

**WTO DISPUTE SETTLEMENT REPORT CARD**

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## **INTRODUCTION**

The World Trade Organization (WTO) dispute settlement system has evolved from the GATT system. As shown in Table 1, some improvements have been made as a result of the changeover. In this report, the rules and trends involved in the WTO dispute settlement system as well as the reasons behind them will be examined. First, the new panel process and its timeliness are explained. Second, the activities of the WTO Dispute Settlement Body (DSB) since its inception in 1995 are looked at in detail. Specifically, this report looks at which parties are involved in cases, what subjects the cases revolve around, the agreements complaints are based on and the types of disputes resulting from this. Finally, current status and repetition of cases are examined. This report card should help readers to gain an understanding of what is happening in the WTO dispute settlement system.

**Table 1: Comparison Between GATT & WTO Dispute Settlement Systems (Rules vs. Diplomacy)**

Features	GATT 1947	WTO
Model	Regime Management Model	Trade Stakeholder Model
Sources of law	No provision for formal, juridical dispute settlement; emphasis on diplomatic methods of consultation and consensus (evolving from the provisions of Art. XXII, XXIII)	WTO Dispute Settlement Understanding (DSU)
Source of panellists	Mostly junior to middle-level trade diplomats, or retired trade diplomats (mostly without formal legal training), very much influenced by the Secretariat	Panel: “well-qualified governmental and/or non governmental individuals”, including diplomats, trade officials, persons who have taught or published international trade law or policy, etc. AB: comprised on 7 “persons of recognized authority, with demonstrated expertise in law, international trade, and the covered agreements generally” (four-year, once renewable term).
Stipulated procedure and time limit for dispute settlement	No hard time limits on consultation, responses to requests for panels, and panel proceedings and rulings. Time cost (from complaint lodged to remedial measures implemented) Trebilcock & Howse: (1947-85): average 2 years, with 10 longer than two years and 1 very protracted. <sup>1</sup> “A reasonable time” was the guiding time restriction for the GATT system.	Time limits provided for each step of dispute settlement (e.g., panel report circulated to DSB in maximum 9 months after the establishment of a panel).
Appeal proceeding	None.	Innovation of appeal.
Adoption of ruling	Adoption of a ruling depends on the consensus of all Contracting Parties (making ruling adoption difficult, if not impossible, due to opposition of losing party)	Rejection of a ruling depends on the consensus of all Contracting Parties (making ruling adoption almost automatic).
Success rate (full/partial satisfaction of the complaint)	Hudec <i>et al.</i> : from 1948-89: Success rate of 88%. Success rate declined in 1980s to 81% <sup>2</sup>	Computation from WTO’s State-of-Play chart <sup>3</sup> : 89.5% success rate for completed cases.

<sup>1</sup> M. J. Trebilcock and R. Howse, *The Regulation of International Trade*, New York: Routledge, 1999, p. 56.

<sup>2</sup> Ibid.

# WTO DISPUTE SETTLEMENT PROCESS

The new dispute settlement process is set out below. Table 2 illustrates the time which a case takes to go through the new system, using a case study to show how the new time constraints work.

## THE WTO PANEL PROCESS

### Objective

- Provide security & predictability to the multilateral trading system
- Preserve the rights & obligations of Members under covered agreements & clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law
- Prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member

### In General

- At all stages, countries in dispute are encouraged to consult each other in order to settle 'out of court'
- At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation
- Where the DSB administers the dispute settlement provisions of the Plurilateral Trade Agreement, only those Members that are party to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute
- Relevant WTO Councils & Committees will be notified by DSB of all case developments

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<sup>3</sup> WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

### Agreements Covered by the Understanding (Appendix 1)

- The following agreements are covered by the Understanding on Rules & Procedures Governing the Settlement of Disputes (DSU):

(A) Agreement Establishing the World Trade Organisation

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements of Trade in Goods

Annex 1B: General Agreement on Trade in Services

Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules & Procedures Governing Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

## **THE COMPLAINT**

### Reason for Complaint

- One country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations
- Claim may be based on any of the multilateral trade agreements included in the Annexes to the Agreement establishing the WTO

### Parties' Conduct

- Before bringing a case, a member shall exercise its judgment as to whether action under these procedures would be fruitful (mutually acceptable solution is preferred to proceedings)
- It is understood that, if a dispute arises, all Members will engage in a good faith effort to resolve the dispute – complaints & counter-complaints in regard to distinct matters should not be linked

### Third Party Interests (art. 10)

- When another Member has a substantial trade interest in the consultations being held, it may notify DSB of desire to be joined in consultations within 10 days of request for consultations; if this request is not accepted (substantial interest not well-founded) that member is free to request its own consultations

- The third party's interests will fully be taken into account during the panel process

#### Multiple Complainants (art. 9)

- A single panel should be established to examine multiple complaints related to the same matter whenever feasible
- Use of a single rather than multiple panels should not impair the rights of the parties, who may request separate reports
- If more than one panel is established to examine complaints related to the same matter, wherever possible, the same panelists shall serve on the panels & the dispute process timetables shall be harmonized

#### Developing Country Complaints

- If a complaint is brought by a developing country Member against developed country Member, the complainant may invoke old rules with extended time limits
- Members shall exercise due restraint in raising matters involving a least-developed country Member

### **CONSULTATIONS (art. 4) – up to 60 days**

#### Procedure

- Countries in dispute must talk to each other to see if they can settle their differences themselves
- A country must reply to a request for consultations from another member within 10 days & enter into consultations within 30 days of that request (10 days for urgent situations, e.g., perishable goods) – if these time limits are not met, the complainant may request immediate establishment of a panel
- If consultations fail, parties can also ask the WTO director-general to mediate or try to help in any other way – parties may voluntarily agree to follow alternative means of dispute settlement including good offices, conciliation, mediation & arbitration

#### Confidentiality

- Consultations shall be confidential & without prejudice to the rights of any Member in any further proceedings

### Developing Country Consultations

- During consultations, Members should give special attention to the particular problems of developing countries (e.g., parties may agree or chairman or DSB may decide to extend some time limits) (art. 12:10)

### **Good Offices, Conciliation & Mediation (art. 5)**

- These are voluntary procedures which may be requested at any time by any party to a dispute & may be terminated at any time (once terminated, complainant may proceed with request for establishment of a panel)

### Procedure

- When entered into within 60 days after request for consultations, must wait until the end of 60 days to request establishment of a panel, unless parties agree that good offices, conciliation or mediation has failed to settle the dispute
- If parties agree, may continue these procedures while the panel process proceeds

### Confidentiality

- Confidential & without prejudice to the rights of either party in any further proceedings

### **PANEL ESTABLISHMENT**

**(art. 6) – by 2<sup>nd</sup> DSB meeting – up to 45 days for panel to be established)**

- If consultations do not yield a solution after 60 days (20 days for urgent situations), complaining country can ask for a panel to be appointed
- Where dispute not settled through consultations, DSU requires establishment of a panel, at the latest, at the meeting following that at which a request is made, unless the DSB decides by consensus against establishment
- Responding country can block the creation of a panel once, but when the DSB meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel)
- DSB makes decision to have a panel
- DSB has sole authority to establish “panels” of experts to consider the case



### **Terms of reference (art. 7) – 0-20 days**

- The DSU also sets out specific rules & deadlines for deciding the terms of reference & composition of the panels
- Standard terms of reference will apply unless parties agree to special terms within 20 days of the panel's establishment

### **Panel Composition (art. 8)**

- A panel can be composed (i.e. panelists chosen) up to about 50 days after its establishment
- Where parties do not agree on the composition of the panel within the same 20 days as above (terms of reference time frame), this can be decided by the Director-General
- Panelists are usually chosen with the countries in dispute
- Only if the two sides cannot agree does the WTO director-general appoint them (this only happens rarely)
- Panels contain 3 (occasionally 5, if parties agree within 10 days) experts, with diverse backgrounds & experience, from countries not party to the dispute
- Panelists for each case can be chosen from a permanent list of well-qualified candidates, or from elsewhere
- The Secretariat will maintain a list of experts satisfying the criteria, & propose nominations for the panel, which parties to the dispute shall not oppose except for compelling reasons
- Panelists serve in their individual capacities – they cannot receive instructions from any government
- Panelists expenses, including travel & subsistence allowance, shall be met from the WTO budget

### Panel Member Qualifications

- Governmental or non-governmental individual, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member

### Developing Country Panelist Member

- When a dispute involves a developing country Member, it may request that the panel include at least one panelist from another developing country Member

## **PANEL EXAMINATION & REPORTS**

### **Panel Examination**

#### Confidentiality (art. 14)

- All panel deliberations shall be confidential and drafted without disputing parties present
- Opinions expressed by the panel shall be anonymous

#### Before the first hearing:

- Each side in the dispute presents its case in writing to the panel

#### First hearing: the case for the complaining country & defence

- Complaining country(/ies), responding country & those who have announced they have an interest in the dispute, make their case

#### Rebuttals

- The countries involved submit written rebuttals & present oral arguments at the panel's second meeting

#### Experts

- If one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report

#### Considerations

- Normally, there is a presumption that a breach of the rules has an adverse impact on other Member parties to that covered agreement, & in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge (art. 3:8)

- A panel should make an objective assessment of the facts, applicability & conformity of agreements (art. 11)
- Panels should consult regularly with the parties to a dispute & give them adequate opportunity to develop a mutually satisfactory solution (art. 11)
- Panel's findings must be based on arguments cited

#### Suspension

- The panel may suspend its work at any time at the complainant's request for up to 12 months, also causing relevant time limits to be extended; if suspended for more than 12 months, authority for establishment will lapse (art. 12:12)

#### First Draft (does not include findings & conclusions)

- Panel submits the descriptive (factual & argument) sections of its report to the two sides, giving them two weeks to comment

#### **Interim Review Stage (art. 15)**

- Panel submits an interim report, including its findings & conclusions, to the two sides, giving them one week to ask for a review
- If a review is not requested, the interim report will become the final panel report

#### Review Meeting with Panel (upon request, art. 15.2)

- The period of review must not exceed 2 weeks
- During that time, the panel may hold additional meetings with the two sides

#### **Panel Report issued to parties (art. 12.8; Appendix 3 para 12(j)) – 6 months from panel's composition, 3 months if urgent (e.g., if perishables involved)**

- Final report is submitted to the two sides
- Members having objections to panel report shall make them 10 days prior to DSB meeting at which the report will be considered (art. 16:2)

#### Final Report

- If dispute involves a developing country, report must indicate how differential & more-favorable treatment provisions for developing countries have been taken into account (art. 12:11)

**Panel Report circulated to DSB (art. 12.9; Appendix 3 para 12(k)) – up to 9 months from panel’s establishment**

- 3 weeks later, final report is submitted to all WTO members

**REPORT ADOPTION**

***DSB adopts panel report (60 days after issued; max of 9 months after panel establishment; TOTAL = 1 year)***

Procedure

- First rulings are made by a panel & endorsed (or rejected) by the WTO’s full membership
- Parties to the dispute may participate fully in the consideration of the panel report & their views shall be fully recorded (art. 16:3)
- DSB has sole authority to accept or reject the panels’ findings or the results of an appeal
- The report becomes the DSB’s ruling or recommendation within 60 days unless a consensus rejects it (as opposed to GATT procedure where consensus had to accept it & losing party could block the ruling) or unless one of the parties notifies the DSB of its intention to appeal

Panel Recommendations (art. 19)

- Where inconsistent measure found, panel shall recommend that the Member bring it into conformity with the covered agreements; may also suggest ways of implementation
- Panel cannot add or diminish the rights & obligations provided in the covered agreements

**OR**

***Appellate review (60-90 days for appellate report issuance; art. 16.4 & 17) then DSB adopts appellate report (30 days for appellate report adoption; art. 16.1; max of 12 months after panel establishment; TOTAL = 15 months)***

Who Can Appeal

- Either side can appeal (& in some cases, both do), but third parties may not appeal

Basis for Appeal

- Appeals must be based on points of law such as legal interpretation – they cannot reexamine existing evidence or examine new evidence

#### Composition of Appellate Body (art. 17)

- The DSB establishes a permanent 7-member Standing AB which will hear appeals from panel cases – this group should broadly represent the range of WTO membership
- The DSB will appoint persons for a 4-year term, & each person may be reappointed once
- The AB shall comprise persons of recognized authority, with demonstrated expertise in law, international trade & the subject matters of the agreements generally, and unaffiliated with any government
- Each appeal is heard by 3 members of the AB
- AB expenses, including travel & subsistence allowance, shall be met from the WTO budget

#### Confidentiality (art. 17:10-11)

- Proceedings of AB shall be confidential
- Opinions expressed shall be anonymous

#### Appellate Body Report/Recommendations (art. 19)

- The appeal can uphold, modify or reverse the panel's legal findings & conclusions
- Where inconsistent measure found, Appellate Body shall recommend that the Member bring it into conformity with the covered agreements; may also suggest ways of implementation
- Appellate Body cannot add or diminish the rights & obligations provided in the covered agreements

#### Appellate Body Report Adoption

- DSB has to accept or reject appeals report within 30 days (rejection only possible by consensus)

## **IMPLEMENTATION (art. 21)**

- DSB monitors implementation– regular surveillance until the issue is resolved

### Prompt compliance

- Prompt compliance with recommendations or rulings of DSB is essential
- The losing party must state its intentions to follow the recommendations of the panel report at a DSB meeting held within 30 days of the report's adoption (art. 21:3)

### Reasonable Period of Time

- If complying with the recommendation immediately proves impracticable, the member will be given a reasonable period of time to do so
- “reasonable period of time” = time proposed by Member concerned & approved by DSB; OR time mutually agreed by parties within 45 days of report adoption; OR time decided by arbitration within 90 days of report adoption (approx 15 months if fixed by arbitrator)
- “reasonable period of time” shall be determined within 15 months after panel establishment

### Status Reports

- Member concerned must provide DSB with an implementation progress report 10 days prior to each DSB meeting

### Implementation of Developing Country Members' Complaints

- DSB will consider trade coverage of measures complained of & impact on economy of developing country Member

## **Possibility of Proceedings (90 days, art. 21.5)**

- Where there is disagreement as to the existence or consistency with a covered agreement of the measures taken to comply with the recommendations & rulings, the original panel may be consulted

## **Compensation & Suspension of Concessions (art. 22) (neither preferred to full implementation)**

### Compensation

- If losing country fails to act within agreed-upon period of time, it has to enter into negotiations with the complaining party to determine a mutually-acceptable compensation (e.g., tariff reductions in areas of particular interest to the complaining side)
- Provision of compensation should only be resorted to if the immediate withdrawal of the measure is impracticable & as a temporary measure pending withdrawal of that measure

### Nature of Compensation

- Compensation is voluntary &, if granted, shall be consistent with the covered agreements

### Suspension of Concessions

- If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the DSB for permission to impose limited trade sanctions (“suspend concessions or obligations”) against other side, only until inconsistent measure brought into line with covered agreements or mutually satisfactory solution is reached
- The DSB should grant this authorization within 30 days of expiry of “reasonable period of time” unless there is a consensus against the request
- Disagreements over proposed level or type of suspension may be referred to arbitration

### Nature of Sanctions

- In principle, the sanctions should be imposed in the same sector as the dispute
- If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement
- If this is not effective or practicable, & if the circumstances are serious enough, the action can be taken under another agreement
- The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective

- The last resort is the possibility of suspending the application of concessions or other obligations under covered agreements on a discriminatory basis

#### Least-Developed Country Sanctions

- Members shall exercise due restraint in asking for compensation or seeking authorization to suspend the applications or concessions or other obligations of least-developed country Members

#### **Retaliation (art. 22.2 & 22.6)**

- if no agreement on compensation, DSB has power to authorize retaliation pending full implementation (i.e. when a country does not comply with a ruling)

#### **Cross-Retaliation (art. 22.3)**

- same sector, other sectors, other agreements

#### **Possibility of Arbitration (art. 22.6 & 22.7)**

- on level of suspension procedures & principles of retaliation



**Table 2: Dispute Settlement Timetable and Case Study**

<b>Time Period</b> (beginning at complaint)	<b>Maximums</b> (according to DSU)	<b>Case Study:</b> Venezuela (& later, Brazil) vs. US: Standards for Reformulated & Conventional Gasoline
0	Complaint	Compliant 23-01-95
1 month	Consultations	Consultations 24-02-95
2		Request for Panel 25-03-95 DSB Agrees 10-14-95
3	Request for Panel	Panel Appointed 28-04-95
4		
5	DSB Agrees (establishment of panel)	
6	Panel Appointed	Panel Meeting
7		
8		
9		
10		
11		Interim Report 11-12-95
12 (One year)	Panel Report Issued to Parties	Final Report to DSB 29-01-96
13	Final Report to DSB	Appeal 21-02-96
14	Appeal/Adoption of Panel Report (60 days after report issued or 9 months after panel established)	
15		Appellate Body Report Submitted 29-04-96
16	Appellate Body Report Submission	Panel & AB Reports Adopted 20-05-96
17	AB Report Adoption (12 months after panel establishment; expected: 15 month mark)	

18 (1½ years)	Losing Party states intentions re implementation	
19	Parties agree on “reasonable period of time” or	
20	“Reasonable period of time” fixed by arbitrator	
21		
22		Parties Agree on Implementation Period (to be 15 months from report adoption; i.e. by month 31) 03-12-96
23		
24 (two years)		
25		
26		
27		
28		
29		
30 (2½ years)		
31		Implementation complete
32 (2 years, 8 months)	“Reasonable period of time” expires (implementation should be complete)	
33	Request/ authorization for trade sanctions	

# **THE WTO DISPUTES**

## **OVERVIEW**

Of the cases that have been brought to the DSB, those which were complete or active as of May 23, 2000 have been outlined in Table 3. Details such as claimant, respondent, winner (where a win for the complainant is full or partial satisfaction of the complainant), and cited provisions.

Some pending, settled, and inactive disputes have also been selected for their potential relevance to a related study of labour standards and health issues in WTO dispute decisions (see Table 4).

**Table 3: Completed and Active WTO Disputes, Parties, and Cited WTO Provisions<sup>4</sup>**

I. Completed WTO Cases (most recent listed first)

<b>Panel Established</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
1-2-1999	Canada – Patent Protection of Pharmaceutical Products	EC winner	Canada	WT/D S114/1	Art. 27.1, 28 and 33 of the TRIPS Agreement
22-9-1998	US – Tax Treatment for “Foreign Sales Corporations”	EC winner	US	WT/D S108/1	Art. 3.1(a) & (b) of the Subsidies Agreement; and Art. 3, 8, 9 and 10 of the Agreement on Agriculture
25-11-1998	Mexico – Anti-Dumping Investigation of High-Fructose Corn Syrup from the US	US Winner	Mexico	DS132	Art. 2, 3, 4, 5, 6, 7, 9, 10, and 12 of the Anti-Dumping Agreement
2-3-1999	US – Sections 301-310 of the Trade Act of 1974	EC	US winner	WT/D S152/1	Art. 3, 21, 22 and 23 of the DSU; Art. XVI:4 of the WTO Agreement; and Art. I, II, III, VIII, and XI of GATT
23-7-1998	Argentina – Safeguard Measures on Imports of Footwear	EC winner	Argentina	WT/D S121/1	Art. 2, 4, 6, and 12 of the Agreement on Safeguards, and Art. XIX of GATT
23-7-1998	Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products	EC Winner	Korea	WT/D S98/1	Art. 2, 4, 5 and 12 of the Agreement on Safeguards, and Art. XIX of GATT

<sup>4</sup> Data compiled from WTO’s State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

25-3-1998	Chile – Taxes on Alcoholic Beverages	EC Winner	Chile	WT/D S110/ 1	Art. III:2 of GATT
18-11-1997	Chile – Taxes on Alcoholic Beverages	EC Winner	Chile	WT/D S87/1	Art. III:2 of GATT
13-3-1998	Turkey – Restrictions on Imports of Textile and Clothing Products	India Winner	Turkey	WT/C S34	Art. XI, XIII, XXIV of GATT, and ATC Article 2
25-3-1998	Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products	US Winner	Canada	WT/D S103/ 1	Art. II, X & XI of GATT, Art. 3, 4, 8, 9, & 10 of the Agreement on Agriculture, Art. 3 of the Subsidies Agreement, and Art. 1, 2, & 3 of the Import Licensing Agreement
12-3-1998	Canada – Measures Affecting Dairy Products	New Zealand Winner	Canada	WT/D S113/ 1	Art. XI of GATT, and Art. 3, 8, 9 and 10 of the Agreement on Agriculture
18-11-1997	India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	US winner	India	WT/D S90/1	Art. XI:1 and XVIII:11 of GATT 1994, Art. 4.2 of the Agreement on Agriculture, Art. 3 of the Agreement on Import Licensing Procedures
23-7-1998	Brazil – Export Financing Programme for Aircraft	Canada Winner	Brazil	WT/D S76/1	Art. 3, 27.4 and 27.5 of Subsidies Agreement
23-7-1998	Canada – Measures Affecting the Export of Civilian Aircraft	Brazil Winner	Canada	WT/D S70	Art. 3 of Subsidies Agreement

22-6-1998	Australia – Subsidies Provided to Producers of Exporters of Automotive Leather	US Winner	Australia	WT/D S126/ 1	Art. 3 of Subsidies Agreement
18-11-1997	Japan – Measures Affecting Agricultural Products	US Winner	Japan	WT/D S76/1	Art. 2, 5, & 8 of the SPS Agreement
16-1-1998	US – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea	Korea Winner	US	WT/D S99/1	Art. 6 & 11 of the Anti-Dumping Agreement
16-10-1997	Korea – Taxes on Alcoholic Beverages	EC Winner	Korea	WT/D S/75/ 1	Art. III:2 of GATT
16-10-1997	Korea – Taxes on Alcoholic Beverages	US Winner	Korea	WT/D S84/1	Art. III:2 of GATT
20-3-1997	Guatemala – Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico	Mexico	Guatemala Winner due to procedural reasons	WT/D S60	Articles 2, 3, 5, & 7.1 of the Anti-Dumping Agreement

25-2-1997	US – Import Prohibition of Certain Shrimp and Shrimp Products	India, Malaysia, Pakistan, Thailand & India winner	US	WT/D S58	Art. I, XI, XIII & XX of GATT
10-4-1997	Australia – Measures Affecting the Importation of Salmon	Canada Winner	Australia	WT/D S18	GATT Art. XI and XIII, Art. 2.2,2.3,5.1,5.5, and 5.6 of SPS
16-10-1997	India – Patent Protection for Pharmaceutical and Agricultural Chemical Products	EC Winner	India	WT/D S79/1	Art. 70.8 & 9 of TRIPS
30-7-1997	EC – Measures Affecting Importation of Certain Poultry Products	Brazil Partly winner	EC	WT/D S69	Art. X & XXVII of GATT, and Art. 1 & 3 of the Agreement on Import Licensing Procedures
12-6-1997	Indonesia – Certain Measures Affecting the Automobile Industry	Japan (EC, US) winner	Indonesia	WT/D S55	Art. I:1. II:2, III:2 & X:3(a) of GATT, Art. 2 & 5.4 of TRIMS, and Art. 5(c) of the SCM
25-2-1997	EC, UK & Ireland – Customs Classification of Certain Computer Equipment	US	EC, UK & Ireland Winner	WT/D S62, 67, 68	Art. II of GATT

25-2-1997	Argentina – Certain Measures Affecting Import of Footwear, Textile, Apparel and Other Items	US Winner	Argentina	WT/D S56	Art. II, VII, VIII & X of GATT, Art. 2 of TBT, Art. 1 – 8 of the Agreement on the Implementation of Article VII of GATT, & Art. 7 of the Agreement on Textiles and Clothing
16-10-1996	Japan – Measures Affecting Consumer Photographic Film and Paper	US Winner	Japan	WT/D S44	Art. III, X & XXIII:1(b) of GATT
20-5-1996	EC – Measures Affecting Meat and Meat Products (Hormones)	US Winner	EC	WT/D S26	GATT Art. III & XI, SPS Agreement Art. 2, 3, & 5 TBT Agreement Art. 2, and the Agreement on Agriculture Art. 4
16-10-1996	EC – Measures Affecting Livestock and Meat (Hormones)	Canada Winner	EC	WT/D S48	GATT Art. XXII, III, & XI, SPS Art. 2, 3, & 5, TBT Art. 2, and Agriculture Art. 4
20-11-1996	India – Patent Protection for Pharmaceutical and Agricultural Chemical Products	US Winner	India	WT/D S50	TRIPS Art. 27, 63, 65 & 70
8-5-1996	EC – Regime for the Importation, Sale and Distribution of Bananas	Ecuador, Guatemala, Honduras, Mexico & US Winner	EC	WT/D S27	GATT Art. I, II, III, X, XI & XIII, as well as Import Licensing Agreement, the Agreement on Agriculture, TRIMs and GATS



19-6-1996	Canada – Certain Measures Concerning Periodicals	US Winner	Canada	WT/D S31	GATT Art. III & XI
17-4-1996	US – Measures Affecting Imports of Woven Wool Shirts and Blouses	India Winner	US	WT/D S33	Art. 2, 6 & 8 of ATC
1995	Brazil – Measures Affecting Desiccated Coconut	Philippines	Brazil	WT/D S22	It was concluded that the WTO and GATT rules relied on by the Claimant were inapplicable to the dispute
1995	US – Restrictions on Imports of Cotton and Man-Made Fibre Underwear	Costa Rica Winner	US	WT/D S24	ATC Agreement
27-9-1995	Japan – Taxes on Alcoholic Beverages	EC, Canada & US Winner	Japan	WT/D S8, WT/D S10, WT/D S11	GATT Art. III:2
1995	US – Standards for Reformulated and Conventional Gasoline	Venezuela & Brazil	US	WT/D S2 & WT/D S4	GATT Art. I, III & XX, and TBT Art. 2

II. Appellate Body Reports Issued

<b>Panel Established</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
17-2-1999	US – Imposition of Countervailing Duties on Certain Hot-rolled Lead and Brismuth Carbon Steel Products Originating in the UK	EC winner	US	WT/D S138/ 1	Art. 1.1(b), 10, 14 and 19.4 of the Subsidies Agreement

III. Panel Reports Appealed

<b>Panel Established</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
1-2-1999	Canada – Certain Measures Affecting the Automotive Industry	Japan Winner	Canada	WT/D S139/ 1	GATT Art. I:1, III:4 & XXIV, TRIMs Art. 2, SCM Art. 3, GATS Art. II, VI & XVII
1-2-1999	Canada – Certain Measures Affecting the Automotive Industry	EC Winner	Canada	WT/D S142/ 1	GATT Art. I:1, III:4, TRIMs Art. 2, SCM Art. 3, GATS Art. II, VI & XVII

IV. Panel Reports Issued

<b>Panel Established</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
1-2-1999	US – Anti-Dumping Act of 1916 (I)	EC	US	WT/D S136	GATT Art. III:4, VI:1 & VI:2, WTO Agreement Art. XVI:4, Anti-Dumping Art. 1, 2, 3, 4 & 5
16-6-1999	Korea – Measures Affecting Government Procurement	US	Korea	WT/D S163/1	Agreement on Government Procurement (GPA)
22-9-1999	Canada – Patent Protection Term	US	Canada	WT/D S170/1	TRIPS Art. 33, 65 & 70

V. Active Panels

<b>Panel Established</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
25-11-1998	EC – Measures Affecting the Prohibition of Asbestos and Asbestos Products	Canada	EC (France)	WT/D S135	SPS Art. 2, 3 & 5, TBT Art. 2, and GATT Art. II, XI & XIII
26-5-1999	Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef	US	Korea	WT/D S161/1	GATT Art. II, III, XI & XVII, Agreement on Agriculture Art. 3, 4, 6, 7, Import Licensing Agreement Art. 1, 3
26-7-1999	Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef	Australia	Korea	WT/D S169/1	GATT Art. II, III, XI & XVII, Agreement on Agriculture Art. 3, 4, 6, 7, Import Licensing Agreement Art. 1, 3

26-5-1999	US – Section 110(5) of the US Copyright Act	EC	US	WT/D S160/ 1	TRIPS Art. 9(1)
16-6-1999	US – Import Measures on Certain Products from the EC	EC	US	WT/D S165/ 1	DSU Art. 3, 21, 22, 23, and GATT Art. I, II, VIII, XI
16-6-1999	Australia – Measures Affecting the Importation of Salmonids	US	Australia	WT/D S18	Same case as WT/DS18
26-7-1999	Argentina – Measures on the Export of Bovine Hides and the Import of Finished Leather	EC	Argentina	WT/D S155	GATT Art. III:2, XI:1, X:3(a)
26-7-1999	US – Anti-Dumping Act of 1916 (II)	Japan	US	WT/D S162/ 1	GATT Art. III, VI, XI, and Anti-Dumping Agreement
26-7-1999	US – Definitive Safeguard Measure on Imports of Wheat Gluten from the EC	EC	US	WT/D S166/ 1	Art. 2, 4, 5, 12 of the Agreement on Safeguards; Art. 4.2 of the Agreement on Agriculture, GATT Art. I, XIX
26-7-1999	Argentina – Measures Affecting Imports of Footwear	US	Argentina	WT/D S164/ 1	Art. 5.1, 7.4, 12 of the Agreement on Safeguards, see also EC(DS121) & Indonesia (DS123)

22-9-1999	Guatemala – Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico	Mexico	Guatemala	WT/D S156	Art. 1, 2, 3, 5, 6, 7, 12, 18 of the Antidumping Agreement and its Annexes I & II, and GATT Art. VI
27-10-1999	EC – Anti-dumping Duties on Imports of Cotton-Type Bed-Linen from India	India	EC	WT/D S141/1	Art. 2.2.2, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.4, 5.8, 6, 12.2.2, 15 of the Anti-Dumping Agreement, GATT Art. I, VI
19-11-1999	US – Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand	New Zealand	US	WT/D S177/1	Art. 2, 4, 5, 11, 12 of Agreement on Safeguards, GATT Art. I, XIX (same panel as DS178)
19-11-1999	US – Safeguard Measure on Imports of Lamb Meat from Australia	Australia	US	WT/D S178/1	Art. 2, 4, 5, 8, 11, 12 of Agreement on Safeguards, GATT Art. I, II, XIX (same panel as DS177)
19-11-1999	Thailand – Anti-Dumping Duties on Angles, Shapes and Section of Iron or Non-Alloy Steel; H-Beams from Poland	Poland	Thailand	WT/D S122/1	Art. 2, 3, 5, 6 of the Anti-Dumping Agreement
19-11-1999	US – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea	Korea	US	WT/D S179	Art. 2, 6, 12 of the Anti-Dumping Agreement, GATT Art. VI

20-3-2000	Argentina – Transitional Safeguard Measures on Certain Imports of Woven Fabrics of Cotton and Cotton Mixtures Originating in Brazil	Brazil	Argentina	WT/D S190/1	Art. 2.4, 6.1, 6.2, 6.3, 6.4, 6.7, 6.8, 6.11, 8.9, 8.10 of the Agreement on Textiles and Clothing
20-3-2000	US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan	Japan	US	DS/184/1	GATT Art. VI, X, and Art. 2, 3, 6 (incl. Annex II), 9, 10 of the Anti-Dumping Agreement
18-5-2000	Nicaragua – Measures Affecting Imports from Honduras and Colombia	Columbia	Nicaragua	WT/D S188/1	GATT Art. I, II

**Table 4: Selected Pending, Settled, and Inactive WTO Disputes, Parties, and Cited WTO Provisions<sup>5</sup>**

I. Pending Consultations (most recent listed first, 69 in total, only selected ones)

<b>Request Date</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
21-5-1999	EC – Measures Relating to the Development of a Flight Management System	US	EC (France)	WT/D S172/ 1	SCM Agreement Art. 1, 3, 5, 6, and GATT Art. XXIII:1(b)
18-8-1997	US – Measures Affecting Imports of Poultry Products	EC	US	WT/D S100/ 1	GATT Art. I, III, X, XI, SPS Art. 2, 3, 4, 5, 8 & Annex C, TBT Art. 2, 5
25-10-1996	US – Import Prohibition of Certain Shrimp and Shrimp Products	Philippines	US	WT/D S61	GATT I, II, III, VIII, XI, TBT Art. 2
24-5-1996	Korea – Measures Concerning Inspection of Agricultural Products	US	Korea	WT/D S41	GATT Art. III, XI, SPS Art. 2, 5, 8, TBT Art. 2, 5, 6, and Art. 4 of the Agreement on Agriculture

II. Settled or Inactive Cases (32 in total, only selected ones)

<b>Request Date</b>	<b>Case Name</b>	<b>Claimant(s)</b>	<b>Respondent</b>	<b>No.</b>	<b>Cited WTO Provision(s)</b>
8-11-1995	Korea – Measures Concerning Bottled Water	Canada (settled)	Korea	WT/D S20	GATT Art. III, XI, SPS Art. 2, 5, and TBT Art. 2
3-3-1995	Korea – Measures Concerning the Shelf-life of Products	US (Settled)	Korea	WT/D S5	GATT Art. III, XI, SPS 2, 5, TBT Art. 2, and Art. 4 of Agreement on Agriculture

<sup>5</sup> Data compiled from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

## **PARTIES TO THE DISPUTES**

One of the most pertinent questions regarding WTO disputes is “Who is involved?” In an examination of the parties to these disputes, complaining and complaint-receiving countries and their development status have been recorded (see Table 5).

As shown in Figure 1, this data reveals that the US, EC and Canada are lodging the majority of complaints, accounting for 56%. Eighteen countries have raised 44%, while the remaining 116 Member parties have yet to make use of the WTO dispute settlement system and lodge any complaint for their own interests.

The three big complainants are also the three main complaint-receivers in the WTO. US, EC, & Canada again account for over 50% of WTO complaints received (see figure 1). Korea and Argentina also received their share of complaints with 9% and 8%, respectively. The remaining complaints were received by 11 other countries. Again, the majority of Member parties have not received any complaints.

As shown in Figure 2, developed countries both made (68%) and received (61%) around twice as many complaints as developing countries.

### Questions and Hypotheses:

*1. Why is Canada one of the big three players in the WTO dispute settlement system when it only represents a small portion of world trade?*

Canada’s proximity to the United States may have increased its involvement in WTO dispute settlement indirectly in two ways. First, there are a great deal of international transactions between these two neighboring countries



(e.g., NAFTA). Canada contrives many benefits from this tight relationship with the US, but at the same time, must be careful not to be “swallowed up” by its (ten times) bigger neighbor. Therefore, the Canadian government has traditionally maintained a series of protective measures in order to support its domestic industry. These measures, some of which might contravene WTO agreements, are obvious targets for the US. This has resulted in frequent US complaints to the WTO DSB. Taking advantage of US efforts, other countries (especially EC) have followed suit and launched similar claims against Canada.

Second, Canada is stimulated by the number of cases it has received, thereby improving its expertise in world trade litigation and dispute settlement. This familiarity with the WTO dispute settlement system as a "defendant" also makes Canada a stronger "plaintiff" and gives her the tools needed to successfully launch claims against other countries. This may account for the fact that Canada is also an active complainant.

## *2. Why are developing countries not bringing/receiving as many claims as developed countries?*

There are at least three possible reasons for the smaller number of claims brought against developing countries. First, developing countries are not the hotspot in international investment and trade. Most trade occurs within the developed world. It can be logically deduced that more claims will arise from parties having a larger stake in world investment and trade.

Second, legal systems in developing countries are less transparent than those of developed countries (e.g., unpublished regulations, unclear procedures,

etc.). Therefore it is more difficult for a potential claimant to identify a measure within a developing country that is inconsistent with WTO requirements.

Third, there are provisions in the DSU requiring special treatment towards developing countries. For example, they may invoke special time limit extensions in dispute settlement proceedings. Also, developed countries are advised to consider the special situations of developing countries when lodging a complaint against them. These might serve as a disincentive to bringing cases against such countries.

The primary reason for the small number of complaints made to the WTO by developing countries may be lack of resources. The economical disadvantage of developing (as compared to developed) countries adversely affects their ability to lodge complaints in two ways. First, an advanced education system requires strong economic support. In the absence of both of these, it is more difficult for developing countries to produce persons with the necessary knowledge and expertise to deal with international trade disputes. Second, the cost of litigating a case may discourage developing countries from participating in any “unsure” claims. Also, the modest bargaining power of developing countries prevents them from waging an economic war, or even retaliating, against a stronger country.

**Table 5: Complaining and Complaint-Receiving Countries and their Development Status<sup>6</sup>**

I. Complaining Parties

Complainant	# Complaints	Developed (A), Developing (B)
EC	17	A
US	19	A
India	4	B
NZ	4	A
Canada	5	A
Brazil	4	B
Japan	4	A
Korea	2	B
Mexico	3	B
Malaysia, Pakistan, Thailand, Ecuador, Guatemala, Honduras, Philippines, Costa Rica, Venezuela, Colombia, Poland	1 each	B
Australia	2	A

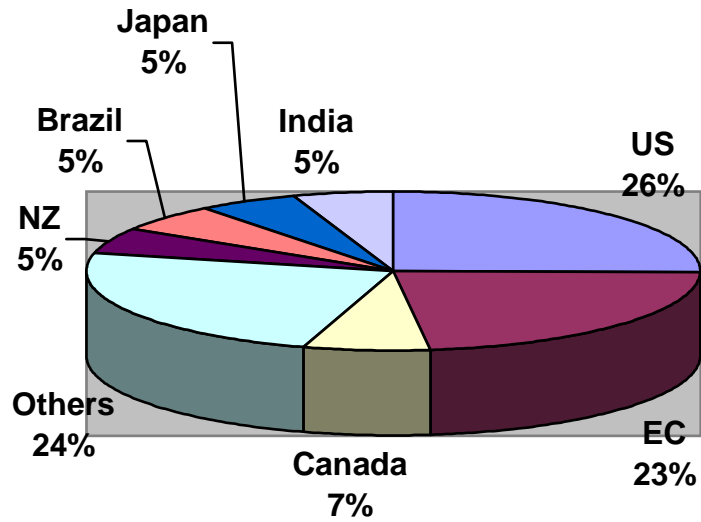
II. Complaint-Receiving Parties

Respondent	# Complaints Received	Developed (A), Developing (B)
Canada	8	A
US	17	A
EC	8	A
Argentina	5	B
Korea	6	B
Australia, Japan	3 each	A
Chile, Brazil, Guatemala	2 each	B
Mexico, Turkey, Indonesia, Thailand, Nicaragua	1 each	B
India	3	B

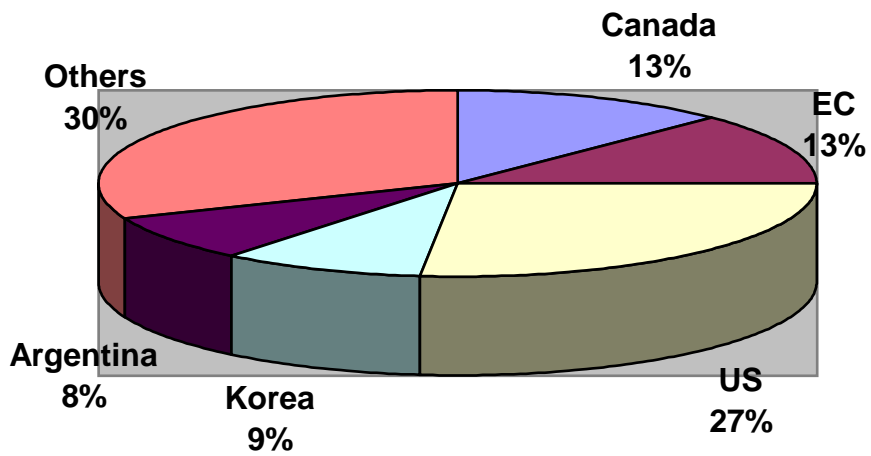
<sup>6</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

**Figure 1: Proportion of Complaints in Relation to Countries<sup>7</sup>**

I. Top Complaining Countries



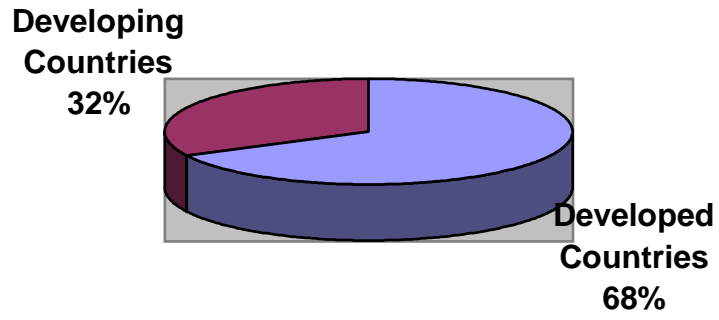
II. Top Complaint-Receiving Countries



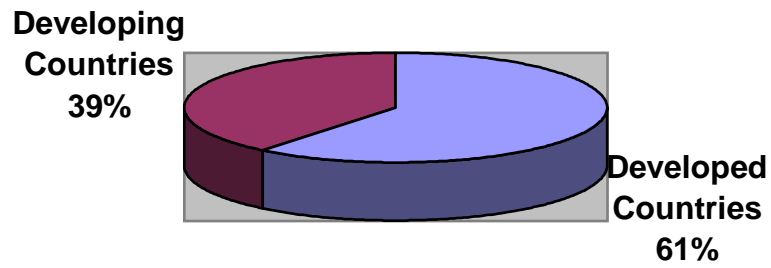
<sup>7</sup> Graphs constructed using data from Table 5.

**Figure 2: Proportion of Complaints in Relation to Country-Types<sup>8</sup>**

I. Proportion of Complaints Made by Each Country-Type



II. Proportion of Complaints Against Each Country-Type



<sup>8</sup> Graphs constructed using data from Table 5.

## DISPUTE SUBJECTS

Topics of WTO disputes were divided into six main categories: Industrial Products (includes computer-related products, photographic film and paper, pharmaceuticals, alcohol, and other products), Agriculture, Clothing & Textiles (also includes leather), Transportation (cars, planes, and gasoline), Raw Materials (cement, metals, and asbestos) and Other (legislation, tax, and periodicals). The incidence of each of these dispute subjects since the birth of the WTO was calculated, as shown in Table 6.

Figure 3 illustrates that Agriculture is the most popular dispute subject (29%), followed by Industrial Products (23%), and Clothing and Textiles (17%). Figure 4 is an analysis of the trends in dispute subjects over time. Agriculture is consistently popular and on the rise. Clothing and Textiles also seems to be increasing in popularity as a dispute subject over the years. The commonality of Industrial Products, however, is largely due to a surge in 1997.

Table 7 looks more closely at the incidence of dispute subjects over time for developed countries. In particular, the complaint subjects both lodged and received by developed countries each year was recorded. Figure 5 gives a visual illustration of this data.

Dispute subjects brought and received by developing countries have been examined in the same manner as those of developed countries (see Table 8 and Figure 6). As shown in Figure 6, no Agricultural disputes have been brought by developing countries in the past two years. It is interesting to note that Agriculture has maintained its status as top dispute subject despite this.

Questions and Comments:

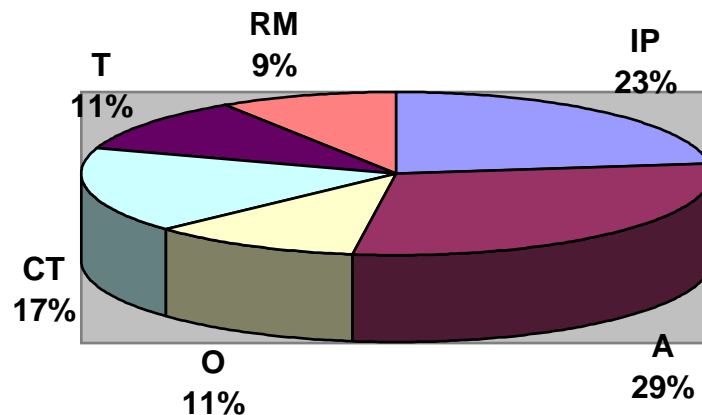
*Why is Agriculture the top dispute subject even though developing countries have not raised them during the past two years?*

Developed countries are the main exporters of agricultural products. This may explain the fact that they are more interested in lodging complaints against protective measures affecting export of agricultural products as, in any WTO dispute, it is usually the exporter bringing the claim.

**Table 6: Dispute Subjects by Year<sup>9</sup>**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
IP: Industrial Products (inc. pharmaceuticals & alcohol)	1	2	7	2	3	
A: Agriculture	1	3	5	4	6	
O: Other (Legislation, tax, periodicals)		1		1	4	1
CT: Clothing & Textiles (inc. leather)	1	1	2	3	3	1
T: Transportation (cars, planes, gasoline)	1		1	2	3	
RM: Raw Materials (cement, metals, asbestos)				1	4	1

**Figure 3: Proportions of WTO Dispute Subjects<sup>10</sup>**



IP = Industrial Products (inc. pharmaceuticals & alcohol)

A = Agriculture

O = Other (legislation, tax, periodicals)

CT = Clothing & Textiles (inc. leather)

T = Transportation (cars, planes, gasoline)

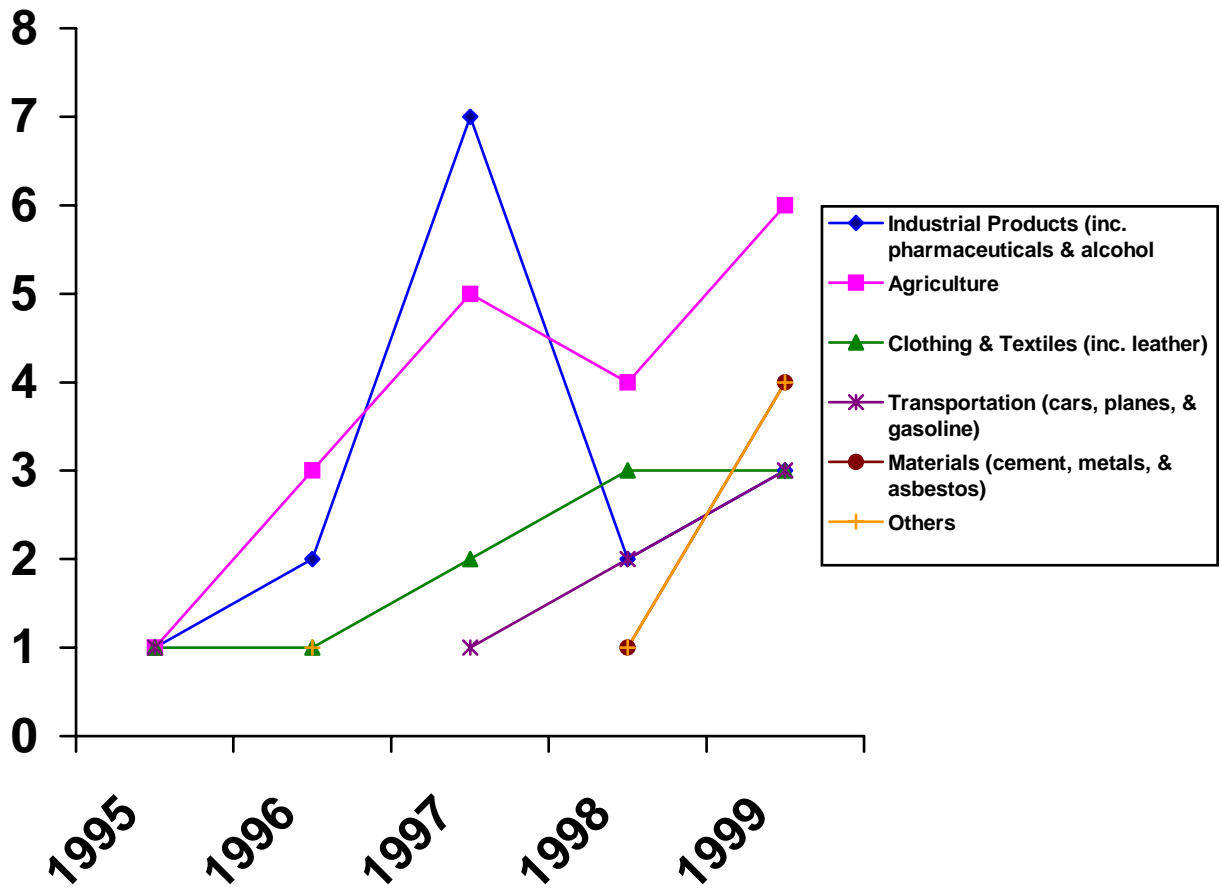
RM = Raw Materials (cement, metals, asbestos)

<sup>9</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

<sup>10</sup> Graph constructed using data from Table 6.



**Figure 4: Trends in Subjects of Disputes<sup>11</sup>**



<sup>11</sup> Graph constructed using data from Table 6.

**Table 7: Dispute Subjects by Year for Developed Countries<sup>12</sup>****I. Dispute Subjects Brought by Developed Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
IP: Industrial Products (inc. pharmaceuticals & alcohol)	1	2	6	1	3	
A: Agriculture		3	2	3	6	
O: Other (Legislation, tax, periodicals)		1		1	4	
CT: Clothing & Textiles (inc. leather)			2	2	2	
T: Transportation (cars, planes, gasoline)			1	1	3	
RM: Raw Materials (cement, metals, asbestos)				1	1	1

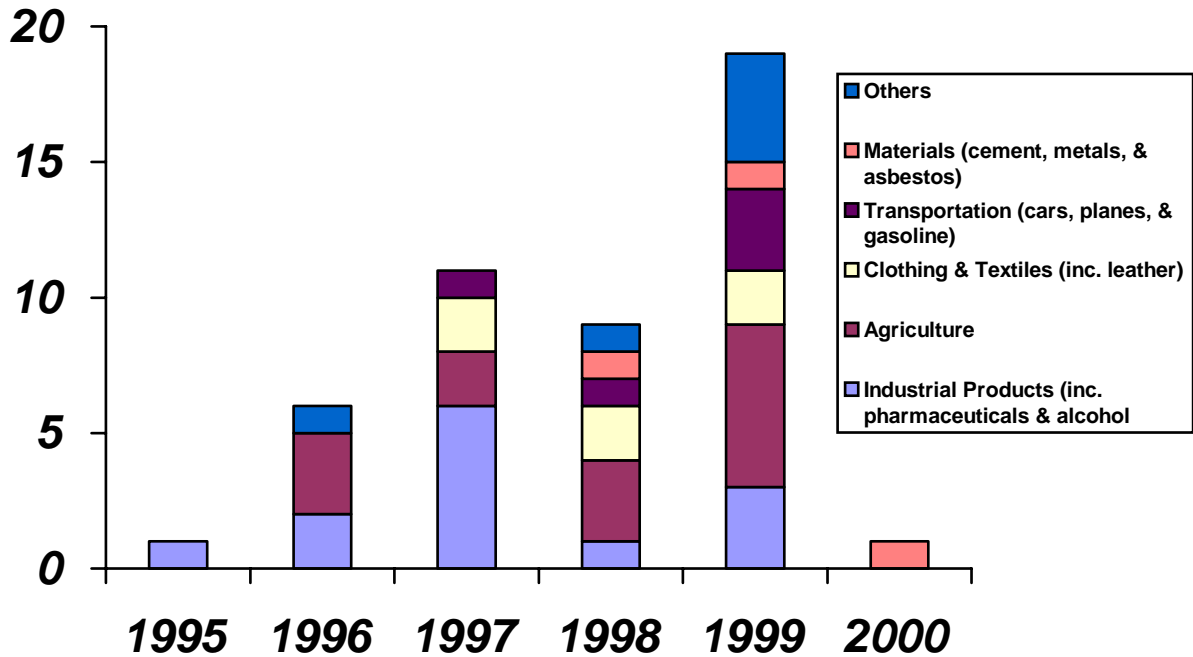
**II. Dispute Subjects Brought Against Developed Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
IP: Industrial Products (inc. pharmaceuticals & alcohol)	1	1	1	1	3	
A: Agriculture		3	3	3	4	
O: Other (Legislation, tax, periodicals)		1		1	4	
CT: Clothing & Textiles (inc. leather)	1	1		1	1	
T: Transportation (cars, planes, gasoline)	1			1	2	
RM: Raw Materials (cement, metals, asbestos)				1	2	1

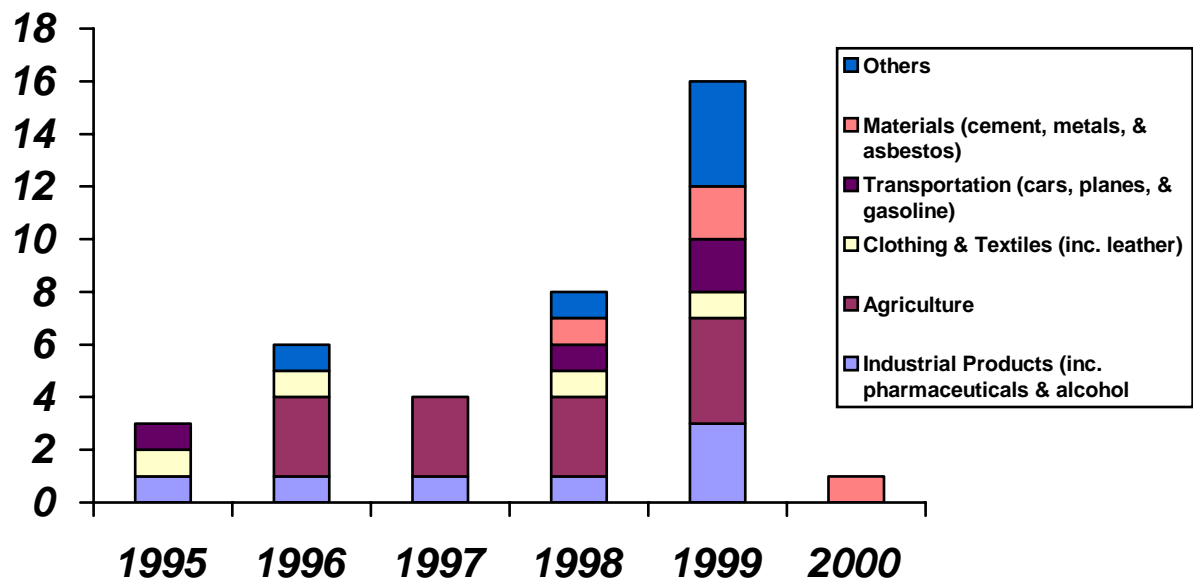
<sup>12</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

**Figure 5: Yearly Breakdown of Dispute Subjects for Developed Countries<sup>13</sup>**

I. Dispute Subjects Brought by Developed Countries



II. Dispute Subjects Brought Against Developed Countries



<sup>13</sup> Graphs constructed using data from Table 7.

**Table 8: Dispute Subjects by Year for Developing Countries<sup>14</sup>****I. Dispute Subjects Brought By Developing Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
IP: Industrial Products (inc. pharmaceuticals & alcohol)			1	1		
A: Agriculture	1	1	2			
O: Other (Legislation, tax, periodicals)						1
CT: Clothing & Textiles (inc. leather)	1	1		2	1	1
T: Transportation (cars, planes, gasoline)	1					
RM: Raw Materials (cement, metals, asbestos)					3	

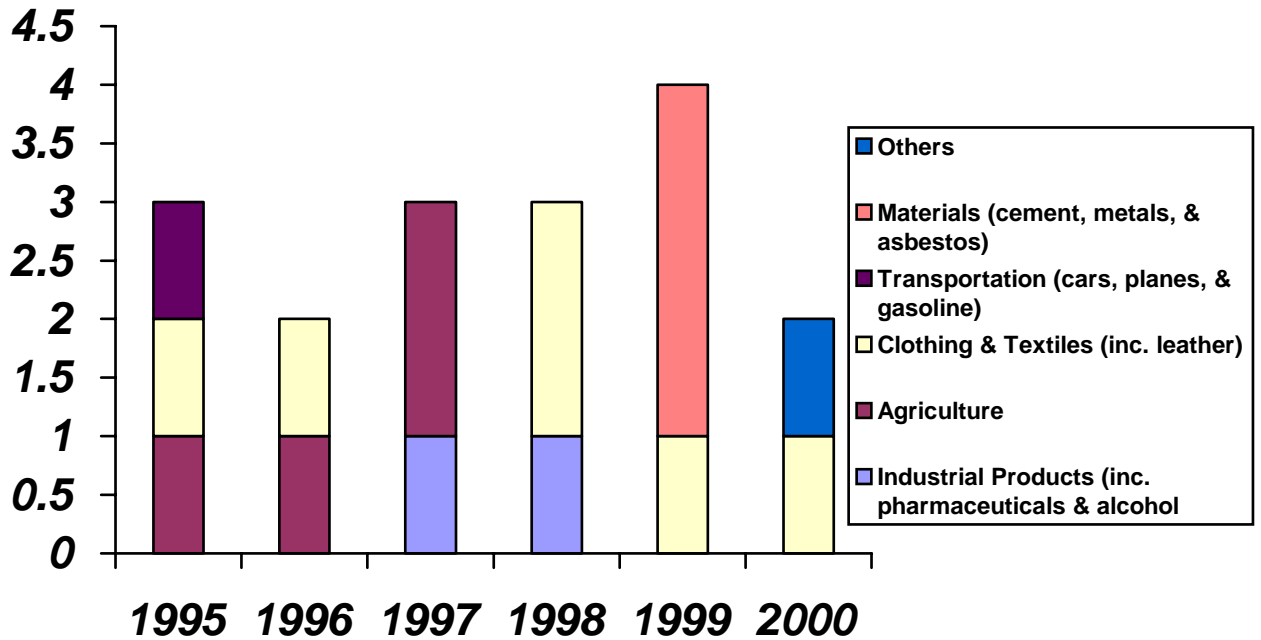
**II. Dispute Subjects Brought By Developing Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
IP: Industrial Products (inc. pharmaceuticals & alcohol)		1	6	1		
A: Agriculture	1		1	2	2	
O: Other (Legislation, tax, periodicals)						1
CT: Clothing & Textiles (inc. leather)			2	2	2	1
T: Transportation (cars, planes, gasoline)			1	1	1	
RM: Raw Materials (cement, metals, asbestos)					2	

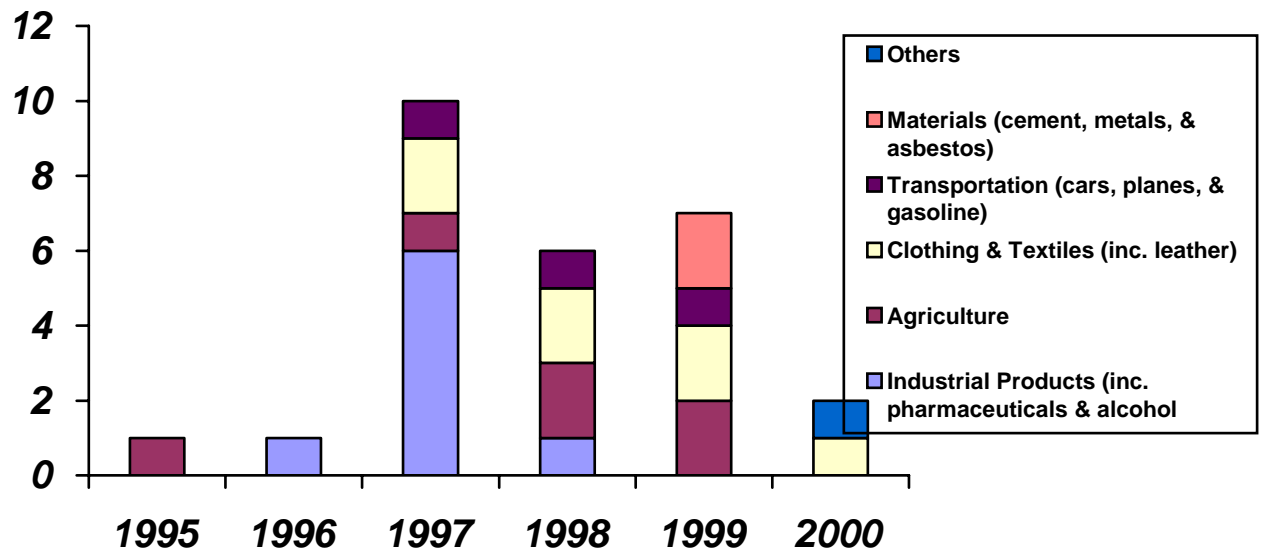
<sup>14</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

**Figure 6: Yearly Breakdown of Dispute Subjects for Developing Countries<sup>15</sup>**

I. Dispute Subjects Brought by Developing Countries



II. Dispute Subjects Brought Against Developing Countries



<sup>15</sup> Graphs constructed using data from Table 8.

## AGREEMENTS

Any complaint brought to the DSB must be based on an infringement of a WTO agreement by one Member party that substantially affects the rights or benefits of another Member party. Table 9 lists the agreements cited in disputes, the number of times each is cited, and the articles of those agreements which are most often cited.

Figure 7 is an illustration of the incidence of citation for each of the agreements. The General Agreement on Tariffs and Trade 1994 is by far the most-cited WTO agreement. Agreements on Anti-Dumping, Agriculture, and Subsidies and Countervailing Measures are also often invoked.

In Table 10, each of the “popular” agreements and its respective “popular” articles are explained. A case example is given for each agreement in order to help illustrate its use in a dispute. It is important to gain a basic understanding of these agreements in order to comprehend the dispute types analyses which follow.

### Questions and Hypotheses:

*Why is GATT so popular?*

GATT came into existence over 50 years ago and it sets out the basic rationale for international trade of goods in the WTO (i.e. most favored nation, national treatment, etc.). This agreement is actually the foundation for each of the newly-signed agreements (each is an evolution of GATT). Therefore, even a very specific claim will still involve the general rules set out in GATT.

**Table 9: Agreements and Articles Often Cited in WTO Disputes<sup>16</sup>**

<b>Agreement</b>	<b># Hits</b>	<b>Articles (&amp; # hits)</b>	<b>Explanatory Notes of Relevant Articles</b>
Understanding on Rules & Procedures Governing the Settlement of Disputes (DSU)	2	3, 21-23	3 (General Provisions), 21 (Surveillance of Implementation of Recommendations and Rulings), 22 (Compensation and Suspension of Concessions), 23 (Strengthening of the Multilateral System)
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)	5	70 (3), 9, 27, 28, 33, 63, 65,	9 (Relation to the Berne Convention), 27 (Patentable Subject Matter), 28 (Rights Conferred), 33 (Term of Protection), 63 (Transparency), 65 (Transitional Arrangements)
Agreement on Subsidies & Countervailing Measures (SCM)	9	3 (7), 1, 5, 10, 14, 19, 27	1 (Definition of a Subsidy), 3 (Prohibition), 5 (Adverse Effects), 10 (Application of Article VI of GATT 1994), 14 (Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient), 19 (Imposition and Collection of Countervailing Duties), 27 (Special and Differential Treatment of Developing Country Members)
Agreement on Agriculture	10	4(6), 3 (4), 8-10 (3 each), 6-7 (1 each)	3 (Incorporation of Concessions and Commitments), 4 (Market Access), 6 (Domestic Support Commitments), 7 (General Disciplines on Domestic Support), 8 (Export Competition Commitments), 9 (Export Subsidy), 10 (Prevention of Circumvention of Export Subsidy Commitments)

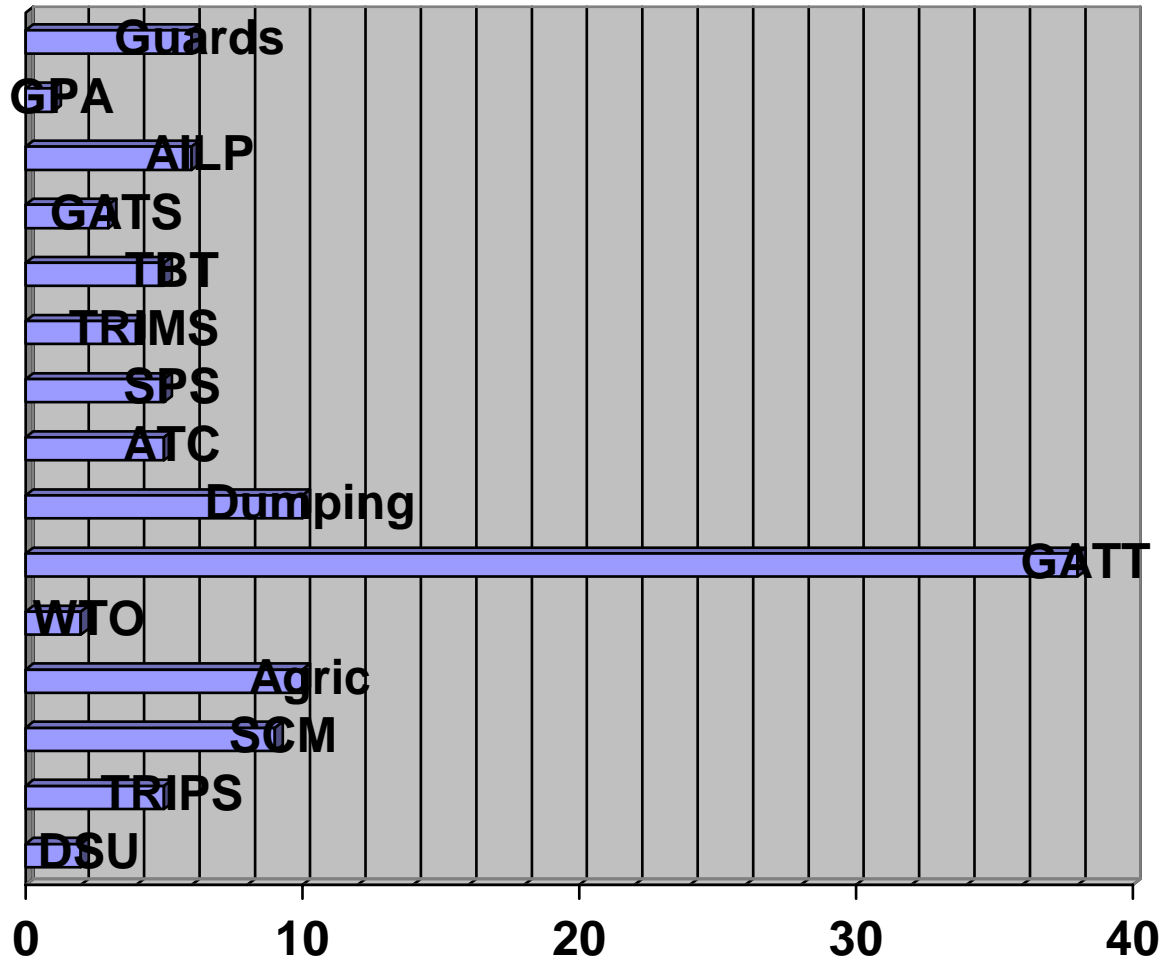
<sup>16</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

Agreement on Implementation of Article VI (Anti-Dumping)	10	2 (7), 3 (6), 5-6 (6 each), 12 (4), 1, 4, 7, 9-11, 15, 18	1 (Principles), 2 (Determination of Dumping), 3 (Determination of Industry), 4 (Definition of Domestic Industry), 5 (Initiation and Subsequent Investigation), 6 (Evidence), 7 (Provisional Measures), 9 (Imposition and Collection of Anti-Dumping Duties), 10 (Retroactivity), 11 (Duration and Review of Anti-Dumping Duties and Price Undertakings), 12 (Public Notice and Explanation of Determinations), 15 (Developing Country Members), 18 (Final Provisions)
Agreement Establishing the WTO	2		
General Agreement on Tariffs & Trade 1994 (GATT)	38	3 (20), 11 (17), 1 (13), 2 (12), 10 (8), 6 (6), & 7, 8, 13, 17-20, 22-24, 27	1 (General Most-Favoured-Nation Treatment), 2 (Schedules of Concessions), 3 (National Treatment on Internal Taxation and Regulation), 6 (Anti-Dumping and Countervailing Duties), 7 (Valuation for Customs Purposes), 8 (Fees and Formalities connected with Importation and Exportation), 10 (Publication and Administration of Trade Regulations), 11 (General Elimination of Quantitative Restrictions), 13 (Non-discriminatory Administration of Quantitative Restrictions), 17 (State Trading Enterprises), 18 (Governmental Assistance to Economic Development), 20 (General Exceptions), 22 (Consultation), 23 (Nullification of Impairment), 24(Territorial Application: Frontier Traffic, Customs Unions and Free-trade Areas), 27 (Withholding or Withdrawal of Concessions)
Agreement on Safeguards	6	12 (6), 2 (5), 4 (5), 5(5), 6-8 (1 each), 11 (2)	2 (Conditions), 4 (Determination of Serious Injury or Threat Thereof), 5 (Application of Safeguard Measures), 7 (Duration of Safeguard Measures), 8 (Level of Concessions and other Obligation), 11 (Prohibition and Elimination of Certain Measures), 12 (Notification and Consultation)
Agreement on Textiles & Clothing (ATC)	5	2 (3), 6-8	General Provisions
Agreement on Import Licensing Procedures	6	1 (3), 2(1), 3(4)	1 (General Provisions), 2 (Automatic Import Licensing), 3 (Non-Automatic Import Licensing)



Agreement on Sanitary & Phytosanitary Measures (SPS)	5	2(5), 3(4), 5(5), 8(1)	2 (Basic Rights and Obligations), 3 (Harmonization), 5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary and Phytosanitary Protections), 8 (Control Inspection and Approval Procedures)
Agreement on Trade-Related Investment Measures (TRIMS)	4	2(2)	2 (National Treatment and Quantitative Restrictions)
Agreement on Technical Barriers to Trade (TBT)	5	2 (5)	2 (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies)
General Agreement on Trade & Services (GATS)	3	2, 6, 17 (2 each)	2 (Most-Favoured-Nation Treatment), 6 (Domestic Regulation), 17 (National Treatment)
Government Procurement Agreement (GPA)	1	In general	

**Figure 7: Citation of Agreements in the WTO<sup>17</sup>**



- Guards = Agreements on Safeguards
- GPA = Government Procurement Agreement
- AILP = Agreement on Import Licensing Procedures
- GATS = General Agreement on Trade & Services
- TBT = Agreement on Technical Barriers to Trade
- TRIMS = Agreement on Trade-Related Investment Measures
- SPS = Agreement on Sanitary & Phytosanitary Measures
- ATC = Agreement on Textiles & Clothing
- Dumping = Agreement on Implementation of Article VI (Anti-Dumping)
- GATT = General Agreement on Tariffs & Trade 1994
- WTO = Agreement Establishing the WTO
- Agric = Agreement on Agriculture
- SCM = Agreement on Subsidies & Countervailing Measures
- TRIPS = Agreement on Trade-Related Aspects of Intellectual Property Rights
- DSU = Understanding on Rules & Procedures Governing the Settlement of Disputes

<sup>17</sup> Graph constructed using data from Table 9.

**Table 10: Explanation and Case Examples of Disputed WTO Agreements and Articles**

Agreement	Explanation of Agreement and Commonly Cited Articles	Case Examples
<p>SPS: Agreement on Sanitary &amp; Phytosanitary Measures</p>	<p><b>Generally</b> This agreement concerns food safety &amp; animal &amp; plant health regulations. (note that this agreement uses fairly weak language (encouraged, expected, etc.) at its preliminary stage)</p> <p><b>2: Basic Rights and Obligations:</b> Governments have the right to take SPS measures, but only to the extent necessary to protect human, animal or plant life or health. Governments should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.</p> <p>3: Harmonization: In order to harmonize SPS measures on as wide a basis as possible, Members are encouraged to base their measures on international standards, guidelines and recommendations where they exist.</p> <p>5: Assessment of Risk and Determination of the Appropriate Level of Sanitary and Phytosanitary Protections Members may maintain or introduce measures resulting in higher standards if there is scientific justification or as a consequence of consistent risk decisions based on an appropriate risk assessment. (also specific procedures/criteria for risk assessment).</p> <p><b>8: Control, Inspection and Approval Procedures</b> (provisions herein). <u>Note:</u> It is expected that Members would accept the SPS measures of others as equivalent if the exporting country demonstrates to the importing country that its measures achieve the importing country's appropriate level of health protection.</p>	<p><b>US vs. EC: Measures Affecting Livestock &amp; Meat (Hormones):</b> <u>US complaint:</u> EC ban on imports of meat from cattle treated with any of 6 growth hormones inconsistent w/ SPS 2, 3, &amp; 5 (etc.). <u>Panel found:</u> inconsistent w/ SPS 3.1, 5.1 &amp; 5.5. <u>AB found:</u> incons. W/ SPS 3.3 &amp; 5.1, but not 3.1 &amp; 5.5.</p>

<p>GATT: General Agreement on Tariffs &amp; Trade 1994</p>	<p><b>Generally</b> This agrees provides the rules of international trade in goods (excluding services). (This is the most important WTO agreement)</p> <p><b>1: General Most-Favoured-Nation Treatment</b> A WTO member shall not treat a member less favorably than any other members. Any preference granted to the goods of a contracting party shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.</p> <p><b>3: National Treatment on Internal Taxation and Regulation</b> A WTO contracting party shall not treat imported goods less favorably than domestic like products.</p> <p><b>6: Anti-dumping and Countervailing Duties</b> Provisions against dumping (and example) – see below – Agreement on Implementation of Article VI (Anti-Dumping).</p> <p><b>10: Publication and Administration of Trade Regulations</b> Trade regulations shall be published in such a manner as to enable governments and traders to become acquainted with them. (often being referred to as “transparency requirements”)</p> <p><b>11: General Elimination of Quantitative Restrictions</b> Except for some exceptions, no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.</p> <p><b>20: General Exceptions</b> Under strict restrictions (Chapeau of Art. XX), some exceptions are permitted, and GATT rules shall not be construed to prevent contracting parties from adopting measures “necessary to protect public morals”, “necessary to protect human, animal or plant life or health”, “necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement”, “relating to the products of prison labour”, imposed for the protection of national treasures of artistic, historic or archaeological value”, relating to the conservation of exhaustible natural resources”, etc.</p>	<p><b>Japan vs. Canada: Certain Measures Affecting the Automotive Industry:</b> <u>Japan complaint:</u> under Canada’s Auto Pact with US, only a limited number of duty-free vehicles of motor vehicle manufacturers can be imported and distributed at the wholesale &amp; retail level. Conditioned access (only those with CVA requirement manufacturing &amp; sales requirement can get in duty-free) is inconsistent with GATT 1.1, 3.4, &amp; 24. Specifically, Canada is allegedly treating US companies more favourably than other parties’ companies (MFN), and domestic manufacturers more favourably than foreign ones (National Treatment). <u>Panel found:</u> Import duty exemption inconsistent with GATT 1 &amp; not justified by GATT 24; CVA requirements inconsistent with GATT 3.4. (appealed)</p> <p><b>India, Malaysia, Pakistan &amp; Thailand vs. US: Import Prohibition of Certain Shrimp &amp; Shrimp Products:</b> <u>Complaint:</u> US ban on importation of shrimp &amp; shrimp products violates GATT 1, 11, &amp; 13. <u>Panel found:</u> Import ban inconsistent with GATT 11.1, and not justified under GATT 20. <u>AB found:</u> Although US measures qualify for provisional justification under GATT 20(g), fail to meet requirements of the chapeau of GATT 20.</p>
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<p>Agreement on Safeguards</p>	<p><b>Generally</b>  This agreement provides that under which conditions and how GATT member may take a "safeguard" action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry.</p> <p><b>2: Conditions</b>  The agreement sets out requirements for safeguard investigation which include public notice for hearings and other appropriate means for interested parties to present evidence, including on whether a measure would be in the public interest. In the event of critical circumstances, a provisional safeguard measure may be imposed based upon a preliminary determination of serious injury. The duration of such a provisional measure would not exceed 200 days.</p> <p><b>4: Determination of Serious Injury or Threat Thereof</b>  The agreement sets out the criteria for "serious injury" and the factors which must be considered in determining the impact of imports. The safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Where quantitative restrictions are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.</p> <p><b>5: Application of Safeguard Measures</b>  In principle, safeguard measures have to be applied irrespective of source. In cases in which a quota is allocated among supplying countries, the member applying restrictions may seek agreement with others. Members having a substantial interest in supplying the product concerned. Normally, allocation of shares would be on the basis of proportion of total quantity or value of the imported product over a previous representative period. The duration of the safeguard measure in this case cannot exceed four years.</p>	<p><b>EC vs. Korea: Definitive Safeguard Measure on Imports of Certain Dairy Products:</b>  <u>EC Compliant:</u> Korea's import quota of certain dairy products is a safeguard measure in violation of Agreement on Safeguards 2, 4, 5, &amp; 12.  <u>Panel found:</u> Korea's measure inconsistent with articles 4.2(a) &amp; 5, but not 2.1 &amp; 12.1-3.  <u>AB found:</u> reversed, in part, panel's finding.</p>
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<p>ATC: Agreement on Textiles &amp; Clothing</p>	<p><b>Generally</b> The object of this agreement is to secure the eventual integration of the textiles and clothing sector - where much of the trade is currently subject to bilateral quotas negotiated under the Multifibre Arrangement (MFA) - into the GATT on the basis of strengthened GATT rules and disciplines. Detailed procedures and time table are stipulated.</p>	<p><b>Costa Rica vs. US: Restrictions on Imports of Cotton and Man-Made Fibre Underwear:</b> <u>Costa Rica compliant:</u> US restrictions on textile imports from Costa Rica violate ATC. <u>Panel found:</u> US restraints were not valid. <u>AB found:</u> same as panel, except on one point, but US measures still not valid. (Implementation completed by US due to expiration &amp; non-renewal of the measure).</p>
<p>Agreement on Import Licensing Procedures</p>	<p><b>Generally</b> The revised agreement strengthens the disciplines on the users of import licensing systems - which, in any event, are much less widely used now than in the past - and increases transparency and predictability. The agreement requires parties to publish sufficient information for traders to know the basis on which licences are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications.</p>	<p><b>Brazil vs. EC: Measures Affecting Importation of Certain Poultry Products:</b> <u>Brazil complaint:</u> EC's importation regime &amp; tariff rate quota for certain poultry products violate articles 1 &amp; 3 of the Agreement on Import Licensing Procedures. <u>Panel found:</u> Brazil's allegation was not proved. <u>AB found:</u> EC has acted inconsistently with Agreement on Agriculture, not Agreement on Import Licensing Procedures.</p>
<p>TRIMS: Agreement on Trade-Related Investment Measures</p>	<p><b>Generally</b> The agreement recognizes that certain investment measures restrict and distort trade. It provides that no contracting party shall apply any TRIM inconsistent with Articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise ("local content requirements") or which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports ("trade balancing requirements").</p>	<p><b>Japan, EC, &amp; US vs. Indonesia: Certain Measures Affecting the Automobile Industry:</b> <u>Compliant:</u> Indonesia's National Car Programme inconsistent with TRIMS 2, 5.4 (etc.). <u>Panel found:</u> Programme in violation of TRIMS 2 (etc.). (Panel report adopted).</p>

<p>TBT: Agreement on Technical Barriers to Trade</p>	<p><b>Generally</b> This agreement will extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.</p> <p>Innovative features of the revised agreement are that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. Notification provisions applying to local government and non-governmental bodies are elaborated in more detail than in the Tokyo Round agreement. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private sector bodies as well as the public sector, is included as an annex to the agreement.</p>	<p><b>US vs. EC: Measures Affecting Livestock &amp; Meat (Hormones):</b> <u>US complaint:</u> EC ban on imports of meat from cattle treated with any of 6 growth hormones inconsistent w/ TBT 2 (etc.). <u>Panel found:</u> inconsistent with SPS, but not TBT. <u>AB found:</u> again inconsistent with SPS, but not TBT.</p>
<p>DSU: Understanding on Rules &amp; Procedures Governing the Settlement of Disputes</p>	<p><b>Generally</b> This agreement sets out new rules for the dispute settlement system, which includes greater automaticity in decisions on the establishment, terms of reference &amp; composition of panels, such that these decisions are no longer dependent upon the consent of parties to a dispute.</p> <p>The DSU establishes an integrated system permitting WTO members to base their claims on any of the multilateral agreements included in the Annexes to the Agreement establishing the WTO. Provisions set out rules &amp; procedures for consultations, panel establishment, panel examination, appellate review, implementation, and compensation or suspension of concessions in the event of non-implementation. A number of provisions take into account the specific interests of the developing &amp; least-developed countries and special rules deal with disputes which do not involve a violation of obligations under a covered agreement.</p>	<p><b>EC vs. US – Sections 301-10 of the Trade Act of 1974:</b> <u>EC complained:</u> Strict time limits in s. 301-310 of TA'74 did not allow US to comply with prior multilateral DSU ruling on conformity measures taken pursuant to implementation of DSB recommendations where that ruling had not been adopted by the DSB, &amp; DSB procedure can't be finalized, nor can subsequent DSU procedure for seeking compensation or suspension concessions be complied with. <u>Panel Found:</u> sections not inconsistent (based on US undertakings &amp; statement confirmations). Panel report adopted.</p>

<p>TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights</p>	<p><b>General provisions &amp; basic principles:</b></p> <ul style="list-style-type: none"> <li>- national treatment commitment – nationals of other parties must be given protection of intellectual property treatment no less favorable than that accorded to a party's own nationals</li> <li>- most favored nation clause – any intellectual property advantage given to a national of one country must be given to all others</li> </ul> <p><b>Individual Intellectual Property Rights</b></p> <ul style="list-style-type: none"> <li>- copyright protection of computer programs, data bases, sound recordings, films, trademarks &amp; service marks, geographical indications (especially for wines), industrial designs and for performers &amp; broadcasting organizations</li> <li>- patent protection of inventions (some exceptions), plant varieties, product processes, layout designs of integrated circuits, trade secrets and chemical test data submitted to governments</li> <li>- provisions regarding anti-competitive practices in licensing or intellectual property contracts</li> </ul> <p>Obligations to provide procedures &amp; remedies under domestic law to ensure that intellectual property rights can be effectively enforced, by right holders as well as by their own nationals. The agreement also establishes a TRIPS Council to monitor its operation &amp; compliance. Transition periods for Members to bring their legislation &amp; practices into conformity are laid out.</p>	<p><b>US vs. India: Patent Protection for Pharmaceutical &amp; Agricultural Chemical Products:</b></p> <p><u>US complaint:</u> Absence of patent protection for pharmaceutical &amp; agricultural chemical products in India violates TRIPS 27, 65, &amp; 70.</p> <p><u>Panel found:</u> Violation of TRIPS 70.8(a) &amp; 63(1-2) by not establishing a mechanism that adequately preserves the novelty &amp; priority of applications for such chemical inventions; violation of TRIPS 70.9 by failing to establish a system for granting exclusive market rights.</p> <p><u>AB found:</u> same as Panel, but TRIPS 63(1) not within Panel's terms of reference.</p>
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<p>SCM: Agreement on Subsidies &amp; Countervailing Measures</p>	<p><b>1: Definition of a Subsidy</b> “specific” subsidy – a subsidy available only to an enterprise or industry or group of enterprises or industries within the jurisdiction of the authority granting the subsidy. Only specific subsidies are subject to this agreement.</p> <p><b>3: Prohibition</b> This agreement establishes three categories of subsidies: 1) Prohibited subsidies – those contingent upon export performance or upon the use of domestic over imported goods. There is a timetable for action by the DSB if a prohibited subsidy is not immediately withdrawn. 2) Actionable subsidies – cause adverse effects to the interests of other signatories &amp; serious prejudice to the interests of another member. Members affected may refer the matter to the DSB &amp; actionable subsidy must be withdrawn or adverse affects removed. 3) Non-actionable subsidies – involve assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental regulations. If this results in serious adverse affects to a domestic industry, a member may seek a determination &amp; recommendation on the matter.</p> <p><b>19: Imposition &amp; Collection of Countervailing Duties</b> Provisions concerning the use of countervailing measures on subsidized imported goods set out disciplines on the initiation of countervailing cases, investigations by national authorities &amp; rules of evidence to ensure that all interested parties can present information &amp; argument.</p> <p><b>27: Special &amp; Differential Treatment of Developing Country Members</b> Provisions giving exemptions &amp; exceptions for subsidies of developing &amp; least-developed countries.</p>	<p><b>Canada vs. Brazil: Export Financing Programme for Aircraft:</b> <u>Canada’s complaint:</u> Brazil’s subsidies to foreign purchasers of Brazil’s Embraer aircraft are inconsistent with SCM 3, &amp; 27.4-5. <u>Panel found:</u> inconsistent with SCM 3.1(a) &amp; 27.4. <u>AB found:</u> same as Panel, but reversed/modified Panel’s interpretation of “material advantage” clause.</p>
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<p>Agreement on Agriculture</p>	<p><b>Generally</b>  This agreement provides a framework for long-term reform of agricultural trade &amp; domestic policies &amp; moves toward increased market orientation in agricultural trade. Provisions encourage the use of less trade-distorting domestic support policies to maintain the rural economy, allow actions to be taken to ease any adjustment burden, and allow flexibility in the implementation of commitments. Concerns of developing countries have also been addressed.</p> <p><b>3: Incorporation of Concessions &amp; Commitments</b>  Procedural provisions regarding incorporation of commitments such as market access, domestic support &amp; export competition.</p> <p><b>4: Market Access</b>  Non-tariff border measures replaced by tariffs that provide substantially the same level of protection. Various reductions &amp; implementation periods are detailed. Maintenance of current access opportunities &amp; the establishment of minimum access tariff quotas are also provided for in this “tariffication package”</p>	<p><b>US vs. Korea: Measures Affecting Imports of Fresh, Chilled, &amp; Frozen Beef:</b>  <u>US Complaint:</u> Korean regulatory scheme on sales, display &amp; pricing of imported beef provides domestic support (amounting to domestic subsidies) to the Korean cattle industry inconsistent with the Agreement on Agriculture 3, 4, 6, &amp; 7 (&amp; GATT &amp; Import Licensing).  <u>Panel active.</u></p>
<p>Agreement on Implementation of Article VI (Anti-Dumping)</p>	<p><b>Generally</b>  This agreement provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at a price below its normal value, if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party.</p> <p><b>2: Determination of Dumping</b>  More detailed methodology for determining whether a product is exported at a dumped price. Specific provisions for allocating costs when the export price is compared with a “constructed” normal value &amp; rules to ensure a fair comparison is made, so as not to arbitrarily create or inflate margins of dumping.</p> <p><b>5: Initiation &amp; Subsequent Investigation of Dumping</b>  Clear-cut procedures on how anti-dumping investigations should be initiated &amp; conducted (e.g., all interested parties must be given the opportunity to present evidence).</p> <p><b>6: Evidence</b>  Requirement for the importing country to establish a clear causal relationship between dumped imports &amp; injury to domestic industry is strengthened (e.g., must evaluate all relevant economic factors bearing on the state of the industry concerned).</p> <p><b>9: Imposition &amp; Collection of Anti-Dumping Duties</b>  New procedures to be followed on the implementation &amp; duration of anti-dumping measures. Anti-Dumping Practices Committee must be promptly notified in detail of all preliminary or final anti-dumping actions.</p>	<p><b>Mexico vs. Guatemala: Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico:</b>  <u>Mexico complaint:</u> Guatemala’s anti-dumping investigation on imports of Portland cement from Mexico inconsistent with Anti-Dumping Agreement 2, 3, 5, &amp; 7.1.  <u>Panel found:</u> inconsistent with ADA 5.3 because investigation initiated on the basis of evidence of dumping, injury &amp; causal link that was not sufficient as a justification for initiation.  <u>AB found:</u> improper dispute because Mexico did not comply with DSU 6.2. Could not conclude on appealed issues. Mexico can re-bring case.</p>

<p>General Agreement on Trade &amp; Services (GATS)</p>	<p><b>Generally</b> This agreement encompasses basic obligations which apply to all member countries, national schedules of commitments containing specific further conditional schedules of commitments which will be the subject of a continuing process of liberalization, and addresses the special situations of individual sectors.</p> <p><b>2: Most-Favored Nation</b> Obligation states that each party shall accord immediately &amp; unconditionally to services &amp; service providers of any other Party, treatment no less favorable than it accords to like services &amp; service providers of any other country (some exemptions).</p> <p><b>6: Domestic regulation</b> Domestic regulations should be administered in a reasonable, objective &amp; impartial manner. Also a requirement that parties establish the means for prompt reviews of administrative decisions relating to the supply of services.</p> <p><b>17: National Treatment</b> Obligation to treat foreign service suppliers &amp; domestic service suppliers in the same manner (possibility of differential treatment to foreign &amp; domestic service providers).</p>	<p><b>Japan vs. Canada: Certain Measures Affecting the Automotive Industry:</b> <u>Japan complaint:</u> under Canada's Auto Pact with US, only a limited number of duty-free vehicles of motor vehicle manufacturers can be imported and distributed at the wholesale &amp; retail level. Conditioned access (only those with CVA requirement manufacturing &amp; sales requirement can get in duty-free) is inconsistent with GATS. <u>Panel found:</u> Conditioned access inconsistent with GATS 2 &amp; not justifiable by GATS 5; CVA requirements inconsistent with GATS 17. (appealed)</p>
<p>Government Procurement Agreement (GPA)</p>	<p><b>Generally</b> When procuring (buying or purchasing), governments must treat foreign suppliers no less favorably than domestic suppliers. This agreement sets out the detailed requirements.</p>	<p><b>US vs. Korea: Measures Affecting Government Procurement:</b> <u>US complaint:</u> Entities concerned with procurement of airport construction in Korea (contractor bidding practices, domestic partnering, &amp; lack of procedures to challenge access) inconsistent with GPA. <u>Panel found:</u> entities not covered by Korea's obligations under GPA. (not yet adopted or appealed).</p>

## DISPUTE TYPES

Once the agreements and articles in disputes are understood, a categorization of cases with respect to “legal” rationale for each case is helpful for conceptualizing trends in this area. The WTO case rationales, here named “dispute types”, have been divided into six major categories: Most Favored Nation (MFN); National Treatment (NT); Safeguard Measures & Quantitative Restrictions (SMQR); Subsidies, Countervailing Measures & Anti-Dumping (SAD); Environment Protection, Sanitary & Quarantine Measures (EPQM); and Intellectual Property Protection (IPP). Table 11 shows the incidence of each dispute type over the past five years (i.e. since WTO’s beginning).

In Figure 8, the overall popularity of each dispute type is displayed. SAD is the most popular type of dispute (34%), followed by SMQR (22%) and NT (22%).

Figure 9 shows the trends of the dispute types over time. SAD has had a dramatic increase in the past few years. SMQR is experiencing a more gradual increase. As both of these are non-tariff barriers (NTBs), this shows a trend of Member parties adopting protective measures which are less obvious than, for example, tariffs (imposition of high duties on imports).

Table 12 also looks at dispute types over time, but looks specifically at those dispute types in claims brought by or against developed countries. Visual illustrations of this data can be seen in Figure 10.

Dispute types over time were similarly examined and illustrated for developing countries (see Table 13 and Figure 11). It is interesting to note that

developing countries are a popular target for NT claims, but do not bring many of these themselves.

Questions and Hypotheses:

*How can the proportion of dispute types be explained?*

The popularity of SAD, SMQR, and NT as dispute types is not surprising as they are the traditional types of disputes in the WTO. Although MFN is also a traditional dispute type, most countries treat all other foreign countries roughly the same, so a complaint of this type does not arise as often as might be expected when looking at tradition. However, the fact that EPQM and IPP are newly included in the free trade regime may explain their relatively low incidence in WTO disputes.

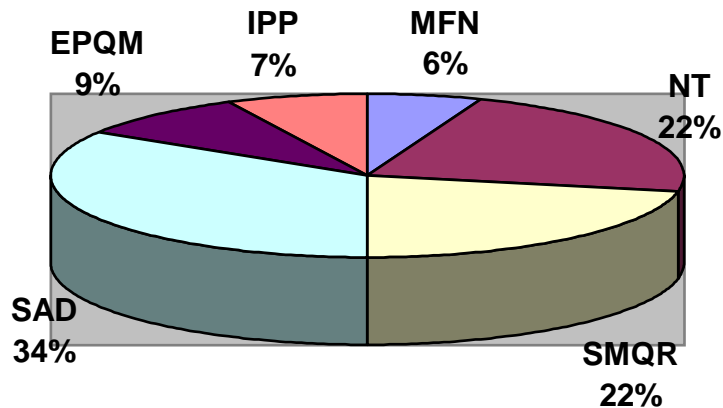
*Why was there a surge of SAD dispute types in '98-'99?*

The '98-'99 surge may be due to an awakening of developing countries. They may be starting to fight against the dumping complaints which have been consistently brought against them by developed countries. This could be a sign that once developing countries have accumulated enough experience, they intend to use WTO dispute settlement system more; i.e. they learned to use it as respondents, now they are beginning to use it for attack in the SAD realm.

**Table 11: Dispute Type By Year<sup>18</sup>**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
MFN (GATT art 1)		1	1		2	
NT: National Treatment (GATT art 3)	2	1	5	1	5	1
SMQR: Safeguard Measures & Quantitative Restrictions (GATT art 11)	1	2	3	4	4	1
SAD: Subsidies/Countervailing Measures & Anti-Dumping	1	1	1	8	11	1
EPQM: Environment Protection, Sanitary & Quarantine Measures		2	2	1	1	
IPP: Intellectual Property Protection (Patent, Copyright)		1	1		3	

**Figure 8: Proportions of WTO Dispute Types<sup>19</sup>**



MFN = Most Favored Nation

NT = National Treatment

SMQR = Safeguard Measures & Quantitative Restrictions

SAD = Subsidies, Countervailing Measures & Anti-Dumping

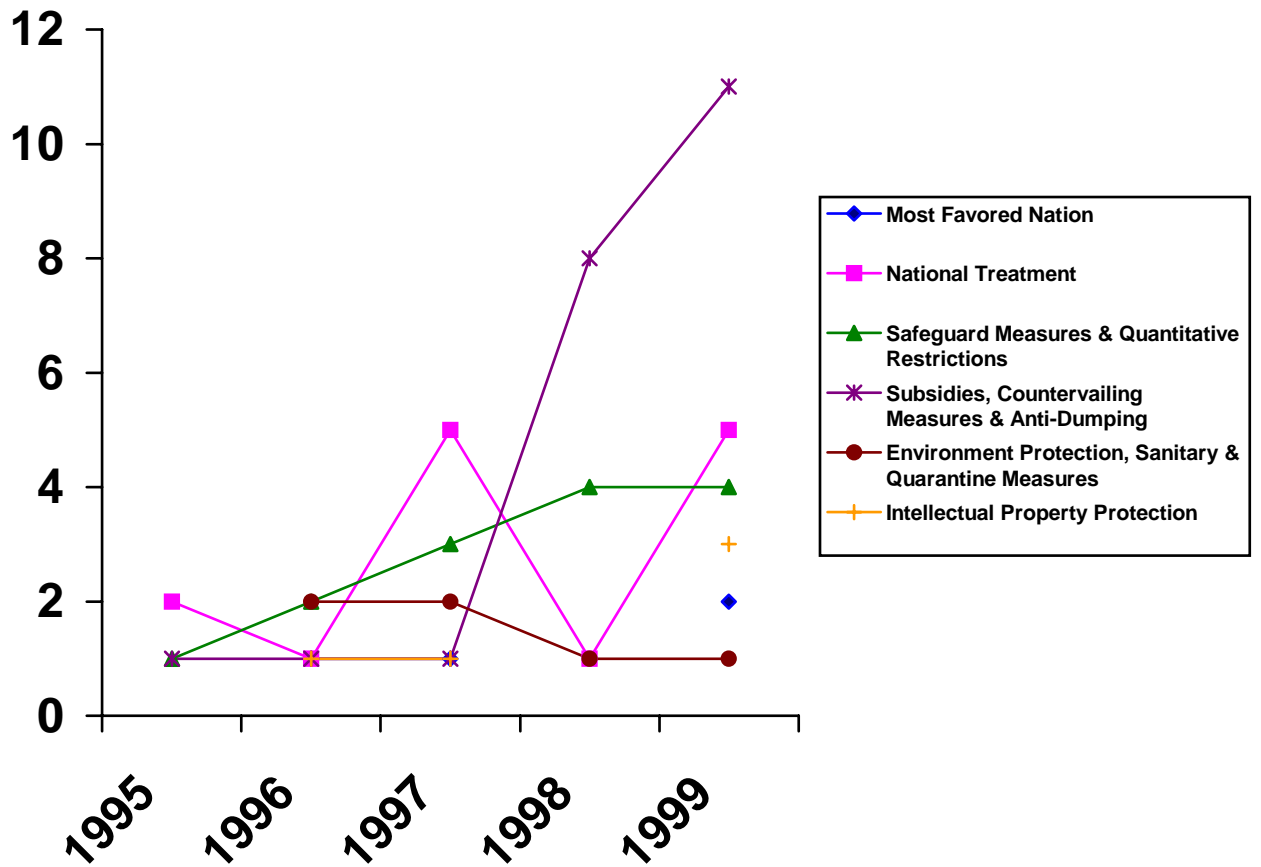
EPQM = Environment Protection, Sanitary & Quarantine Measures

IPP = Intellectual Property Protection

<sup>18</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

<sup>19</sup> Graph constructed using data from Table 11.

**Figure 9: Trends in Types of Disputes<sup>20</sup>**



<sup>20</sup> Graph constructed using data from Table 11.

**Table 12: Dispute Types by Year for Developed Countries<sup>21</sup>****I. Dispute Types Brought by Developed Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
MFN (GATT art 1)		1	1		2	
NT: National Treatment (GATT art 3)	1	1	5	1	5	
SMQR: Safeguard Measures & Quantitative Restrictions (GATT art 11)		1	1	3	4	
SAD: Subsidies/Countervailing Measures & Anti-Dumping		1		6	7	1
EPQM: Environment Protection, Sanitary & Quarantine Measures		2	1	1	1	
IPP: Intellectual Property Protection (Patent, Copyright)		1	1		3	

**II. Dispute Types Brought Against Developed Countries**

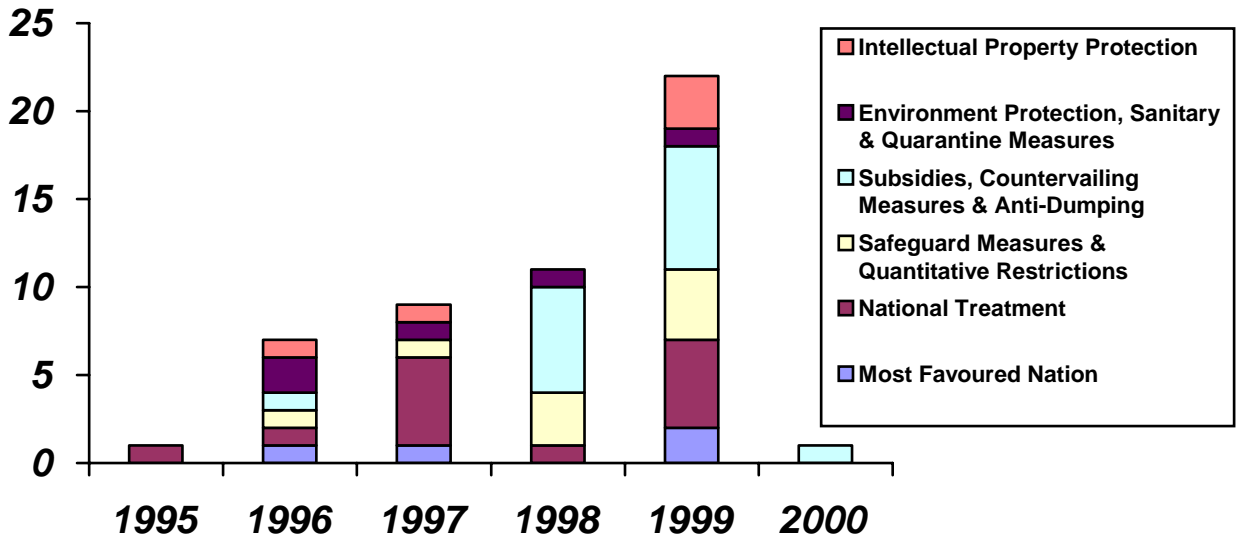
SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
MFN (GATT art 1)		1			3	
NT: National Treatment (GATT art 3)	2	1	1			
SMQR: Safeguard Measures & Quantitative Restrictions (GATT art 11)	1	2	2	1	3	
SAD: Subsidies/Countervailing Measures & Anti-Dumping		1		6	9	1
EPQM: Environment Protection, Sanitary & Quarantine Measures		2	2	1	1	
IPP: Intellectual Property Protection (Patent, Copyright)					3	

<sup>21</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

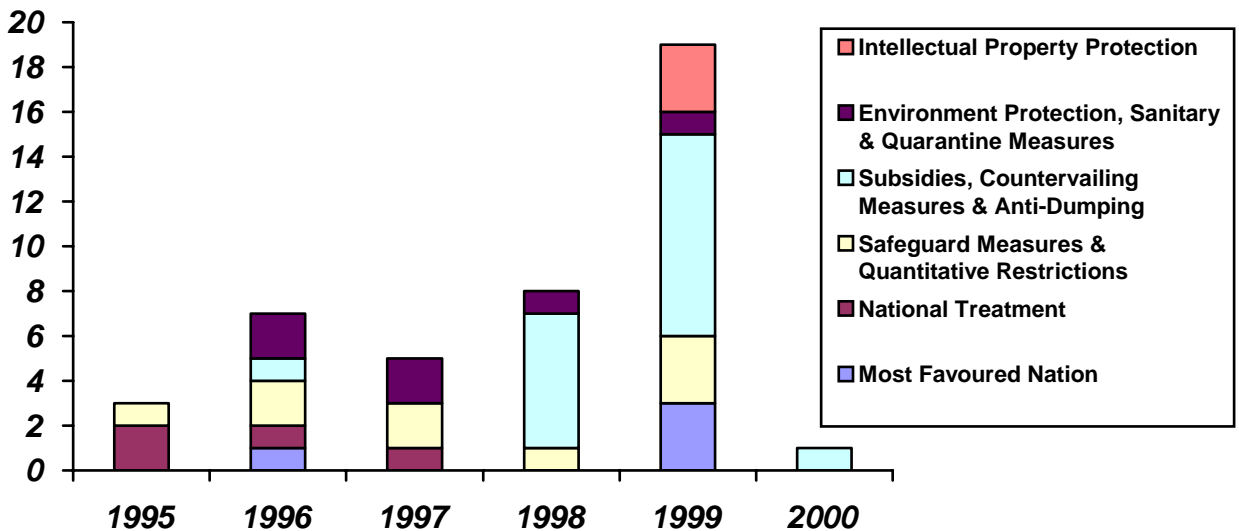


**Figure 10: Yearly Breakdown of Dispute Types for Developed Countries<sup>22</sup>**

I. Types of Disputes Brought by Developed Countries



II. Types of Disputes Brought Against Developed Countries



<sup>22</sup> Graphs constructed using data from Table 12.

**Table 13: Dispute Types by Year for Developing Countries<sup>23</sup>****I. Dispute Types Brought By Developing Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
MFN (GATT art 1)		1				
NT: National Treatment (GATT art 3)	1					1
SMQR: Safeguard Measures & Quantitative Restrictions (GATT art 11)	1	1	1	1		1
SAD: Subsidies/Countervailing Measures & Anti-Dumping	1			3	4	
EPQM: Environment Protection, Sanitary & Quarantine Measures			1			
IPP: Intellectual Property Protection (Patent, Copyright)						

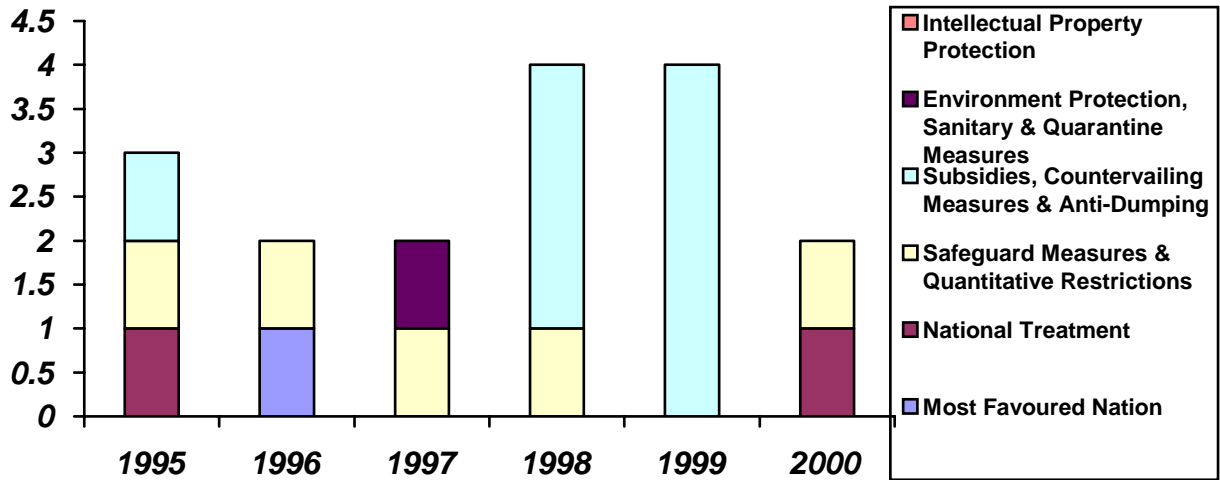
**II. Dispute Types Brought Against Developing Countries**

SUBJECT/ YEAR PANEL ESTABLISHED	1995	1996	1997	1998	1999	2000
MFN (GATT art 1)			1			
NT: National Treatment (GATT art 3)			3	2	4	1
SMQR: Safeguard Measures & Quantitative Restrictions (GATT art 11)			1	3	1	1
SAD: Subsidies/Countervailing Measures & Anti-Dumping	1		1	2	2	
EPQM: Environment Protection, Sanitary & Quarantine Measures						
IPP: Intellectual Property Protection (Patent, Copyright)		1	1			

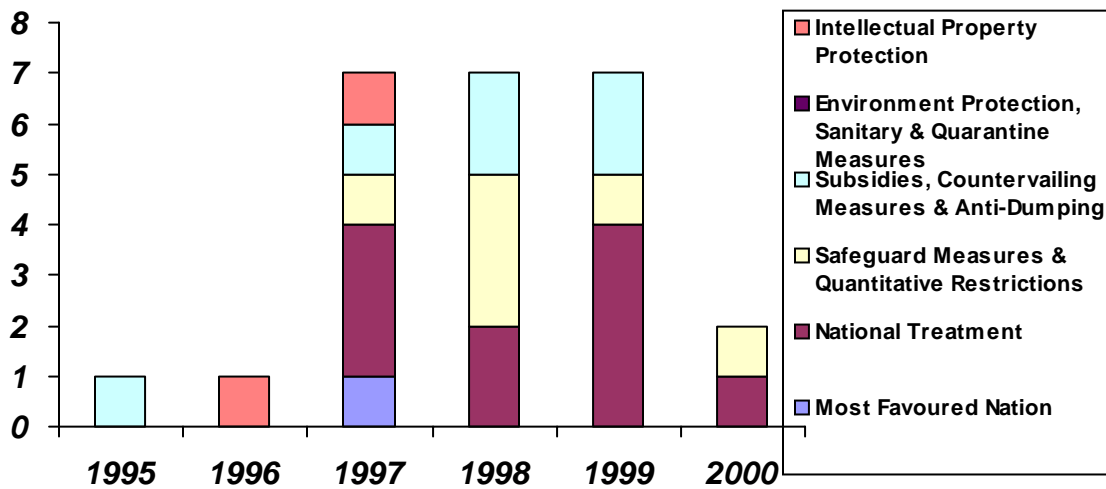
<sup>23</sup> Data compiled using completed (reports adopted) and active cases for which panels have been established from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

**Figure 11: Yearly Breakdown of Dispute Types for Developing Countries<sup>24</sup>**

I. Types of Disputes Brought by Developing Countries



II. Types of Disputes Brought Against Developing Countries



<sup>24</sup> Graphs constructed using data from Table 13.

## STATUS OF DISPUTES

The current status of WTO cases may be divided into four categories: Active Cases, Appellate Body & Panel Reports Adopted, Settled or Inactive Cases, and Preliminary Complaints. Table 14 reports the status of all complaints which have been brought to the WTO.

As shown in Figure 12, the majority of complaints (54%) are at the preliminary stage. That is, a panel has not been established to examine them. This includes cases which were abandoned at the preliminary stage or are currently active at the preliminary level.

After a panel report is issued for a WTO case, some cases are appealed and others are not. Table 15 looks at the number of cases appealed versus not appealed. Figure 13 clearly shows that the appeal rate for WTO cases is very high (78%).

### Questions and Hypotheses:

*Why is the appeal rate so high?*

The Appellate Body often makes amendments to the Panel reports. This probability of amendment of a Panel ruling encourages losing parties to appeal. However, it should be noted that the Appellate Body does not usually completely reverse the Panel's decision, but often only reinterprets the law, coming to a more conservative decision.

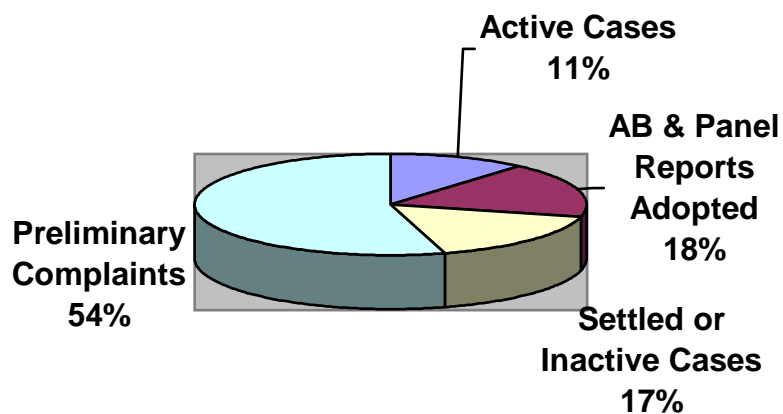
**Table 14: Status of WTO Cases<sup>25</sup>**

	Complaints notified to the WTO	Active Cases	Appellate Body & Panel Reports Adopted	Settled or Inactive Cases	Preliminary Complaints (Abandoned or Ongoing)
Reporting Period/ Date	Since 1-1-1995	On reporting date	Since 1-1-1995	Since 1-1-1995	Since 1-1-1995
Number	193 (151 of which involve distinct matters)	22	34	32	105

**Note:**

- Active Cases includes pending or suspended panel proceedings or appellate review proceedings.
- Settled or Inactive Cases includes cases where the contested measure has been terminated, a panel request was withdrawn, etc.

**Figure 12: WTO Case Status Breakdown<sup>26</sup>**



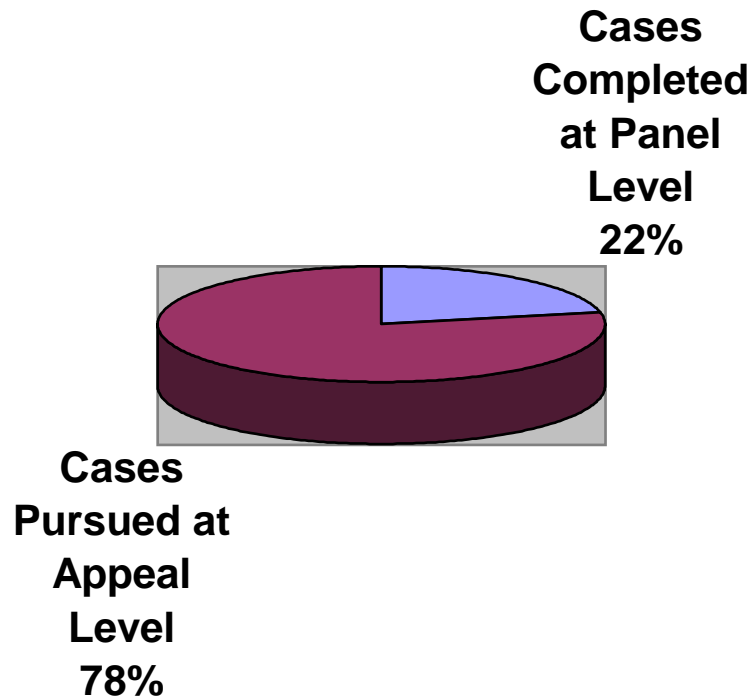
<sup>25</sup> Data compiled using WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

<sup>26</sup> Graph constructed using data from Table 14.

**Table 15: Number of WTO Cases Appealed vs. Not Appealed<sup>27</sup>**

Number of Cases Appealed	Number of Cases Completed at the Panel Level
29	8

**Figure 13: Rate of Appeal for WTO Disputes<sup>28</sup>**



<sup>27</sup> Data compiled using completed (reports adopted) cases and active cases for which appeals have been made from WTO's State-of-Play Summary, <[http://www.wto.org/english/tratop\\_e/dispu\\_e/stplay\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc)> (accessed: July 1, 2000).

<sup>28</sup> Graph constructed using data from Table 15.

## REPETITION OF DISPUTES

One of the complements paid to the new WTO dispute settlement system is that it is more effective than the old GATT system. However, as shown in Table 16, many very similar claims have been repeated by the same or different parties. This might cast doubt on the effectiveness of the system or, at least, the implementation or enforcement of adopted DSB decisions.

### Questions and Hypotheses:

*Is case repetition indicative of an ineffective system?*

Cases not being brought by & against the exact same parties for the same contentious measures. Only two cases are repeated by the same complainant, therefore the effectiveness of the WTO system is not seriously challenged. The other repeated cases are simply a result of interested parties following in the footsteps of previous complainants. This is more a matter of wait-and-see complainants attempting to take advantage of an observed win for another Member party.





**Table 16: Repetition of Disputes in the WTO**

**INTELLECTUAL PROPERTY**

I. Canada Patent Protection

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
1-2-1999	Canada – Patent Protection of Pharmaceutical Products (case completed)	EC winner	Canada	WT/DS 114/1	Patent Protection	Art. 27.1, 28 and 33 of the TRIPS Agreement
22-9-1999	Canada – Patent Protection Term (Panel Report Issued)	US	Canada	WT/DS 170/1	Patent protection term	TRIPS Art. 33, 65 & 70

II. India – Patent Protection

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
16-10-1997	India – Patent Protection for Pharmaceutical and Agricultural Chemical Products (case completed)	EC Winner	India	WT /DS 79/ 1	Patent	Art. 70.8 & 9 of TRIPS
20-11-1996	India – Patent Protection for Pharmaceutical and Agricultural Chemical Products (case completed)	US Winner	India	WT /DS 50	Patent Protection	TRIPS Art. 27, 63, 65 & 70

## CLOTHING & TEXTILES

### III. Argentina Footwear & Textiles

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
23-7-1998	Argentina – Safeguard Measures on Imports of Footwear (case completed)	EC winner	Argentina	WT/DS 121/1	Safeguard measures	Art. 2, 4, 6, and 12 of the Agreement on Safeguards, and Art. XIX of GATT
25-2-1997	Argentina – Certain Measures Affecting Import of Footwear, Textile, Apparel and Other Items (case completed)	US Winner	Argentina	WT/DS 56	Internal tax on imports	Art. II, VII, VIII & X of GATT, Art. 2 of TBT, Art. 1 – 8 of the Agreement on the Implementation of Article VII of GATT, & Art. 7 of the Agreement on Textiles and Clothing
26-7-1999	Argentina – Measures Affecting Imports of Footwear (Active Panel)	US	Argentina	WT/DS 164/1	Tariff-rate quota on imports	Art. 5.1, 7.4, 12 of the Agreement on Safeguards, see also EC(DS121) & Indonesia (DS123)
20-3-2000	Argentina – Transitional Safeguard Measures on Certain Imports of Woven Fabrics of Cotton and Cotton Mixtures Originating in Brazil (Active Panel)	Brazil	Argentina	WT/DS 190/1	Safeguard measures	Art. 2.4, 6.1, 6.2, 6.3, 6.4, 6.7, 6.8, 6.11, 8.9, 8.10 of the Agreement on Textiles and Clothing

## INDUSTRIAL PRODUCTS

### IV. Chile Taxes on Alcohol

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
25-3-1998	Chile – Taxes on Alcoholic Beverages (case completed)	EC Winner	Chile	WT/DS 110/1	Internal tax National treatment	Art. III:2 of GATT
18-11-1997	Chile – Taxes on Alcoholic Beverages (case completed)	EC Winner	Chile	WT/DS 87/1	Sales tax National treatment	Art. III:2 of GATT

### V. Korea – Alcohol Tax

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
16-10-1997	Korea – Taxes on Alcoholic Beverages (case completed)	EC Winner	Korea	WT/DS /75/1	Internal Taxes, national treatment	Art. III:2 of GATT
16-10-1997	Korea – Taxes on Alcoholic Beverages (case completed)	US Winner	Korea	WT/DS 84/1	Internal Taxes, national treatment	Art. III:2 of GATT

## AGRICULTURE

### VI. Canada Dairy

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
25-3-1998	Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products (case completed)	US Winner	Canada	WT/DS 103/1	Export subsidies and tariff-rate quota	Art. II, X & XI of GATT, Art. 3, 4, 8, 9, & 10 of the Agreement on Agriculture, Art. 3 of the Subsidies Agreement, and Art. 1, 2, & 3 of the Import Licensing Agreement
12-3-1998	Canada – Measures Affecting Dairy Products (case completed)	New Zealand Winner	Canada	WT/DS 113/1	Export subsidy	Art. XI of GATT, and Art. 3, 8, 9 and 10 of the Agreement on Agriculture

### VII. Korea – Beef

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
26-5-1999	Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef (Active Panel)	US	Korea	WT/DS 161/1	Discrimination on National Treatment	GATT Art. II, III, XI & XVII, Agreement on Agriculture Art. 3, 4, 6, 7, Import Licensing Agreement Art. 1, 3
26-7-1999	Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef (Active Panel)	US	Korea	WT/DS 169/1	Discrimination on National Treatment	GATT Art. II, III, XI & XVII, Agreement on Agriculture Art. 3, 4, 6, 7, Import Licensing Agreement Art. 1, 3

VIII. EC – Meat Hormones

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
20-5-1996	EC – Measures Affecting Meat and Meat Products (Hormones) (case completed)	US Winner	EC	WT/DS 26	Import prohibition	GATT Art. III & XI, SPS Agreement Art. 2, 3, & 5 TBT Agreement Art. 2, and the Agreement on Agriculture Art. 4
16-10-1996	EC – Measures Affecting Livestock and Meat (Hormones) (case completed)	Canada Winner	EC	WT/DS 48	Import prohibition	GATT Art. XXII, III, & XI, SPS Art. 2, 3, & 5, TBT Art. 2, and Agriculture Art. 4

IX. US – Shrimp

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
25-2-1997	US – Import Prohibition of Certain Shrimp and Shrimp Products (case completed)	India, Malaysia, Pakistan, Thailand & India winner	US	WT/DS 58	Environment Protection	Art. I, XI, XIII & XX of GATT

X. Australia – Salmon & Salmonids

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
10-4-1997	Australia – Measures Affecting the Importation of Salmon (case completed)	Canada Winner	Australia	WT/DS 18	Quarantine measures	GATT Art. XI and XIII, Art. 2.2, 2.3, 5.1, 5.5, and 5.6 of SPS
16-6-1999	Australia – Measures Affecting the Importation of Salmonids (Active Panel)	US	Australia	WT/DS 18		Same case as WT/DS18

## TRANSPORTATION

### XI. Brazil – Canada: Aircraft Financing

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
23-7-1998	Brazil – Export Financing Programme for Aircraft (case completed)	Canada Winner	Brazil	WT/DS 76/1	Export subsidies	Art. 3, 27.4 and 27.5 of Subsidies Agreement
23-7-1998	Canada – Measures Affecting the Export of Civilian Aircraft (case completed)	Brazil Winner	Canada	WT/DS 70	Export subsidies	Art. 3 of Subsidies Agreement

### XII. Canada – Automotive

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
1-2-1999	Canada – Certain Measures Affecting the Automotive Industry (Panel Report Appealed)	Japan Winner	Canada	WT/DS1 39/1	“Auto Pact” discrimination, subsidy, MFN	GATT Art. I:1, III:4 & XXIV, TRIMs Art. 2, SCM Art. 3, GATS Art. II, VI & XVII
1-2-1999	Canada – Certain Measures Affecting the Automotive Industry (Panel Report Appealed)	EC Winner	Canada	WT/DS1 42/1	“Auto Pact” discrimination, subsidy, MFN	GATT Art. I:1, III:4, TRIMs Art. 2, SCM Art. 3, GATS Art. II, VI & XVII

## RAW MATERIALS

### XIII. Guatemala – Cement

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
20-3-1997	Guatemala – Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico (case completed)	Mexico	Guatemala Winner due to procedural reasons	WT/DS60	Anti-dumping investigation	Articles 2, 3, 5, & 7.1 of the Anti-Dumping Agreement
22-9-1999	Guatemala – Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico (Active Panel)	Mexico	Guatemala	WT/DS156	Anti-dumping	Art. 1, 2, 3, 5, 6, 7, 12, 18 of the Antidumping Agreement and its Annexes I & II, and GATT Art. VI

### XIV. US – Steel

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
17-2-1999	US – Imposition of Countervailing Duties on Certain Hot-rolled Lead and Brismuth Carbon Steel Products Originating in the UK (Appellate Body Report Issued)	EC winner	US	WT/DS138/1	Subsidy & countervailing duties	Art. 1.1(b), 10, 14 and 19.4 of the Subsidies Agreement
20-3-2000	US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (Active Panel)	Japan	US	DS/184/1	Anti-Dumping	GATT Art. VI, X, and Art. 2, 3, 6 (incl. Annex II), 9, 10 of the Anti-Dumping Agreement

**OTHER**

## XV. US – Anti-Dumping Act of 1916

Panel Established	Case Name	Claimant(s)	Respondent	No.	Subject	Cited WTO Provision(s)
1-2-1999	US – Anti-Dumping Act of 1916 (I) (Panel Report Issued)	EC	US	WT/DS 136	Anti-dumping	GATT Art. III:4, VI:1 & VI:2, WTO Agreement Art. XVI:4, Anti-Dumping Art. 1, 2, 3, 4 & 5
26-7-1999	US – Anti-Dumping Act of 1916 (II) (Active Panel)	Japan	US	WT/DS 162/1	Anti-Dumping	GATT Art. III, VI, XI, and Anti-Dumping Agreement



## **CONCLUSION**

Compared to the old GATT system, the WTO system is much improved. Because of this improvement, more cases have been brought to the WTO DSB annually than those brought to the GATT panel, as Member parties seem to have faith in the capabilities of the new system.

Through examination of the disputes brought to WTO, the following findings may be made. The increasing popularity of agreements concerning non-tariff barriers in dispute citation indicates that non-tariff barriers are the most common measures adopted by WTO Member parties for the protection of domestic industry and economic interest. Although new subjects have surfaced in WTO disputes, goods remain the primary area of dispute.

Details regarding the parties to disputes have also become apparent through this examination. In the beginning of WTO, developing countries were not very active in bringing complaints, but their activity in the system is slowly growing. This is a sign that, with a better understanding of the system and the accumulation of expertise, developing countries will start to use the system more to their advantage. This is also a good indication that accessibility to the WTO dispute settlement system is improved. At the same time, due to their economic advantage and abundant expertise, developed countries are still the most active players in the WTO dispute settlement system, especially US, EC, and Canada.

Although the appeal rate of WTO cases is high and there appears to be some repetition of cases, neither of these facts are necessarily indicative of inefficiency. Rather, the WTO dispute settlement system seems to be operating well.

## WTO DISPUTE SETTLEMENT REPORT CARD SUMMARY

In this summary, the WTO Dispute Settlement Report Card has been summarized. Necessary analysis has been made on WTO's performance in its first five years and a comparison between the GATT and the WTO dispute settlement systems is also made.

### **Old vs. New Process: No Dramatic Changes from GATT to WTO, but Some Changes, including Switch from Diplomacy to Rules-Based System**

#### **Time Limits**

- time limits now more concrete (where previously "a reasonable time" was guiding time restriction for various stages), process is still lengthy, but its length is now defined and a little shorter

#### **Innovation of Appeal**

- innovation of appeal, importing more judicial characteristics into the system and shifting the power in dispute settlement from GATT Secretariat's office of legal affairs to the WTO Appellate Body.

#### **Ruling Adoption**

- ruling adoption procedure switched from consensus adoption (where ruling adoption was difficult due to opposition of losing party) to consensus rejection (where ruling adoption is almost automatic, because rejection requires agreement of all parties)
- However, as noted by Hudec<sup>29</sup> the difference between the WTO procedure and its GATT predecessor should not be overstated. Much of the new procedure laid down in the WTO's DSU is merely a repetition of operating practices already established less formally by the GATT procedure.
- The high success rate of late GATT years suggests that in order to be generally effective, an international legal system like WTO does not require rigorously binding procedures to the extent that the public seems to believe. The success of the loose gatt system was a result of the political will of governments which wanted to have a working legal order in this area.

#### **Cases per Year**

- More complaints per year are brought to this new system (33.8 for 1995-2000) than were brought to the old system (15.8 for 1990-1993).
- In 1998, Hudec<sup>30</sup> proposed that the increase in case volume since WTO's inception was because governments have more confidence in the new procedure, the WTO contains more legal obligations (including new areas) than the 1947 GATT, and the legal obligations of developing obligations of developing countries have been tightened. These facts remain as true for the current status of WTO as they did for the 1998 status.

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<sup>29</sup> Hudec.

<sup>30</sup> Id.

### WTO is Facing Increasing Pressures to Change

- as much as the WTO has changed, some groups are still not satisfied. NGOs, for instance, require more transparency and public participation in WTO dispute settlement, as greater public attention will create pressures for more pro-value rulings (environmental issues, labor rights, and human rights)

### **Active WTO Members: Developing countries are becoming more active in a system dominated by developed countries**

- US, EC & Canada are 3 big players (Canada because of proximity to US)
- many countries still not using the system (out of 137 Members, 116 have not lodged any complaints)
- developed countries making/receiving twice as many complaints as developing countries
- developing countries not receiving as many complaints b/c not hotspot of world trade, less transparent legal systems, & special DSU provisions
- developing countries not making as many complaints b/c lack of expertise, money and bargaining power
- developing countries are beginning to raise more complaints upon the accumulation of expertise with the WTO dispute settlement system, indicating better understanding of the system
- the fact that developing countries are raising more cases is also indicative of its greater accessibility – this is seen as a positive stride made by the WTO

### **Subjects: Agriculture, Industrial Products and Clothing and Textiles remain the primary subjects of WTO disputes**

#### **Agriculture**

- Agriculture is top subject (29%), consistently popular & on the rise, despite fact that only developed countries have brought Agric disputes in last 2 years (b/c they are the main exporters of Agric products & usually the exporters are the complainants)
- The high occurrence of agriculture-related disputes is due to countries' subsidization of their domestic agriculture, which is done for reasons of national security (e.g., in case of wartimes) and in order to employ peasants (and therefore avoid several social problems). This is the major reason for agricultural disputes among developed countries.
- Agriculture is also a major subject in international trade because of the great disparity in efficiency which exists between developed and developing countries. This disparity can be large enough to cause misunderstandings or suspicions between countries, thus raising the issue of dumping.
- Finally, the fact that farmers are incredibly well-organized in terms of high-membership unionization contributes to the high number of agricultural cases in two ways:

- 1) Member governments are pushed by farming unions to subsidize domestic farming, making them a target for WTO dispute claims.
- 2) Similarly, member governments are pushed by farming unions to dispute the subsidization activities of other Member governments

### **Industrial Products**

- Industrial Products is 2<sup>nd</sup> most common subject (23%), due largely to '97 surge
- The reason for the high percentage Industrial Products disputes is that in this research, Industrial Products is a classification which has been used to cover a great variety of industry-related subjects, such as computer-related products, photographic film and paper, pharmaceuticals, alcohol and other products.

### **Clothing and Textiles**

- Clothing & Textiles is 3<sup>rd</sup> most common subject (17%), increasing in popularity over the years
- The costs of production depends heavily on labour costs. The huge disparity of labour costs between developed and developing countries gives developing countries a strong comparative advantage. In order to protect their domestic textile industry (and especially the interests of their unskilled workers), developed countries often impose import restrictions. This has, in turn, spawned textile disputes brought by developing countries (e.g., antidumping, quota).
- The focus of competitive pressure from developing countries has traditionally only been on the unskilled labour force of labour-intensive industries (e.g., clothing) in developed countries. However, as technology develops, skilled labourers in non-labour-intensive industries (e.g., computer programming) are also in danger.

### **Agreements: GATT is the basic agreement and other commonly cited agreements refer to agricultural products or NTBs**

- GATT 1994 is most cited agreement because it sets out the basic rationale for other agreements (e.g., Most Favored Nation, National Treatment, etc.), and most disputes touch on these general rules
- Agreements on Anti-Dumping, Agriculture, and Subsidies & Countervailing Measures also often invoked – this is due to the popularity of Agriculture as a dispute subject and NTBs as dispute types (see below)

### **Types: Stable presence of new types of disputes has emerged in a system dominated by traditional dispute types**

- SAD (Subsidies, Countervailing Measures & Anti-Dumping) is most popular (34%), dramatic increase in 98-9, mainly due to awakening of developing countries – gaining expertise with the WTO dispute settlement system & starting to fight back against Anti-Dumping complaints brought against them in the past
- SMQR (Safeguard Measures & Quantitative Restrictions) is 2<sup>nd</sup> most popular (22%), experiencing a more gradual increase

- Both of these are about NTBs, indicating trend of Members attempting less obvious protective measures (than tariffs)
- NT (National Treatment) is also very popular (22%), developing countries are popular target for these claims, but do not bring many themselves
- Popularity of these 3 types is not surprising as they are traditionally common dispute types
- EPQM (Environment Protection, Sanitary & Quarantine Measures) & IPP (Intellectual Property Protection) constitute relatively few claims, probably because they are newly included in WTO regime, but since their incorporation in the system, they have had a stable presence
- The inclusion of new types of disputes in the WTO, especially those dealing with the environment and intellectual property, indicates that the WTO, although based on a 50 year old pro-trade legacy, has evolved in order to accommodate the changing priorities and new innovations of Members and their societies

## **Panel and Appellate Body**

### The Panel

- The percentage of cases proceeded to the stage of appointing a panel is relatively low (46%).
- This has not changed since Hudec's analysis in 1998 (44%). The reasons proposed by Hudec for this low percentage are: 1) the binding quality of the new procedure persuaded more governments to remove illegal practices voluntarily; and 2) a greater number of governments are using legal complaints as a negotiating instrument.<sup>31</sup> These reasons are still valid today.
- The question still remains whether a first-tier panel procedure still necessary, as most international adjudication takes place at one level. Hudec has suggested that the Appellate Body be expanded and that the Panel be eliminated altogether. This would also contribute to the neutrality of decision-makers, as panelists are currently only ad hoc, and so have private interests which may affect their impartiality, whereas the Appellate Body members perform their WTO function independently and full-time, and therefore are less state-influenced.

### **The Appellate Body**

- High appeal rate (78%), probably because probability of partial amendment encourages appeal.
- Since most appeals lead to a partial amendment of a panel decision, it is in the best interest of a party who is not happy with all or part of the panel decision to appeal.
- This high appeal rate shifts the power in dispute settlement from the GATT secretariat of legal affairs to the WTO Appellate Body
- In most cases the AB has identified some legal errors in the panel's supporting analysis, often fairly extensive errors, but it has rarely reversed the ultimate result reached by the panel. The Appellate Body's power,

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<sup>31</sup> id.

however, is limited by time concerns. They may not remand incorrect decisions to panels for further proceedings.

### **Repetition of Cases: High occurrences, but system operating well**

- Several like claims brought, but not usually by & against same parties, so this commonality does not challenge effectiveness of WTO dispute settlement system – this observation indicates that the wto dispute settlement system works, however with flaws
- The rationale behind MFN is that any concessions made by a country to another member party shall be automatically extended to all other parties
- The repetition of cases indicates that MFN does not function well here in an automatic way as expected to.
- There exists a fundamental misunderstanding of what the WTO is. The WTO does not act as the world trade police with an enforcement role to actively prevent companies and countries from engaging in illegal kinds of trade practices (e.g., social dumping). It is a court which passively responds to complaints on case by case basis.
- Therefore, although the WTO may resolve one problem between the parties to a dispute, other affected parties must raise their own dispute in order for this problem to be resolved for them.
- This has caused many parties to follow in the successful footsteps of previous complainants

### **Dilemmas WTO Dispute Settlement System Improvement**

The Problem of Greater Transparency: Would create a shift in diplomacy that would destroy the wto

- Presently, in a nontransparent case, the wto is free to make a legal ruling. The diplomacy of the system exists in the governments' ability to make diplomatic concessions.
- However, in a transparent case, the wto is forced to make a diplomatic ruling, and Member governments lose their ability to make diplomatic concessions. This happens as a result of a lack of a power superior to the sovereignty of Member states.

NGO's have called for greater transparency in the wto system. However, such a development may reduce the wto's effectiveness in two ways:

- 1) Member governments would be less likely to make diplomatic concessions for fear of domestic public outrage
- 2) The wto would be forced to make more balanced rulings (with less clear winners), in order to appease all parties involved and maintain the system. For instance, the EC hormone case received much public attention, and resulted in a ruling in which each country claimed partial victory. The reason behind this is that the public will not stand for an absolute loss in a highly publicized case, therefore eliminating the ability of the state involved to accept or enforce the ruling. The unenforceability of wto rulings will, in turn, destroy the predictability and security of the wto regime.

### The Problem of Greater Social Concern:

NGO's have also called for more pro-value rulings in the wto. This would entail a greater role of the wto which would effectively kill it.

- The wto's role is, by its nature, contrary to the furtherance of social concerns such as health, environment and labour standards
- Any concession of the organization in the direction of such social concerns is necessarily a step backward for international trade (the heart & soul of the wto). Too many of these "steps backward" in trade and the world trade organization will no longer be able to accomplish its purpose.
- We must choose whether we want the wto to be a social cop or a trade cop. If the wto is to survive, the promotion of social concerns must be taken on by another organization.
- (labour standards: 2 teirs, status quo, vagueness, unpredictability; even if clear labour standard is developed, still not appropriate for inclusion in the wto b/c they will destroy it)