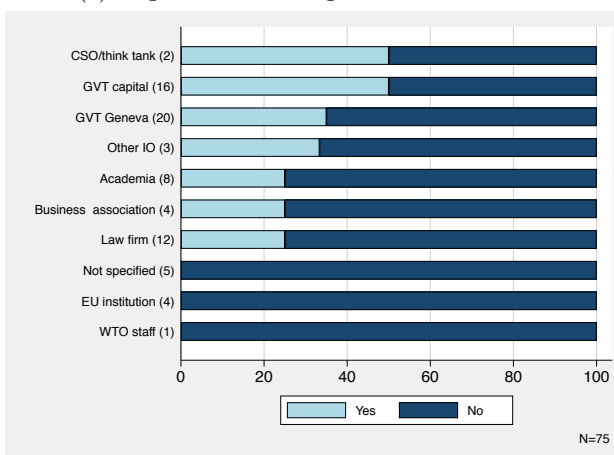
(b) Whole sample



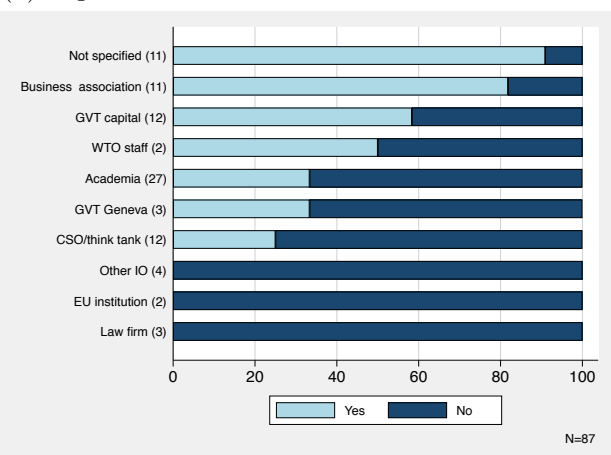
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



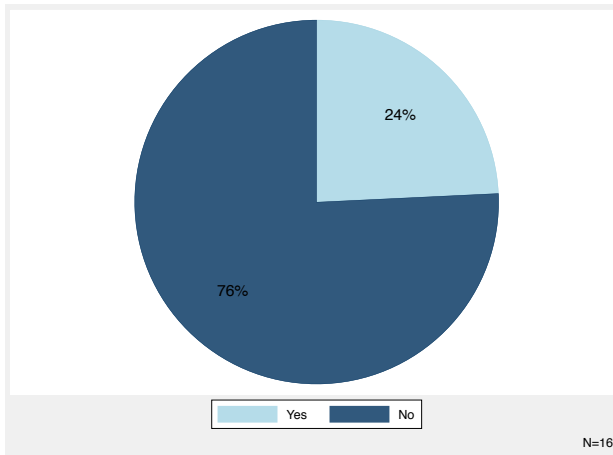
(e) Respondents involved in DS cases



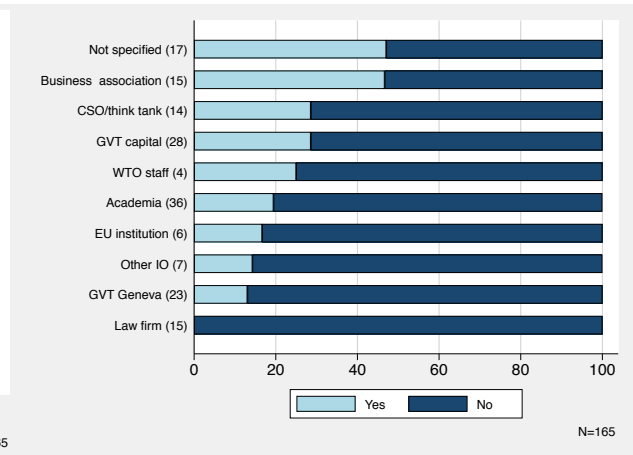
(f) Respondents not involved in DS cases

Question 5

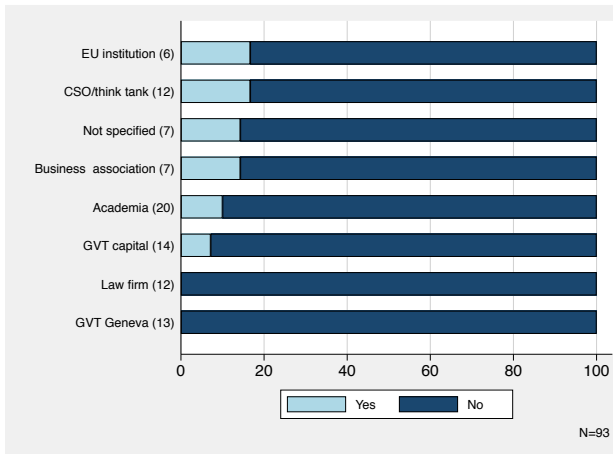
Free trade agreements offer a better forum to resolve disputes



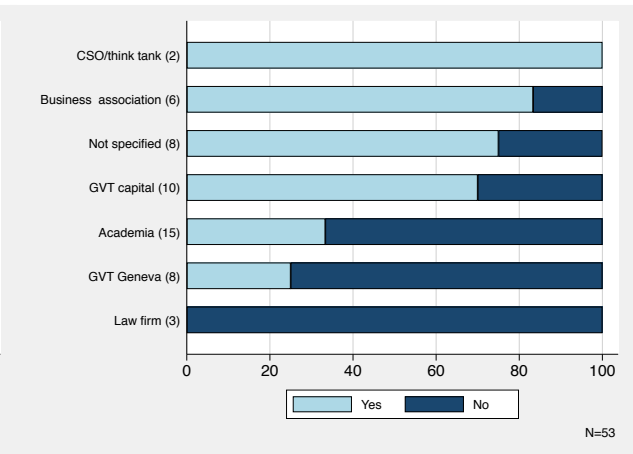
(a) Whole sample



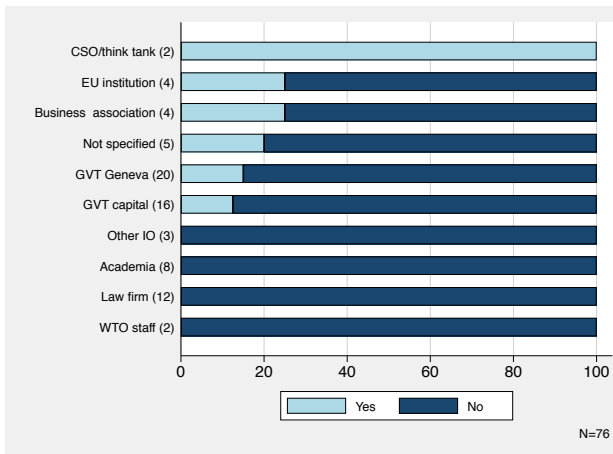
(b) Whole sample



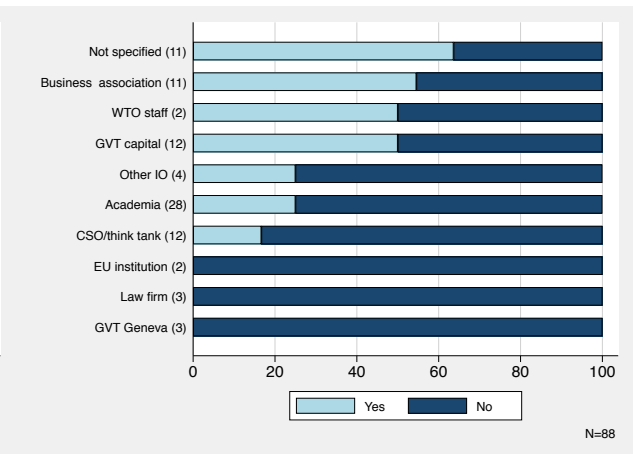
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



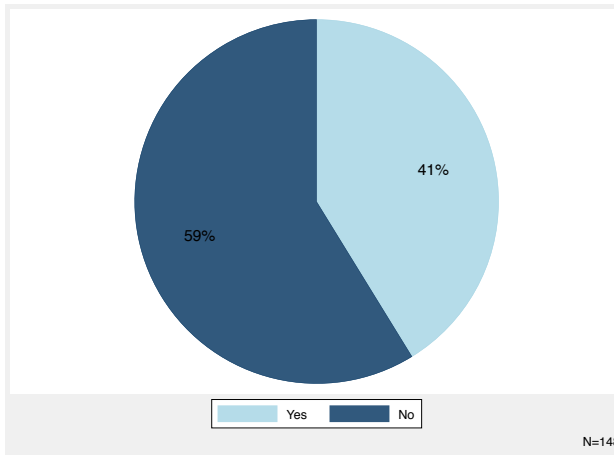
(e) Respondents involved in DS cases



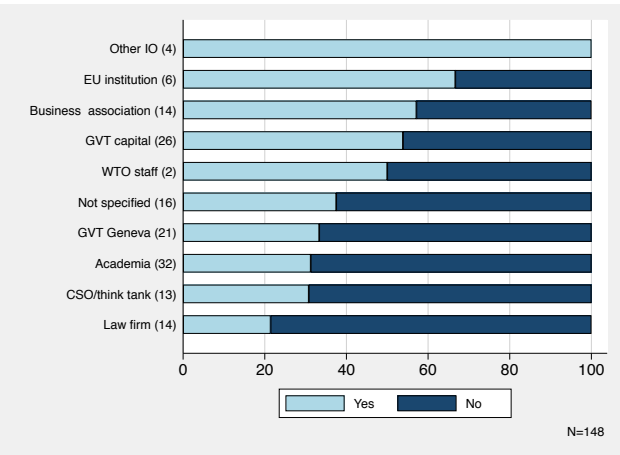
(f) Respondents not involved in DS cases

Question 6

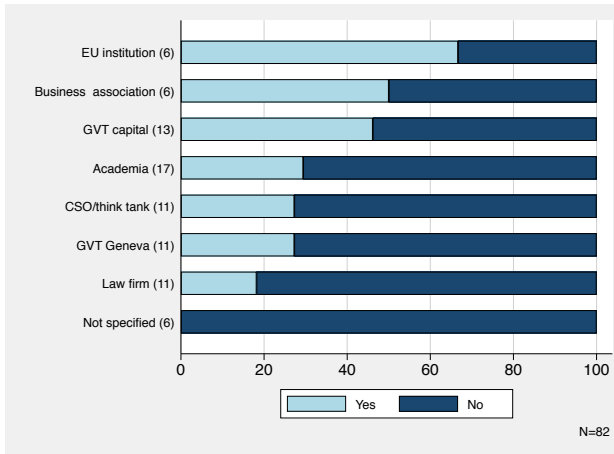
Has your country considered using arbitration instead of formal WTO dispute settlement procedures?



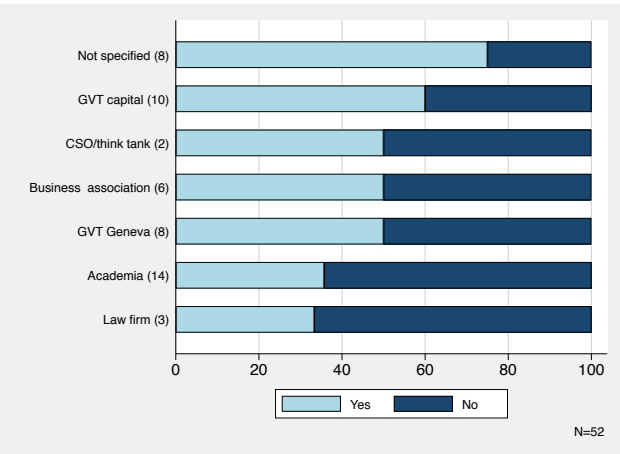
(a) Whole sample



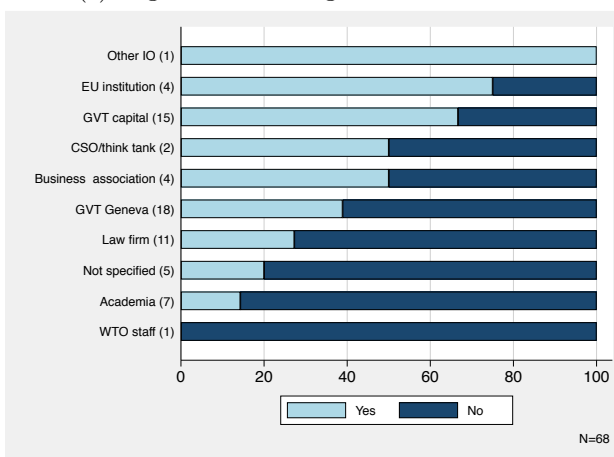
(b) Whole sample



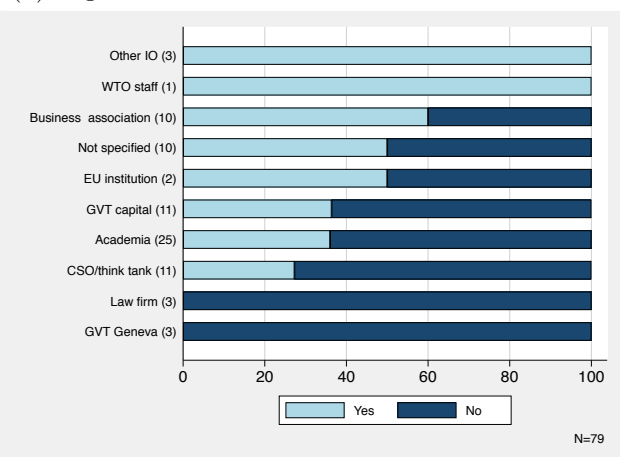
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



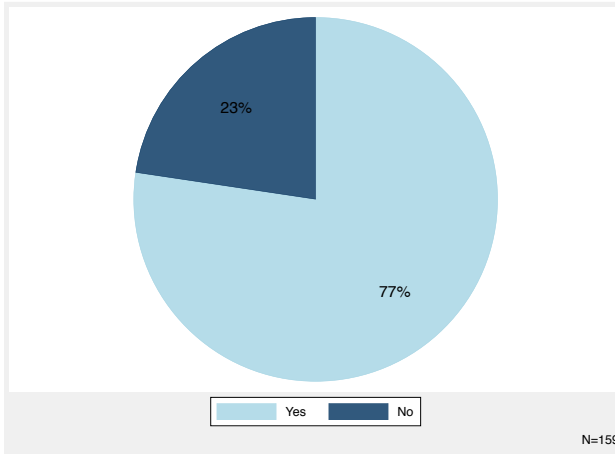
(e) Respondents involved in DS cases



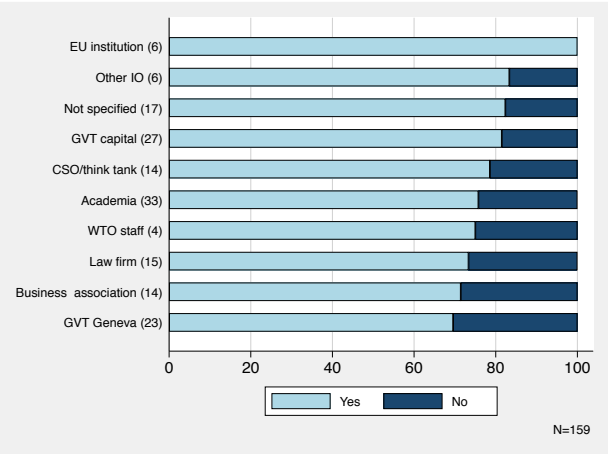
(f) Respondents not involved in DS cases

Question 7

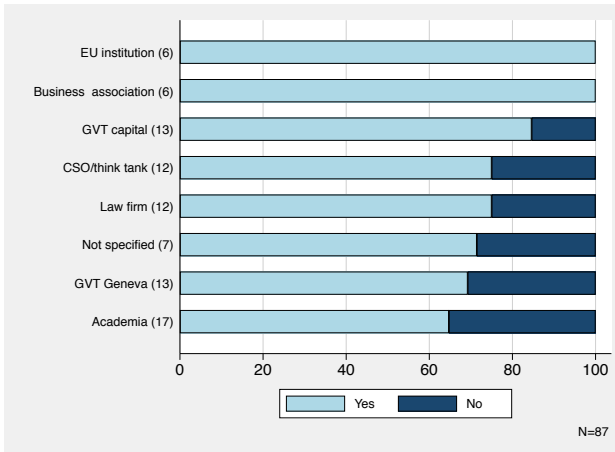
Does the WTO need a mediation mechanism?



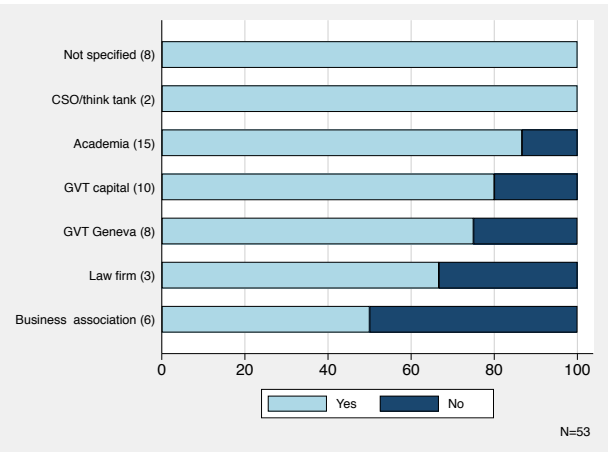
(a) Whole sample



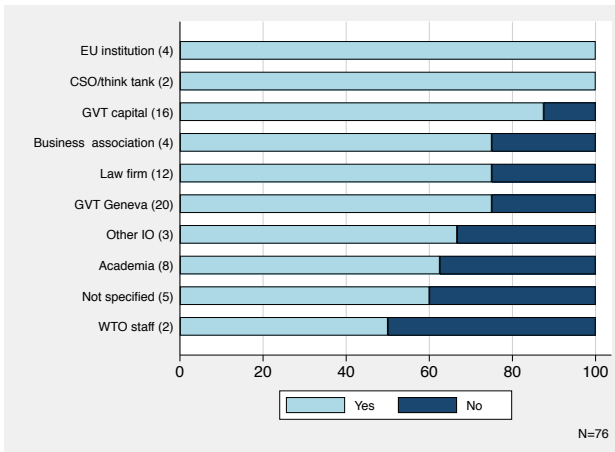
(b) Whole sample



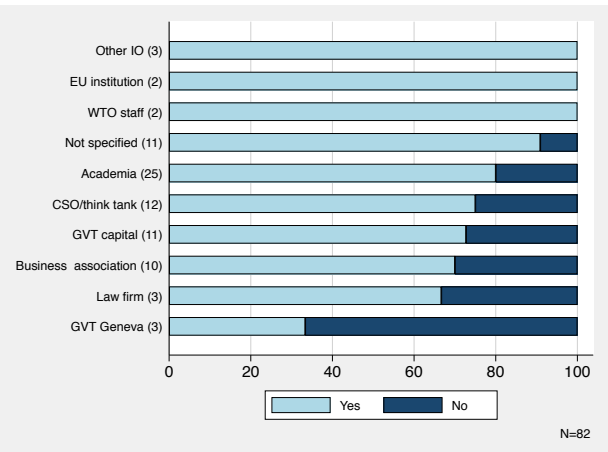
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



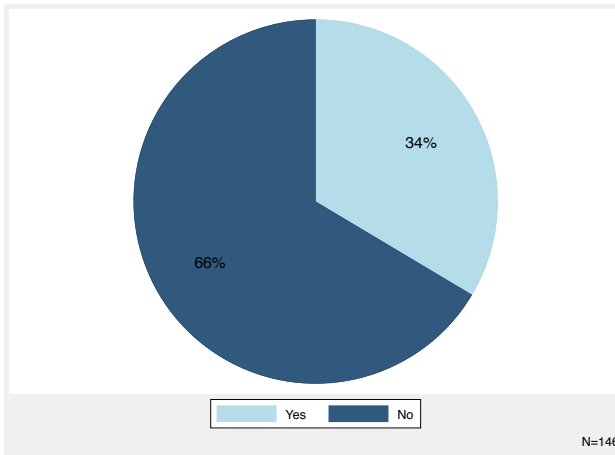
(e) Respondents involved in DS cases



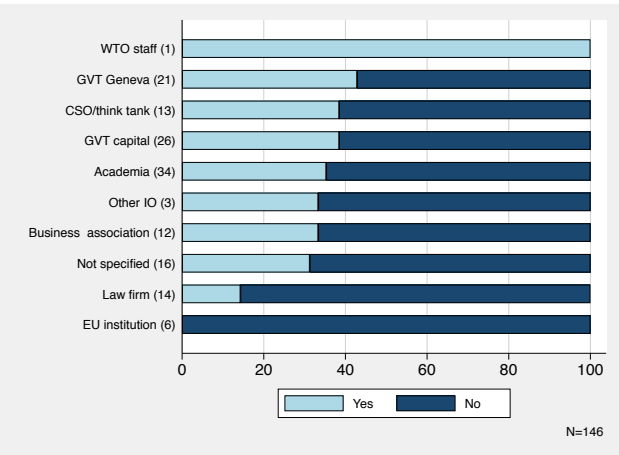
(f) Respondents not involved in DS cases

Question 8

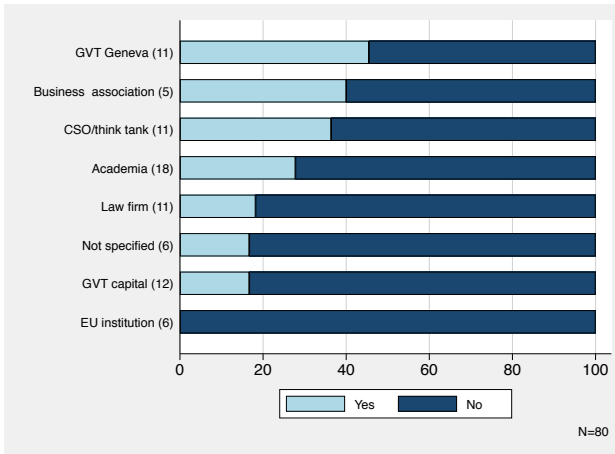
My country does not launch disputes when other parties have larger interests at stake than we do



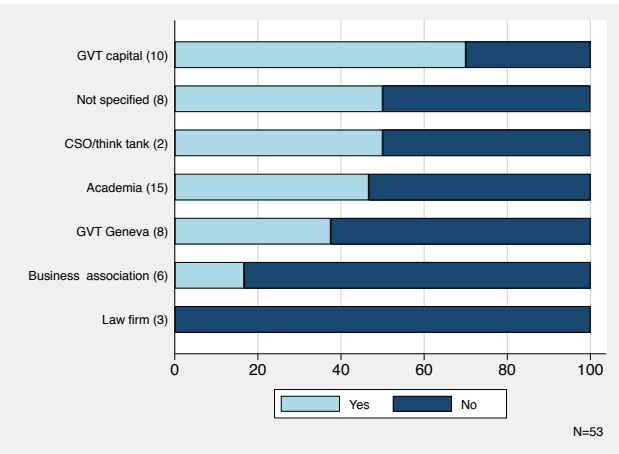
(a) Whole sample



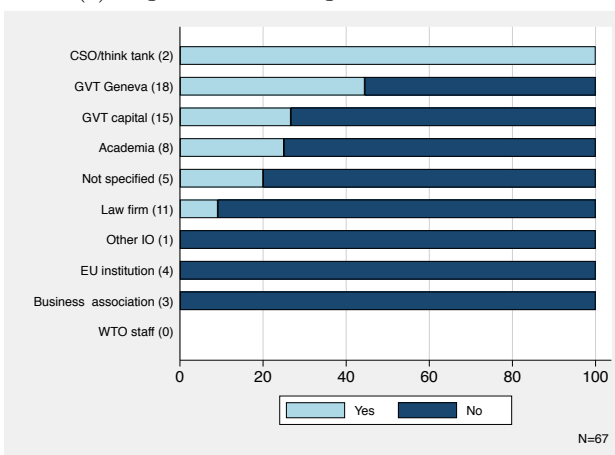
(b) Whole sample



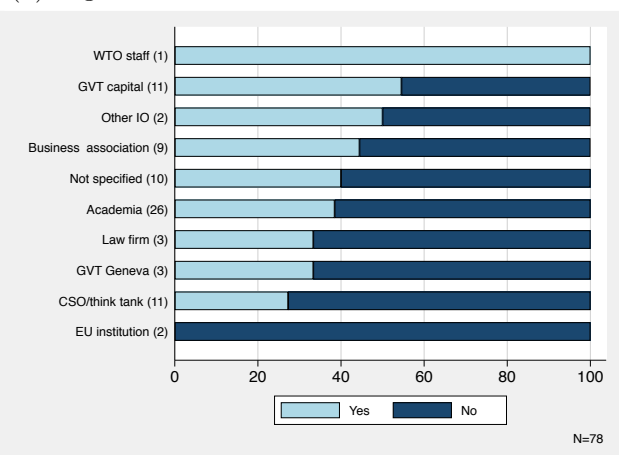
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



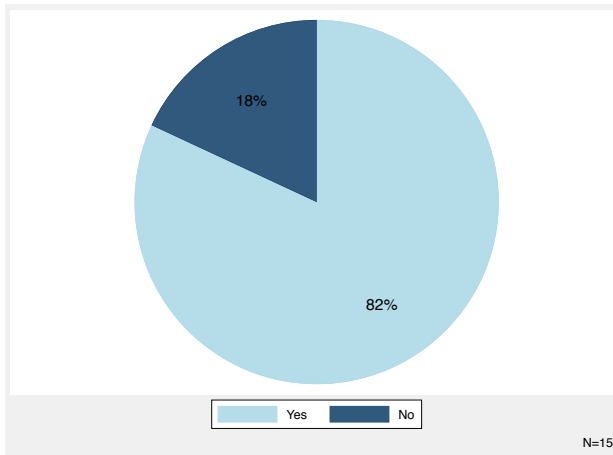
(e) Respondents involved in DS cases



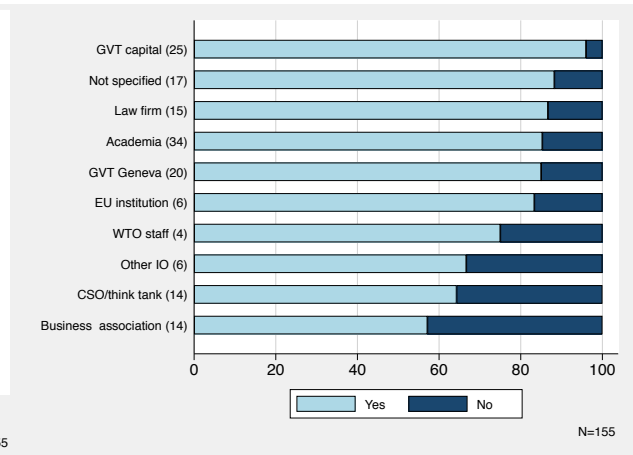
(f) Respondents not involved in DS cases

Question 9

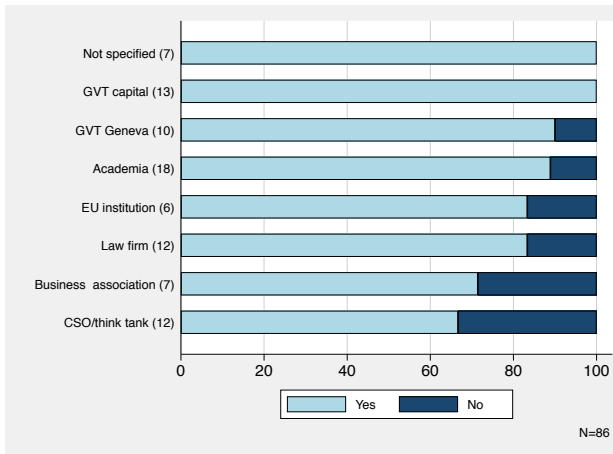
Panelists appointed to dispute settlement panels are objective and unbiased



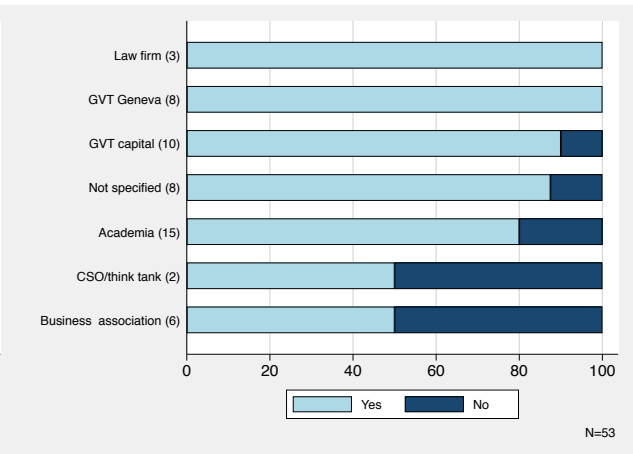
(a) Whole sample



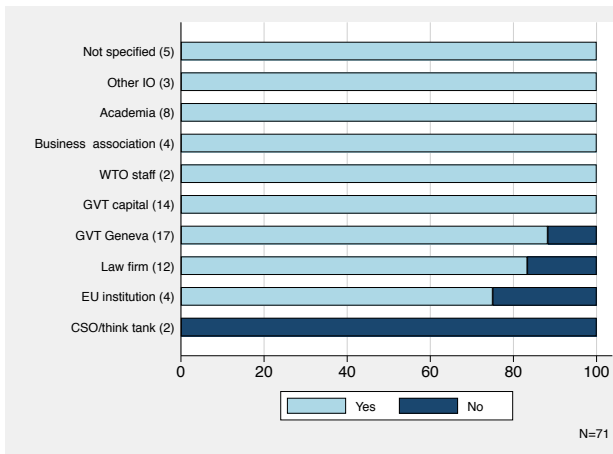
(b) Whole sample



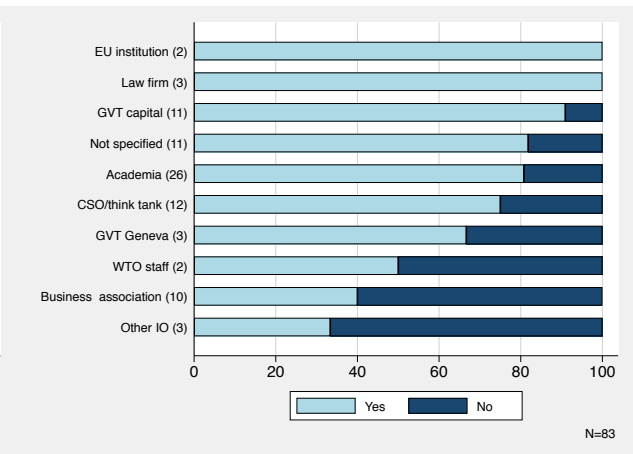
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



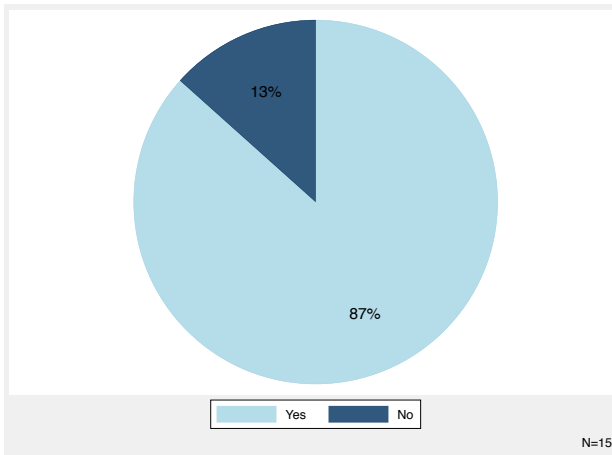
(e) Respondents involved in DS cases



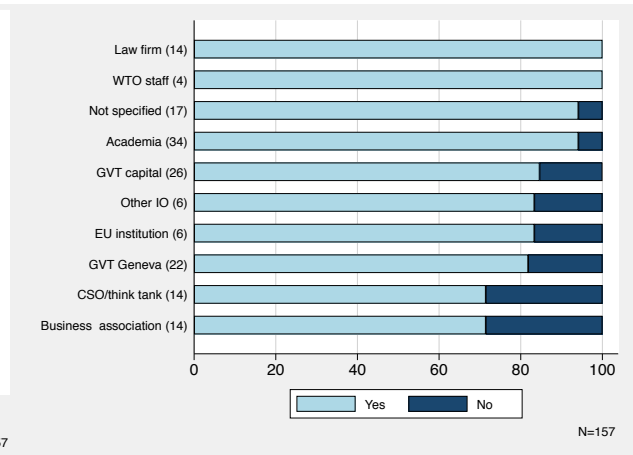
(f) Respondents not involved in DS cases

Question 10

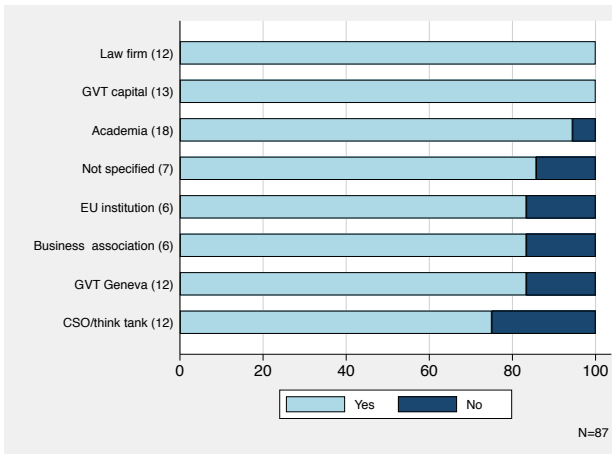
Should WTO panel reports be binding?



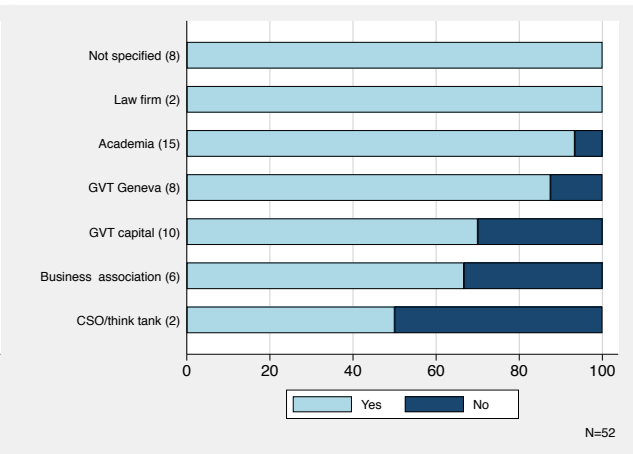
(a) Whole sample



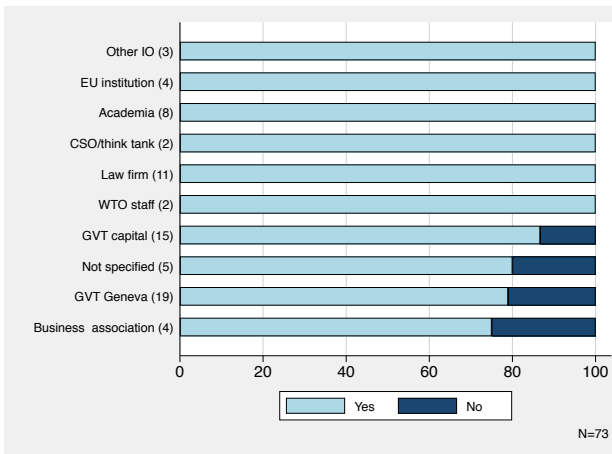
(b) Whole sample



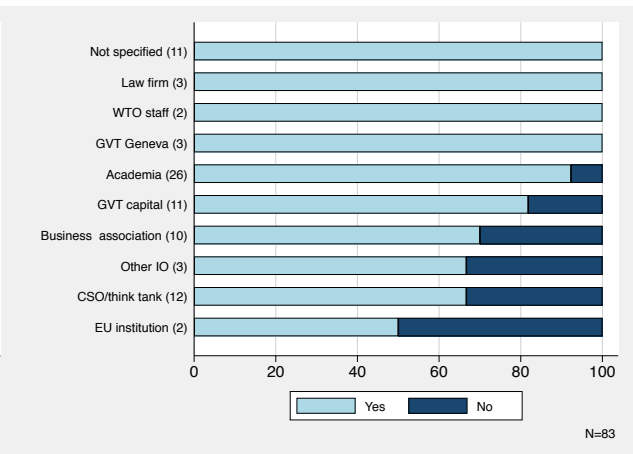
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



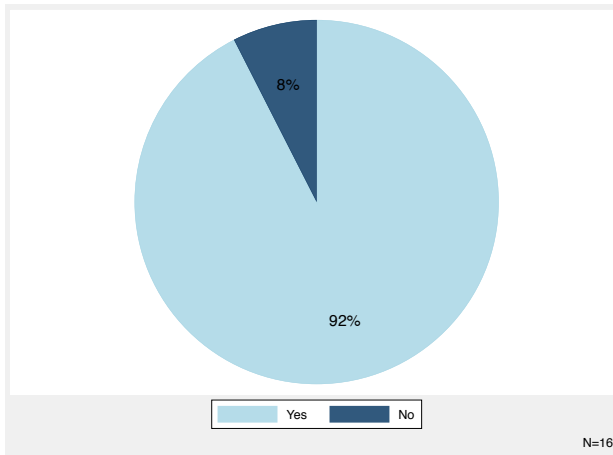
(e) Respondents involved in DS cases



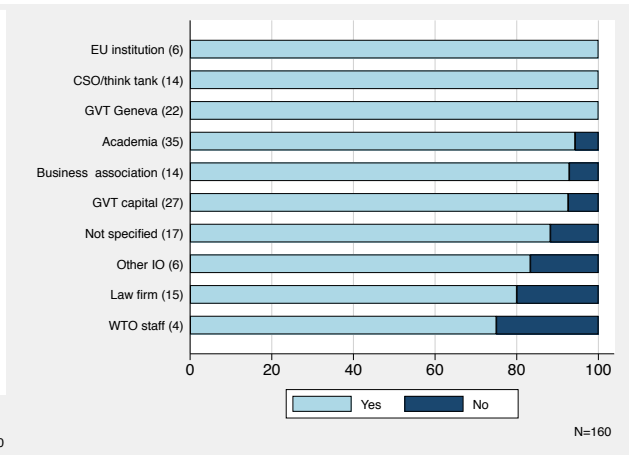
(f) Respondents not involved in DS cases

Question 11

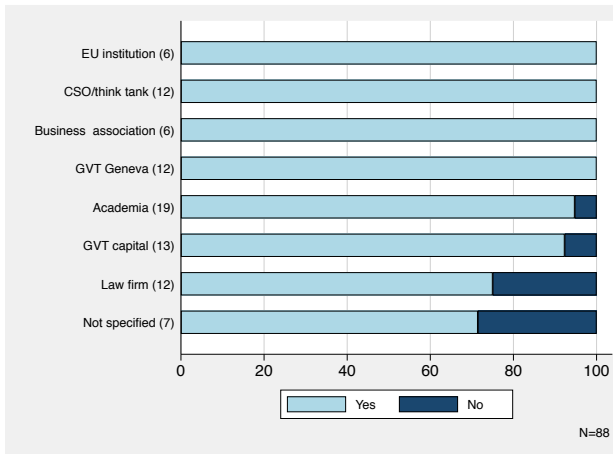
Does the WTO need the Appellate Body to ensure coherent case law?



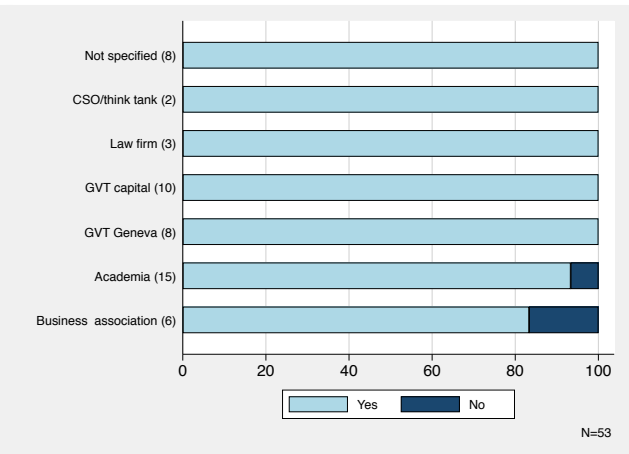
(a) Whole sample



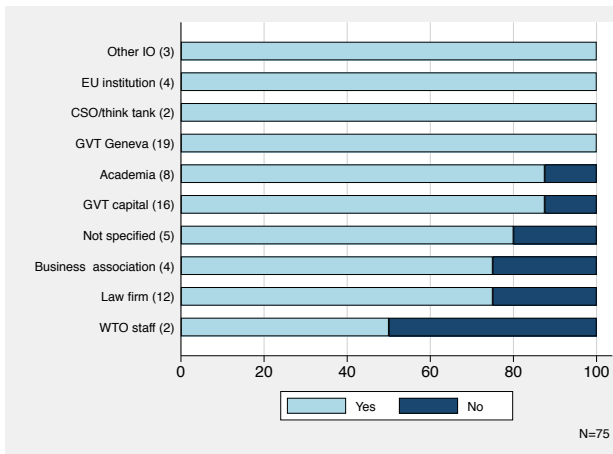
(b) Whole sample



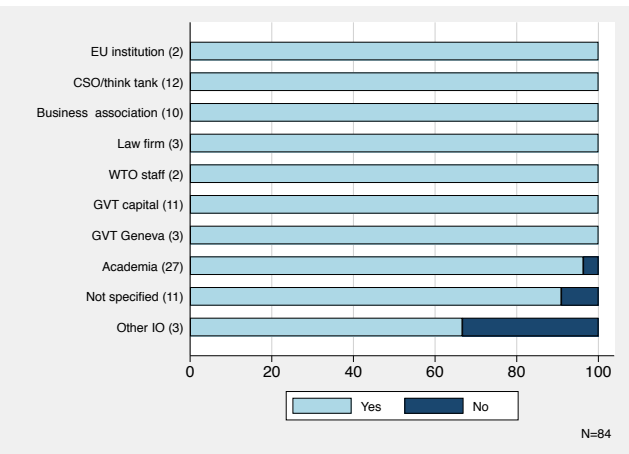
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



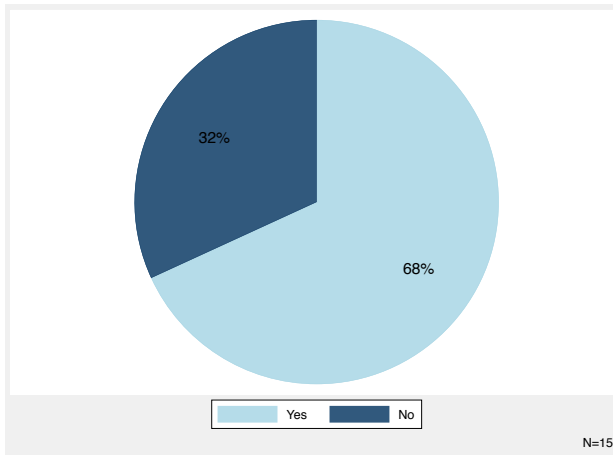
(e) Respondents involved in DS cases



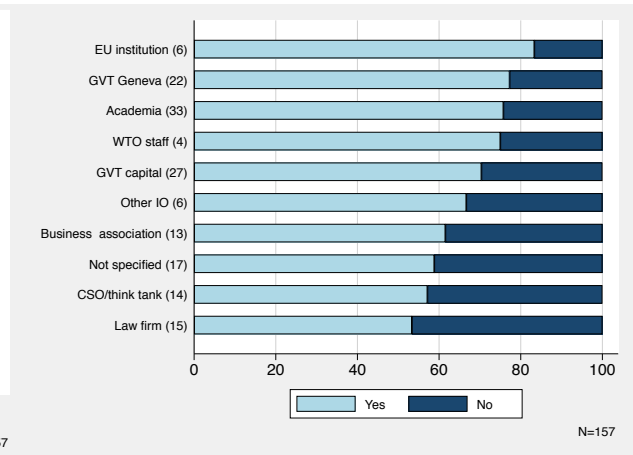
(f) Respondents not involved in DS cases

Question 12

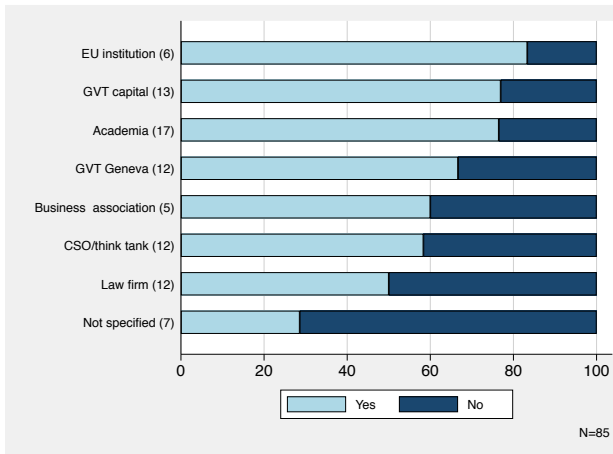
Do you think that the Appellate Body has in fact provided coherent case law?



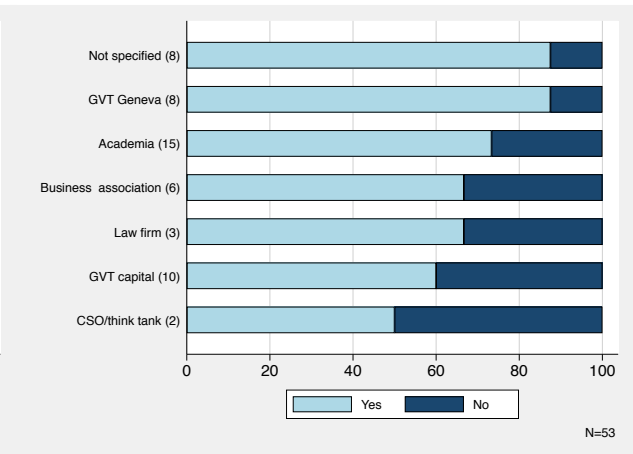
(a) Whole sample



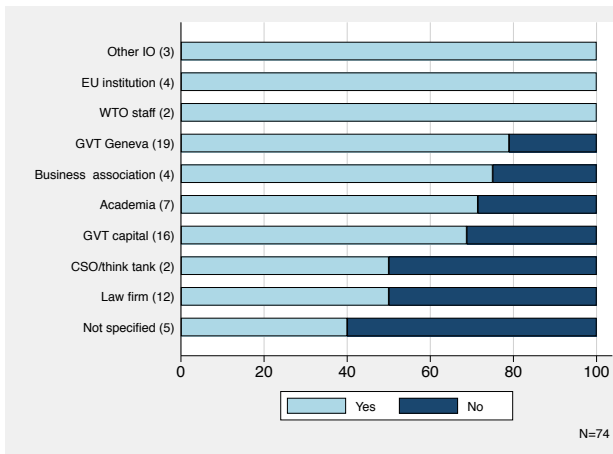
(b) Whole sample



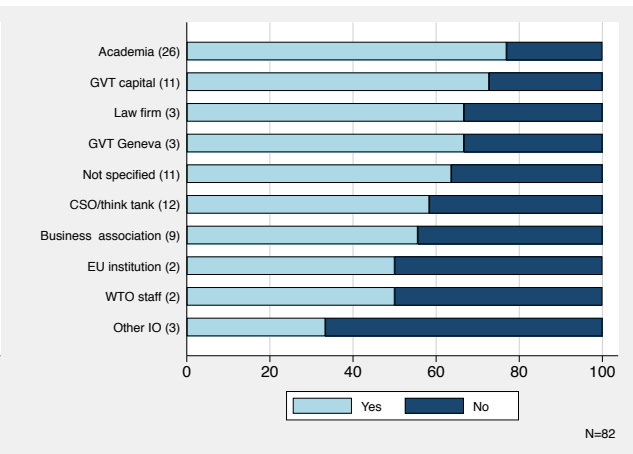
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



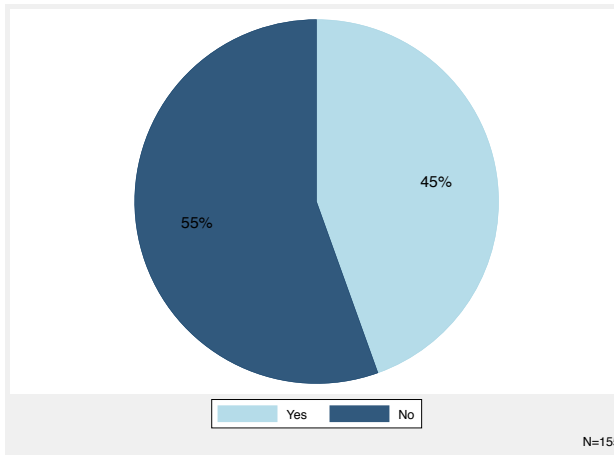
(e) Respondents involved in DS cases



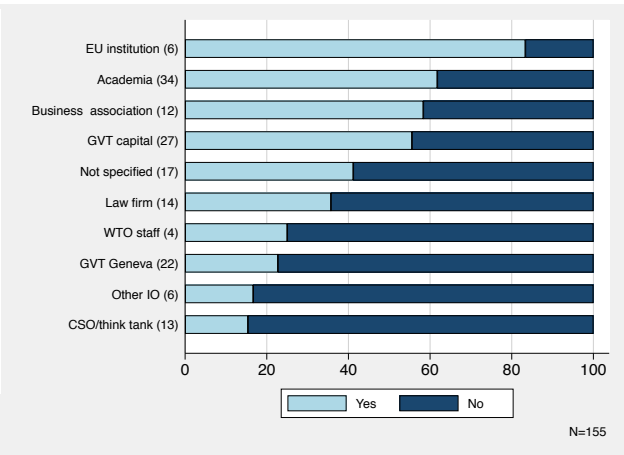
(f) Respondents not involved in DS cases

Question 13

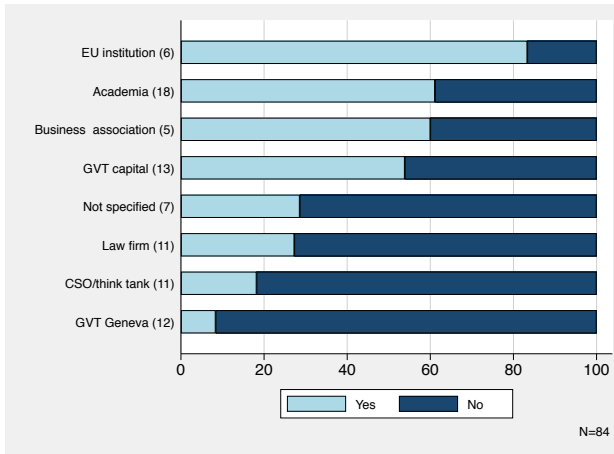
Has the Appellate Body always acted consistently with the Dispute Settlement Understanding?



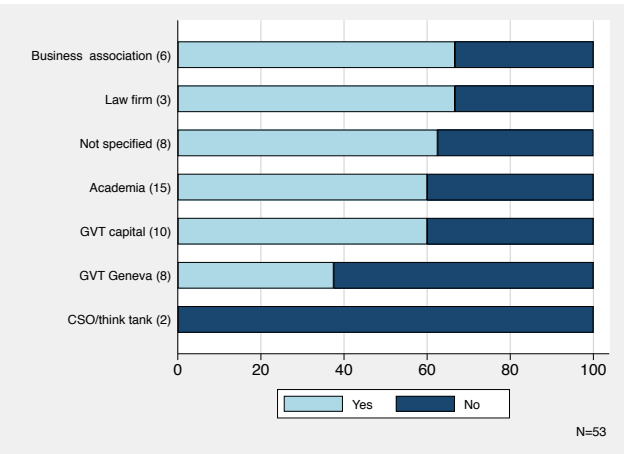
(a) Whole sample



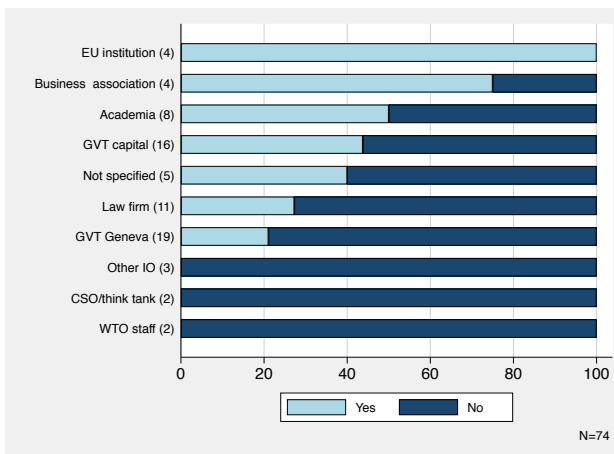
(b) Whole sample



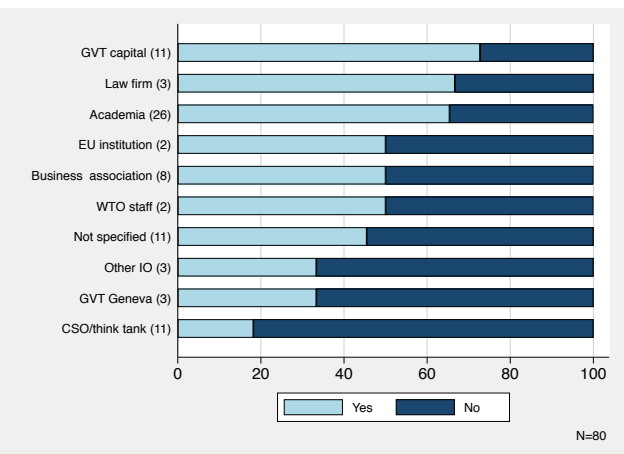
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



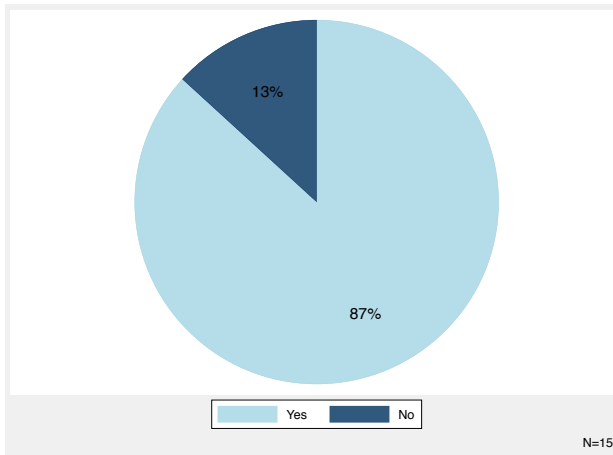
(e) Respondents involved in DS cases



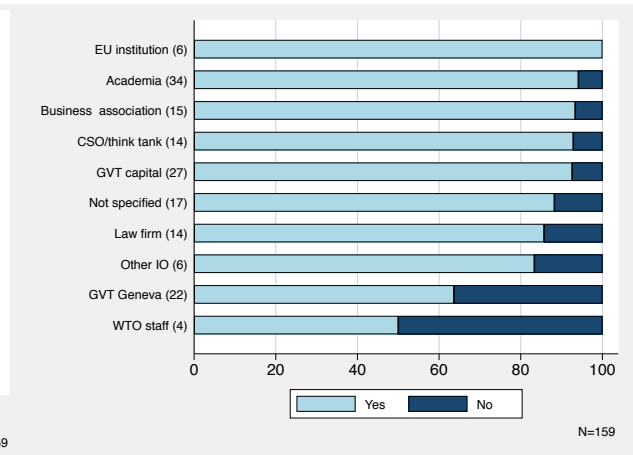
(f) Respondents not involved in DS cases

Question 14s1

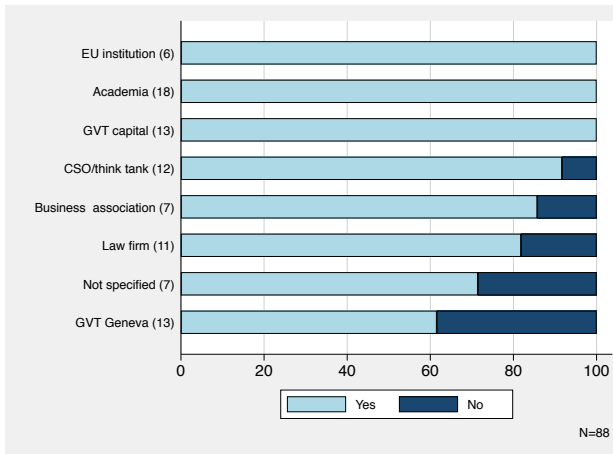
Dispute settlement is valuable for legal clarification; to create a precedent



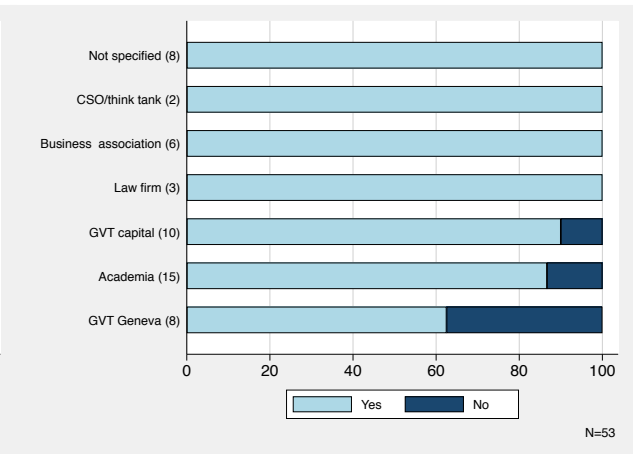
(a) Whole sample



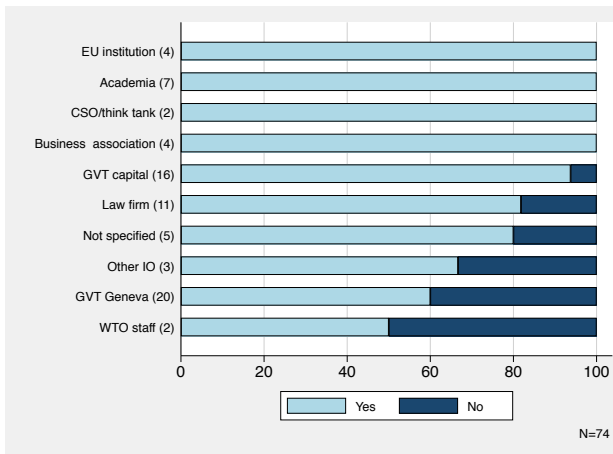
(b) Whole sample



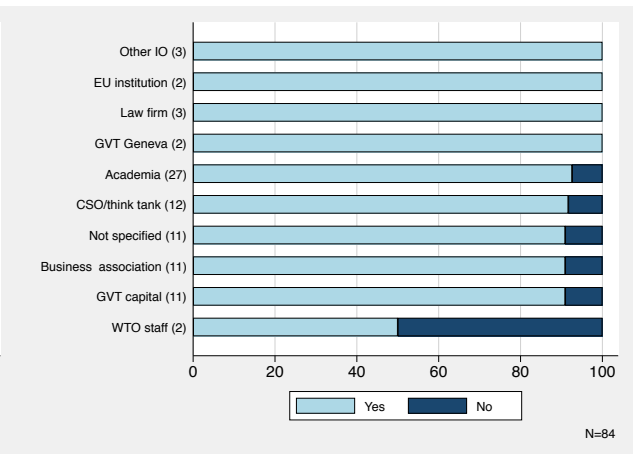
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



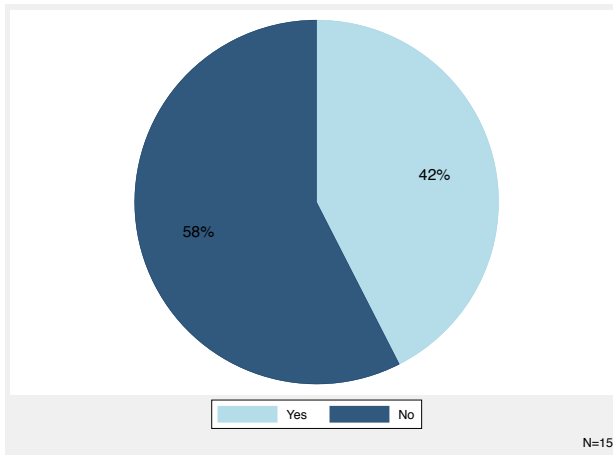
(e) Respondents involved in DS cases



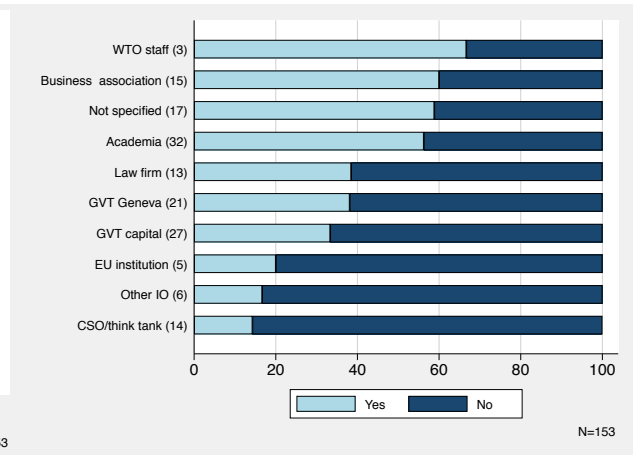
(f) Respondents not involved in DS cases

Question 14s2

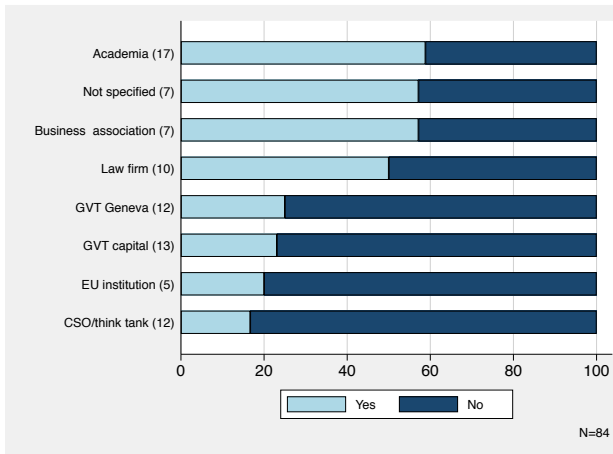
Dispute settlement is valuable for being alternative to negotiations



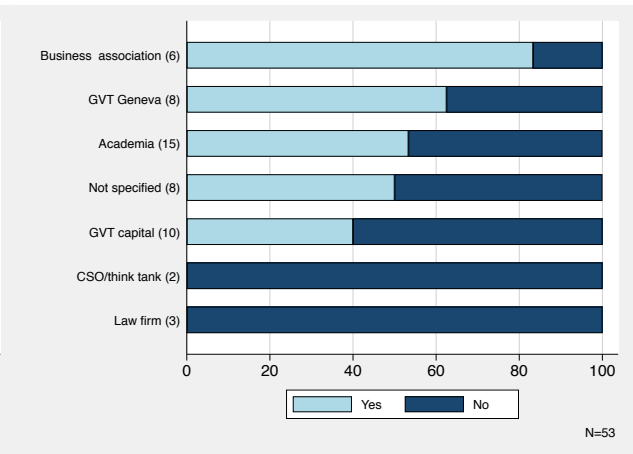
(a) Whole sample



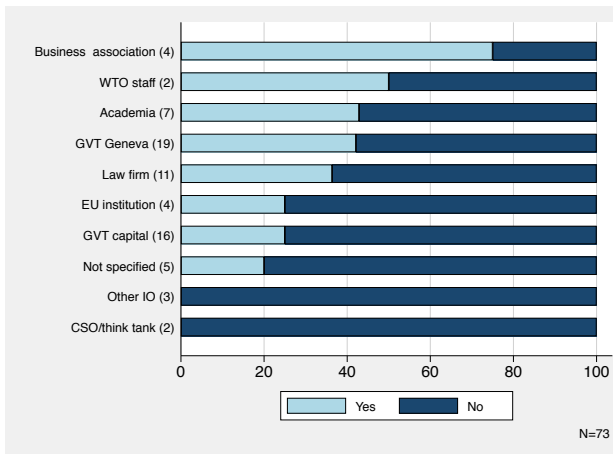
(b) Whole sample



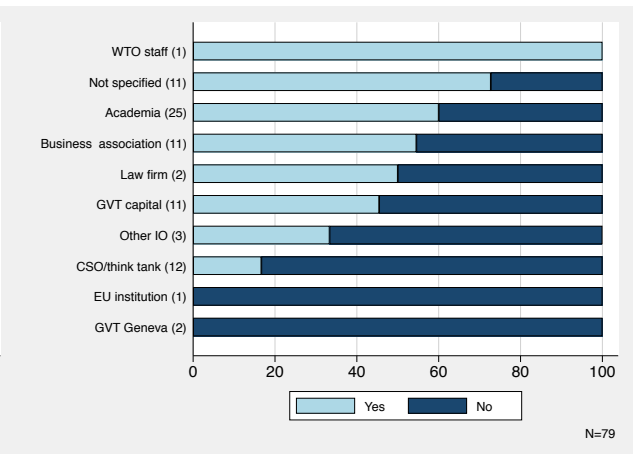
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



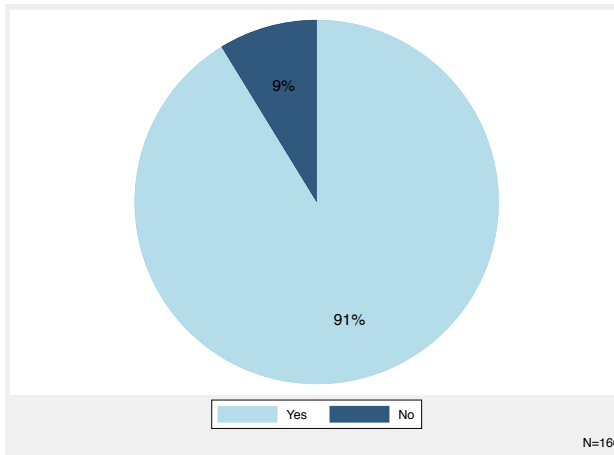
(e) Respondents involved in DS cases



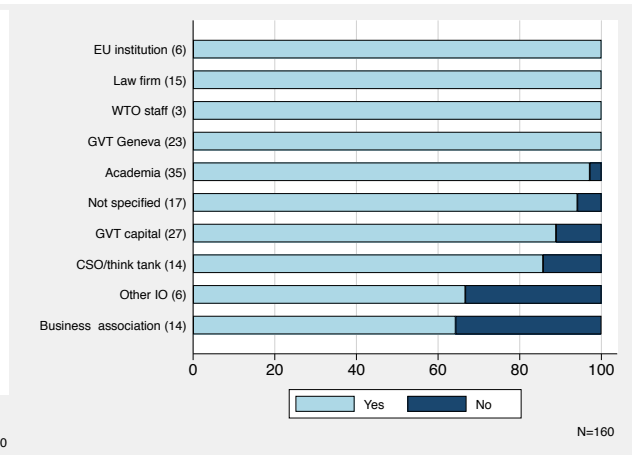
(f) Respondents not involved in DS cases

Question 14s3

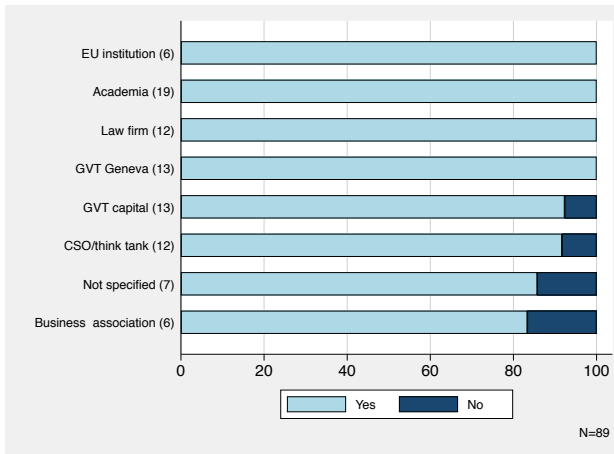
Dispute settlement is valuable for ensuring predictability



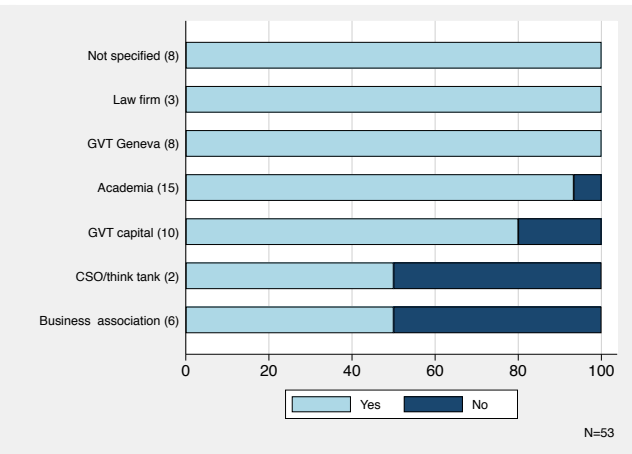
(a) Whole sample



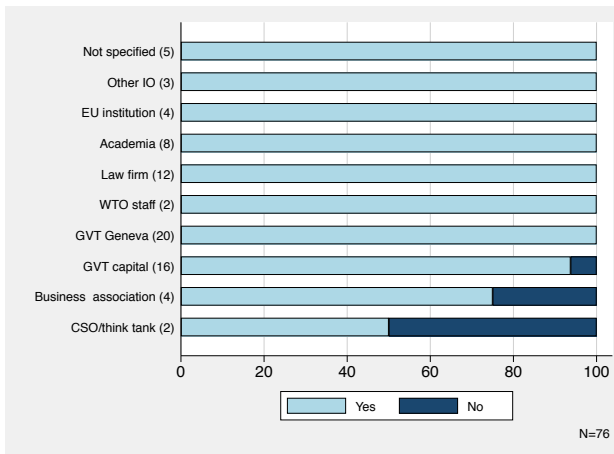
(b) Whole sample



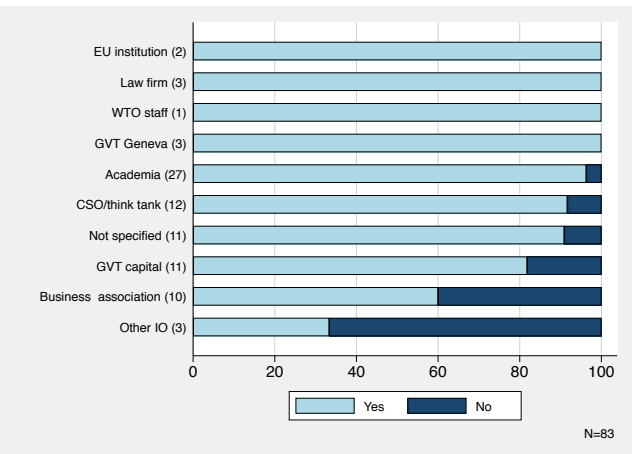
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



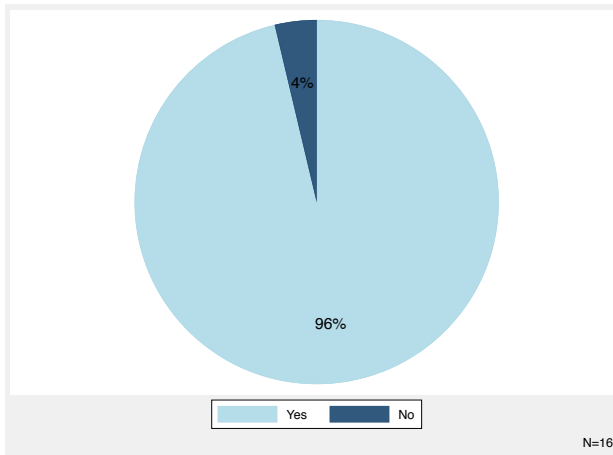
(e) Respondents involved in DS cases



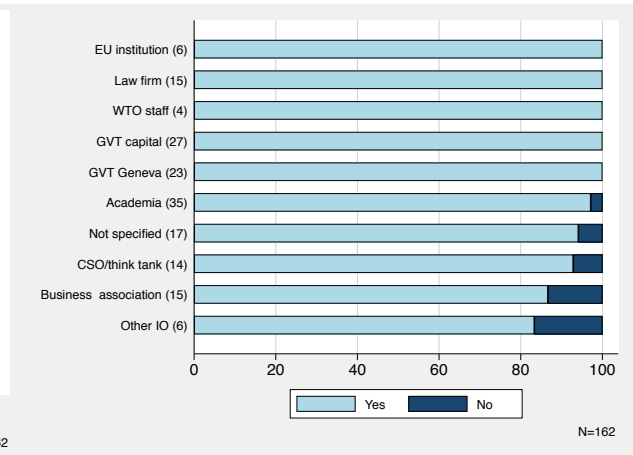
(f) Respondents not involved in DS cases

Question 14s4

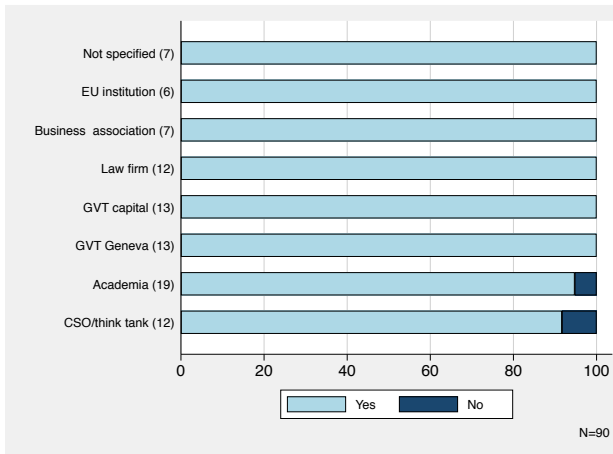
Dispute settlement is valuable for enforcement of commitments



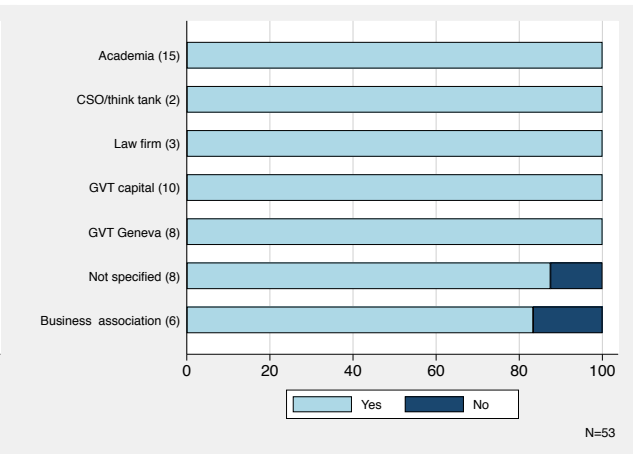
(a) Whole sample



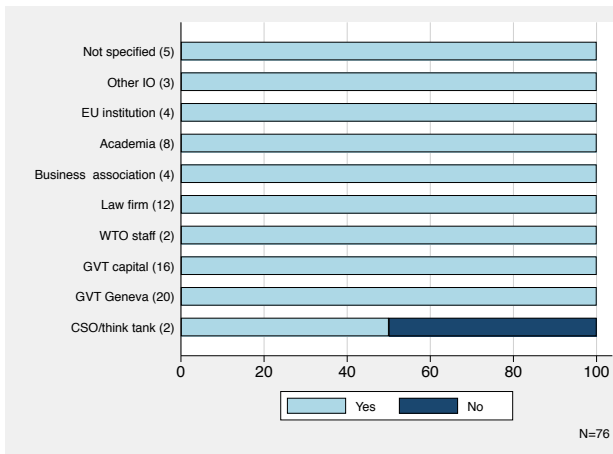
(b) Whole sample



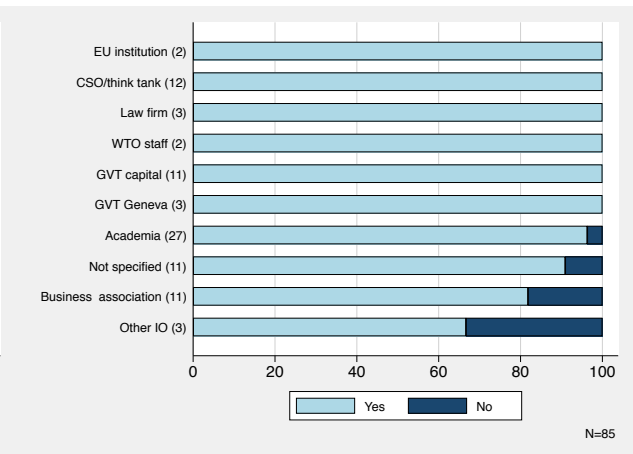
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



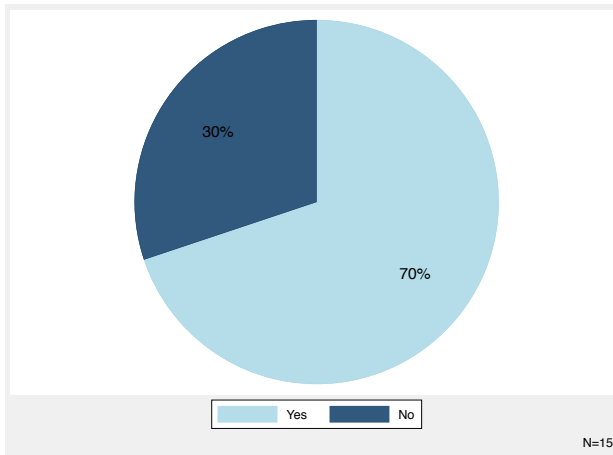
(e) Respondents involved in DS cases



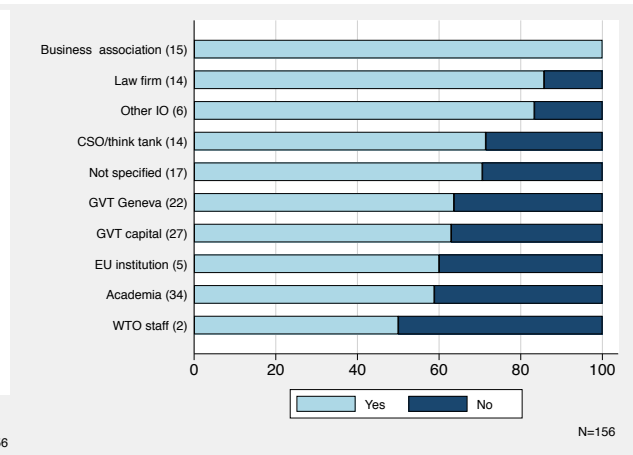
(f) Respondents not involved in DS cases

Question 14s5

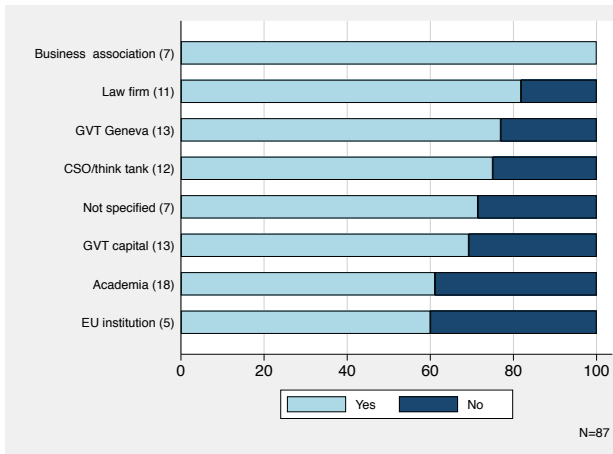
Dispute settlement is valuable for punishing cheaters



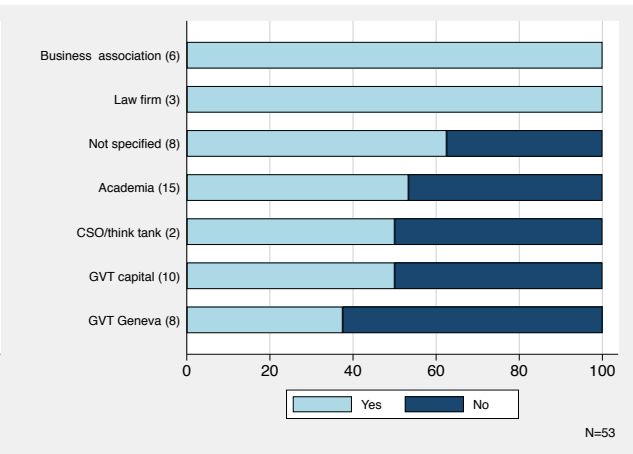
(a) Whole sample



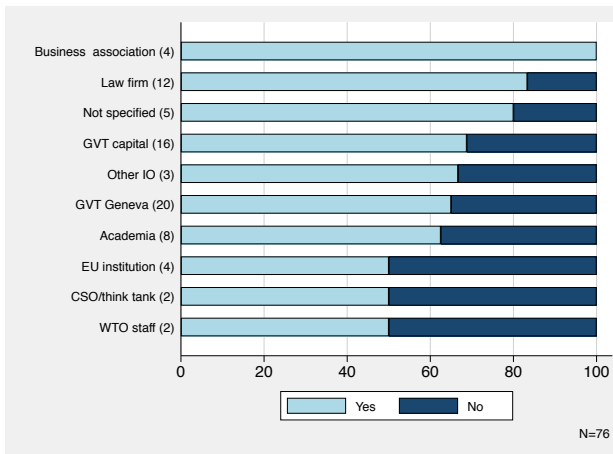
(b) Whole sample



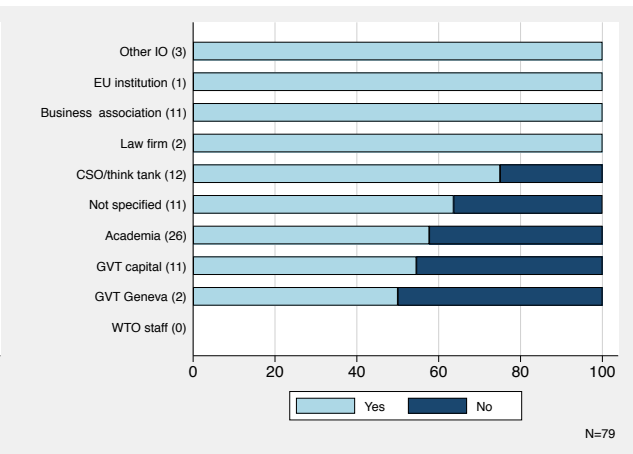
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



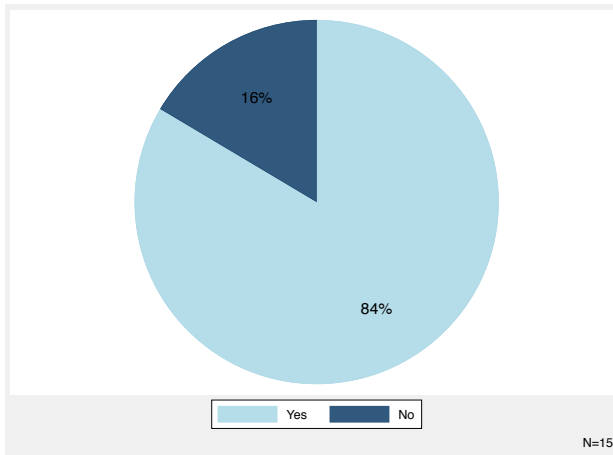
(e) Respondents involved in DS cases



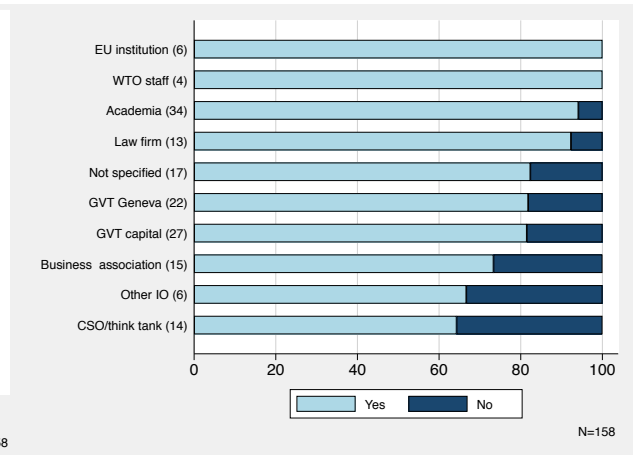
(f) Respondents not involved in DS cases

Question 14s6

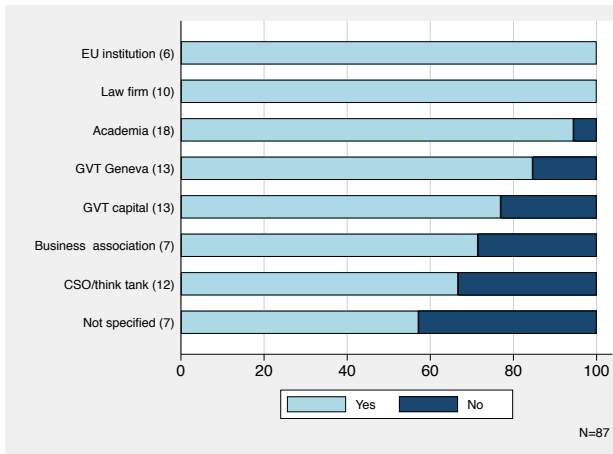
Dispute settlement is valuable for securing a mutually acceptable solution



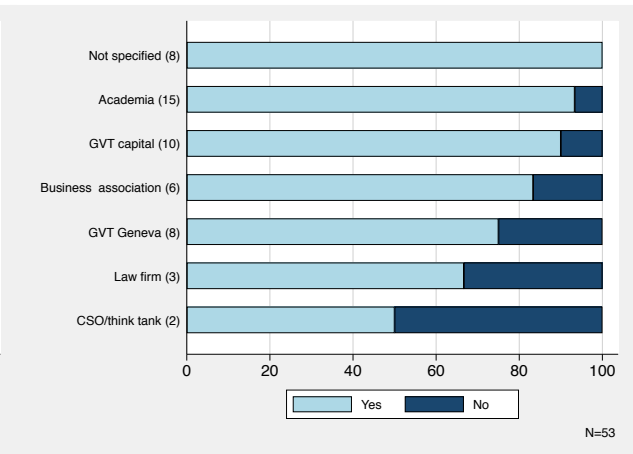
(a) Whole sample



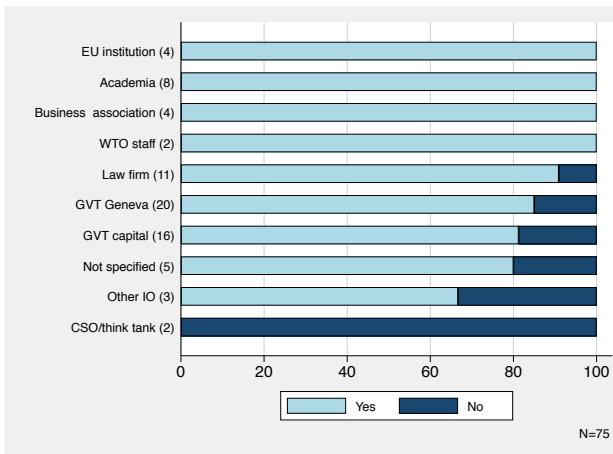
(b) Whole sample



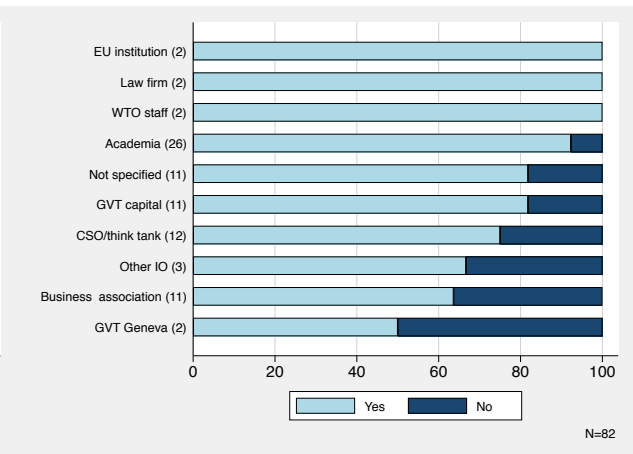
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



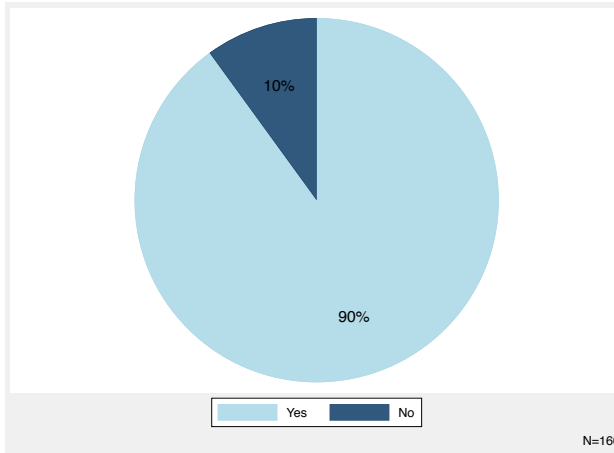
(e) Respondents involved in DS cases



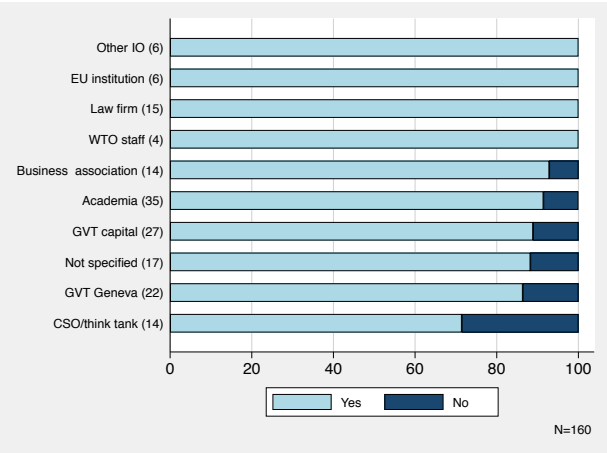
(f) Respondents not involved in DS cases

Question 15

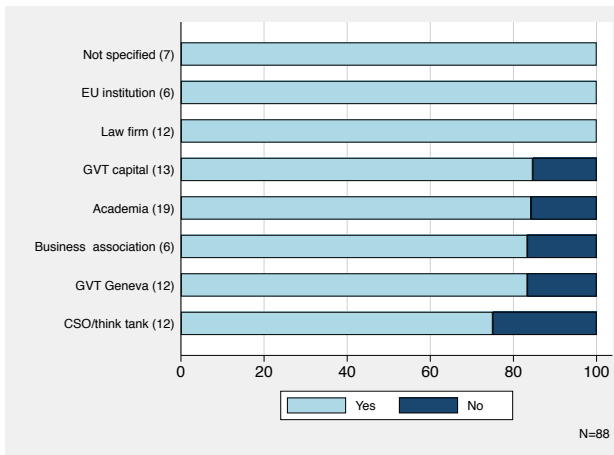
A compulsory and binding dispute settlement system that includes automatic adoption of reports is a necessary feature of the multilateral trade system



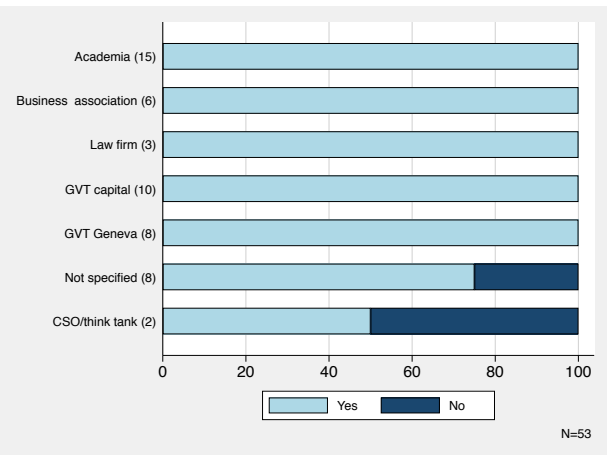
(a) Whole sample



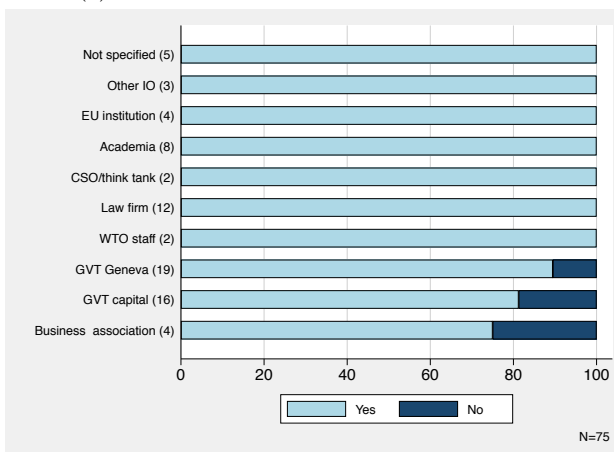
(b) Whole sample



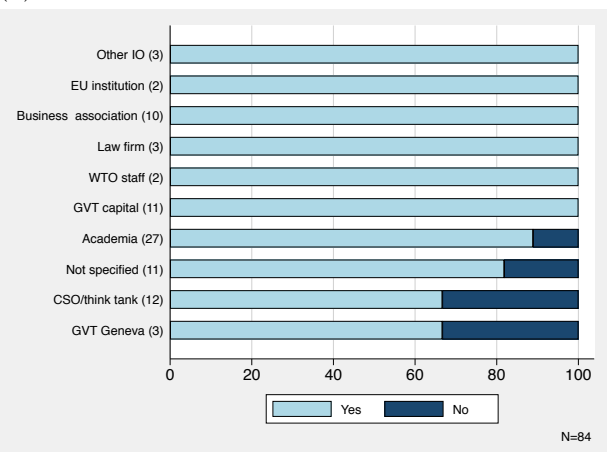
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



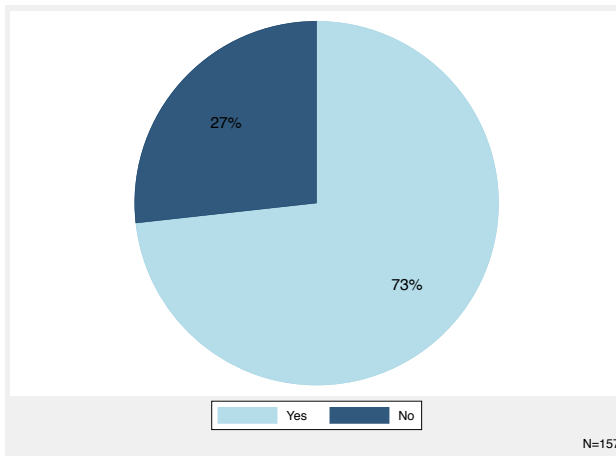
(e) Respondents involved in DS cases



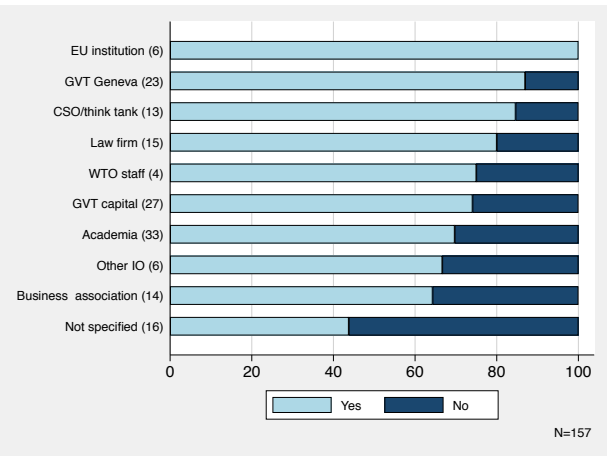
(f) Respondents not involved in DS cases

Question 16

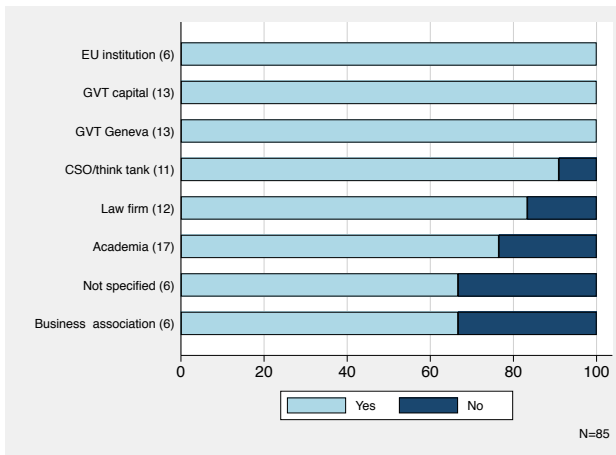
When officials in capitals ask themselves whether a new policy is consistent with WTO rules, do they pay attention to Appellate Body rulings?



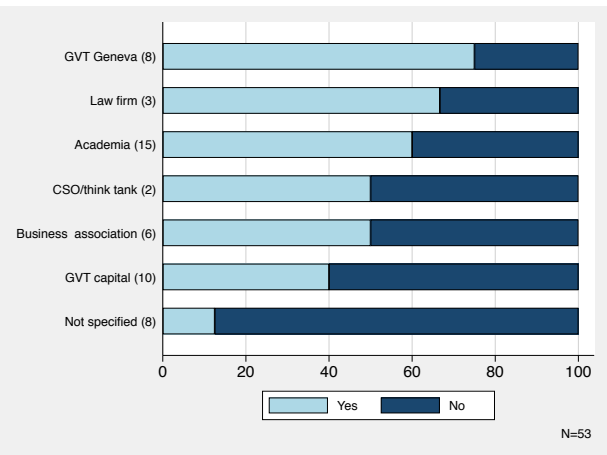
(a) Whole sample



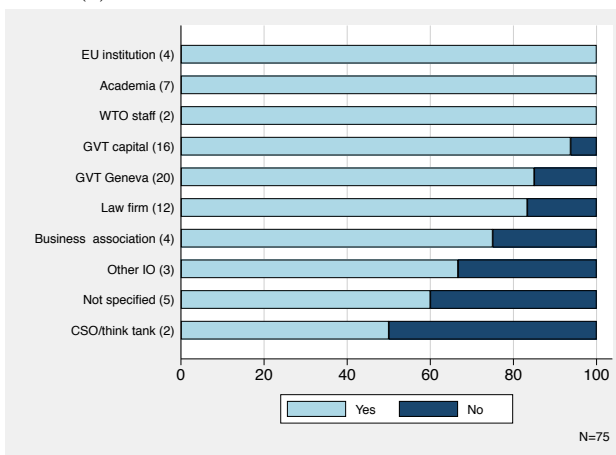
(b) Whole sample



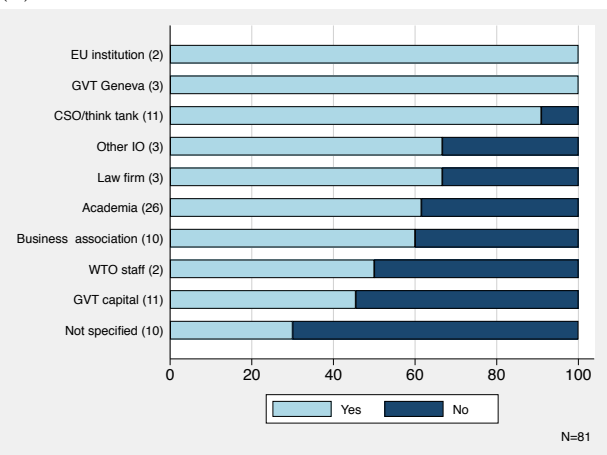
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



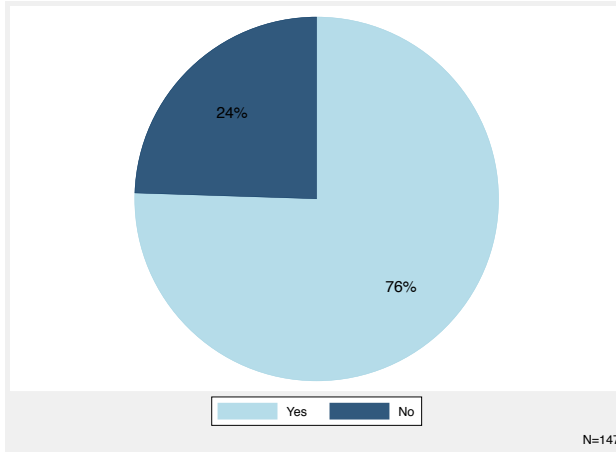
(e) Respondents involved in DS cases



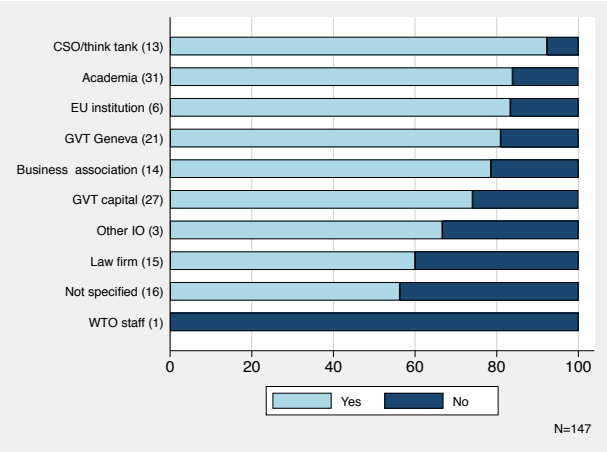
(f) Respondents not involved in DS cases

Question 17

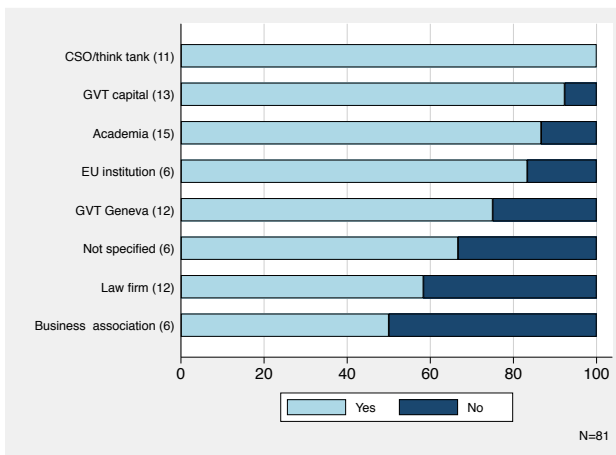
Does your country's WTO delegation or Trade ministry read WTO monitoring reports, or use the Global Trade Alert initiative to identify trade barriers affecting your country that might be the subject of a dispute, or a specific trade concern (STC)?



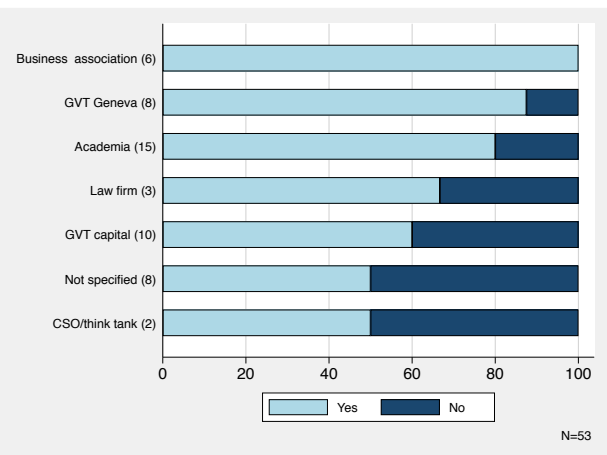
(a) Whole sample



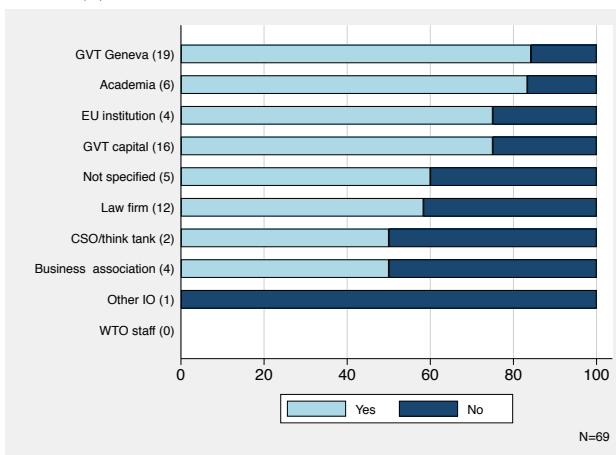
(b) Whole sample



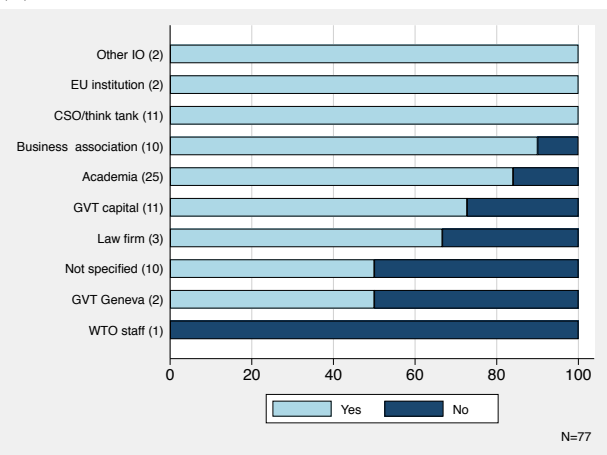
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



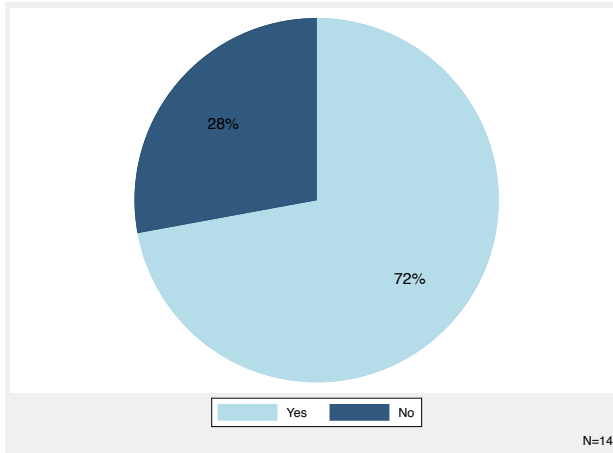
(e) Respondents involved in DS cases



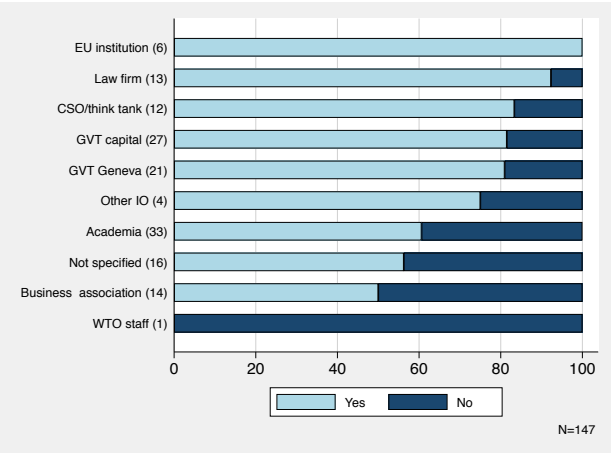
(f) Respondents not involved in DS cases

Question 18

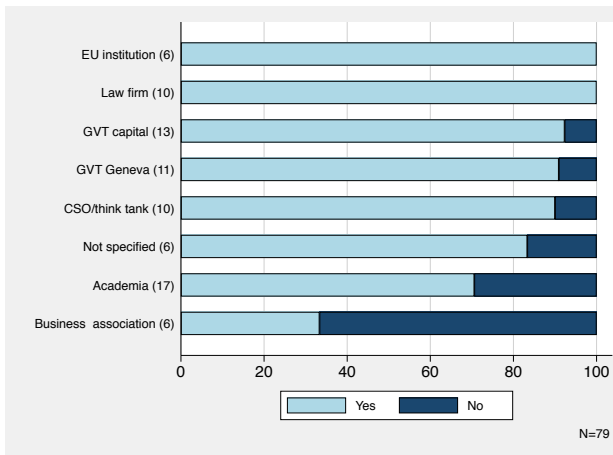
Does your government provide analysis of other Members' trade policy notifications that could lead to a question in a WTO committee?



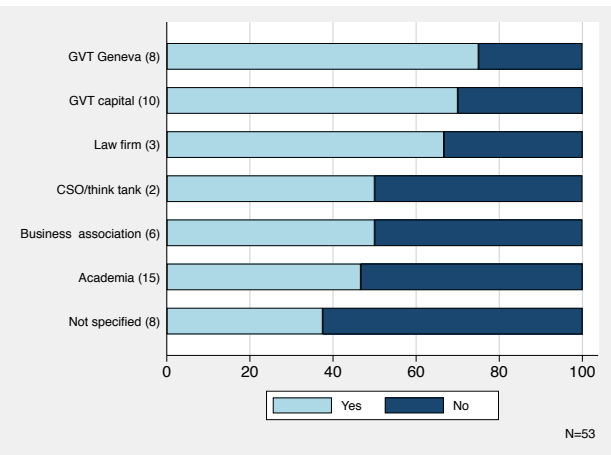
(a) Whole sample



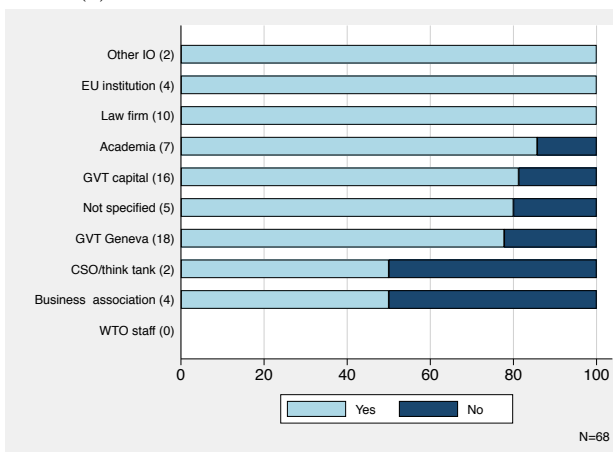
(b) Whole sample



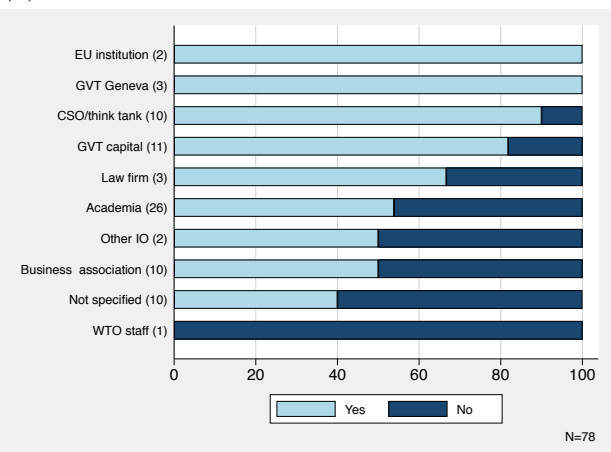
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



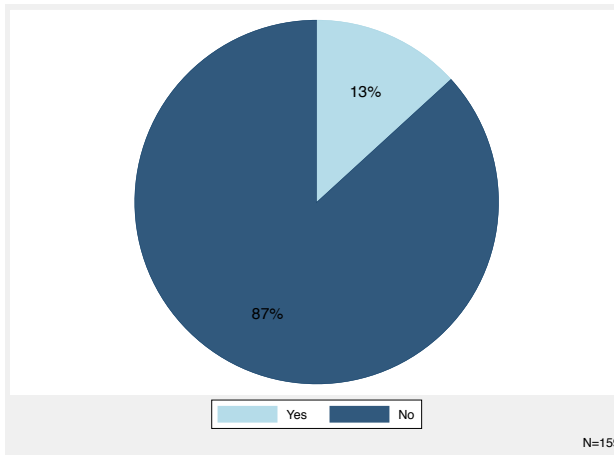
(e) Respondents involved in DS cases



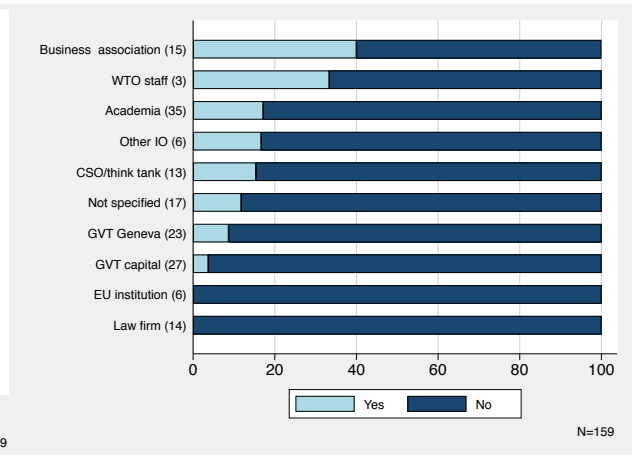
(f) Respondents not involved in DS cases

Question 19

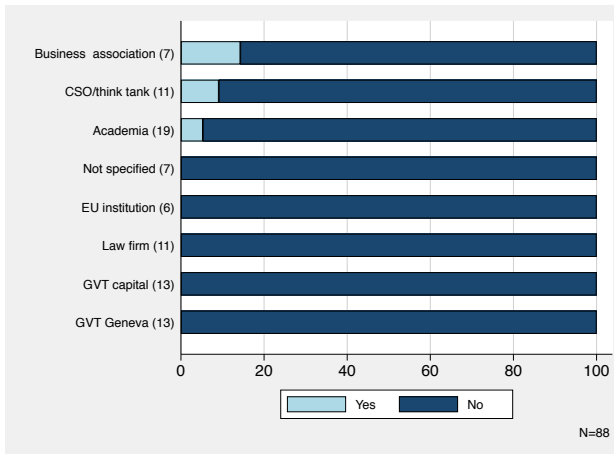
Disputes are irrelevant because conflicts are settled by the power of the bigger market



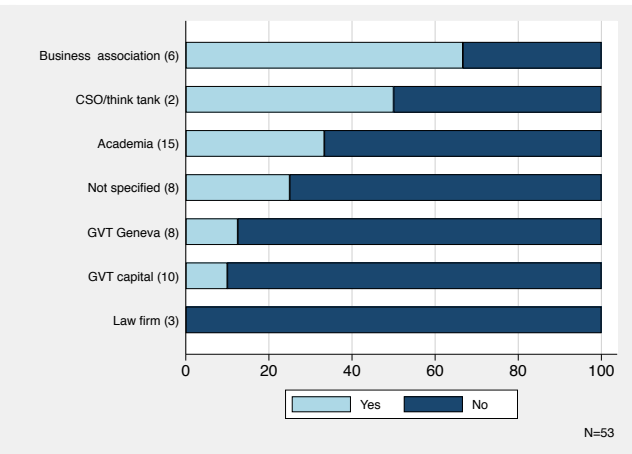
(a) Whole sample



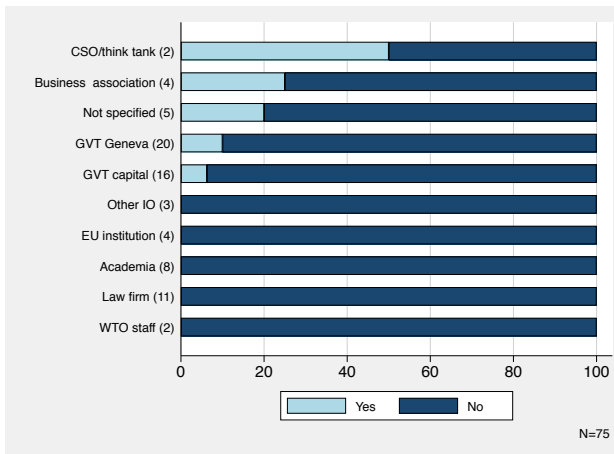
(b) Whole sample



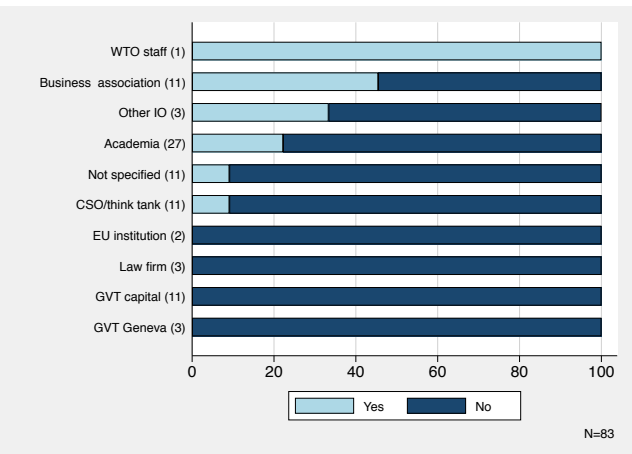
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



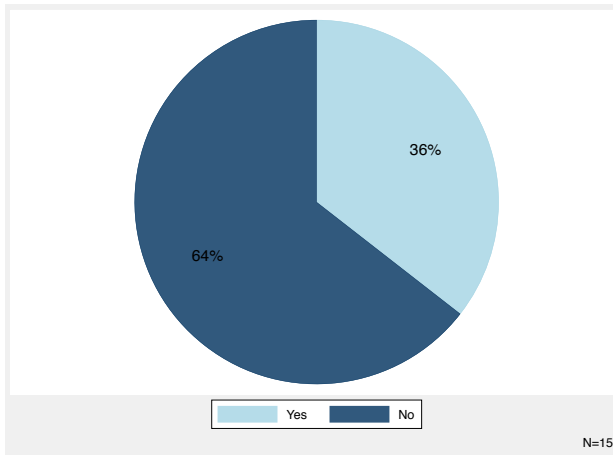
(e) Respondents involved in DS cases



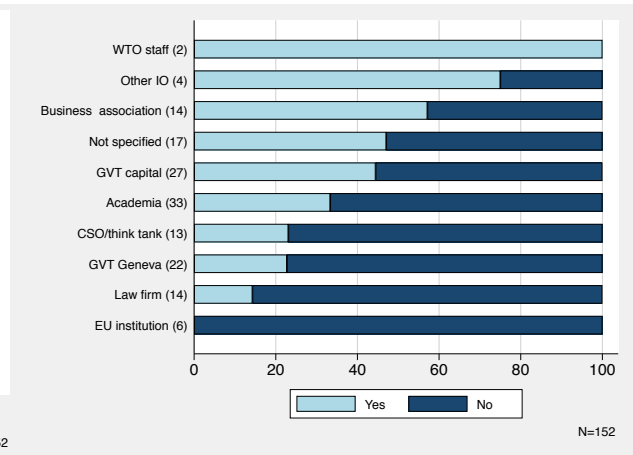
(f) Respondents not involved in DS cases

Question 20

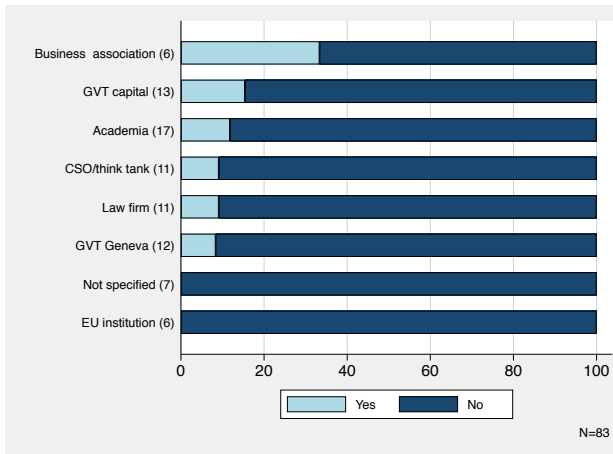
Dispute settlement is too expensive for my country



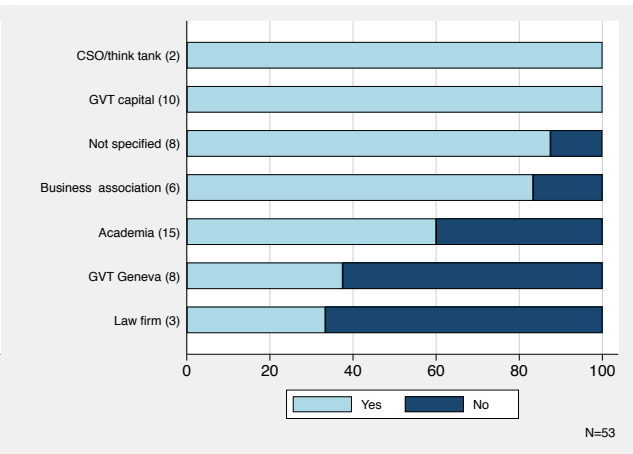
(a) Whole sample



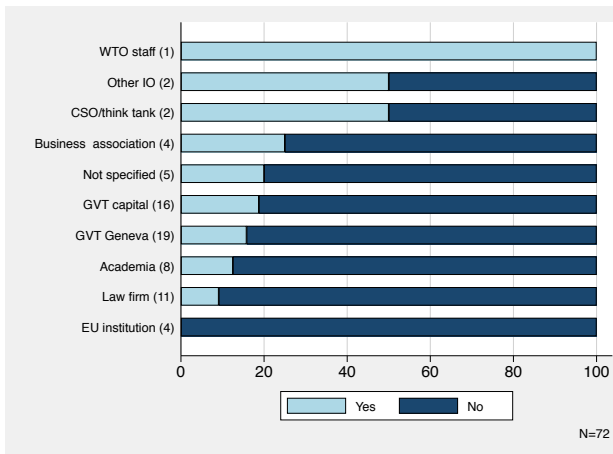
(b) Whole sample



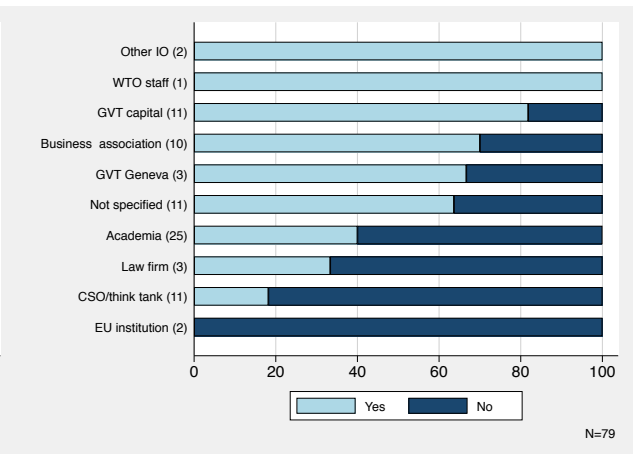
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



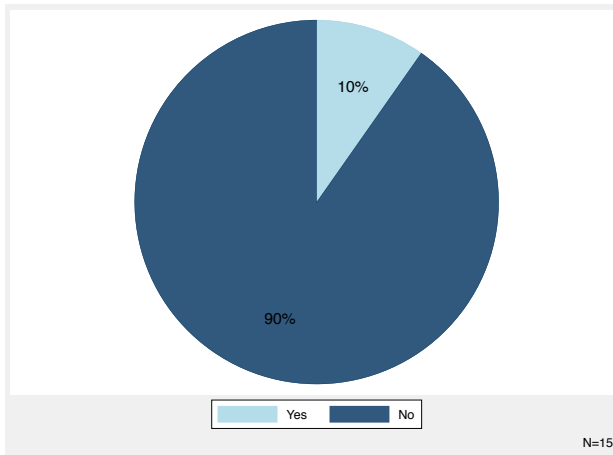
(e) Respondents involved in DS cases



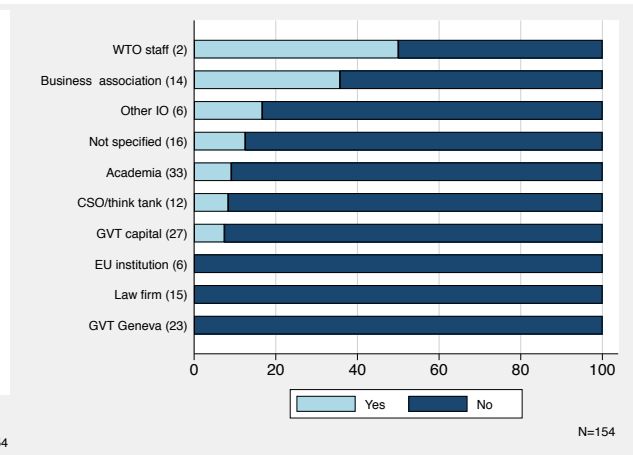
(f) Respondents not involved in DS cases

Question 21

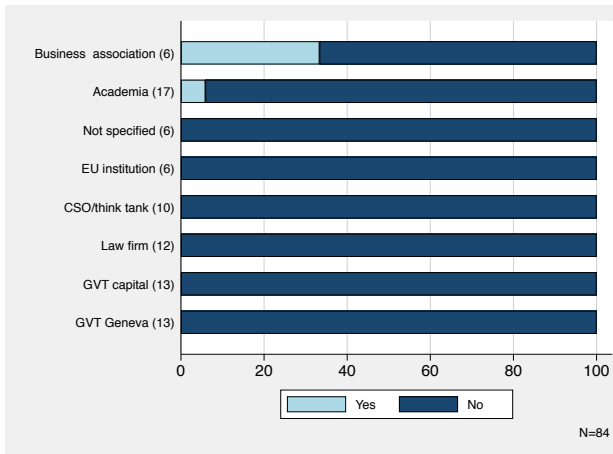
Dispute settlement is not relevant because we use alternative mechanisms



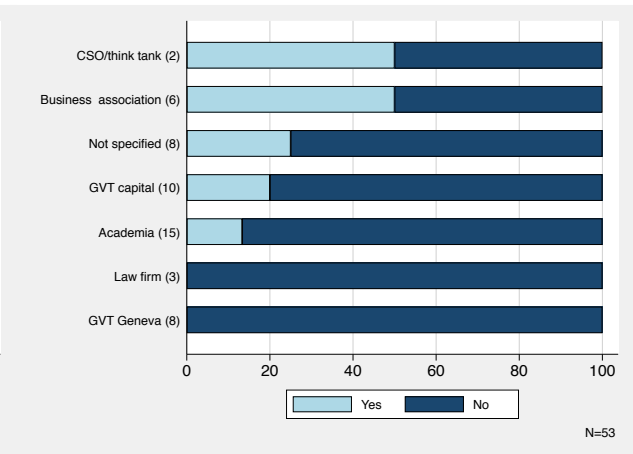
(a) Whole sample



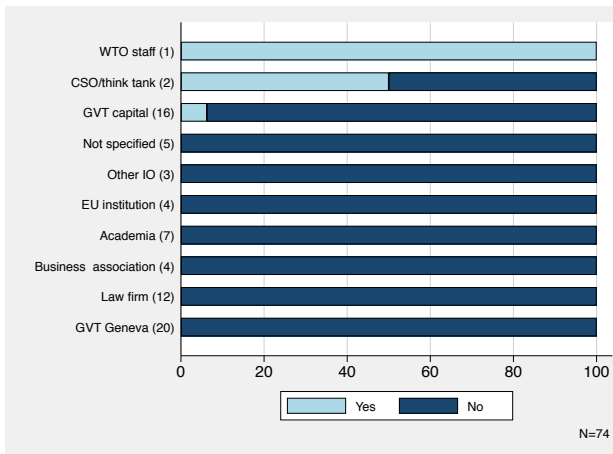
(b) Whole sample



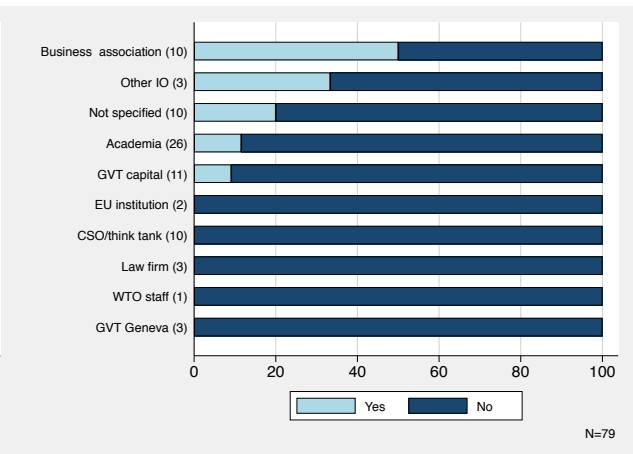
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



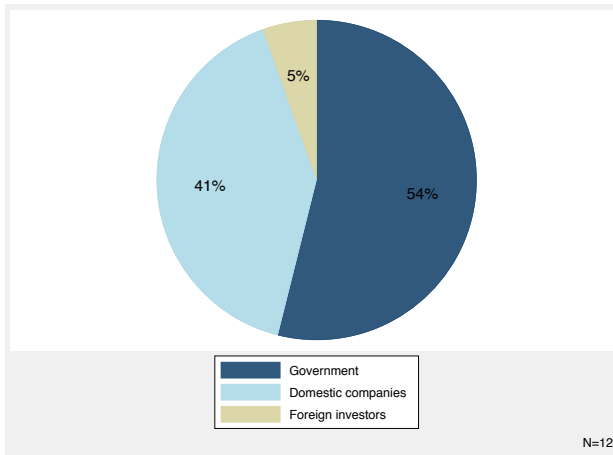
(e) Respondents involved in DS cases



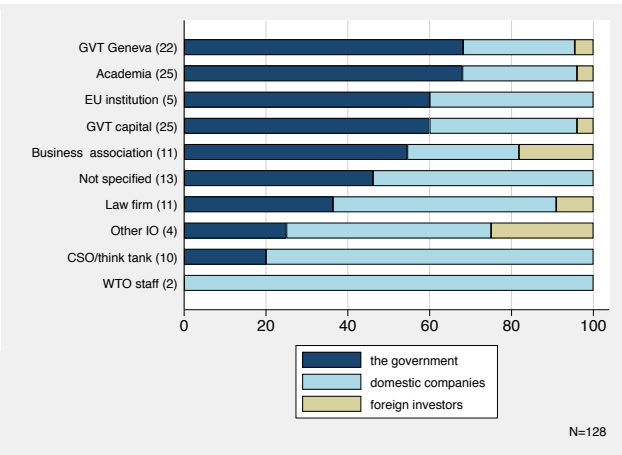
(f) Respondents not involved in DS cases

Question 22

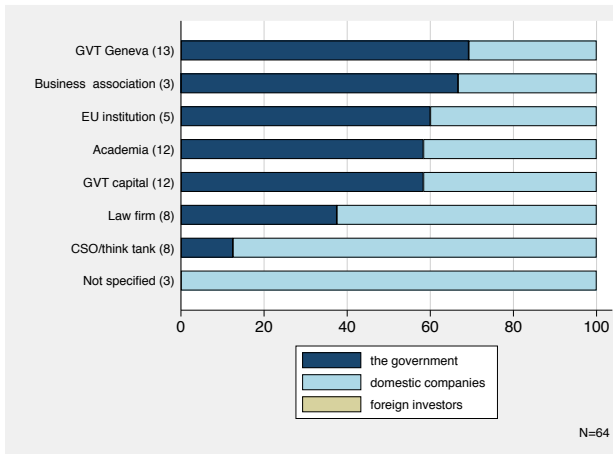
If you represent a country, who are the drivers of dispute settlement requests in your country?



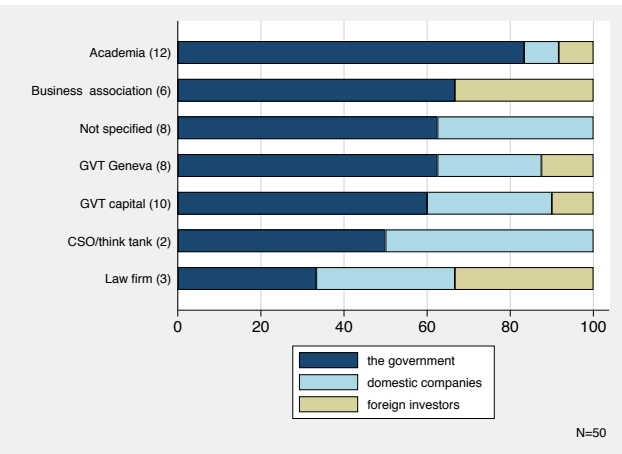
(a) Whole sample



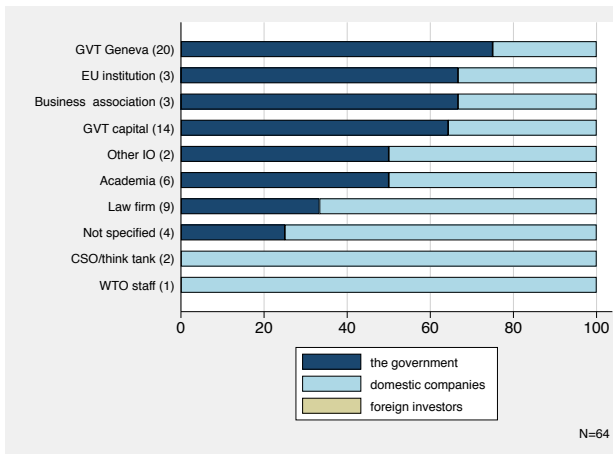
(b) Whole sample



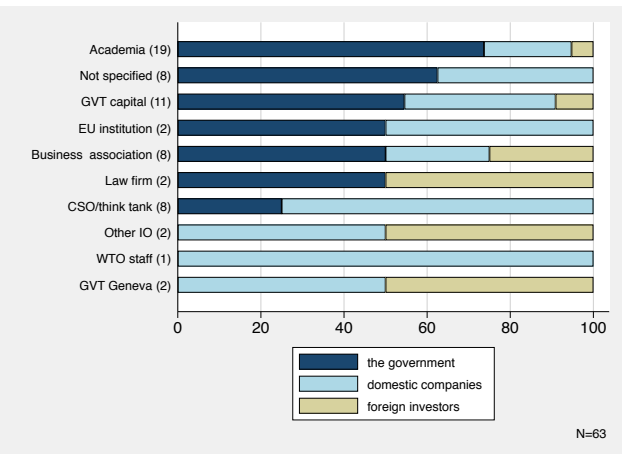
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



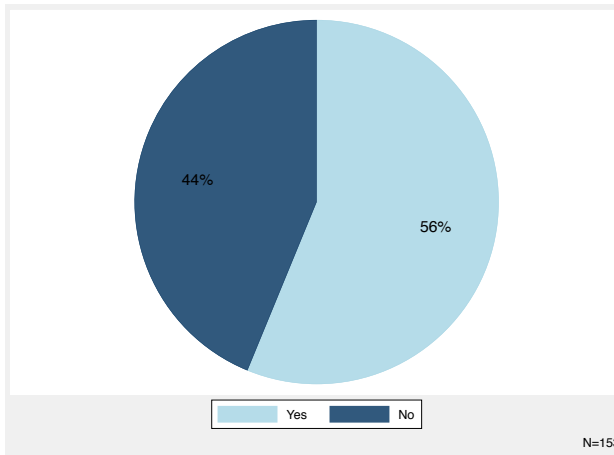
(e) Respondents involved in DS cases



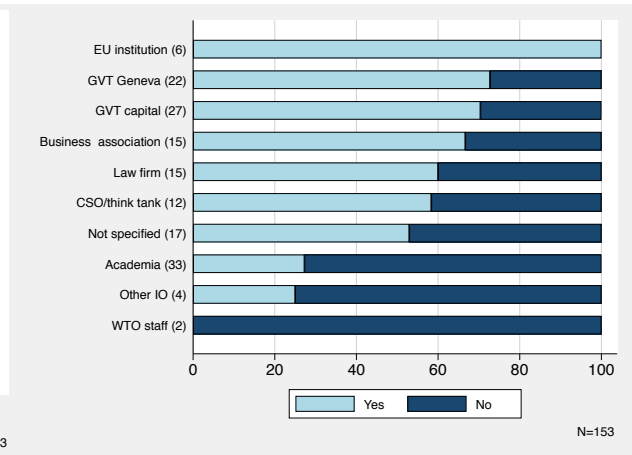
(f) Respondents not involved in DS cases

Question 23

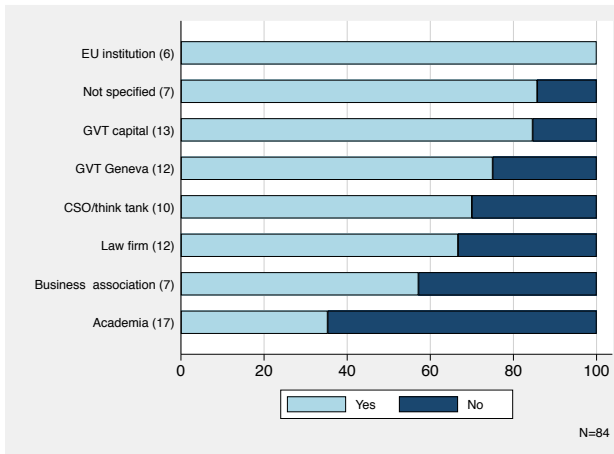
Our businesses are well-informed about foreign market access barriers



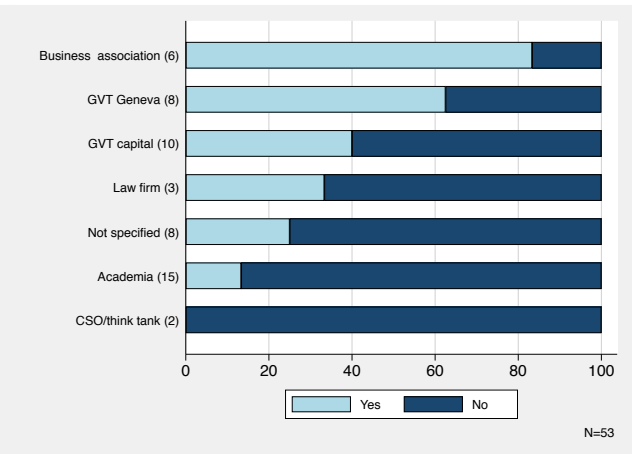
(a) Whole sample



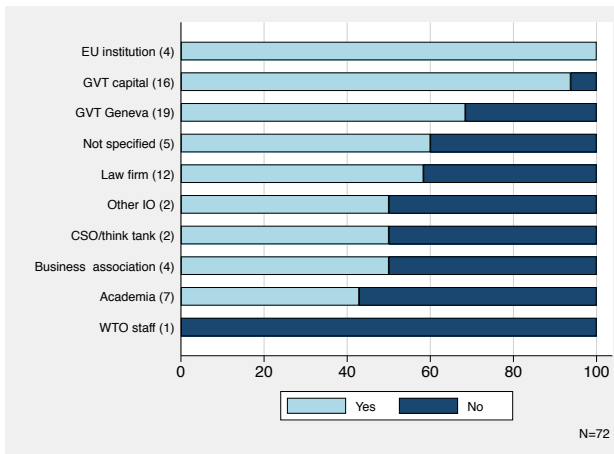
(b) Whole sample



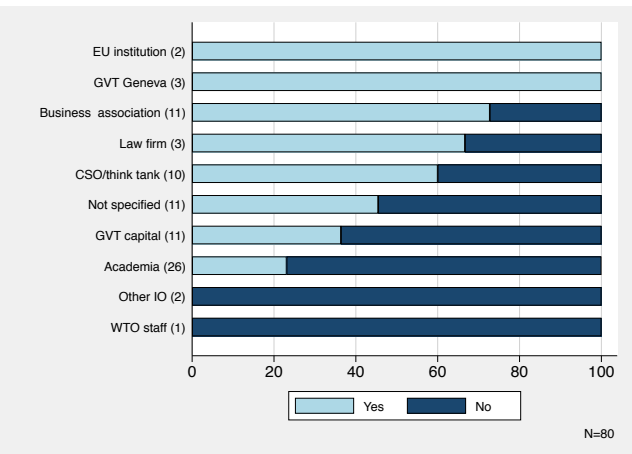
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



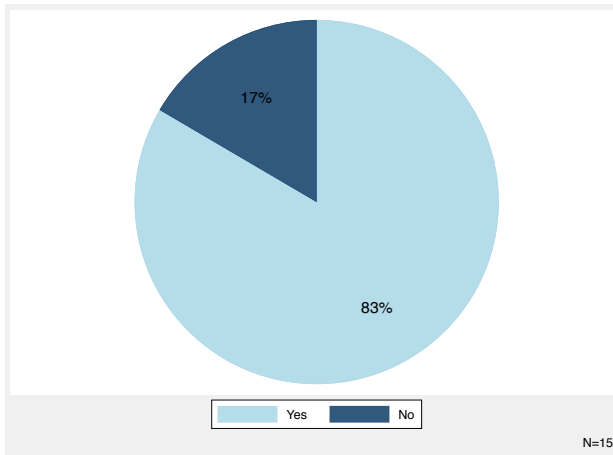
(e) Respondents involved in DS cases



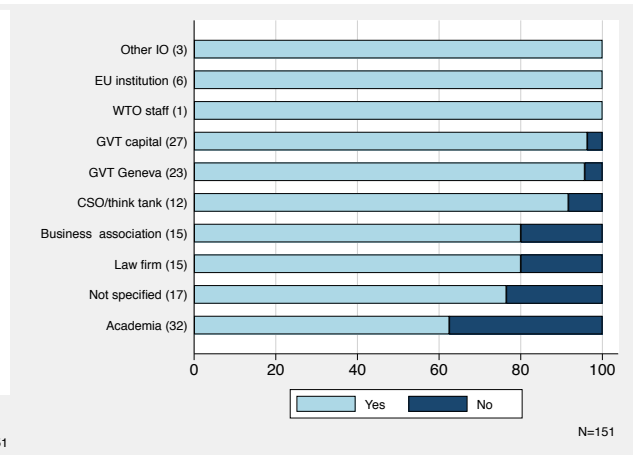
(f) Respondents not involved in DS cases

Question 24

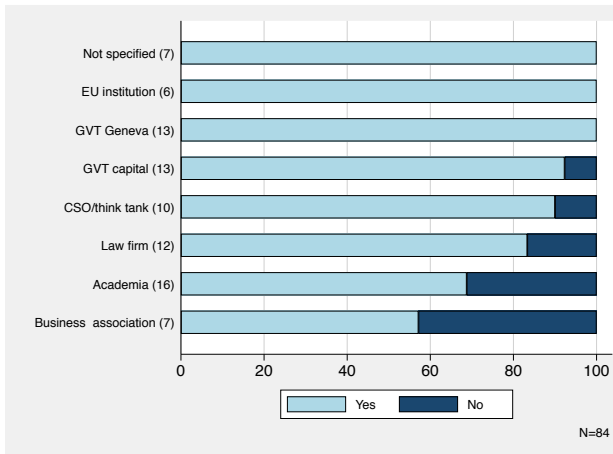
Our businesses complain to the trade ministry about foreign market access barriers



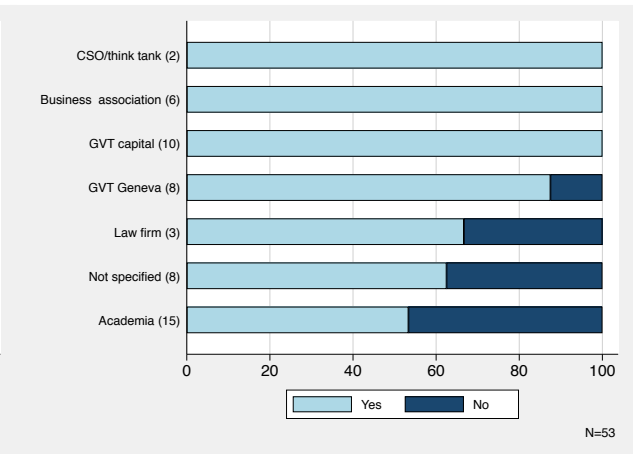
(a) Whole sample



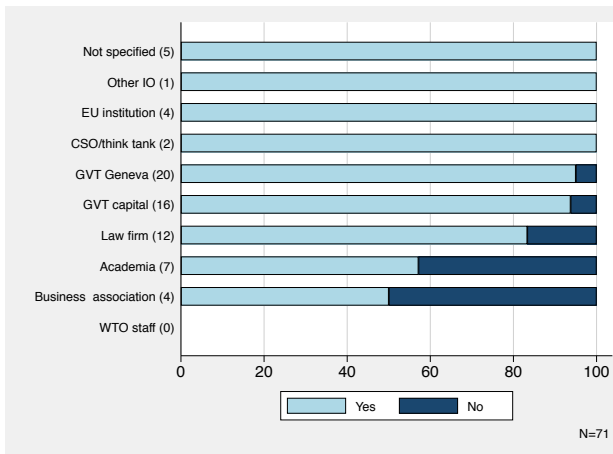
(b) Whole sample



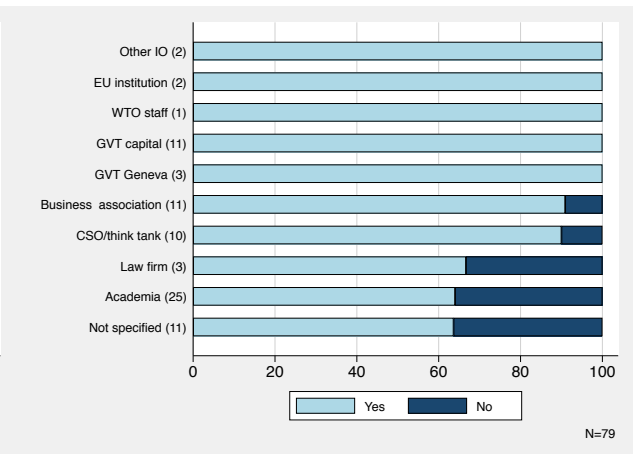
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



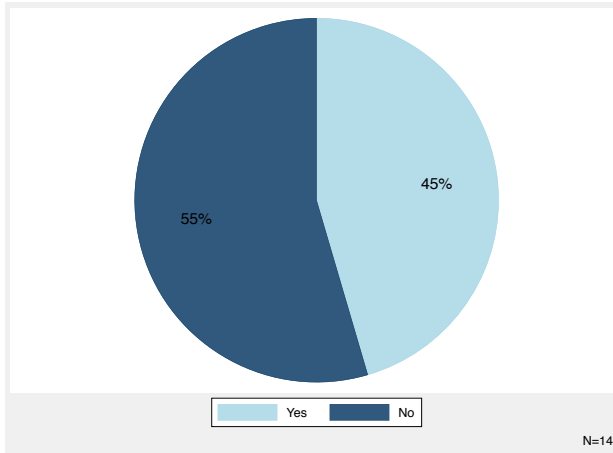
(e) Respondents involved in DS cases



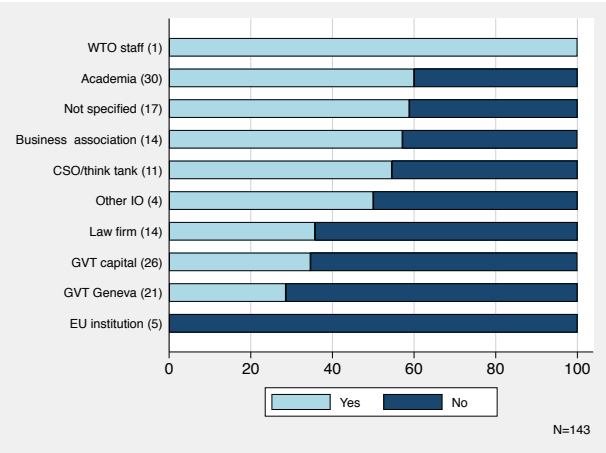
(f) Respondents not involved in DS cases

Question 25

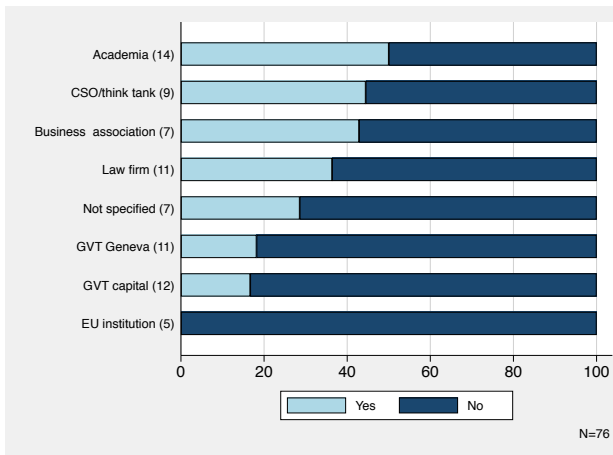
Our businesses do not know whether difficulties in market access are due to the policies of another government



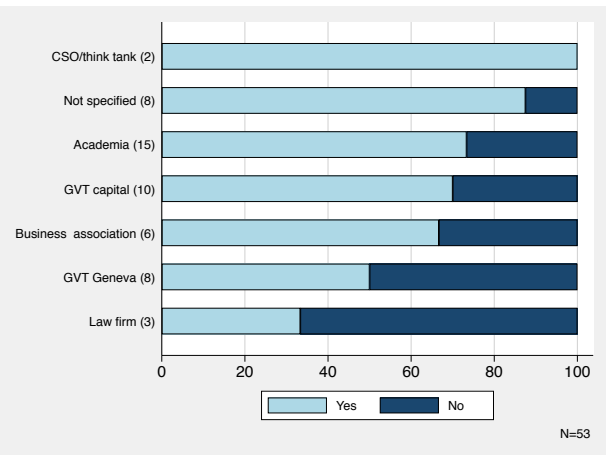
(a) Whole sample



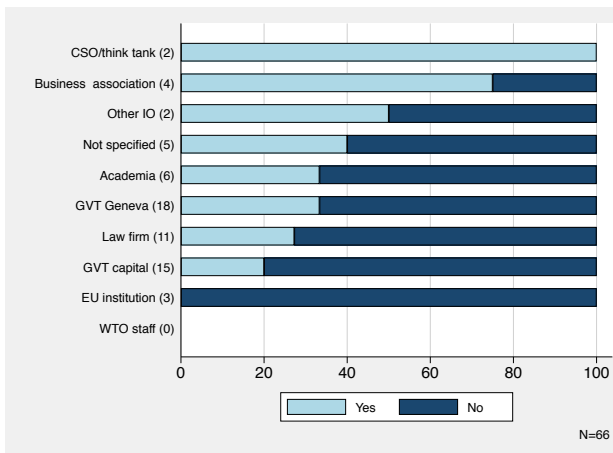
(b) Whole sample



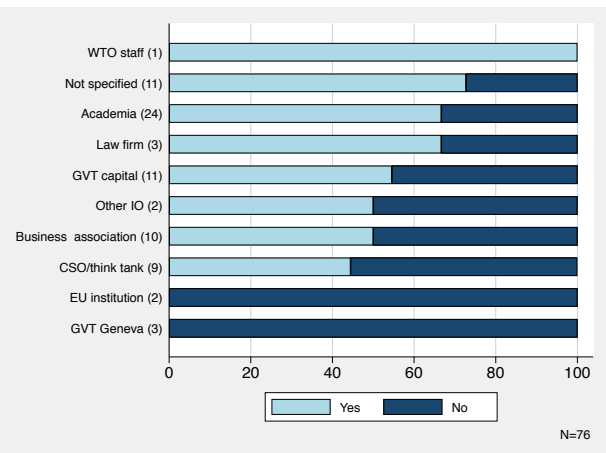
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



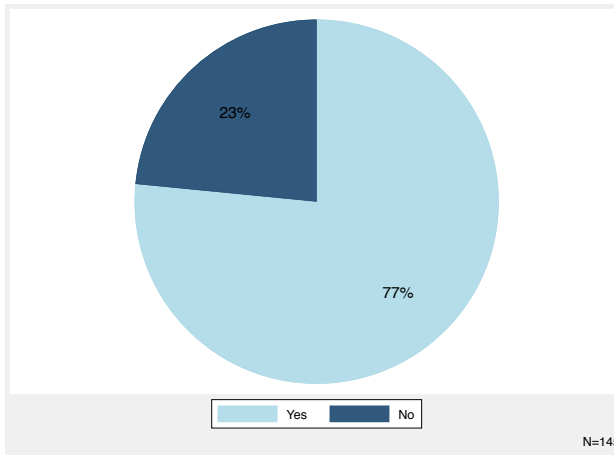
(e) Respondents involved in DS cases



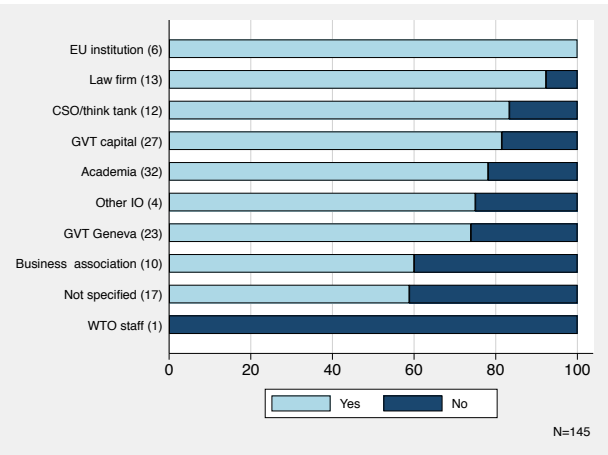
(f) Respondents not involved in DS cases

Question 26

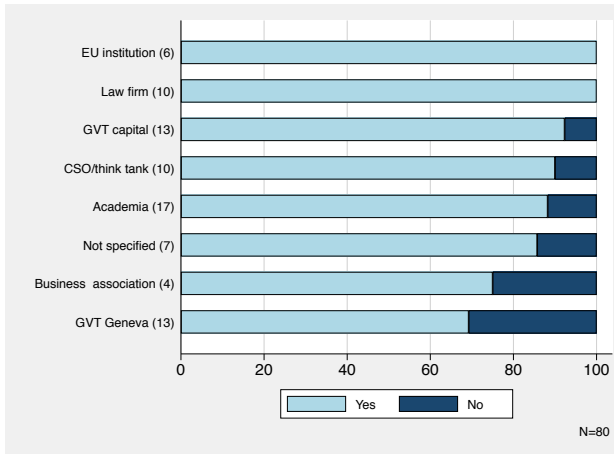
Do your WTO representatives intervene in Dispute Settlement Body (DSB) meetings?



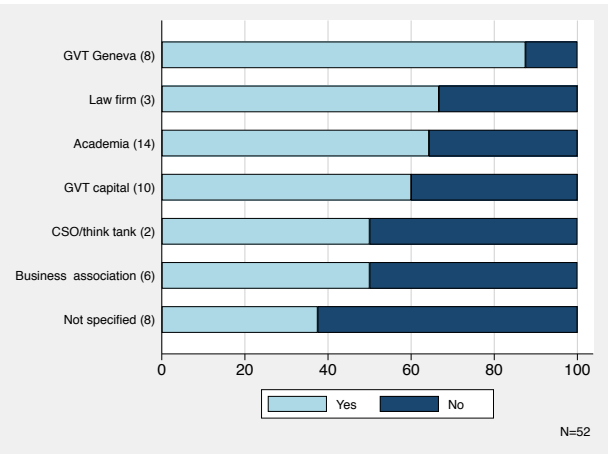
(a) Whole sample



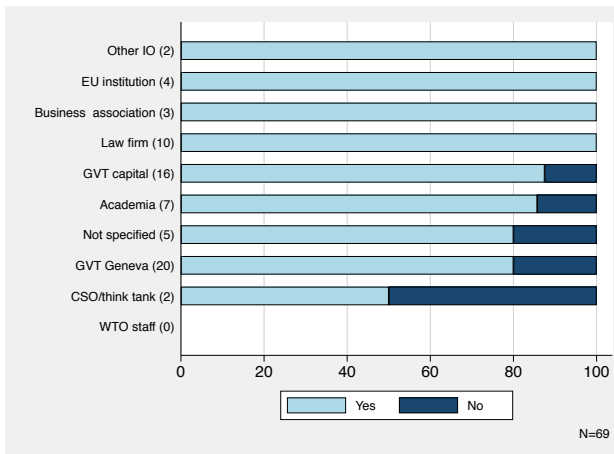
(b) Whole sample



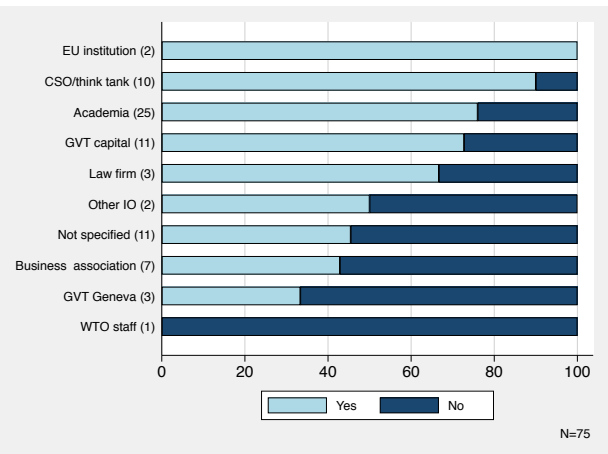
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



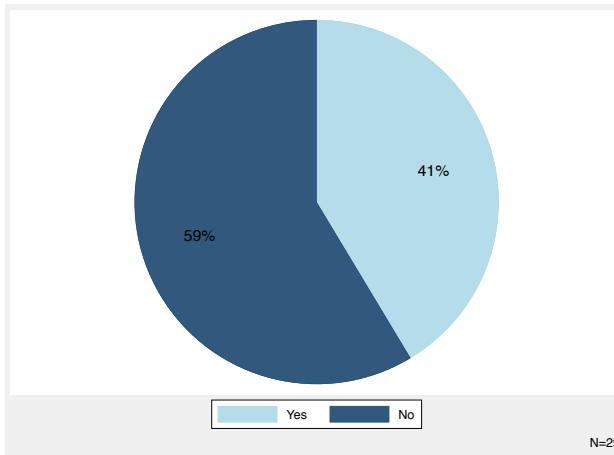
(e) Respondents involved in DS cases



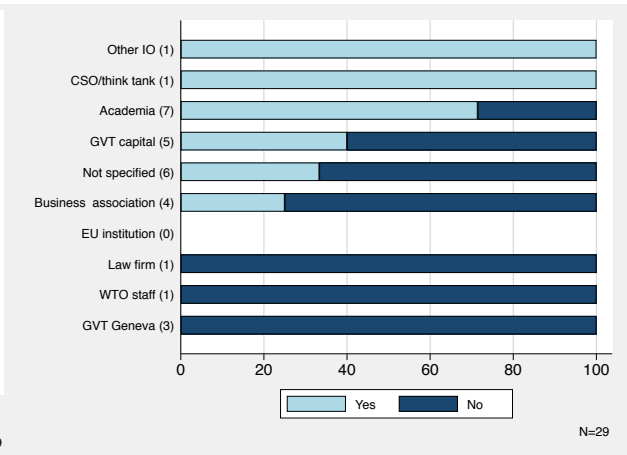
(f) Respondents not involved in DS cases

Question 27s1

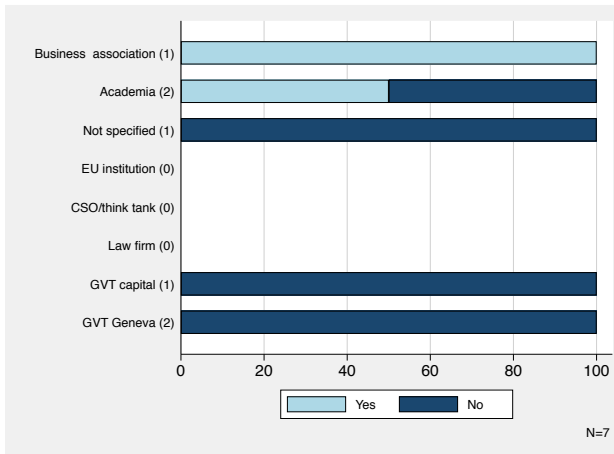
Your country does not intervene in DSB meetings because issues are of no interest



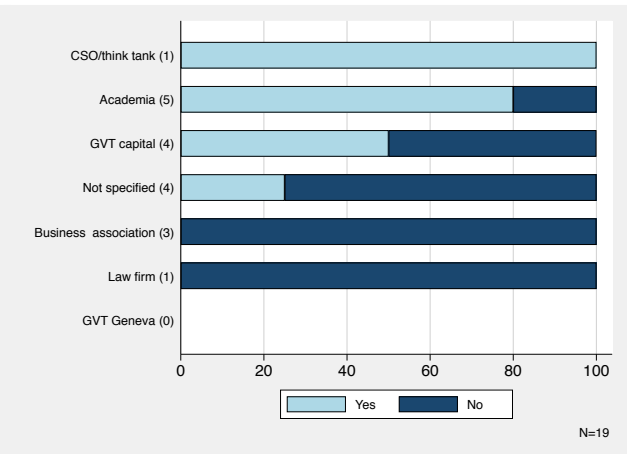
(a) Whole sample



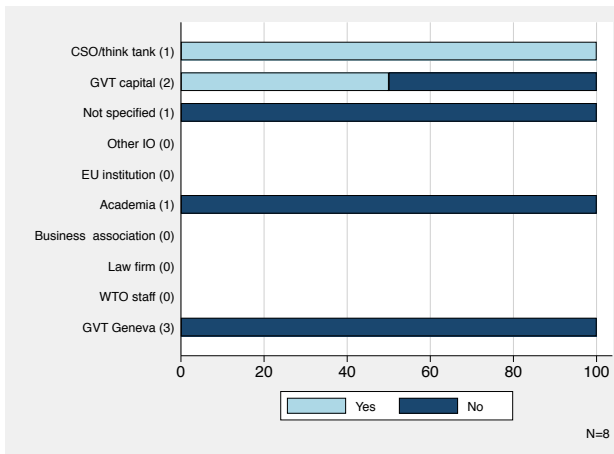
(b) Whole sample



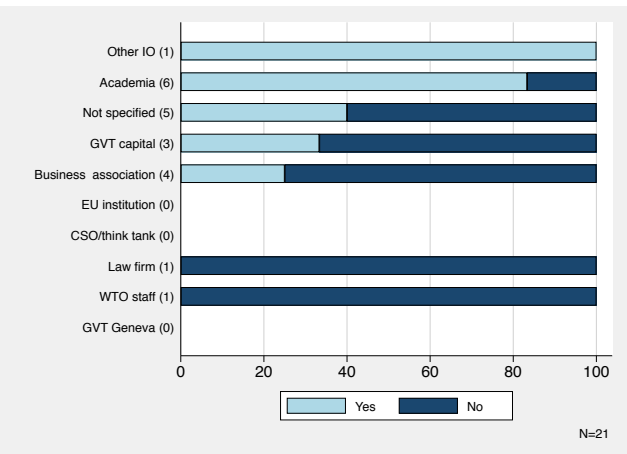
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



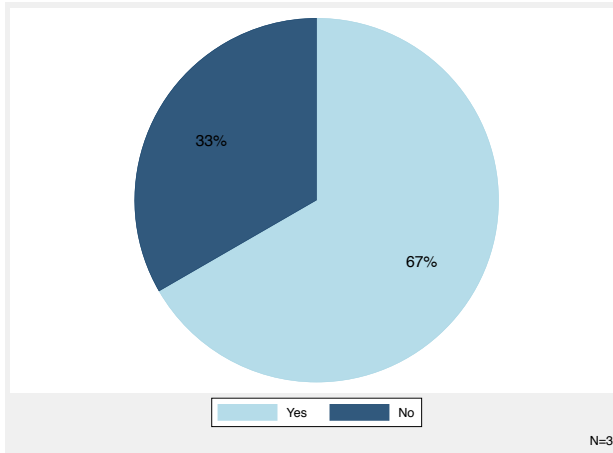
(e) Respondents involved in DS cases



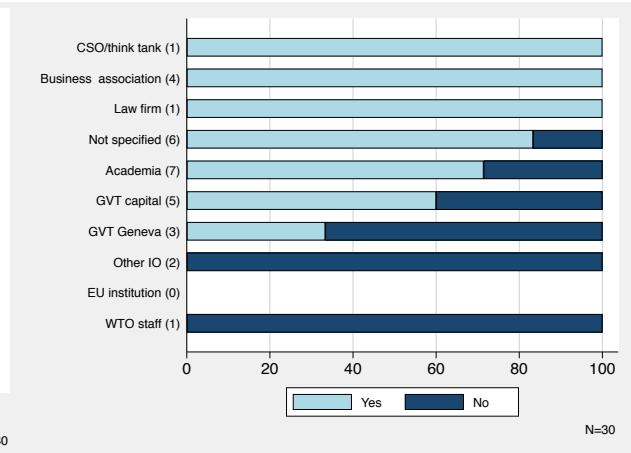
(f) Respondents not involved in DS cases

Question 27s2

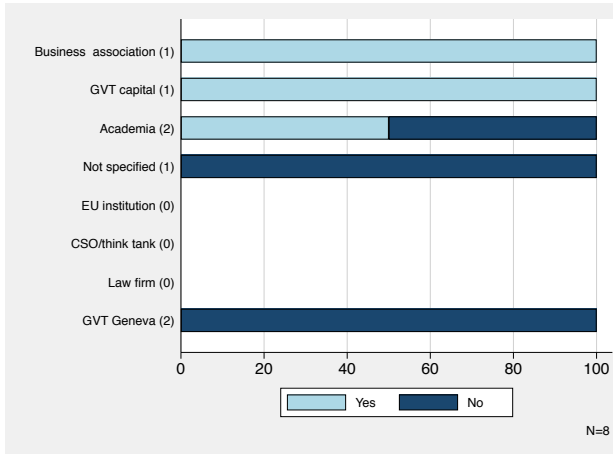
Your country does not intervene in DSB meetings because you rely on other delegations to raise your concerns



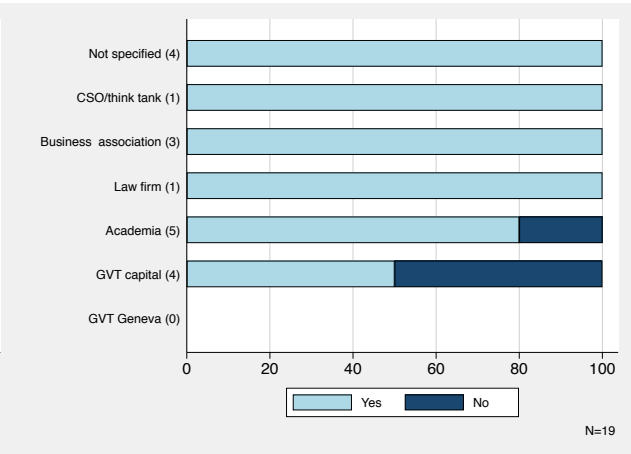
(a) Whole sample



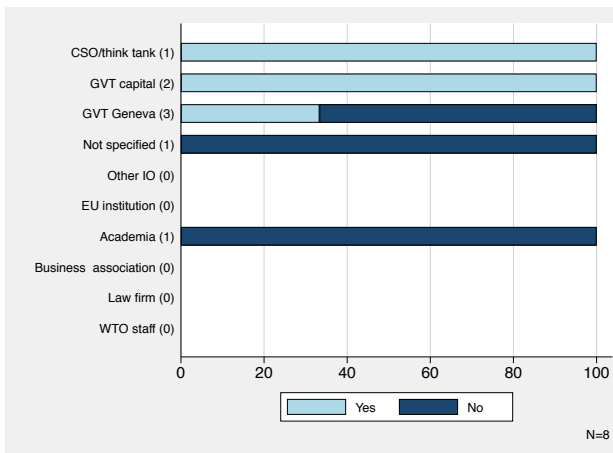
(b) Whole sample



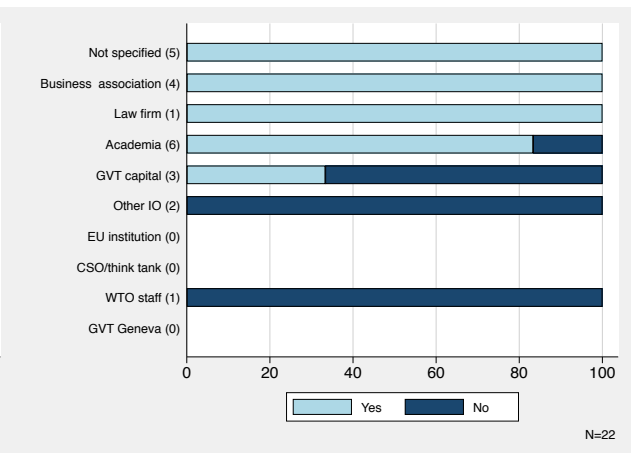
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



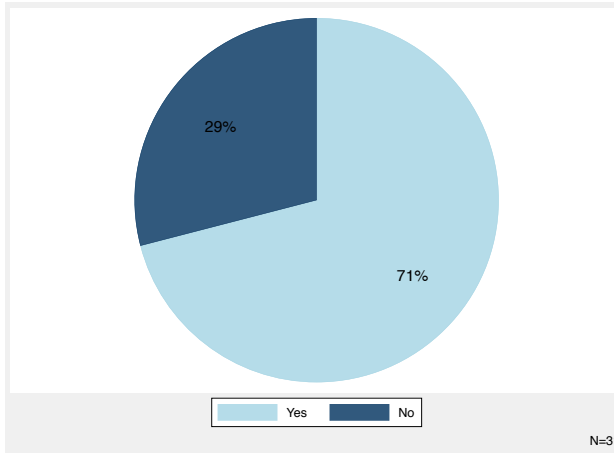
(e) Respondents involved in DS cases



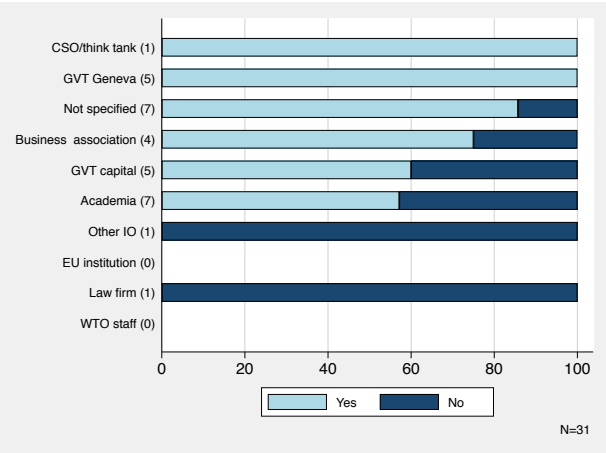
(f) Respondents not involved in DS cases

Question 27s3

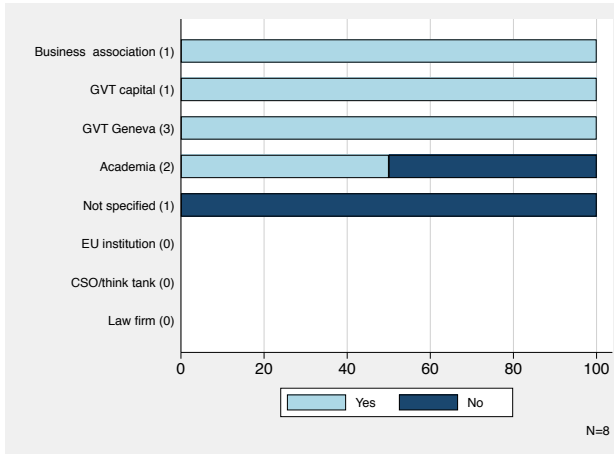
Your country does not intervene in DSB meetings because you participate in group proposals on dispute settlement matters



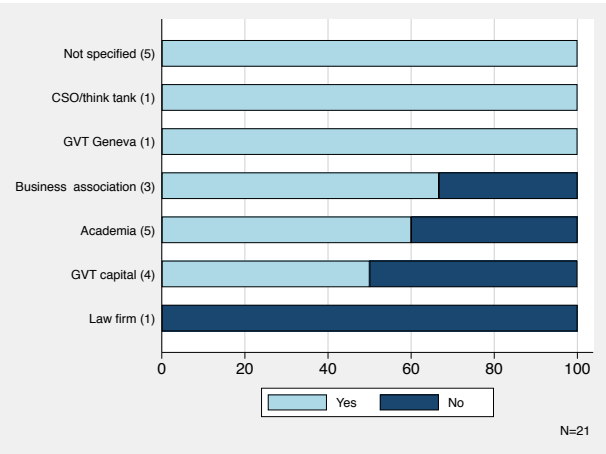
(a) Whole sample



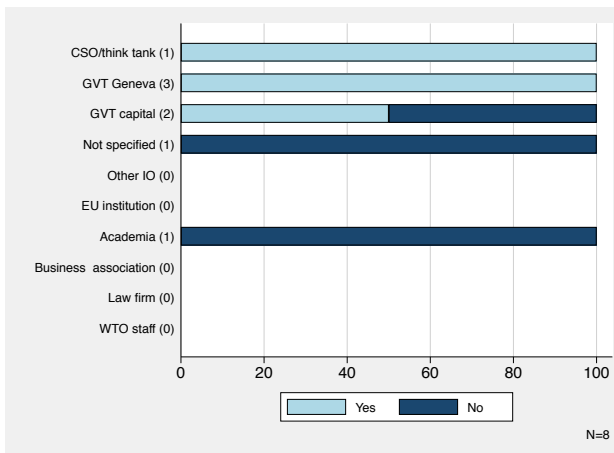
(b) Whole sample



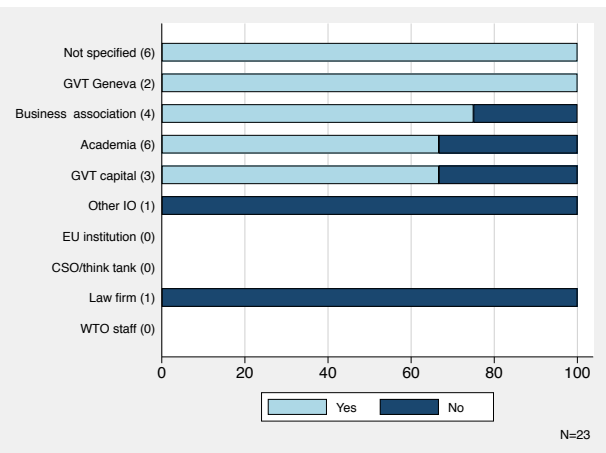
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



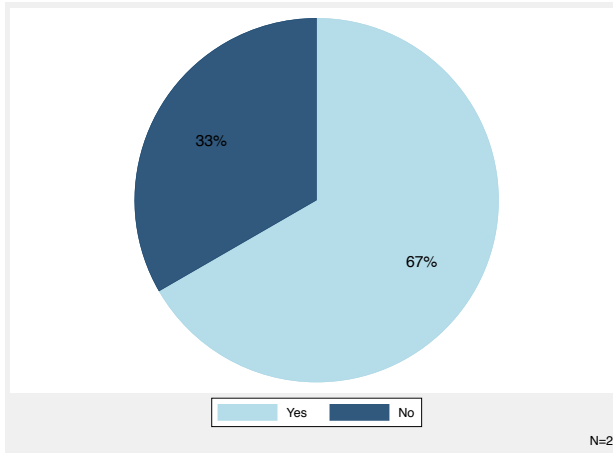
(e) Respondents involved in DS cases



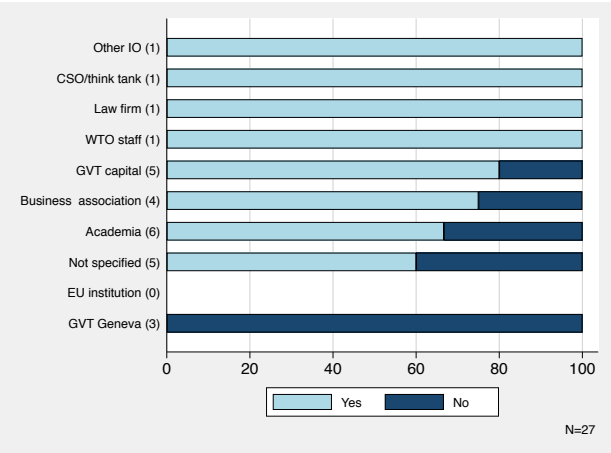
(f) Respondents not involved in DS cases

Question 27s4

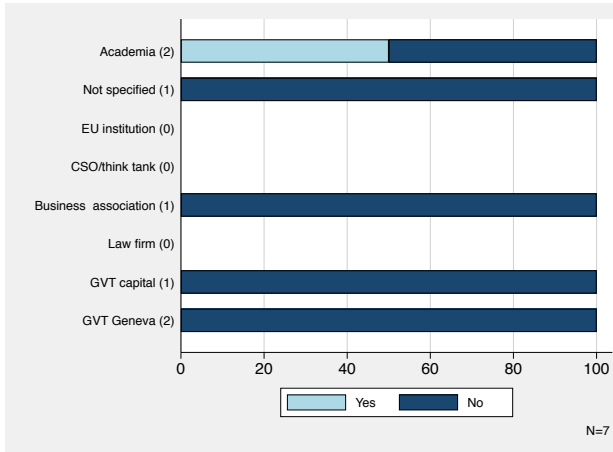
Your country does not intervene in DSB meetings because you have no capacity in Geneva or capital to generate a statement



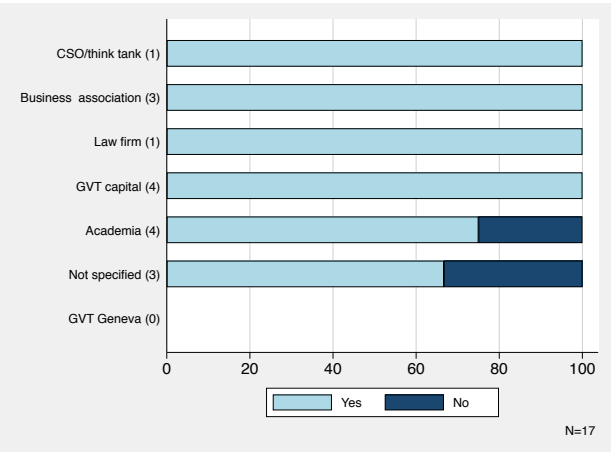
(a) Whole sample



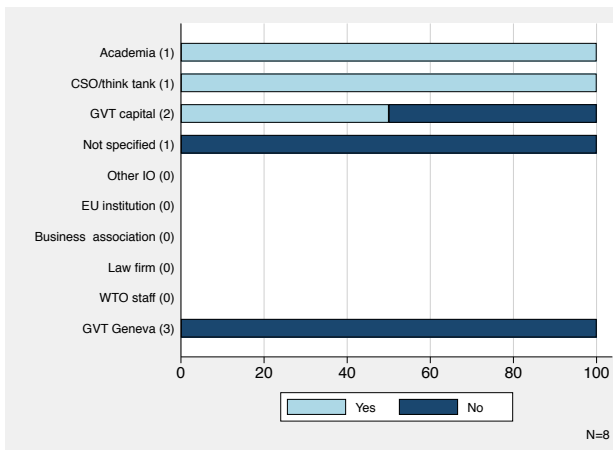
(b) Whole sample



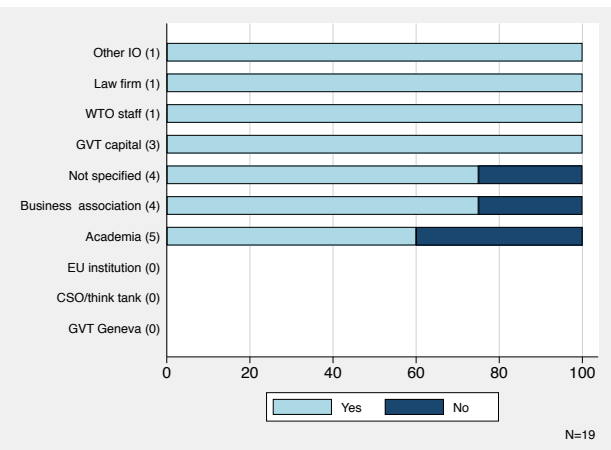
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



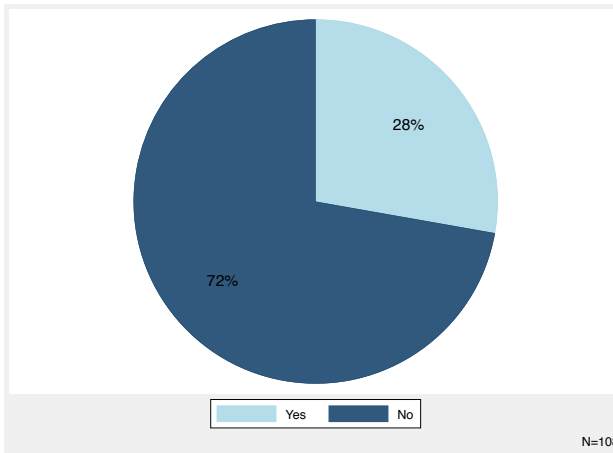
(e) Respondents involved in DS cases



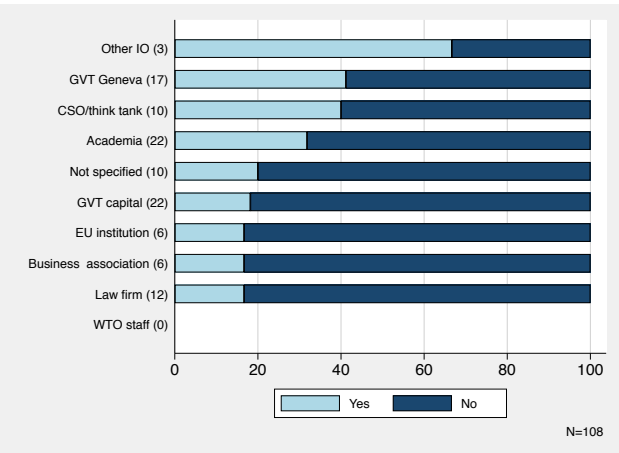
(f) Respondents not involved in DS cases

Question 28

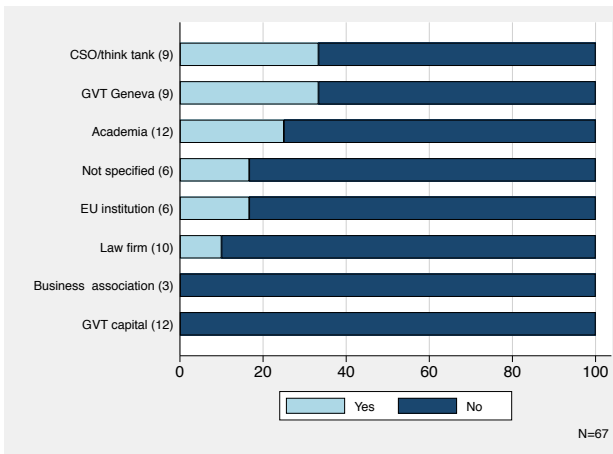
Does your country only intervene in the DSB to address matters that directly affect its export interests?



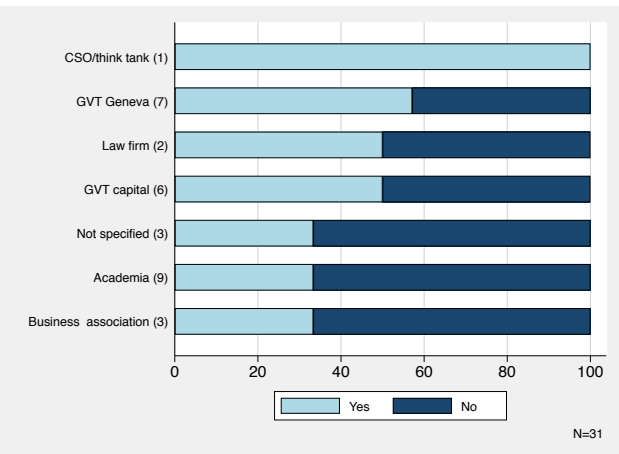
(a) Whole sample



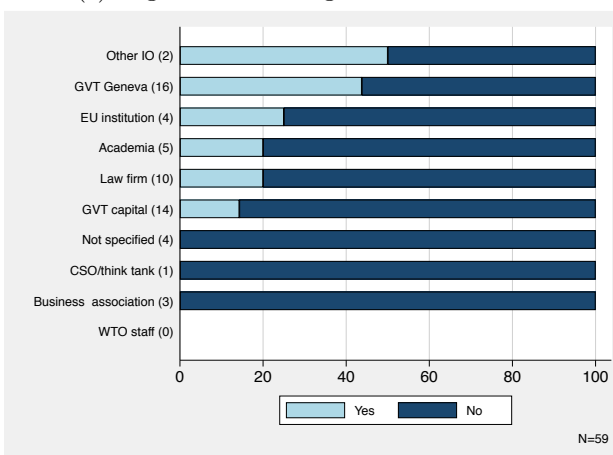
(b) Whole sample



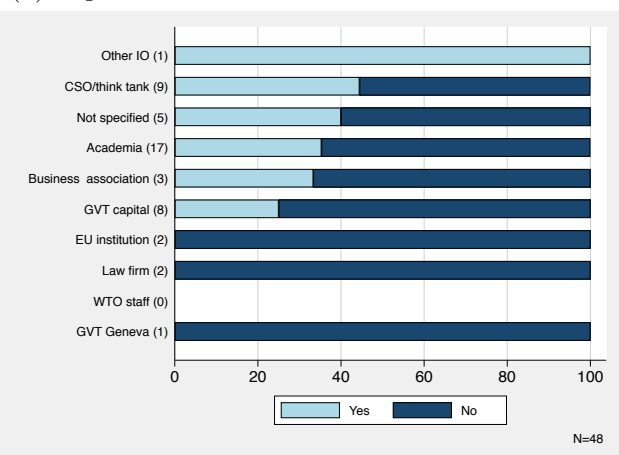
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



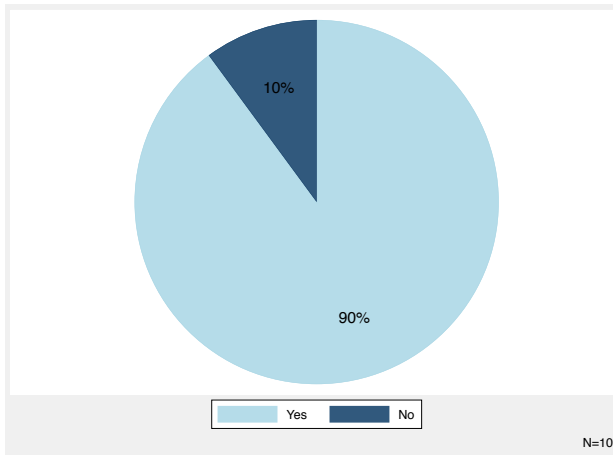
(e) Respondents involved in DS cases



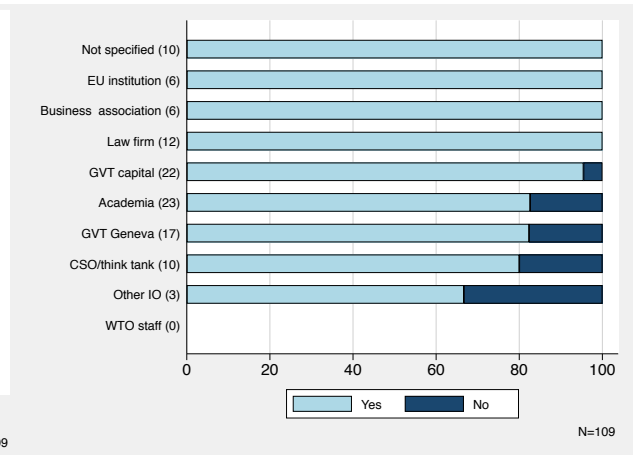
(f) Respondents not involved in DS cases

Question 29

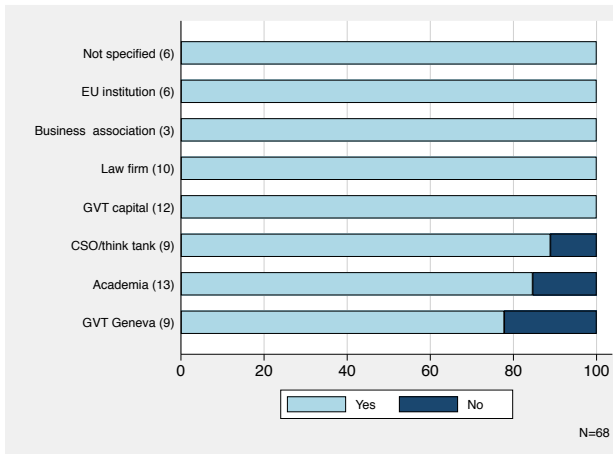
Do your country's DSB interventions address broad systemic issues?



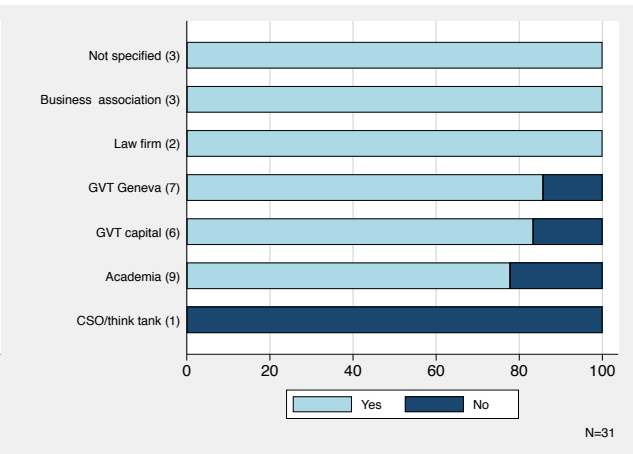
(a) Whole sample



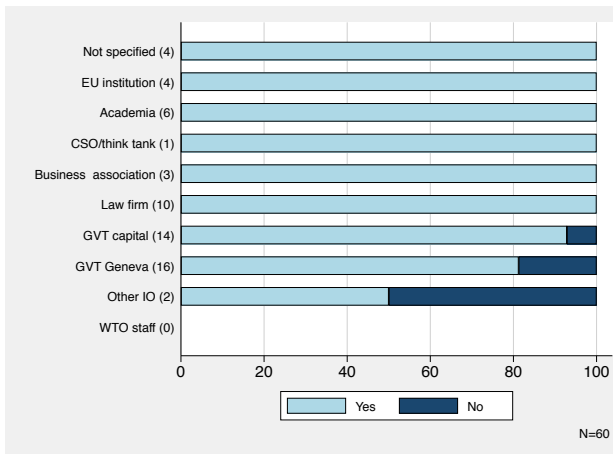
(b) Whole sample



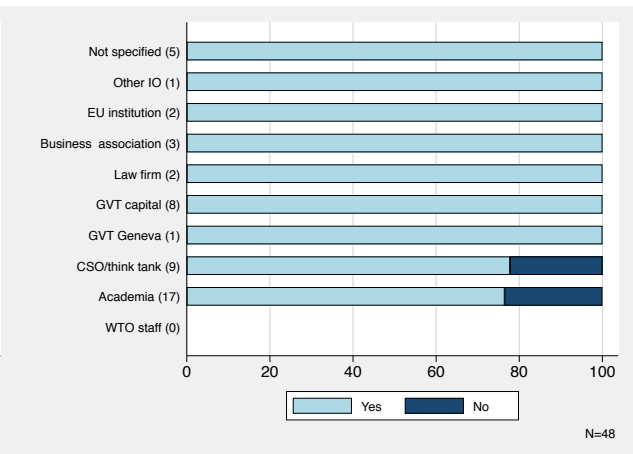
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



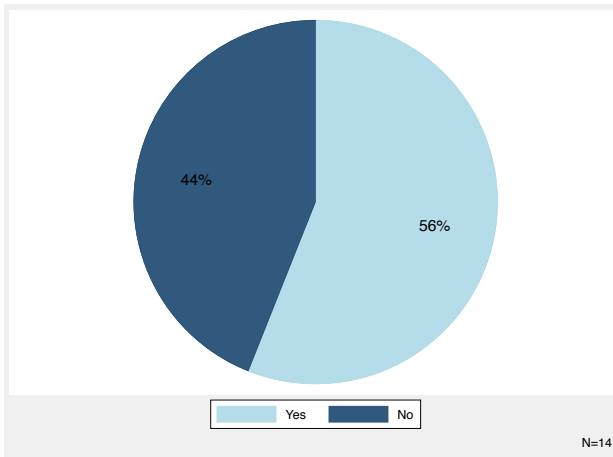
(e) Respondents involved in DS cases



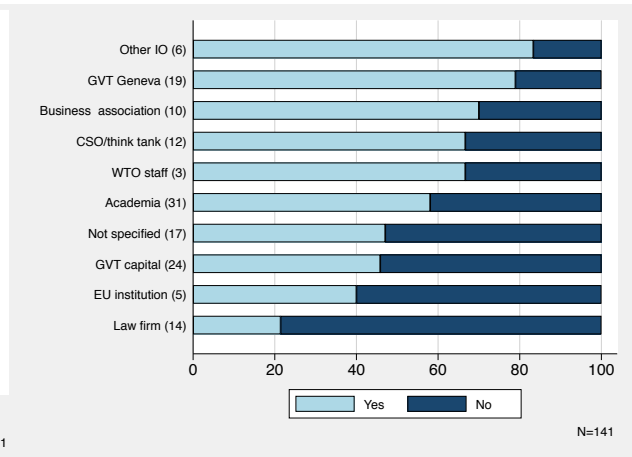
(f) Respondents not involved in DS cases

Question 30

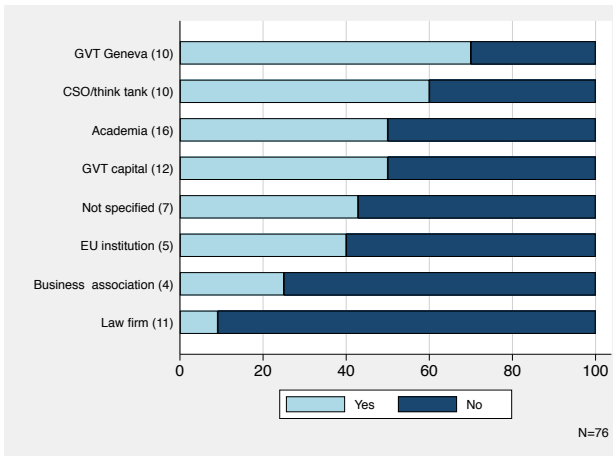
Are panel reports sometimes biased?



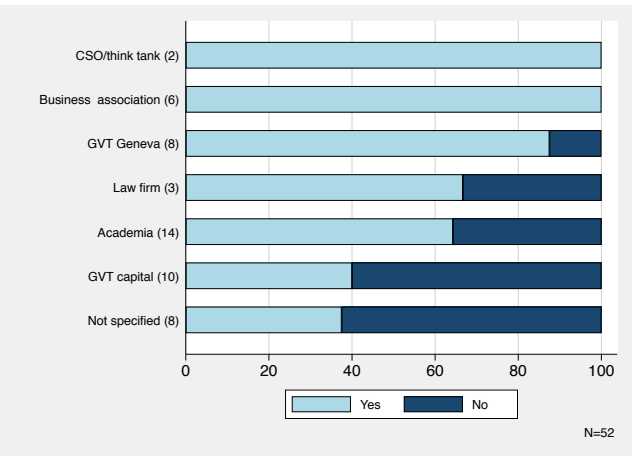
(a) Whole sample



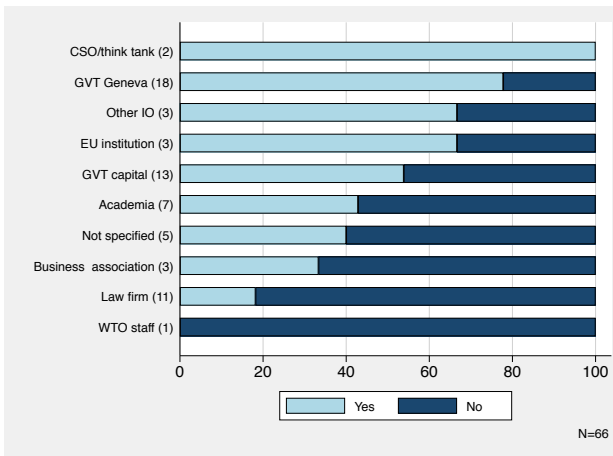
(b) Whole sample



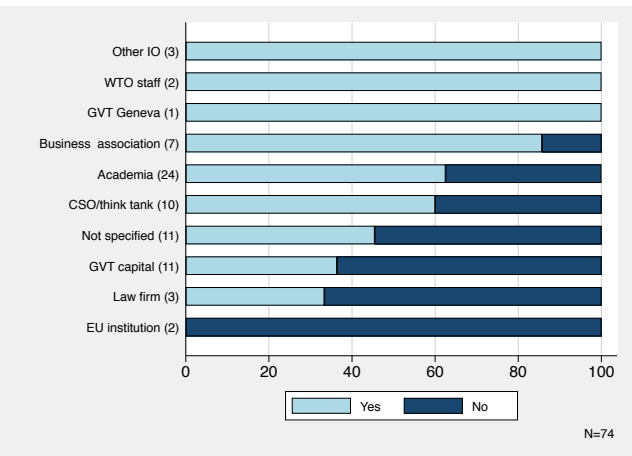
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



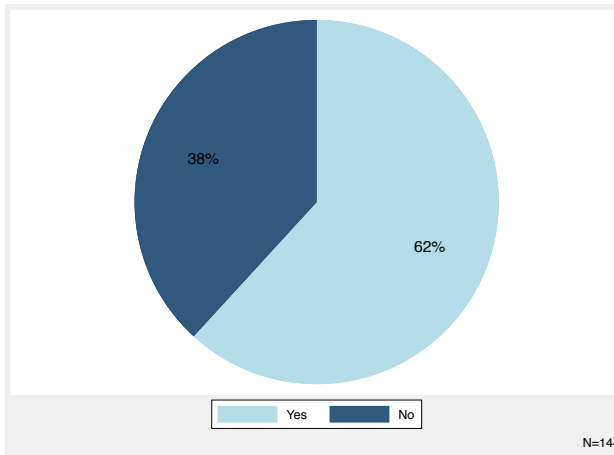
(e) Respondents involved in DS cases



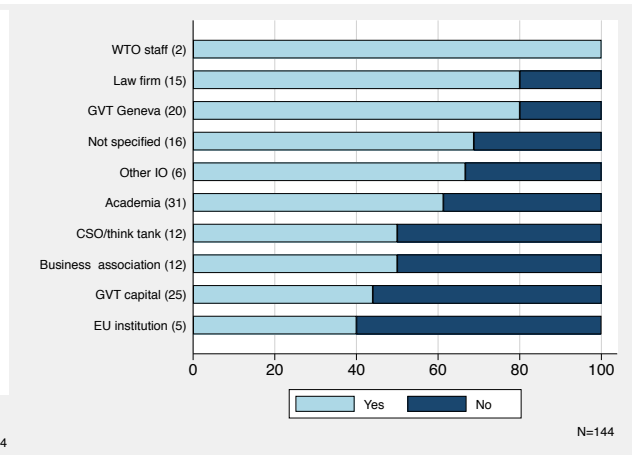
(f) Respondents not involved in DS cases

Question 31

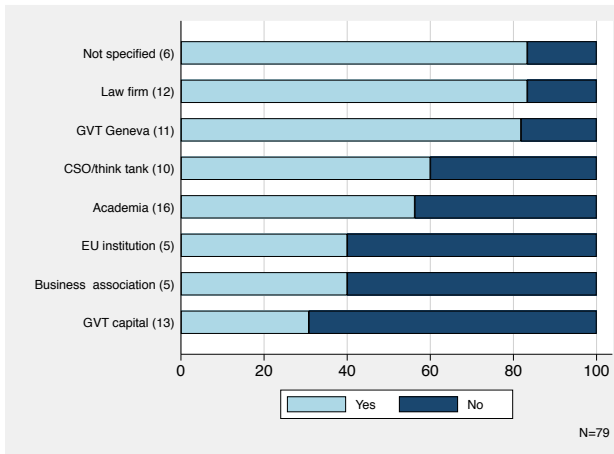
Do you think that Appellate Body reports are written by the Secretariat?



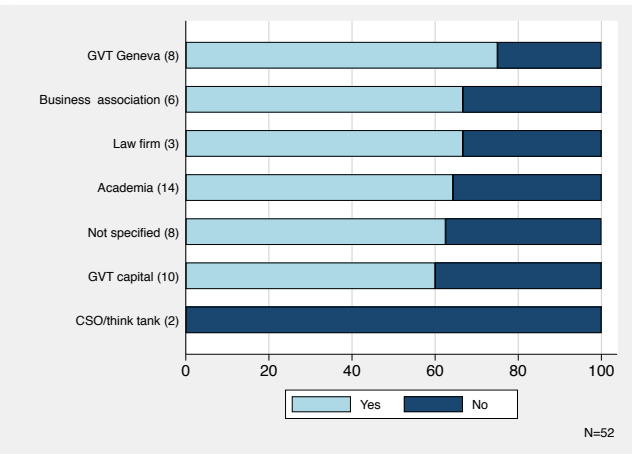
(a) Whole sample



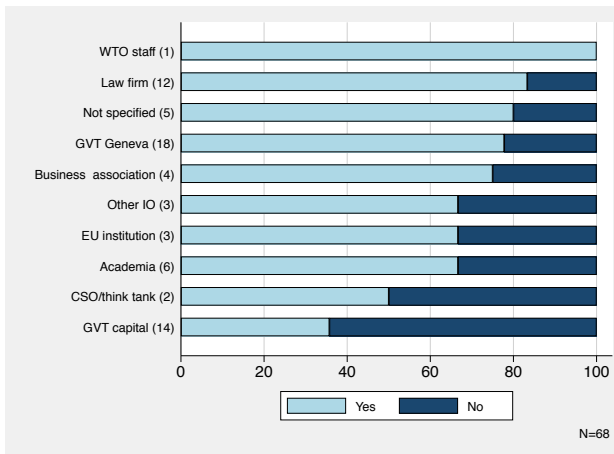
(b) Whole sample



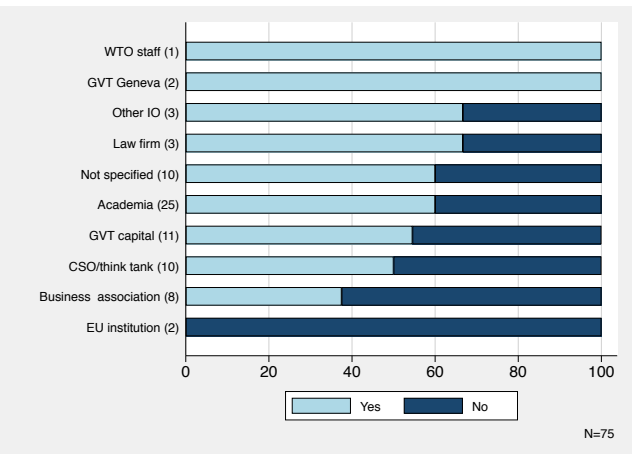
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



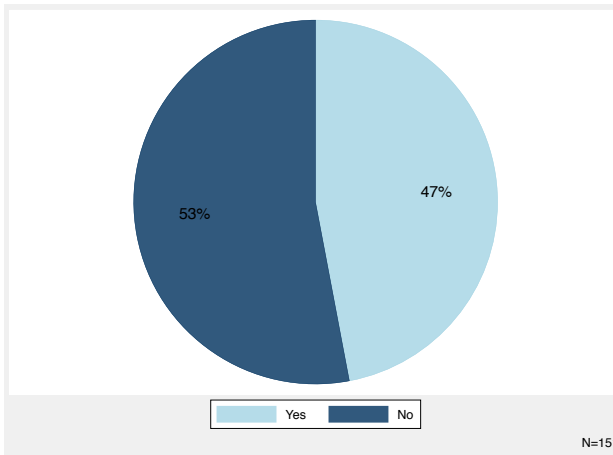
(e) Respondents involved in DS cases



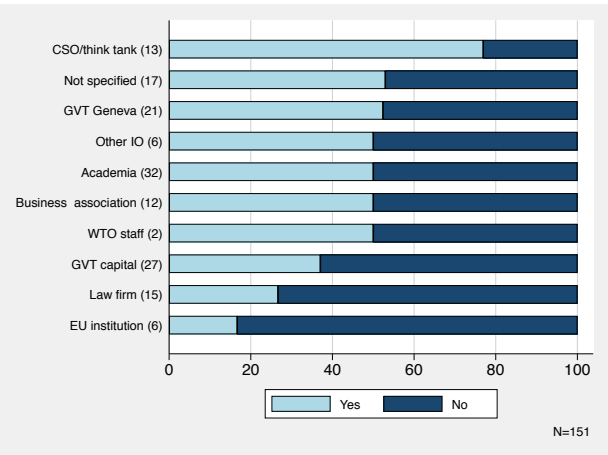
(f) Respondents not involved in DS cases

Question 32

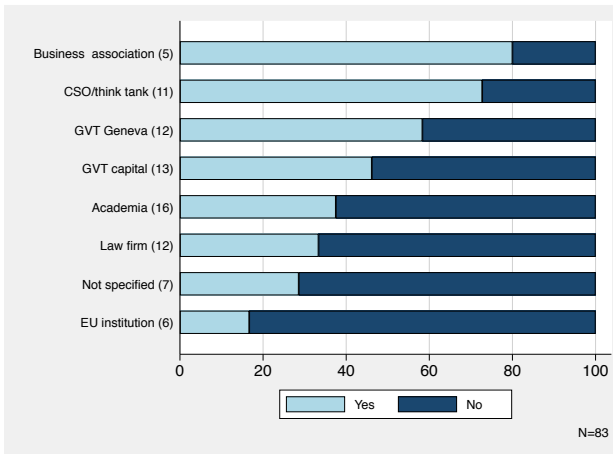
Should there be a page limit for Appellate Body reports?



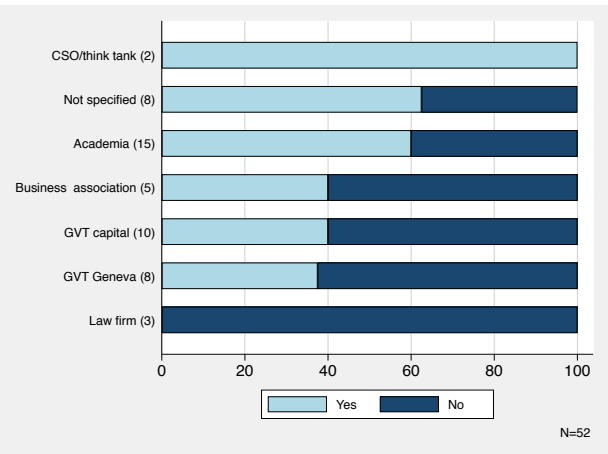
(a) Whole sample



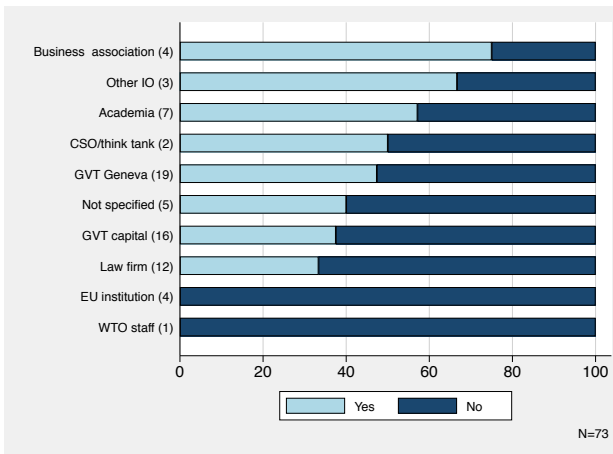
(b) Whole sample



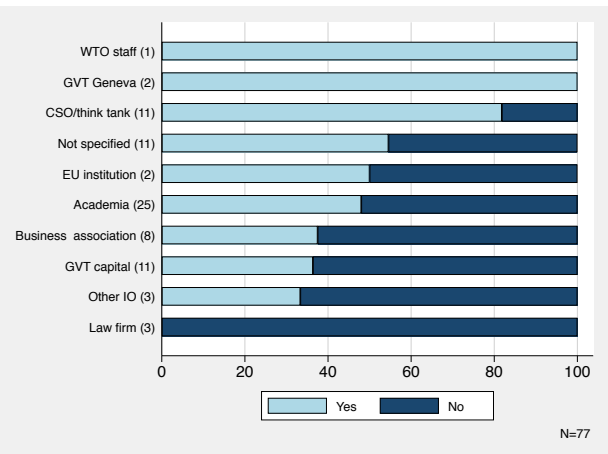
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



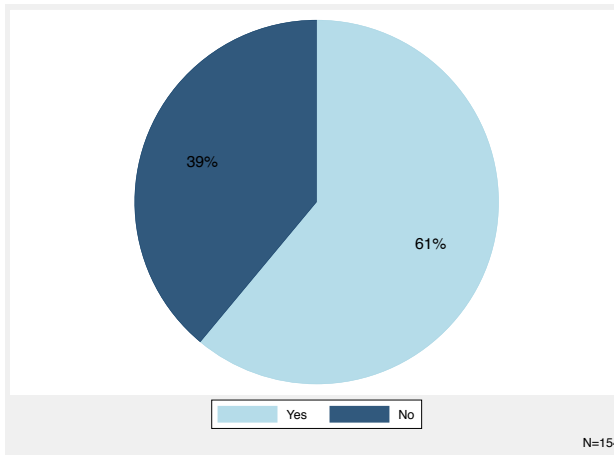
(e) Respondents involved in DS cases



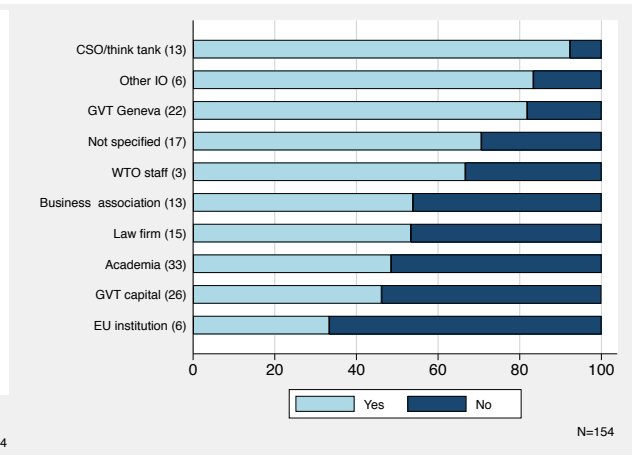
(f) Respondents not involved in DS cases

Question 33

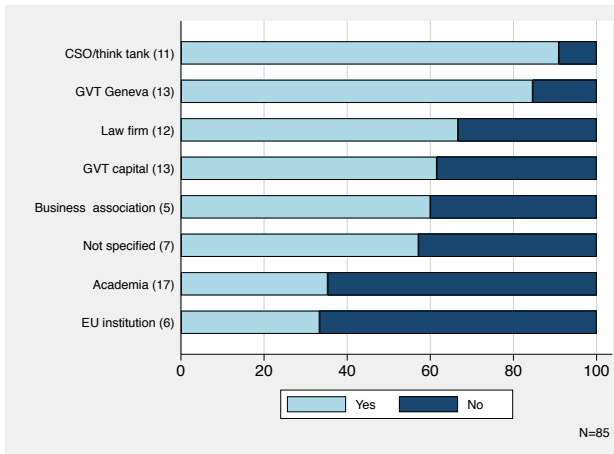
Should there be page limits on submissions by WTO Members in appeals procedures?



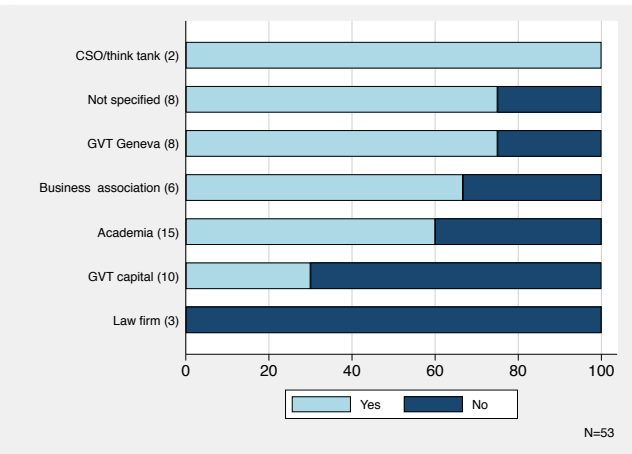
(a) Whole sample



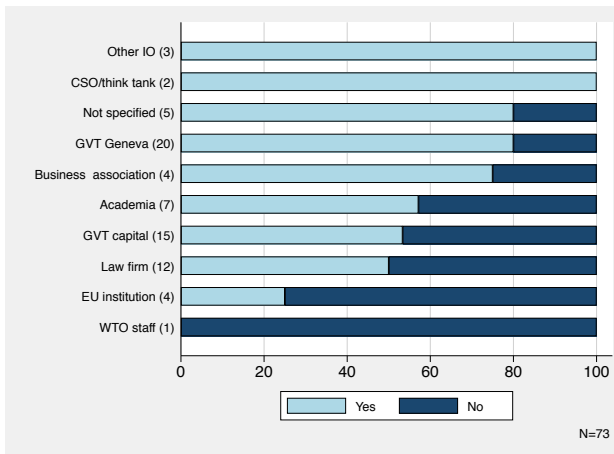
(b) Whole sample



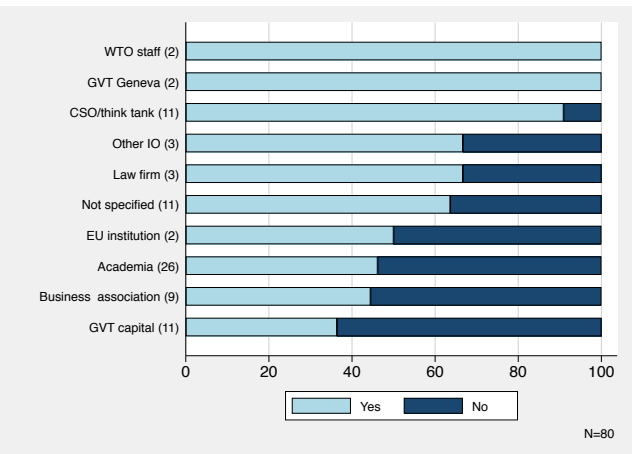
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



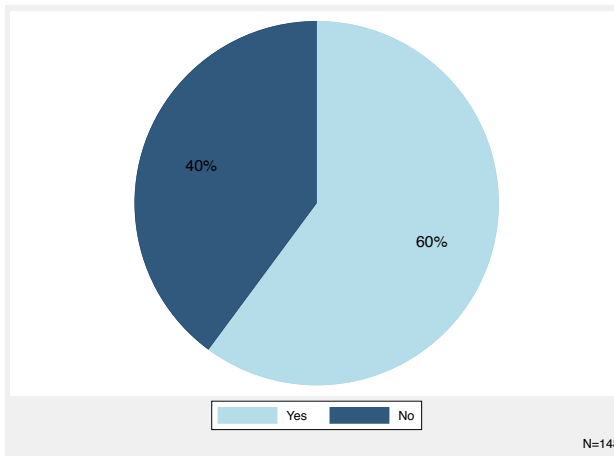
(e) Respondents involved in DS cases



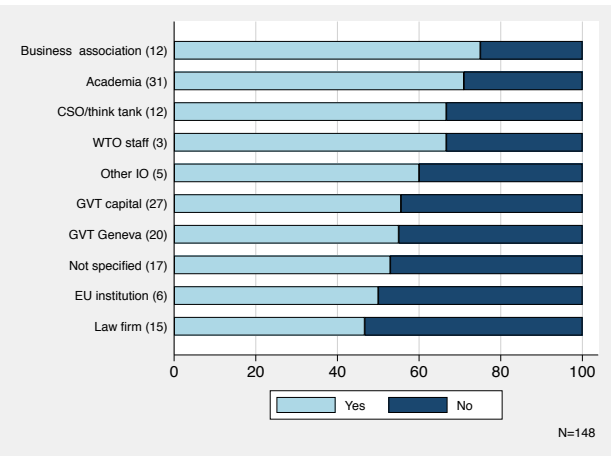
(f) Respondents not involved in DS cases

Question 34

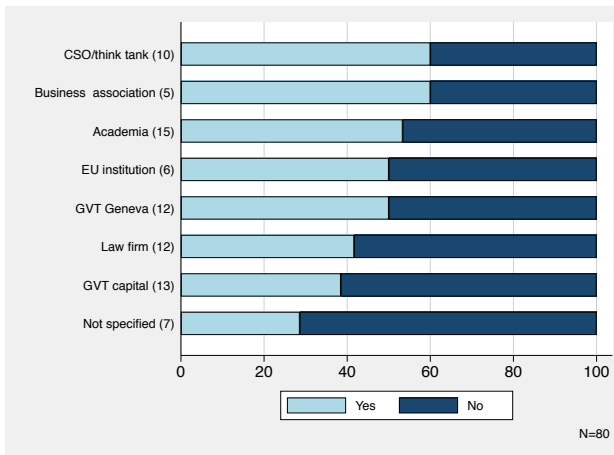
Would making available the possibility of award of monetary damages, enforceable in domestic courts, enhance interest in participating in WTO dispute settlement?



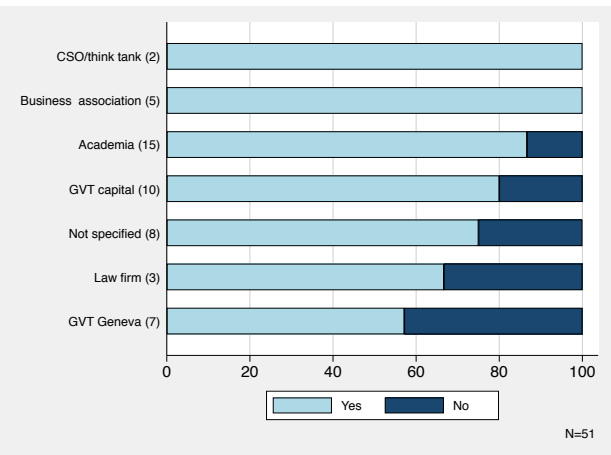
(a) Whole sample



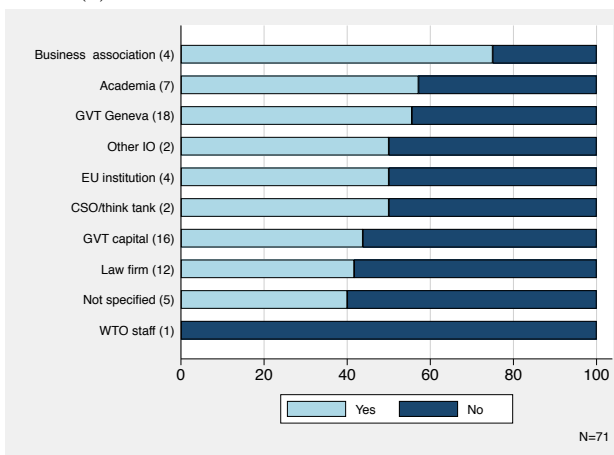
(b) Whole sample



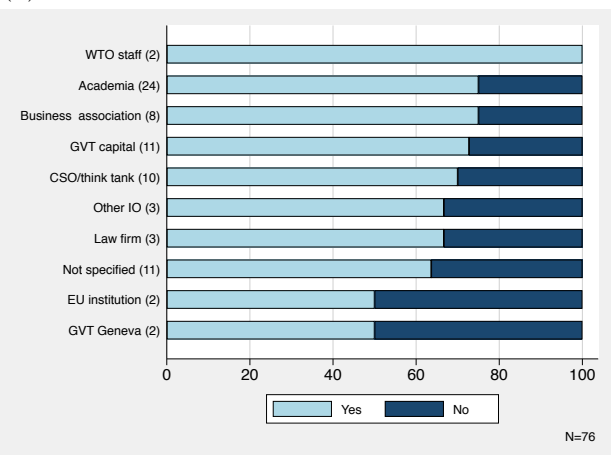
(c) Organizations in high income countries



(d) Organizations in low and middle income countries



(e) Respondents involved in DS cases



(f) Respondents not involved in DS cases

Adresse | Contact

Bertelsmann Stiftung
Carl-Bertelsmann-Straße 256
33311 Gütersloh
Telefon +49 5241 81-0

GED Team

Megatrends Program
Telefon +49 5241 81-81353
ged@bertelsmann-stiftung.de
www.ged-project.de

www.bertelsmann-stiftung.de