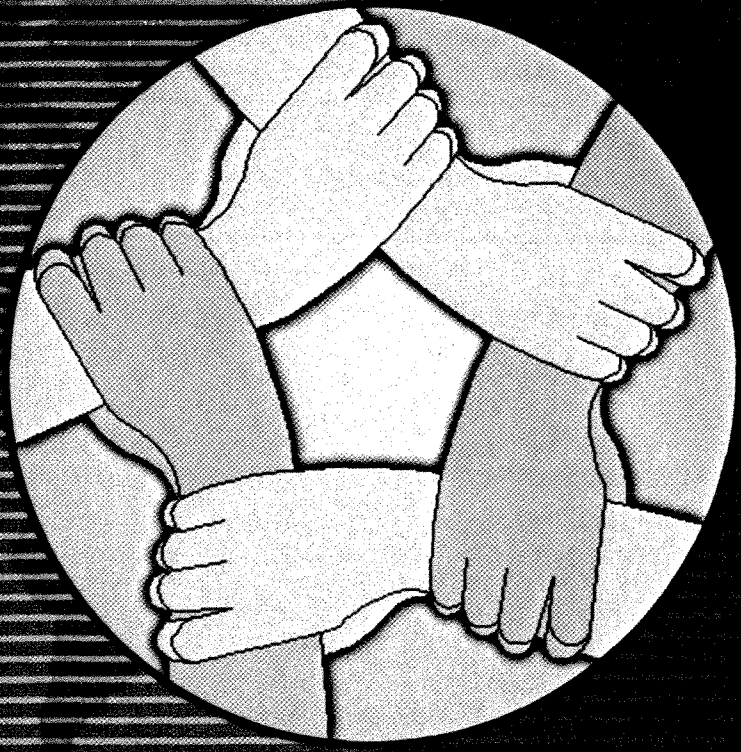
WTO AND DISPUTE RESOLUTION



EDITED BY

K PADMAJA

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7

WTO Dispute Settlement: General Appreciation and the Role of India

Thomas A. Zimmermann[*]

On 1 January 1995, the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) entered into force. Until August 2006, the DSU has since been applied to 348 complaints – more cases than dispute settlement under the GATT 1947 had dealt with in nearly five decades. The system is perceived, both by practitioners and in academic literature, to work generally well. However, it has also revealed some flaws. Negotiations to review and reform the DSU have been taking place since 1997 ("DSU review"), however, without yielding any result so far. In the meantime, WTO Members and adjudicating bodies managed to develop the system further through evolving practice. While this approach may remedy some practical shortcomings of the DSU text, the more profound imbalance between relatively efficient judicial decision-making in the WTO (as incorporated in the DSU) and nearly blocked political decision-making evolves into a serious challenge to the sustainability of the system.

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This article provides an overview of the first eleven years of DSU practice and the current DSU review negotiations. An outlook for future challenges to the system is also given. Moreover, specific sections of the article focus on the role of India in WTO dispute settlement, her use of the system and her participation in the DSU review negotiations.

1. Introduction

Trade agreements on the basis of reciprocity are instruments used by governments to achieve trade liberalisation. The reciprocal exchange of market access rights which occurs through such agreements amounts to an international exchange of domestic political support between governments that helps policymakers to overcome the protectionist bias of uncoordinated trade policies. In order to protect the negotiated balance of rights and obligations from eroding – e.g., by trade restrictions which one government may introduce in violation of the trade agreement in order to enhance its political support from import-competing interests – trade agreements usually include dispute settlement mechanisms based on diplomatic and/or adjudicative procedures.

Such a dispute settlement mechanism is also included in the multilateral trading system. Based on the rudimentary provisions of two articles in the General Agreement on Tariffs and Trade (GATT) 1947, i.e., Article XXII on Consultations and Article XXIII on Nullification or Impairment of Benefits, dispute settlement developed gradually through evolving practice and occasional codifications thereof. With the exception of an anti-legalist phase in the 1960s, the trend went from an initially rather diplomacy-oriented mechanism towards a more adjudication-oriented one.

The conclusion of the Uruguay Round of Multilateral Trade Negotiations brought the establishment of the World Trade Organisation (WTO) on 1 January 1995. According to Article III.3 of the WTO Agreement, dispute settlement is one of the key functions of the WTO. The rules of the mechanism are laid down in

detail in the Understanding on Rules and Procedures Governing the Settlement of Disputes (in short: Dispute Settlement Understanding; DSU) in Annex 2 of the WTO Agreement. The DSU has both incorporated the inherited concept of GATT dispute settlement, and it has codified the practices that had evolved previously into a consolidated text. In addition, it has brought important innovations (see below).

The mechanism has been used actively by Members in the first ten years of its existence. At the same time, it has been a topic of much academic interest and debate. Moreover, Members have been involved in negotiations to review and reform the mechanism since late 1997, however, without coming to an agreement so far.

This article gives an overview of the WTO dispute settlement mechanism eleven years after it became operational. Chapter 2 briefly presents the structure of the mechanism. Chapter 3 includes basic data on the use of the system between 1995 and 2005 and its perception in academic literature. Specific paragraphs focus on the experience of India in the system. Chapter 4 deals with efforts of Members to further develop the DSU in the DSU review negotiations. Again, specific attention is given to the role of India in this exercise. Chapter 5 concludes and attempts to give an outlook on the challenges that await the DSU in the coming years.

2. The Dispute Settlement Procedure in the DSU[1]

In WTO dispute settlement, private economic actors such as consumers, producers, importers and exporters cannot bring complaints directly. Nor does the WTO by itself initiate legal cases against its Members, even if their trade measures obviously violate multilateral trade law. In WTO dispute settlement, complaints may exclusively be brought by (and against) governments. Whether or not a government will make use of the system in order to tackle a trade issue that is raised by a private economic actor is therefore a matter of national policy, law, and procedure. Some countries have established norms for this decision

process (such as the United States with "Section 301" or the European Union with the "Trade Barriers Regulation").[2] In many countries, however, there is no publicly-known decision process.

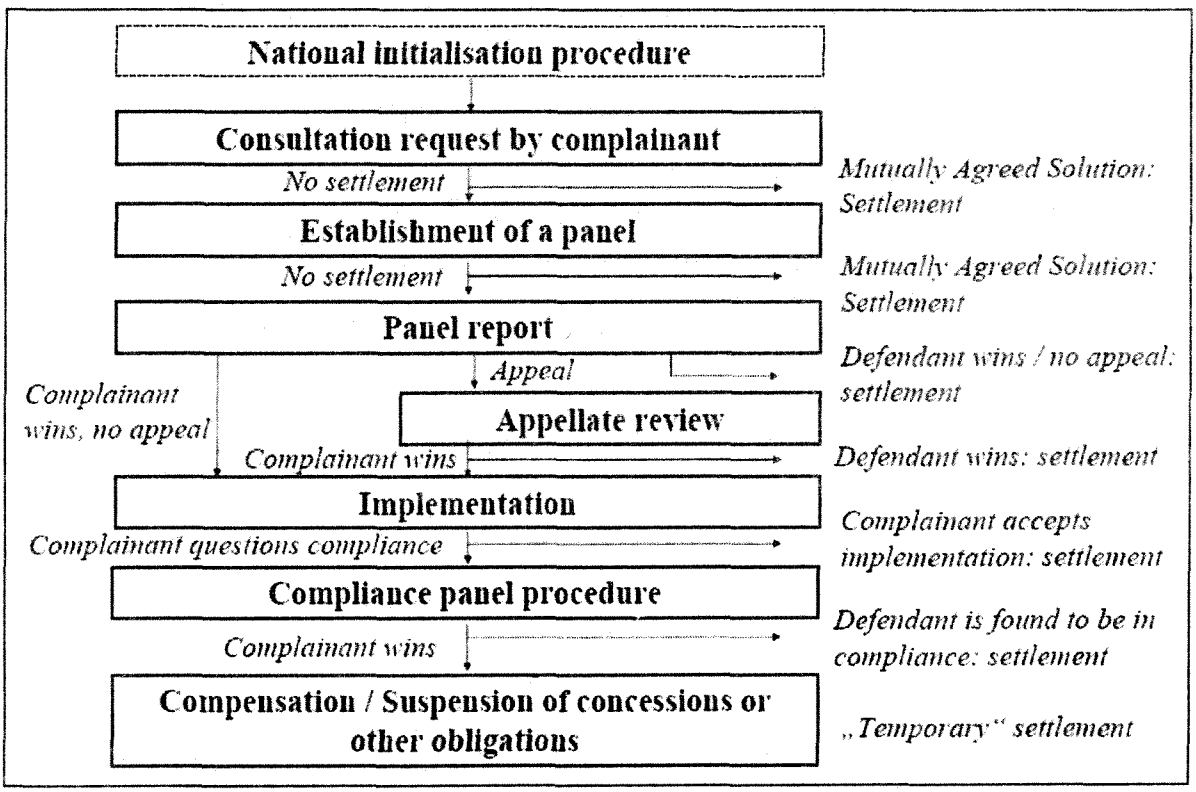
In short, the WTO Dispute Settlement Understanding provides for a procedure that starts with mandatory consultations as a diplomatic element. If the disputing governments cannot agree to a settlement during these consultations within a certain period, or if the defending party does not respond to the consultations request, the complainant may request a panel to review the matter. Panels are composed *ad hoc* and they consist of normally three specialists who engage in fact-finding and apply the relevant WTO provisions to the dispute at hand. Their findings and recommendations are published in a report against which either or both parties may appeal. Unless there is an appeal, the reports are adopted in a quasi-automatic adoption procedure by the Dispute Settlement Body (DSB)[3] where all WTO Members are represented. "Quasi-automatic" adoption means that the reports are adopted unless the DSB decides by consensus (i.e., including the party that has prevailed) not to adopt the report.

In case of an appeal, however, the Appellate Body reviews the issues of law and legal interpretations in the panel report that are subject to the appeal. The Appellate Body is a standing body composed of seven jurists, three of whom (i.e., a division) work on each case. The Appellate Body can uphold, modify or reverse the panel's findings. After this appellate review, no further recourse is possible. The DSB shall then adopt the report in the quasi-automatic adoption procedure described above.

If it has been found that a trade measure is in violation of WTO law, the defendant shall bring the measure into compliance with the covered agreements within a reasonable period of time, normally not exceeding 15 months. If the defendant refuses to comply, the complainant may ask the defendant to enter into negotiations on compensation, or may seek authorisation from the DSB to Suspend Concessions or Other Obligations (SCOO) *vis-à-vis* the defendant at an amount equivalent to the injury suffered. If the adequacy of implementation is disputed, the implementation measures are subject to further review under the

DSU. The suspension of concessions or other obligations, if authorised, normally takes the form of punitive tariffs on a defined value of the complainant's imports from the defendant. The structure of the dispute settlement mechanism (key elements only) is summarised in Graph 1.

Graph 1: Simplified Overview of the Dispute Settlement Procedure under the DSU



The DSU as of today represents a codified procedure that combines elements of both political negotiation and adjudication. In the current mechanism, the political, negotiation-oriented elements include, *inter alia*, mandatory confidential consultations, tactical elements during the panel stage (establishment of panels only at second meeting where the panel request appears on the DSB agenda, possibility to suspend the panel procedures upon complainant's request, interim review), and the subordination of the entire procedure to a "political" body, as the competence to adopt panel and Appellate Body reports rests with the Dispute Settlement Body. Finally, the nature of the ultimate countermeasures, i.e., the Suspension of Concessions or Other Obligations (SCOO) in the case of non-implementation of recommendations, is negotiation-oriented and exclusively

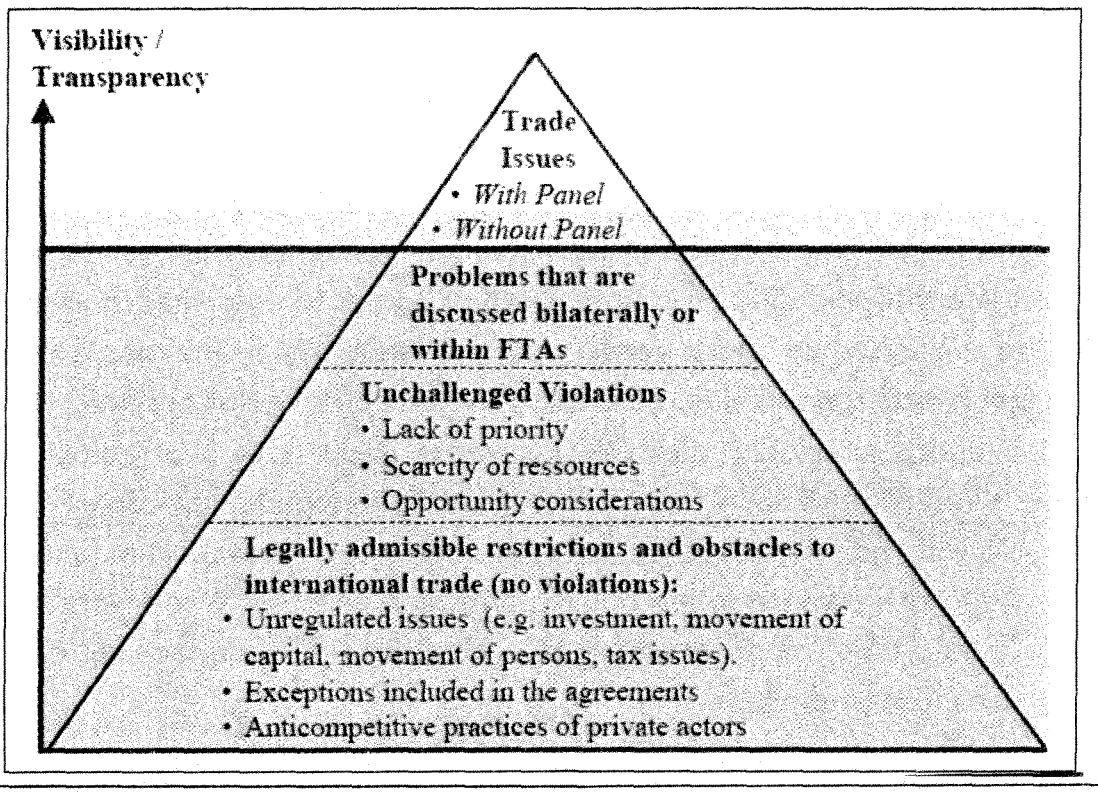
based on the political concept of reciprocity, as it can hardly be regarded as supportive of the security and predictability of a rule-oriented multilateral trading system. The Special and Differential treatment (S&D) of developing countries under the DSU is also a political feature.

Rule-oriented elements include, inter alia, the conformity and notification requirements with regard to mutually agreed solutions; the right to a panel (more generally: the removal of blocking possibilities in the process); the appellate review stage; and the prohibition of unauthorised, unilateral retaliatory action. These elements seek to secure the conformity of trade policy measures and dispute outcomes with the relevant provisions of WTO law. Other features of the system such as third party rights also support rule-orientation.

Given the stage-specific approach to WTO dispute settlement (which provides for gradual escalation) and the fact that trade violations do not trigger automatic prosecution, we may furthermore establish the hypothesis that only a fraction of all protectionist measures will ever be tackled under the WTO dispute settlement system. We could use the picture of an iceberg: Trade measures in areas that are not governed by strict WTO disciplines or that do not seem politically opportune to tackle, may indeed never be raised before the WTO visibly. Discussions on such measures – if they take place at all – may be confined to informal settings of bilateral meetings or fora below the multilateral level, e.g., bilateral economic commissions, mixed committees of preferential trade agreements (or their subcommittees) and so forth. From the perspective of the WTO, all these protectionist measures remain "under the water".

Of those cases that are raised officially through the notification of consultations to the WTO, a considerable proportion is settled during the rather informal consultation stage, meaning that the actual outcome of the discussions remains often unknown or unclear ("foggy area"). Therefore, those cases actually leading to panel or Appellate Body reports with clear findings of violations may therefore be considered to represent just the tip of the iceberg (see Graph 2).

Graph 2: WTO Dispute Settlement and the "Iceberg of Protectionism"



3. Experiences with the WTO Dispute Settlement System

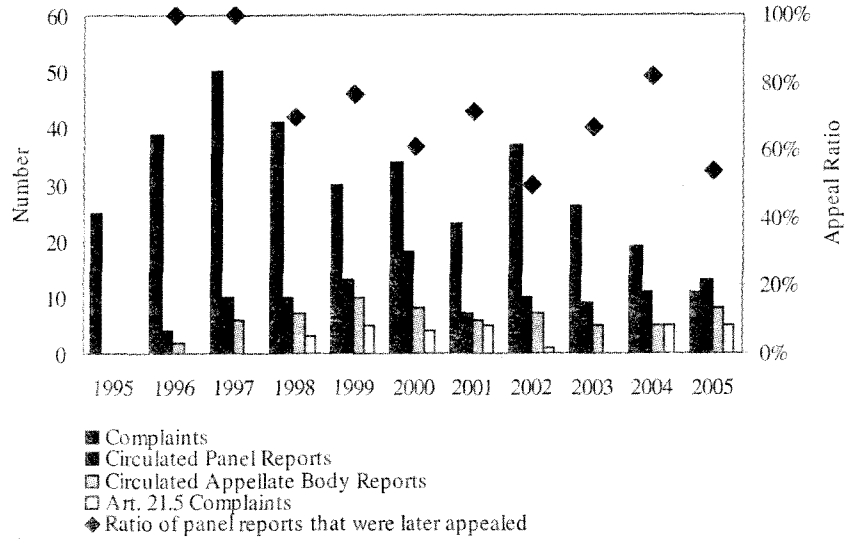
3.1 General Use of the Procedure

Between 1 January 1995 and 31 August 2006, 348 consultation requests were notified to the WTO.[4] Compared to the less than 300 cases submitted to GATT dispute settlement in 47 years, this number already shows that the new system has been quite popular among Members so far. However, these numbers should not be over-interpreted: The old GATT had less Members, and it covered fewer agreements and sectors of economic activity than the WTO.

Graph 3 shows the intensity in the use of the dispute settlement mechanism in its first eleven years, i.e., until 31 December 2005. The number of complaints increased sharply in the first three years after the mechanism had come into force, and it peaked in 1997 with 50 new consultation requests in one single year. Thereafter, the number of consultation requests dropped to an annual average of 30 complaints in the period from 2000 to 2003, and further to only 11 new complaints in 2005, the lowest number since inception of the new system. Figures for the first eight months of 2006 indicate a slight increase.

The evolution of the number of panel reports circulated displays a similar pattern, yet with a certain time lag and a peak in 2000. Overall, the number of panel reports is much lower than the number of consultation requests. This shows that mutually agreed solutions can be found in a considerable number of disputes prior to the circulation of the panel report (consultation or panel stage). Moreover, in some cases, several separate consultation requests are dealt with by one single panel (e.g., in cases with multiple complainants), which equally contributes to the difference in numbers. The number of Appellate Body reports peaked in 1999. While every panel report circulated in 1996 and 1997 had been subject to an appeal, this ratio dropped to an average of around two thirds for panel reports circulated after 2000. Overall, there have been relatively few complaints under Article 21.5 DSU regarding alleged non-compliance of defendants with panel rulings (so-called compliance reviews). The fairly small number is in stark contrast to the public perception of these "trade wars" as they concern "high profile" cases, including *EC – Bananas*,[5] *EC – Hormones*,[6] and *US – Foreign Sales Corporations*.[7]

Graph 3: Use of the WTO Dispute Settlement System (1995-2005)

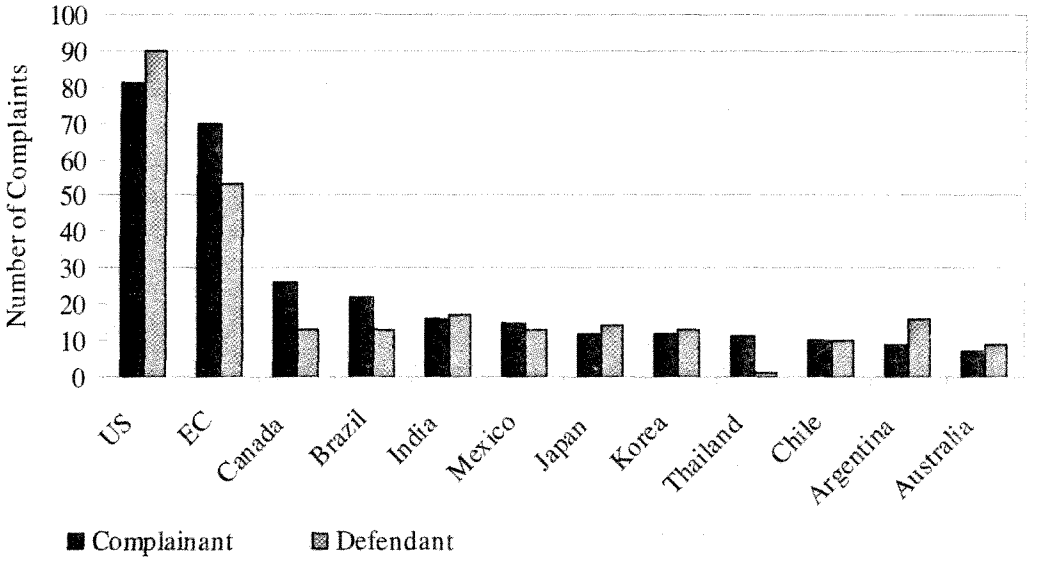


Graph by the author; based on data from worldtradelaw.net (downloaded on 28 February 2006)

Notes: i.) Numbers refer to standard DSU complaints. ii.) Some of the panel reports circulated in 2005 may still become the subject of an appeal later on. The low ratio of panel reports appealed in 2005 should therefore be interpreted cautiously.

In terms of usage by country, the United States and the European Communities (EC) have been the DSU's most frequent users by far: Together, they account for nearly half of the cases brought before the WTO (see Graph 4). Among developing countries, Brazil and India are the most important users of the system. Developing countries' participation in dispute settlement proceedings is generally increasing, but still on a relatively modest level, given the high number of developing countries in the WTO. The near absence of LDCs in dispute settlement activities is another salient feature: The first LDC to lodge a complaint was Bangladesh. In early 2004, the country asked for consultations with India regarding Indian anti-dumping measures against battery imports from Bangladesh.[8]

Graph 4: Main Users of the WTO Dispute Settlement System (1995-2005)



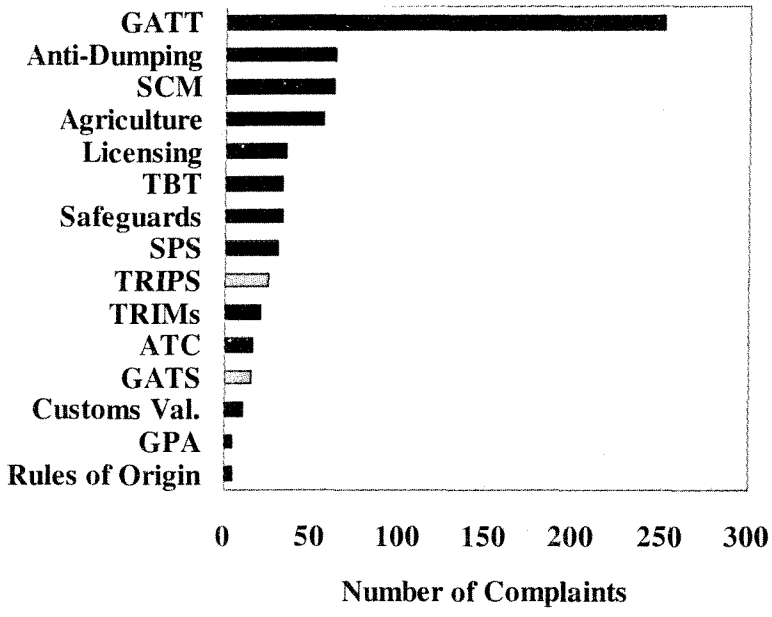
Graph by the author; based on data from worldtradelaw.net (downloaded on 28 February 2006)

Note: EC figures for cases where the EC is a respondent do not include DS numbers of complaints against individual EC Members.

Regarding the subject matter, by far most disputes concern trade in goods, with the GATT being the agreement whose provisions are most often invoked in disputes. This dominance of goods trade in WTO dispute settlement becomes even more apparent when the complaints relating to the special agreements in the goods sector (in particular those dealing with trade remedies such as the Agreement on Subsidies and Countervailing Measures and the Agreement on Antidumping) are taken into account (see Graph 5).

By comparison, the "new issues" – i.e., trade in services (GATS) and Trade-Related Intellectual Property Rights (TRIPS) – have not yet been frequent subjects of WTO disputes. Nevertheless, it should be noted that one particularly "high profile" case – a dispute between the US and the EC on the one hand, and India on the other, regarding patent protection of pharmaceutical and agricultural chemical products – ranges among these disputes.[9] Similarly, there have not been frequent disputes under the GATS. Some of these disputes, however, have considerable political and economic importance, i.e., a US complaint against Mexican measures affecting telecommunications[10] and a complaint by the small Caribbean islands of Antigua and Barbuda against US measures affecting gambling services.[11]

Graph 5: Agreements whose Provisions were Subject to Litigation (1995-2005)



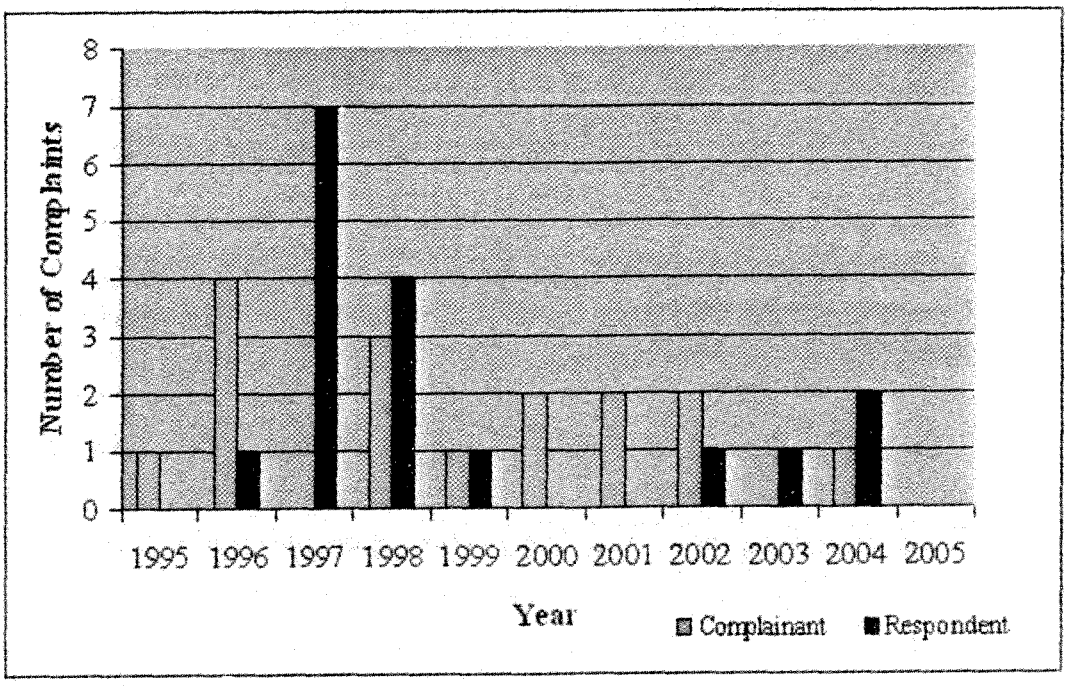
Graph by the author; based on data from worldtradelaw.net (downloaded on 28 February 2006)

Notes: GATT = General Agreement on Tariffs and Trade; SCM = Agreement on Subsidies and Countervailing Measures; AD = Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping); TBT = Agreement on Technical Barriers to Trade; SPS = Agreement on the Application of Sanitary and Phytosanitary Measures; TRIPS = Agreement on Trade-Related Aspects of Intellectual Property Rights; TRIMS = Agreement on Trade-Related Investment Measures; ATC = Agreement on Textiles and Clothing; GATS = General Agreement on Trade in Services; GPA = Agreement on Government Procurement.

3.2 India's Use of the Dispute Settlement Procedure

As has been noted above, India is among the most active developing country users of the WTO dispute settlement system. In chronological terms, the pattern displayed by India's activities in the system broadly follows the general pattern: Dispute activity was particularly strong in the first years after the new mechanism entered into force and then slowed somewhat (see Graph 6). Considered over a longer period of time, cases brought by India (16) and cases brought against India (17) are largely in balance. In certain years, however, there was a strong imbalance: For instance, after being a net complainant in 1995 and 1996, India faced seven challenges to her trade policy in 1997 alone, without India herself bringing one single case to Geneva in that year. Most of these cases, which were brought by a variety of Members, concerned India's quantitative restrictions on imports of agricultural, textile and industrial products.

Graph 6: Use of the WTO Dispute Settlement System (1995-2005): Cases with India as Complainant and Respondent

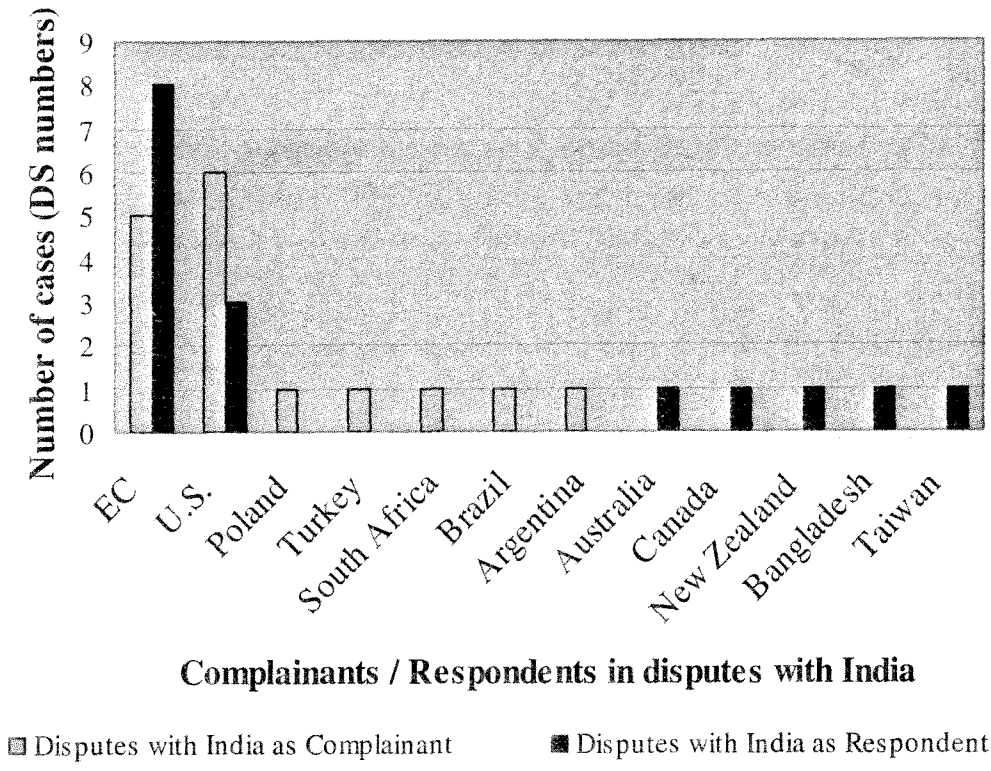


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Cases against India were brought by a variety of WTO Members. Disputes are fairly frequent between the European Communities and India, whereby India is more often on the bench than the EC. With the United States as well, a fairly

intense dispute activity has developed. However, in the case of the US, India is more often a complainant than a defendant. Isolated disputes have been litigated with a number of other WTO Members (see Graph 7).

Graph 7: Disputing Parties in Cases Involving India as Complainant or Respondent

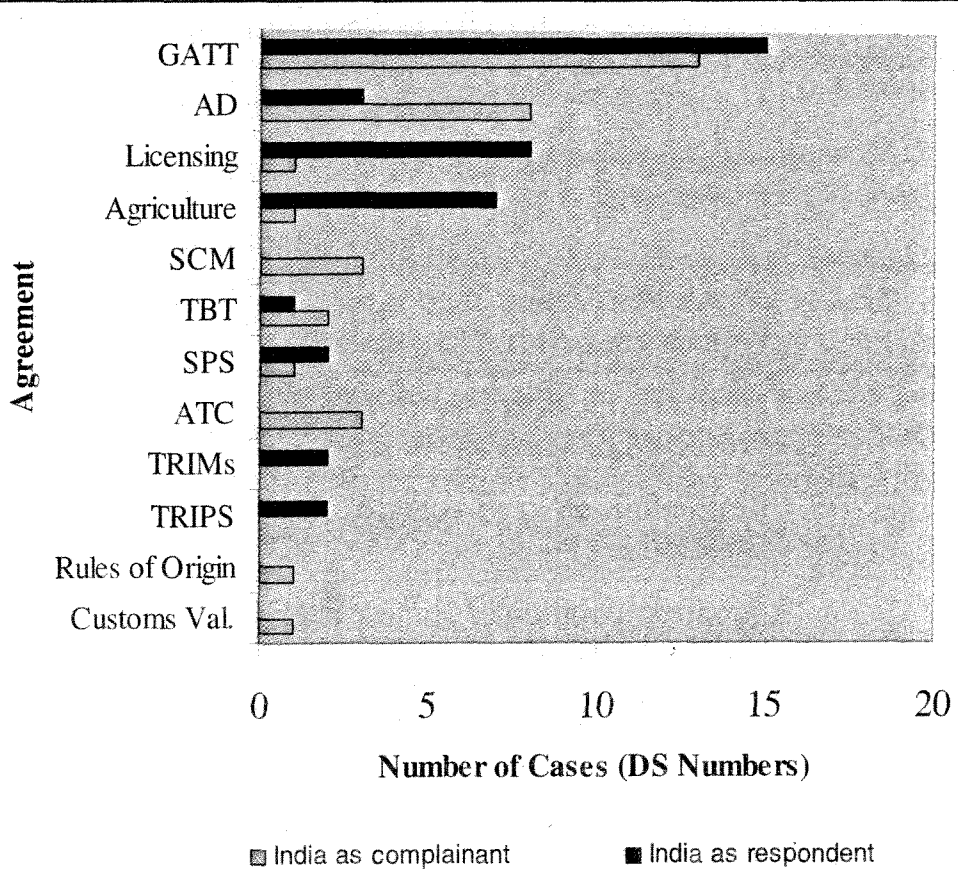


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Dispute activity involving India has focussed on trade in goods. As far as the GATT is concerned, India has been both a complainant and a respondent. Concerning anti-dumping, she has far more often challenged foreign anti-dumping measures than vice versa. Regarding Licensing and Agriculture, a different picture emerges: India has been more often a defendant than a complainant. Although the statistical data is too scarce to allow for sweeping generalisations, it points to a rather restrictive agricultural trade policy and to the widespread use of licences in India, with adverse repercussions on the free flow of trade and, hence, on the conformity of Indian trade policies with multilateral trade rules.[12]

Other agreements have played a minor role in India's dispute activities. As one would expect in light of the structure of the Indian economy and her trade policies, she has pursued offensive trade interests under the Agreement on Textiles and Clothing, whereas she was a defendant under the TRIPS and TRIMs Agreements. Graph 8 gives an overview of the main agreements whose provisions were subject to litigation in disputes involving India.

Graph 8: Agreements whose Provisions were Subject to Litigation in Cases Involving India (1995-2005)



Graph by the author; based on data from worldtradelaw.net (downloaded on 28 February 2006)

Notes: GATT = General Agreement on Tariffs and Trade; AD = Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping); SCM = Agreement on Subsidies and Countervailing Measures; TBT = Agreement on Technical Barriers to Trade; SPS = Agreement on the Application of Sanitary and Phytosanitary Measures; ATC = Agreement on Textiles and Clothing; TRIMS = Agreement on Trade-Related Investment Measures; TRIPS = Agreement on Trade-Related Aspects of Intellectual Property Rights.

As Graph 8 shows, India is particularly active as a complainant against restrictions in the textiles sector. A minor portion of Indian complaints concerns primary products (agriculture and shrimp fishing), steel products, and pharmaceutical products (see Table 1). As a respondent, she was called upon to defend her policy measures in a variety of sectors including pharmaceuticals, agricultural and chemical products, textiles, automotive products and other. Quantitative restrictions and anti-dumping measures were among the most often challenged Indian trade policy measures (see Table 2).

Table 1: WTO Disputes with India as Complainant (1995-2005)

DS No.	Respondent	Matter	Agreements
19	Poland	Import Regime for Automobiles	GATT, Art. XXIV Understanding
32	US	Measures Affecting Imports of Women's and Girls' Wool Coats	ATC
33	US	Measures Affecting Imports of Woven Wool Shirts and Blouses	ATC
34	Turkey	Restrictions on Imports of Textile and Clothing Products	ATC, GATT
58	US	Import Prohibition of Shrimp and Shrimp Products	GATT
134	EC	Restrictions and Certain Import Duties on Rice	Agriculture, Customs, GATT, Licensing, SPS, TBT
140	EC	Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India	AD, GATT
141	EC	Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India	AD, GATT
168	South Africa	Anti-Dumping Duties on Certain Pharmaceutical Products from India	AD, GATT
206	US	Anti-Dumping and Countervailing Measures on Steel Plate from India	AD, GATT, SCM, WTO

contd...

contd...			
217	US	Continued Dumping and Subsidy Offset Act of 2000	AD, GATT, SCM, WTO
229	Brazil	Anti-Dumping Duties on Jute Bags from India	AD, GATT, WTO
233	Argentina	Measures Affecting the Import of Pharmaceutical Products	GATT, TBT, WTO
243	US	Rules of Origin for Textile and Apparel Products	Origin
246	EC	Conditions for the Granting of Tariff Preferences to Developing Countries	Enabling, GATT
313	EC	Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India	AD
Source: WTO Homepage; Chronological lists of disputes cases (http://www.wto.org)			

Table 2: WTO Disputes with India as Respondent (1995-2005)			
DS No.	**Complainant**	**Matter**	**Agreements**
50	US	Patent Protection for Pharmaceutical and Agricultural Chemical Products	TRIPS
79	EC	Patent Protection for Pharmaceutical and Agricultural Chemical Products	TRIPS
90	US	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	Agriculture, GATT; Licensing
91	Australia	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	Agriculture, GATT; Licensing
92	Canada	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	Agriculture, GATT; Licensing
			contd...

contd...			
93	New Zealand	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	Agriculture, GATT; Licensing
94	Switzerland	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	GATT; Licensing
96	EC	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	Agriculture, GATT; Licensing, SPS
120	EC	Measures Affecting Export of Certain Commodities	GATT
146	EC	Measures Affecting the Automotive Sector	GATT, TRIMS
149	EC	Import Restrictions	Agriculture, GATT, Licensing
150	EC	Measures Affecting Customs Duties	GATT
175	US	Measures Affecting Trade and Investment in the Motor Vehicle Sector	GATT, TRIMS
279	EC	Import Restrictions under the Export and Import Policy 2002-2007	Agriculture, GATT, Licensing, SPS, TBT
304	EC	Anti-Dumping Measures on Imports of Certain Products from the European Communities and/or Member States	AD, GATT
306	Bangladesh	Anti-Dumping Measure on Batteries from Bangladesh	AD, GATT
318	Taiwan	Anti-Dumping Measures on Certain Products from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	AD, GATT

Source: WTO Homepage; Chronological lists of disputes cases (http://www.wto.org)

3.3 Perception in Scholarly Literature

The WTO dispute settlement system has attracted a remarkable amount of academic attention. In this literature, the system received a particularly warm, if not enthusiastic, welcome.

Specifically, the quasi-automaticity in the establishment of panels as well as in the adoption of panel and Appellate Body reports was among the most-lauded elements. This quasi-automaticity removed blockage possibilities for losing defendants that had existed in dispute settlement under the old GATT. The introduction of precise time-limits was equally seen as a highly positive step. From a legal point of view, the introduction of an appellate review mechanism and the institution of a permanent Appellate Body composed of highly-qualified lawyers were greeted as particularly important contributions towards improved legal quality of decisions and as a further step towards the rule of law in trade matters.[13] More generally, this appellate review system was greeted as a model for other areas of international public law.

HUDEC (1999, pp. 4 and 9) has warned, however, not to overstate the differences between the new DSU and the former procedure under the GATT. With regard to the removal of blocking possibilities, HUDEC holds that blockage did not play too prominent a role in GATT practice either, as there was a community consensus that every Member should have a right to have its claims heard by an impartial third-party decision-maker. Moreover, GATT dispute settlement had already become a more judicial instrument in the late 1970s and 1980s, where the cornerstones were laid for the later evolution towards the DSU. As HUDEC (1999, p. 11) argues with regard to the success of dispute settlement in the 1980s, an international legal system does not require rigorously binding procedures to be generally effective but requisite political will can achieve much. As to this author, stringent procedures by themselves are not likely to make a legal system effective unless they are buttressed by sufficient political support. He cautioned, therefore, that even the new system would not lead to 100% compliance. As under the GATT, countries would be unable or unwilling to comply in specific cases under WTO dispute settlement rules as well. The system would accordingly have to learn to live with legal failure.

Indeed, legal literature began to take these problems into account towards the end of the 1990s as implementation problems surged in a number of high profile cases, including, *inter alia*, *EC-Bananas*, *EC-Hormones*, and *US – Foreign Sales Corporations*. In these cases, the refusal of defendants to implement DSB recommendations triggered the suspension of concessions or other obligations (SCOO) by the complainant government under authorisation from the Dispute Settlement Body. More commonly known under martial terms like "retaliation" or "sanctions", the SCOO itself has become the focus of much fundamental criticism. Major problems, to name only a few, include its adverse economic effects, its inappropriateness from a small or developing country perspective, its psychological connotations and its negative impact on the predictability of trade conditions which the WTO is normally set to preserve.

Other problems identified with the new procedure include the often poor respect of the deadlines laid down in the DSU, the lack of a remand procedure which would allow the Appellate Body to remand certain issues back to the panels for further factual clarification, and the problems of developing countries wishing to participate more actively in the system. More recently, some quite strong criticism has been spelt out on the jurisprudence of the Appellate Body in trade remedy cases. The gist of this criticism is that the adjudicating bodies are exceeding their authority and are legislating instead of adjudicating, that they are not showing sufficient deference to Members' trade policy decisions, and that the system is biased towards trade liberalisation.[14] However, for the time being, strong criticism may be considered a minority view in literature. And, as some observers hold, "it is not always clear that some of the harshest critics of WTO jurisprudence, many of whom have advocacy roles related to a variety of special interests, have the best interests of the overall WTO system in mind."[15]

Yet, there is a real concern about what some commentators perceive to be an imbalance between relatively effective legal decision-making by the adjudicating bodies and ineffective political decision-making by the political bodies of the WTO.[16] Unlike the lengthy search for compromise at the negotiating table, the quasi-automatic architecture of the DSU allows complainants to exact decisions on politically highly sensitive issues from the dispute settlement system. It is therefore hardly surprising that the DSU is the forum of choice for governments that perceive their position to be in accordance with WTO rules. The danger

associated with such a trend is that those Member governments that see their interests insufficiently safeguarded might be driven out of the system. This would be particularly problematic if large Members with "systemic weight" were to retreat from the system. There are two strands in DSU literature that seek to strike a balance between the relative success and well-functioning of the dispute settlement system with its adjudicative bodies on the one hand, and the weakness of the consensus-based political decision-making at the WTO on the other. One school of thought – probably the minority point of view – seeks to re-strengthen political control of WTO dispute settlement and to weaken its adjudication character.[17] Other authors, however, oppose any effort to weaken the adjudicating system and argue in favour of focussing reform efforts on improved political decision-making.[18]

4. Efforts to Review and Reform the DSU: The Negotiations and India's Contribution

4.1 The DSU Review Negotiations

The accumulated experience of WTO Members with dispute settlement under the DSU constitutes the foundation of the current negotiations to review and reform the DSU. This "DSU review" started already in 1997. However, it could not be concluded so far as several deadlines lapsed without tangible achievements. The last deadline missed so-far had been set for May 2004. As part of the so-called "July package" adopted on 1 August 2004, the mandate to continue the negotiations has been renewed, however, without a new deadline being set. This mandate was subsequently reconfirmed at the Sixth Ministerial Conference of the WTO in Hong Kong in December 2005.

Despite their lack of success, the discussions are of interest as they track the evolution of country interests and negotiating positions in the dispute settlement system. Moreover, they point to opportunities perceived for improvements to the system and to the general degree of satisfaction with the system. The latter is of particular importance in a "member-driven organization". Whereas a full account of the negotiating process and of the many heterogeneous proposals submitted by Members would be beyond the scope of this paper,[19] a summary of the stages of the negotiations process and of the major proposals received shall be given.

4.1.1 The Initial Stage of DSU Review Negotiations (1997-1999)[20]

Negotiations in the early stages took place under a 1994 Ministerial Declaration and were supposed to conclude by the Third Ministerial Conference, i.e., by the Seattle meeting. Several Members participated actively in these largely informal negotiations (*inter alia* the European Communities, Canada, India, Guatemala, the United States, Venezuela, Hungary, Korea, Argentina, Japan) as a range of issues was discussed. The negotiations were mainly characterised by two divides – one ran between industrialised countries (mainly between the US and the EC) whereas the other pitted industrialised against developing countries.

The rift between industrialised countries was mostly due to the efforts of the United States to strengthen the enforcement quality of the system. Being a "net complainant" in these initial years of DSU practice, and having won several "high profile" cases (such as *EC – Hormones*, *EC – Bananas*, *Canada – Magazines*, or *India – Patents*), the United States became increasingly worried that the implementation of the reports would remain behind their expectations. They therefore pressed forward with retaliatory measures and threats thereof, whereas the EC and Canada tried to delay the implementation of rulings. This translated into different proposals for the DSU review negotiations on the so-called sequencing issue which arose for the first time in *EC – Bananas* over ambiguities (or even contradictions, as some may argue) in Art. 21.5/22 DSU. The key question was whether a "compliance panel" must first review the implementation measures undertaken by a defendant before a complainant may seek authorisation to retaliate on grounds of the defendant's alleged non-compliance. Whereas the US initially opposed any idea of sequencing and favoured immediate retaliation, the EC and many other members argued in favour of the completion of such a compliance panel procedure as a prerequisite to seeking an authorisation to retaliate. The EC underlined its position, *inter alia*, by bringing a DSU case against US legislation requiring early retaliation[21] and against its application[22] in *EC – Bananas*, as well as by seeking an authoritative interpretation of the DSU in this respect.[23] Both attempts ultimately failed.

Another attempt by the US to increase the enforcement power of WTO dispute settlement occurred when it discussed the so-called "carousel retaliation". This term refers to periodic modifications of the list of products that are subject to the

suspension of concessions, and it surfaced for the first time when the "Carousel Retaliation Act of 1999" was introduced into Congress. Its purpose was to increase pressure on the EC Commission and European governments in *EC – Bananas* and *EC – Hormones* by requiring the government to periodically rotate the list of products subject to retaliation in order to maximise the effect of the sanctions. The measure was signed into law in May 2000, but has so far never been applied. Whereas the EC (supported by most other nations) sought a prohibition of carousel retaliation in the DSU review of 1998/1999, the US had sought a footnote explicitly allowing such retaliation. In a parallel development, the EC had requested consultations under the DSU on the carousel provision in summer 2000, however, without proceeding to the panel stage.[24]

Finally, the US did not only pursue a "tough stance" on sequencing and on the carousel issue, but it also sought shorter timelines for certain steps in WTO dispute settlement.

The controversy between developed and developing countries was of a different nature. It mainly focused on the issue of transparency and the acceptance of so-called "*amicus curiae* briefs", with the United States pressing hardest for both. Regarding transparency, the US wanted to make submissions of parties to panels and the Appellate Body public, and it wanted to allow public observance of panel and Appellate Body meetings. Developing countries in particular, but also some industrialised countries, opposed such increased transparency, as they feared "trials by media" and undue public pressure.[25] Insisting on the intergovernmental nature of the WTO, developing countries equally rejected efforts by the US and the EC to formalise the acceptance of *amicus curiae*, or "friend of the court", briefs. *Amicus curiae* briefs are unsolicited reports which a private person or entity submits to an adjudicative body in order to support (and possibly influence) its decision-making. These briefs became an issue for the first time in 1998 when the Appellate Body decided in *US – Shrimp/Turtle*[26] that the panel had the authority to accept unsolicited *amicus curiae* briefs. That right was subsequently confirmed in further disputes, causing outrage among many developing country Members who feared undue interference from NGOs.[27]

4.1.2 The "Limbo" in the DSU Review Negotiations (2000-2001)[28]

After the December 1999 Seattle Ministerial Conference had failed, the DSU review essentially remained in limbo through most of 2000 and 2001. Isolated efforts of Members to change the DSU failed.

However, as DSU practice moved along, negotiating positions changed behind the scenes. New developments in the case *US – Foreign Sales Corporations* which the US had lost and where implementation measures were now disputed, weakened in particular the US position on issues such as carousel or sequencing: After it had become increasingly clear that the US replacement legislation (Extraterritorial Income Exclusion Act; ETI) would not be in compliance with the DSB recommendations, the US and the EC negotiated in September 2000 a bilateral procedural agreement on how to proceed in this case in order to bridge the gaps in the DSU on the sequencing issue. According to the Agreement, a sequencing approach was adopted under which a panel (subject to appeal) would review the WTO consistency of the replacement legislation, and arbitration on the appropriate level of sanctions would be conducted only if the replacement legislation was found WTO-inconsistent. The US had now become a beneficiary of the sequencing approach (even with the possibility of subsequent appeal) which it had opposed before. It is believed that, in exchange for the agreement, the US had to back down on carousel retaliation although no such deal had been explicitly made part of the procedural agreement. The retaliatory measures requested by the EC were several times higher than US retaliation in *EC – Bananas* and *EC – Hormones* combined.[29] The arbitrators later confirmed that the suspension of concessions in the form of 100% *ad valorem* duties on imports worth 4.043 bn USD constituted "appropriate countermeasures".

US – Foreign Sales Corporations was not the only case that had a weakening impact on the negotiating stance of the US: With more and more trade remedy cases – traditionally the Achilles heel of US trade policy – being brought against the US and the latter losing most of these, the US stance changed from offensive into highly defensive.

As attempts to move the DSU review forward in 2000 and 2001 proved to be unsuccessful, the DSU review only returned to the fore at the Fourth Ministerial Conference in Doha in November 2001. The Doha Ministerial Declaration committed Members to negotiate on improvements to and clarifications of the Dispute Settlement Understanding.

4.1.3 The Doha-Mandated DSU Review Negotiations (2002-2004)[30]

According to the Doha mandate on the DSU Review, an agreement was to be reached no later than May 2003. Formal and informal discussions were held under the auspices of the Special Negotiating Session of the Dispute Settlement Body, chaired by PÉTER BALÁS of Hungary. Work progressed from a general exchange of views to a discussion of conceptual proposals put forward by Members. In total, 42 specific proposals had been submitted by the deadline of the negotiations at the end of May 2003. The negotiations were comprehensive: Not only did they cover virtually all provisions of the DSU,[31] but they also involved a large number of Members, including, *inter alia*, all the "Quad" Members (with submissions being made by the EC, the US, Canada and Japan) as well as developing countries of all sizes and stages of development. As the papers were usually circulated as formal proposals (which means that the documents were released publicly), this stage of the negotiations is relatively well-documented.

Compared to the pre-Seattle stage of DSU review negotiations, negotiating positions were, however, less clear-cut now. The most remarkable change occurred in the position of the United States, which reflected its new defensive stance in dispute settlement practice. In December 2002 the US submitted, jointly with Chile, a proposal to strengthen flexibility and member control in dispute settlement.[32] The proposal would allow the deletion of portions of panel or Appellate Body reports by agreement of the parties to a dispute, and an only partial adoption of such reports. Moreover, it calls for "some form of additional guidance" to WTO adjudicative bodies. The gist of the submission is to transfer influence from the adjudicative bodies to the parties to disputes. The proposal was greeted predominantly with scepticism, with Members arguing that deleting parts of panel or Appellate Body reports would weaken the WTO adjudicating bodies. Moreover, the move was seen as a contradiction to earlier proposals on

improving transparency as parties would be able to "bury" more controversial or groundbreaking decisions by the adjudicating bodies before the rulings were made public. The proposal was understood as attending to the complaints from Congress that the WTO adjudicating bodies were legislating.

A large number of other proposals, only some of which can be presented here, were submitted. The EC reiterated calls for the establishment of a permanent panel body instead of the current system where panellists are appointed ad hoc, discharging their tasks on a part-time basis and in addition to their ordinary duties.[33] Opponents of the proposal argue that a permanent panel body could be more "ideological" and might engage in lawmaking. They therefore feel more comfortable with the current system which draws heavily on government officials who are familiar with the constraints faced by governments.[34]

Developing countries submitted a variety of proposals with quite different orientations. For instance, some countries sought to strengthen enforcement by introducing collective retaliation.[35] It is meant to address the problems caused by the lack of retaliatory power of many small developing economies, such as those experienced by Ecuador in *EC – Bananas*. With collective retaliation, all WTO Members would be authorised (or even obliged under the concept of collective responsibility) to suspend concessions vis-à-vis a non-complying Member. Proposals for the retroactive calculation of the level of nullification and impairment and for making the SCOO a negotiable instrument (Mexico),[36] for introducing a fast-track panel procedure (Brazil),[37] and for calculating increased levels of nullification or impairment (Ecuador)[38] have a similar thrust. At the same time, the African Group questioned the automaticity of the current dispute settlement process and sought the re-introduction of more political elements.[39] China even proposed the introduction of a quantitative limitation on the number of complaints per year that countries could bring against a particular developing country.[40]

By contrast to these controversial proposals, a large number of less controversial issues were integrated into a compromise text that was elaborated by Ambassador PÉTER BALÁS of Hungary. This so-called BALÁS text[41] contains modifications to all stages of the process, including improved notification

requirements for mutually agreed solutions, a procedure to overcome the "sequencing issue" in Art. 21.5/22 DSU, the introduction of an interim review into the appellate review stage, and a remand procedure in which an issue may be remanded to the original panel in case the Appellate Body is not able to fully address an issue due to a lack of factual information in the panel report. The compromise text would also have introduced numerous amendments in other areas, including, *inter alia*, housekeeping proposals, enhanced third party rights, enhanced compensation, and several provisions on the special and differential treatment of developing countries.

Despite the existence of a compromise proposal, the deadline for the completion of talks that had been set for the end of May 2003 was finally missed. While many smaller trading nations would have favoured coming to a conclusion on a limited package of issues, both the EC and the US preferred negotiations to continue, and to address those (of their) concerns that had been left out in the BALÁS text.

Members subsequently agreed to extend the deadline for the review by another year until the end of May 2004. However, the failure of the Fifth Ministerial Conference held in Cancún, Mexico, in mid-September 2003 caused a further setback to overall negotiations under the Doha mandate which also affected DSU review negotiations. Only a few additional proposals were brought into the negotiations between May 2003 and May 2004, including an informal paper by Mexico with an analysis of major issues in dispute settlement practice,[42] an informal proposal by Malaysia on provisional measures,[43] a communication from Indonesia and Thailand with questions relating to the composition of panels,[44] and a communication from Thailand on the workload of the Appellate Body.[45]

The Chairman then established a brief report on his own responsibility to the Trade Negotiations Committee. He suggested continuing the negotiations, however, without any new target date.[46] In the subsequent decision adopted by the General Council on 1 August 2004 on the Doha Work Programme – the so-called "July Package" – the General Council took note of the above-mentioned report, and the continuation of negotiations according to the Doha Mandate along the lines set out in the Chairman's report was decided.[47]

4.1.4 Negotiations after July 2004

Negotiations continued through the rest of 2004. Discussions focussed on stocktaking and on a proposal by Argentina, Brazil, Canada, India, New Zealand and Norway,[48] dealing with issues such as sequencing, remand and post-retaliation. However, "not much was achieved", as the Chairman noted in his opening remarks at the first negotiating session on 18 January 2005.[49]

Unlike the discussions held in 2002 and 2003, the negotiations took place again in a more informal mode. A key characteristic of these informal discussions is a lack of public documentation: Neither the proposals (circulated as so-called "Jobs") are made public, nor are the informal portions of the discussions documented in the protocols (TN/DS/M/ document series). Presumably, this informal mode is meant to shelter the negotiators from public pressure and to facilitate a more open exploration of possible solutions without committing the Members to positions discussed during such talks. The preparation of the negotiating sessions was also intensified: Preparatory work was mostly done informally in groups of countries with similar interests such as the "Mexican Group" (also called "off-campus group"; an informal group open to participation from all delegations), the G-6 (Argentina, Brazil, Canada, India, New Zealand and Norway; initially including also Mexico as G-7), and the "like-minded" group (a group of developing countries, including India).

Informal proposals were submitted by the "G-7" (Argentina, Brazil, Canada, India, Mexico, New Zealand and Norway; third party rights)[50], the European Communities and Japan (on sequencing[51] and on post-retaliation[52]), the European Communities (panel composition)[53] Korea (focussing on remand authority for the Appellate Body),[54] and Australia (time-savings).[55] Formal proposals at that stage were submitted by the United States (focussing on transparency[56] and on flexibility[57], including on additional guidance to WTO adjudicative bodies[58]). Finally, a number of proposals focussing on special and differential treatment of developing countries were referred to the Special (Negotiating) Session of the Dispute Settlement Body by the Special Session of the Committee on Trade and Development.[59]

In the Ministerial Declaration which resulted from the Sixth WTO Ministerial Conference held in Hong Kong in December 2005, Members took "note of the

progress made in the Dispute Settlement Understanding negotiations..." and directed "the Special Session to continue to work towards a rapid conclusion of the negotiations".[60]

In 2006, work on the DSU review has continued on a largely informal basis.[61] In Spring, informal proposals were circulated by the G-7 (revision of a proposal on third party rights),[62] Canada (revised version of a G-7 proposal on third party rights),[63] Hong Kong (focussing on third party rights),[64] Japan and the EC (joint proposal, focussing on "post-retaliation", i.e., the upward or downward adjustment of retaliation along with changes in the level of nullification or impairment),[65] as well as by the G-6. Formal proposals on flexibility[66] and on transparency[67] were circulated by the US

In Summer 2006, informal proposals were circulated by Japan[68] and Switzerland,[69] each of which focussed on third party rights, as well as a proposal by Cuba, Malaysia and India, containing revisions to a previous formal proposal.[70]

Despite the suspension *sine die* of the Doha talks which occurred in late July 2006, the DSU review talks appear to continue.[71]

4.2 India's Contribution to the DSU Review Discussions

4.2.1 India's Participation in the Initial Stage of DSU Review Negotiations (1997-1999)

From early on, India has actively participated in the DSU review discussions. She submitted her first discussion paper in the DSU review period 1998/1999, dealing with all stages and several horizontal issues of the dispute settlement process:

Regarding consultations, India proposed to set a time-frame for the notification of mutually-agreed solutions.[72]

With regard to the panel stage, India voiced her concerns about due process and equal opportunities to examine and rebut arguments and comment on documentary evidence. She therefore sought to give the complainant and the defendant three to four weeks each, in sequential manner, for making the first

and the second submissions to the panel.[73] In order to have clear terms of references for panels at an early stage, India suggested that the complaining party make all its claims in the first written submission, and that no claim should be entertained that had not been presented in the first written submission.[74] Drawing on her experience in the *India-Patents* Case, where first the US and later the EC requested a panel on basically the same issue, India suggested that rules for multiple complainants under Art. 9 and 10 of the DSU need to be adapted: She held that "an unmitigated right to bring successive complaints by different parties based on the same facts and legal claims would entail serious risks for the multilateral trade order, besides imposing an (*sic!*) unnecessary resource costs of re-litigation of the same matter."[75] Moreover, India sought to ensure that matters already undergoing the panel process may only be referred to the original panel before the first written submissions have been made by the parties to the original dispute.[76] Finally, India proposed to amend Art. 16.4 DSU on the adoption of panel reports so as to provide 60 days after circulation of panel reports to Members before they are considered in the DSB.[77]

On appellate review, India proposed to increase the period of time between the circulation of Appellate Body reports to Members and their consideration in the DSB to 30 days.[78] India also called for improved transparency with regard to the constitution of Appellate Body divisions.[79] India further proposed to extend the time-frame for appellate review from 60 to 90 days.[80]

Implementation: With regard to implementation, India called for a solution to the problem of an uneven distribution of retaliatory power between developing countries on one hand and developed countries on the other. Specifically, India suggested limiting the right of developed countries to retaliate against developing countries to countermeasures under the same agreements in which a violation may have occurred, while allowing developing countries to get relief through joint retaliation by the entire membership of the WTO against the wrongful defendant.[81]

The Indian proposal also dealt extensively with the provision on special and differential treatment of developing countries.[82] India deplores the general character and lack of specificity in many S&D provisions.[83] As there was no way to ensure that such special and differential treatment would be accorded to

developing countries in practice, India suggested replacement of the word "should" by "shall" in such provisions, as well as specific guidelines to ensure rigorous implementation.[84] India further proposed to differentiate between developing and developed countries when it comes to implementation: For disputes involving developed and developing countries, India wishes to increase the maximum time period for implementation from 15 months to 30 months in the case of developing country defendants.[85] Moreover, India sought to give developing countries additional time to implement the commitment "(i)f, due to circumstances beyond the control of a developing country and in spite of such country's best endeavour, the developing country is unable to complete action within the implementation period ..."[86] By contrast, India proposed a 30 day time-frame for the compliance panel procedures in cases against developed countries "without any further procedural requirement."[87] Regarding time-frames, India also called for longer time-frames for developing country defendants to prepare their submissions, rebuttals etc.[88]

In her paper, India also expressed her frustration over "certain developed countries" that use dispute settlement proceedings "to prove their aggression to domestic constituencies." According to India, "(p)rocedures must be developed to make sure that the interests of developing countries are protected and that developed countries do not use dispute settlement proceedings as instruments for coercion of the less privileged Member countries." This would translate into a concrete suggestion that developed country Members abstain from invoking the DSU if the trade effect of a developing country measure on the developed country is only marginal, i.e., below a certain de-minimis level. Alternatively, panels should first look into this aspect and dismiss the case if it is found that the trade effect does not exceed this de-minimis limit.

In her proposal, India also highlights the problem of the enormous legal cost associated with participation in WTO dispute settlement. In order to alleviate the burden on developing countries, India suggests that some kind of levy may be imposed on a country using the dispute settlement mechanism. The amount collected would, along with supplementary WTO funds, be used to assist developing countries. Moreover, developed countries should bear the legal costs

incurred by developing countries in cases challenging developed country measures that are later found to be illegal. Finally, India calls for increased capacity-building efforts to the benefit of developing countries.[89]

India remarks in her proposal that dispute settlement with regard to anti-dumping cases had a different standard of review than dispute settlement in other areas. Given the special conditions and circumstances of developing countries, India sought to remove this anomaly by either subjecting the Anti-Dumping Agreement to the same standard of review as other covered agreements or, alternatively, to apply the standard of review currently used in the Anti-Dumping Agreement to the TRIPS.[90]

4.2.2 India's Role in the "Limbo" in the DSU Review Negotiations (2000-2001)

After it became clear in mid-1999 that the DSU review could not be concluded within a deadline that had been set to July 1999, India and some other countries opposed any continuation of the review after the 1999 summer break.[91] India was not particularly supportive of continuing the DSU review at the Seattle Ministerial either, taking an intermediate position along with Indonesia, between countries that expressed outright opposition against a continuation of talks (such as Mexico, Malaysia, the Philippines and Egypt) and countries that favoured the continuation thereof (the US in particular, but also many other WTO Members such as the EC, Japan, Canada, Brazil, Australia and others). As noted above in Section 4.1.2, the DSU review remained essentially in limbo in 2000-2001, with no major contribution by India being noted.

4.2.3 India's Contribution to The Doha-Mandated DSU Review Negotiations (2002-2004)

In the 2002-2003 negotiations under the Doha mandate, India took once more an active role. She engaged early on in the discussions, submitting a large number of questions on a paper which had been submitted by the EU (the first paper at all under the Doha-mandated negotiations).

Later on, India brought in proposals jointly with other developing countries. Some of the proposals are familiar from the paper submitted by India previously (see above Section 4.2.1). These include improved notification requirements for

mutually agreed solutions, the strengthening of developing countries when it comes to making use of countermeasures, and the problem of litigation costs. The contents of all the formal proposals (co-)sponsored by India during the 2002-2003 negotiations are summarised in Table 3.

Table 3: Synopsis of the Proposals (co-)sponsored by India in the 2002-2003 Negotiations

Doc. No.	Sponsors	Concrete Proposals
TN/DS/W/5	India	39 questions on the EC Proposal as contained in TN/DS/W/1, covering the proposals for a permanent panel body, on implementation issues (in particular making compensation more attractive), on transparency, and on *amicus curiae* submissions (answers in TN/DS/W/7).
TN/DS/W/7	EC	The EU's answers to India's questions, as contained in TN/DS/W/5.
TN/DS/W/18 and TN/DS/W/18/Add.1	Cuba, Honduras, India, Jamaica, Malaysia, Pakistan, Sri Lanka, Tanzania, Zimbabwe	Proposal, consisting of (I) An introduction, and calling for (II) An obligation to notify within 60 days the terms of settlement of mutually agreed solutions; (III) Clarification that the term "seek" (right to seek information) shall be limited to information sought actively by the panels and the AB, and that unsolicited information (*amicus curiae* briefs) shall not be taken into consideration; (IV) New terms of appointment for AB members, consisting of non-renewable six-year terms; (V) Prompt distribution to disputing parties of inputs provided by the Secretariat; (VI) Establishment of guidelines on the nature of the notice of appeal in order to make sure such notices are sufficiently clear (Working Procedures for Appellate Review, WT/AB/WP/4); (VII) Preservation and expansion of third party rights during the appeal.
TN/DS/W/19	Cuba, Honduras, India, Indonesia, Malaysia, Pakistan, Sri Lanka, Tanzania, Zimbabwe	Conceptual and textual proposal calling for (I) The freedom of developing countries to suspend concessions vis-à-vis non-complying industrial countries in sectors of their choice; (II) Awarding litigation costs in cases involving developing countries and industrial countries to the industrial country if it does not prevail in the dispute; (III) Further S&D provisions, regarding consultations, time-frames, and implementation.

contd...

Contd...		
TN/DS/W/47	India, Cuba, Dominican Republic, Egypt, Honduras, Jamaica, Malaysia	Textual proposal, strengthening the notification requirement of mutually acceptable solutions (Art. 3.6), factually prohibiting panels to accept unsollicited information (footnote to Art. 13), appointing Appellate Body members on a non-renewable six year term (Art. 17.2), giving third parties a right to be heard by the Appellate Body (Art. 17.4); establishing minimum requirements for notices of appeal (footnote to Art. 17.6); denying the Appellate Body the right to seek or accept information from anyone other than parties or third parties (footnote to Art. 17.6); expanding freedom for developing countries regarding sectors subject to retaliation (Art. 22.3bis); awarding litigation costs to developing countries of 500'000 USD or actual expenses, whichever is higher (Art. 3bis); strengthening the S&D provisions in Art. 4.10, Art. 12.10, Art. 21.2.

In addition to the afore-mentioned formal proposals, India submitted a non-paper jointly with Argentina, Brazil, Canada, New Zealand and Norway in mid-May 2004, shortly before the lapse of the May 2004 deadline. This document contained textual proposals on a selection of issues, i.e., sequencing, remand, and procedures for the removal of the authorisation to suspend concessions or other obligations.[92]

4.2.4 India's Contribution to Negotiations after July 2004

In the months after the lapse of the May 2004 deadline, the afore-mentioned informal paper submitted by India and some co-sponsors[93] remained on the agenda of the DSB special negotiating session.[94] In January 2005, India submitted – jointly with Argentina, Brazil, Canada, Mexico, New Zealand and Norway – another paper on the DSU review with a textual proposal on third party rights.[95] A revised version of the same paper was presented in Spring 2006.[96]

In Summer 2006, India submitted – jointly with Cuba and Malaysia – an informal paper containing revisions to a previously submitted text,[97] focussing on developing country issues such as special and differential treatment of developing countries, freedom of cross-retaliation for developing countries, a narrow interpretation of the right to "seek" information as contained in Art. 13 DSU.[98]

In addition to advancing proposals of her own and jointly with others, India increasingly participated in coordination efforts between the different informal groups.[99]

4.2.5 Analysis: India in the DSU Review

India participated actively in most stages of the DSU review, with the exception of the 2000-2001 period when negotiations were in a general limbo. In the DSU review negotiations, India focussed clearly on developing country interests, in particular with a view to strengthening special and differential treatment of developing countries. Some of the proposals India brought were clearly motivated by her own experience with the mechanism.

In the (mostly informal) negotiations that have taken place since 2005, India actively participated in several informal groups, also trying to build bridges between proposals that were elaborated inside these different groups. In this context as well, a major focus of India's efforts lay in the special and differential treatment of developing countries. Not surprisingly, the major allies of India in these negotiations were other developing countries such as China, Nigeria and Malaysia.

4.3 The Difficulties of Concluding the DSU Review

The difficulties faced by negotiators so far in their attempts to reach a successful conclusion of the DSU review negotiations may be explained with a number of reasons: Firstly, the consensus requirement[100] for any change to the DSU sets high hurdles, particularly as the WTO counts 149 heterogeneous Members with equally heterogeneous interests. These problems are further exacerbated in the case of the DSU review where negotiators are intending to reap an early harvest outside the larger context of the Doha negotiations and thus within a narrow field of negotiations, offering less space for compromise solution through the linkage of different issues and interests.

Secondly, key decisions of the adjudicative bodies and Members' experience with the system have created controversial views on specific aspects of the system that have become increasingly difficult to bridge (e.g., on issues such as transparency, *amicus curiae* briefs, carousel retaliation or collective retaliation –

to mention but a few). Thirdly, and of fundamental importance, there appears to be a more profound controversy regarding the overall direction the DSU should pursue, namely whether it should continue its route towards more rule-orientation and adjudication, or whether it should return to a more negotiatory and diplomatic – i.e., power-oriented – approach.[101] Proposals with both orientations have been submitted, as the non-exhaustive list of examples in Table 4 show.

Table 4: Power-Orientation versus Rule-Orientation in the Doha Round DSU Negotiations

Proposals Strengthening Rule Orientation	Proposals Strengthening Power Orientation
• Strengthened notification requirements for mutually acceptable solutions and written reports on the outcome of consultations; • Compliance reviews of mutually agreed solutions; • Reduced time frames; • Creation of a professional Permanent Panel Body (PPB); • Terms of appointment of the Appellate Body; • Regulating sequencing and implementation; • Prohibition of carousel retaliation; • Strengthening enforcement and the cost of non-compliance; • Strengthening third party rights; • Increasing external transparency.	• Automatic lapse or withdrawal of consultations/panel requests; • Calls for separate opinions by individual panellists/Appellate Body Members; • Flexibility during appellate review: interim review and the suspension of the appellate procedures; • Deletion of findings from reports; • Partial adoption procedures; • Additional measures of special and differential treatment of developing countries; • Extension of time-frames by agreement of the parties; • Obliging adjudicating bodies to submit certain issues to the General Council for interpretation.

For more details, see ZIMMERMANN (2006), pp. 204-214.

Fourthly, some problems of the DSU review may be explained with the difficulties of negotiating reforms to a system that is constantly in use: Negotiating positions are subject to permanent change as Members continuously gather new experience due to new cases and new reports. Moreover, on-going negotiations on material WTO rules may also have a bearing on the stance of

Members towards the dispute settlement system (e.g., the negotiations on "Rules", including on anti-dumping). Such problems can be partly remedied by the inclusion of generous periods of transition for any change to the DSU.

Finally, despite the criticism that is occasionally voiced, there seems to be a general sense of satisfaction with the system. As the CONSULTATIVE BOARD (2004, p. 56) holds with regard to the lack of success of the DSU review to date, "... an important underlying concern is, or should be, to not 'do any harm' to the existing system since it has so many valuable attributes."

4.4 The "DSU Review in Practice"

As negotiations on the DSU Review are stalled, practical solutions have been found to some of the problems in what could be called a "DSU reform in practice". It includes practical actions both by Members and by the adjudicating bodies to further develop the system and to come to terms with the problems in its application, as the following examples show.

Firstly, the sequencing problem has been overcome by the conclusion of bilateral agreements between the Members during the implementation stage. These agreements allow Members to overcome the gaps and contradictions in the DSU text in a practical way. Whereas, there has not yet been a consensus to adapt the DSU text to this evolving practice, Members have adapted to the practice of bilateral agreements and do no longer appear to consider the sequencing issue as a pressing concern.

Secondly, a partial solution could be found to the differences of opinion with regard to external transparency: In two recent cases,[102] the panels opened to the public their proceedings with the main parties to the dispute, as the latter had jointly requested. At the same time, the proceedings with third parties remained closed, as not all third parties had agreed to such an opening of the process.

Thirdly, with regard to *amicus curiae* briefs, the Appellate Body has *de facto* developed a very pragmatic approach, despite initially strong opposition from mostly developing countries. On the one hand, the Appellate Body displays a general openness towards the acceptance of *amicus curiae* briefs. On the other hand, it does not appear to accord decisive weight to these submissions in its

decisions – at least not explicitly. This approach gives adjudicating bodies a maximum of flexibility while it respects the concerns of Members who are against such briefs.

Fourthly, on a related matter, the Appellate Body has found a response to the concerns of many Members who held that the acceptance of *amicus curiae* briefs gave NGOs an edge over Members, as the latter had to cope with restrictive requirements on third country participation. It relaxed these requirements by adopting new working procedures in late 2002 which give third parties the possibility of attending oral hearings even if they had not made a written submission prior to the hearing, as the old rule had required.[103] Similarly, the Appellate Body only recently adopted new working procedures requiring more precision in notices of appeal. It thus catered for a long standing concern of some Members who had called for increased precision of notices of appeal but were unable to reach such a modification through the DSU review negotiations.[104]

As a final example, the establishment of an Advisory Centre on World Trade Law (ACWL) has remedied some of the resource constraints that developing countries face in the more sophisticated legal settings of the new dispute settlement system. This international organisation, which is independent from the WTO, provides legal training, support and advice on WTO Law and dispute settlement procedures to developing countries, in particular LDCs. ACWL services are available against payment of modest fees for legal services varying with the share of world trade and GNP per capita of user governments.[105] The Centre thus serves to a certain degree as a substitute for other institutions such as, for instance, a special fund for developing countries – a proposal that has been brought into the DSU review negotiations by developing countries.

As these examples show, Members and adjudicating bodies manage to adapt the dispute settlement system to changing circumstances without changing one single provision of the DSU. Dispute settlement *practice* has thus brought some amount of DSU reform, without facing the problems of political renegotiations of the DSU text. In other terms, the system seems to build once more on its historic strength, which is to evolve with a certain degree of flexibility and in a pragmatic spirit. We should not be surprised if, as in the past, these elements of evolving practice were to be codified into a new or modified text at a later date.

5. Conclusions

The first eleven years of dispute settlement practice under the DSU have confirmed the usefulness of the system: Except for a recent slowdown (which cannot be properly interpreted yet), the mechanism has been used actively, and the perception by both practitioners and academic observers has generally been positive.

Nevertheless, the intense use of the mechanism has also revealed certain problems in its practical application. Guided by their own experiences and interests, Members have sought to improve the mechanism through several rounds of DSU review negotiations since late 1997. So far, all these attempts have been unsuccessful. While negotiations are currently continuing, there is no clear deadline and, subsequently, there is a presumption that the impetus for the conclusion of the negotiations may not be sufficient to lead to a conclusion in the near future.. In the meantime, Members and adjudicating bodies have managed to resolve some of the practical issues through a further development of dispute settlement practice without amending the DSU text.

As far as India is concerned, she has made active use of the system. Most of her litigation took place with major trade partners such as the United States and the European Union. The sectoral pattern of India's dispute activity follows her trade structure and her trade policy profile: As a complainant, she focussed her efforts on challenging foreign trade restrictions in the textile sector and on foreign anti-dumping practices. As a defendant, India had to face complaints against her quantitative restrictions, her patent policies, and more recently, her anti-dumping practices. In tune with her active use of the system, India also engaged actively from early on in the DSU review discussions. As could be expected, India's negotiating positions mainly reflect her interests as a developing country.

Regarding the general outlook for the DSU, the major challenge for the system is not so much whether the multitude of technical questions in the DSU review negotiations can be resolved through an agreement but, rather, how well suited the DSU is to overcome the more fundamental concern – notably that there is an unsustainable imbalance between political and judicial decision-making in the WTO. This holds in particular after the suspension *sine die* of the

Doha Round of multilateral trade negotiations: In the current context of blocked political negotiations, pressures to resolve politically delicate issues through use of the dispute settlement mechanism might increase even further.

None of the two generic options that are being discussed to remedy the situation – weakening adjudication or strengthening political decision-making – holds great promise if considered in isolation. Weakening adjudication is not an attractive option as Members would have to forego the achievements which the new DSU has brought for a rules-based international trading system. It would also be at odds with globalisation and its increasing reliance on international transactions in economic life. Alternatively, improving political decision-making is an extremely difficult task and could result in important Members being driven out of the system, if the sacred consensus principle were to be replaced by some form of majority voting. Sovereignty concerns similar to those that are currently voiced against allegedly overreaching dispute settlement would ultimately be raised against undesired outcomes of voting procedures as they would eventually force results upon countries which the latter cannot or do not want to accept.

For the time being, only incremental steps by a variety of actors therefore seem to be feasible and desirable to remedy the situation:

- All Members should assume their systemic responsibility by exercising restraint in bringing politically difficult cases to adjudication.
- Adjudicating bodies should continue their current approach to dispute settlement, based on judicial restraint and the avoidance of "sweeping statements".
- Selective multilateral political elements could be built into the dispute settlement procedure without altering the basic architecture of the DSU (e.g., by allowing the DSB to decide by consensus not to adopt specific findings or the basic rationale behind a finding in a report.)
- Members should explore alternative political decision-making mechanisms more actively. Indeed, the WTO Community has become aware of the problem as the report by the "Consultative Group" around PETER SUTHERLAND to the Director General showed. The report has a clear focus on institutional issues, including on decision-making.[106]

Whereas such a gradual and eclectic approach may not satisfy the more ambitious observers who would favour clear reforms in either direction – i.e., towards more adjudication and rule-orientation or back to power-orientation and diplomacy – this eclecticism appears at least as a feasible option. And, if judged in the light of past experience with the gradual evolution of the system, it also appears to be the most promising approach: The current DSU is the fruit of five decades of gradual development, which has not been free of setbacks. There is no reason to assume why this gradualism should not be adequate for the future as well. If Members and adjudicating bodies continue to assume their systemic responsibility, the DSU should continue to remain an attractive forum for dispute settlement.

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Endnotes

1 The text of the WTO Dispute Settlement Understanding (as laid down in Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization) is available via the Internet (http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf). As a detailed discussion of the DSU procedure is beyond the scope of this article, readers are invited to consult the rich body of literature on this topic. For an introduction and a discussion of the system, see, for instance GALLAGHER (2002) (for a detailed guide to the procedure), JACKSON (2001) (for an introduction), DAVEY (2002a), GOH and WITBREUK (2001), FELICIANO and VAN DEN BOSSCHE (2001), HOEKMAN and KOSTECKI (2001) (Chapter 3), PALMETER and MAVROIDIS (1999), TREBILCOCK and HOWSE (1999; Chapter 3 for an introductory overview), JACKSON (1998), JACKSON (1997, Chapter 4), PETERSMANN (1997), and PETERSMANN (1997a).

2 For further references on these instruments, see ZIMMERMANN (2006), pp. 59ff.

3 The Dispute Settlement Body is a political organ of the WTO. In principle, it is identical with the General Council (see Art. IV.3 of the WTO Agreement): "The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. (...)"

4 See WTO website at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

5 WT/DS27: *European Communities – Regime for the importation, sale and distribution of bananas* (brought by Ecuador, Guatemala, Honduras, Mexico, and the US).

6 WT/DS26: *European Communities – Measures concerning meat and meat products (hormones)* (brought by the US).

7 WT/DS108: *United States – Tax treatment for "Foreign Sales Corporations"* (brought by the EC).

8 WT/DS306: *India – Anti-dumping measure on batteries from Bangladesh* (brought by Bangladesh).

9 WT/DS50: *India – Patent protection for pharmaceutical and agricultural chemical products* (brought by the US); WT/DS79: *India – Patent protection for pharmaceutical and agricultural chemical products* (brought by the EC).

10 WT/DS204: *Mexico – Measures affecting telecommunications services* (brought by the US).

11 WT/DS285: *United States – Measures affecting the Cross-Border Supply of Gambling and Betting Services* (brought by Antigua and Barbuda).

12 A detailed account of Indian trade policy can be found in the trade policy reviews of India under the WTO Trade Policy Review (TPR) Mechanism. The last such review was carried out in 2002 (Document No. WT/TPR/G/100 and WT/TPR/S/100). On quantitative restrictions in particular, see BHALA (2002) and QURESHI (2000).

13 See, for instance, the many contributions by JACKSON or PETERSMANN.

14 See, for instance, GREENWALD (2003), MAGNUS, JONEJA and YOCIS (2003), RAGOSTA, JONEJA and ZELDOVICH (2003), WILSON and STARCHUK (2003), as well as RAGOSTA, JONEJA and ZELDOVICH (no year specified).

15 See CONSULTATIVE BOARD ed. (2004), p. 55.

16 See, for instance, EHLERMANN (2002a).

17 See BARFIELD (2002) and BARFIELD (2001). An earlier contribution to the discussion from a critical perspective is HIPPLER BELLO (1996).

18 See EHLERMANN (2003, 2002, 2002a), JACKSON (2002), STEGER (2002a), as well as COTTIER and TAKENOSHITA (2003).

19 For comprehensive discussions on the DSU Review, please refer to GEORGIEV and VAN DER BORGHT eds. (2006), ZIMMERMANN (2006a), ZIMMERMANN (2006), and the first part of ORTINO and PETERSMANN eds. (2003).

20 For a detailed discussion and further references, see ZIMMERMANN (2006), pp. 93-105.

21 WT/DS152: *United States – Sections 301-310 of the Trade Act of 1974* (brought by the EC).

22 WT/DS165: *United States – Import measures on certain products from the European Communities* (brought by the EC).

23 WT/GC/W/143: Request for an Authoritative Interpretation Pursuant to Article IX.2 of the Marrakesh Agreement Establishing the World Trade Organization (Communication by the EC to the General Council).

24 WT/DS200: *United States — Section 306 of the Trade Act of 1974 and amendments thereto* (brought by the EC).

25 On the issue of transparency, see, for instance, WAINCYMER (2000) who discusses the various facets of transparency. See ZIMMERMANN (2006), pp. 167-171 for an introductory discussion and further references.

26 WT/DS58: *United States – Import prohibition of shrimp and shrimp products* (brought by India, Malaysia, Pakistan, Thailand).

27 On the *amicus curiae* issue, see, for instance, UMBRICHT (2001), MAVROIDIS (2001), MARCEAU and STILWELL (2001). For further references, see also ZIMMERMANN (2006), pp. 172-176.

28 For a detailed discussion and further references, see ZIMMERMANN (2006), pp. 105-111.

29 The respective amounts are USD 191.4 mn in *EC – Bananas* and USD 116.8 mn in *EC – Hormones*.

30 See also Paragraph 47 of the Ministerial Declaration, Adopted on 14 November 2001 (WT/MIN(01)/DEC/1). For a detailed discussion and further references, see ZIMMERMANN (2006), pp. 111-118.

31 For an overview, see ZIMMERMANN (2006), pp. 127-165 (on stage-related proposals) and pp. 167-198 (on horizontal proposals).

32 See TN/DS/W/28 (US, Chile) for the conceptual proposal, and TN/DS/W/52 (US, Chile) for the textual proposal. For a discussion of this proposal, see EHLERMANN (2003). See also the critical remarks in CONSULTATIVE BOARD (2004), p. 56, which obviously refer to the US – Chilean proposal.

33 See TN/DS/W/1, No. I (EC), and Attachment, No. 7.

34 The proposal has been discussed intensely in scholarly literature. See, for instance, PETERSMANN (2002a), pp. 14-15, and STEGER (2002), pp. 63-64, for brief introductions. Support for the idea is expressed, to varying degrees, by BOURGEOIS (2003), COTTIER (2003, 2002), and DAVEY (2003, 2002a). A more cautious approach is contained in CARTLAND (2003), HECHT (2000), and in SHOYER (2003).

35 See TN/DS/W/15, No. 6, and TN/DS/W/42, No IX (both submitted by the African Group) as well as TN/DS/W/17 (LDC Group). For a discussion on collective retaliation, see PAUWELYN (2000).

36 See TN/DS/W/23 and TN/DS/W/40 (both submitted by Mexico).

37 See TN/DS/W/45 and TN/DS/W/45/Rev.1 (Brazil).

38 See TN/DS/W/9 and TN/DS/W/33 (both submitted by Ecuador).

39 See TN/DS/W/15 and TN/DS/W/42 (both submitted by the African Group).

40 See TN/DS/W/29, No. 1, and TN/DS/W/57, No. 1 (both submitted by China).

41 See TN/DS/9.

42 Job(03)/208.

43 Job(04)/2, discussed in TN/DS/M/15.

44 TN/DS/W/61.

45 TN/DS/W/60.

46 See TN/DS/10.

47 See WT/L/579.

48 Job(04)/52, originally submitted on 19 May 2004 (discussed in TN/DS/M/21).

49 See TN/DS/M/22, No.1. See also "DSU Review: Members Discuss May Proposal, Dispute Settlement Data"; in: *BRIDGES Weekly Trade News Digest*, Vol. 8, No. 36, 27 October 2004; and *BRIDGES Weekly Trade News Digest*, Vol. 8, No. 41, 1 December 2004.

50 Job(05)/19, discussed in TN/DS/M/23.

51 Job(05)/71, mentioned in TN/DS/M/26.

52 Job(05)/47, mentioned in TN/DS/M/24.

53 Job (05)/48, mentioned in TN/DS/M/24 and Job(05)/144, discussed in TN/DS/M/27.

54 Job(05)/182, discussed in TN/DS/M/28.

55 Job(05)/224 (containing a revised version of Job(05)/65), discussed in TN/DS/M/29.

56 See TN/DS/W/79, discussed in TN/DS/M/27.

57 See TN/DS/W/82, discussed in TN/DS/M/29.

58 TN/DS/W/74, previously circulated as Job(05)/23, discussed in TN/DS/M23.

59 So-called "Category II" special and differential treatment provisions, compiled in Job(05)/258; see the discussion in TN/DS/M/29, including on further references.

60 See WT/MIN(05)/DEC of 18 December 2005, Paragraph No. 34.

61 See the reports by the Chairman of the negotiations to the Trade Negotiations Committee TNC (TN/DS/14 through TN/DS/17). The work programme of 2006 was discussed by Members on 22 February 2006 after confirmation of the new chairman of the negotiations, Ronald Saborio Soto from Costa Rica (see TN/DS/M/30.

62 Job (05)/19/Rev.1; discussed in TN/DS/M/31.

63 Job(06)/56, based on previous work contained in TN/DS/W/41 with a focus on procedures for the handling of confidential information, discussed in TN/DS/M/31.

64 Job(06)/89.

65 Job(05)/47/Add.1, based on previous proposal Job(05)/47.

66 TN/DS/W/82/Add.2; discussed in TN/DS/M/31.

67 TN/DS/W/86.

68 Job(06)/175.

69 Job(06)/224.

70 The formal proposal was circulated previously as TN/DS/W/47. See also below in Section 4.2.3.

71 See the latest report by the Chairman of the negotiations to the Trade Negotiations Committee TNC of 1 September 2006 (TN/DS/18).

72 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 2.

73 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 3.

74 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 4.

75 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 5.

76 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 6.

77 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 8.

78 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 8.

79 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 9.

80 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 10.

81 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 11.

82 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated).

83 Art. 4.10, Art. 8.10, Art. 12.11, Art. 21.2, 21.7 and 21.8, Art. 24 and Art. 27.1 and 27.2 DSU are quoted as examples.

84 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 1, lit. a.

85 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 1, lit. b, (i).

86 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 1, lit. e.

87 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 1, lit. b, (ii).

88 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 1, lit. c.

89 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 13.

90 See Review of the Dispute Settlement Understanding - Discussion Paper by India (undated), No. 12.

91 See "WTO Fails to Meet Deadline For Completing DSU Review"; in: *International Trade Reporter*, Vol. 16, No. 31, 4 August 1999; and "WTO Members Deadlocked on DSU Review After Missing July Deadline"; in: *Inside US Trade*, 6 August 1999.

92 Job(04)/52.

93 Job(04)/52.

94 See TN/DS/W/70, TN/DS/W/71, and TN/DS/W/72.

95 See Job(05)/19.

96 Job(05)/19/Rev.1.

97 TN/DS/W/47.

98 Being an informal proposal, this document is not officially available. A discussion is included in the minutes of the meeting on 13 July 2006 (TN/DS/M/34).

99 See, for instance, the discussion in TN/DS/M/32, Nos. 11-13.

100 See Article X.8 of the WTO Agreement.

101 For the purpose of this article, rule-orientation is understood as the heavy reliance on procedural and material rules for the settlement of trade disputes. In such a setting, relatively much power and independence are granted to adjudicative bodies, and the results of the adjudicative process are not subject to political review. By contrast, negotiations and political power play a stronger role for the outcome in a power-oriented dispute settlement procedure. In such a setting, disputing parties enjoy a large amount of control and flexibility whereas less power is granted to

adjudication bodies. Rule-orientation and power-orientation as basic concepts for the settlement of international trade disputes were introduced into the literature by JACKSON (1978). For a short overview, see JACKSON (1997), pp. 109ff. For a critical comment, see DUNNE III (2002).

102 *United States – Continued Suspension of Obligations in the EC – Hormones Dispute* (WT/DS320) and *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute* (WT/DS321).

103 These modifications were introduced into document WT/AB/WP/7 (meanwhile replaced by WT/AB/WP/8). See also "WTO Appellate Body Braces for Criticism For Easing Rules on Third Party Participation"; in: *WTO Reporter*, 10 October 2002; "WTO Appellate Body Chair Offers To Discuss Appellate Review Rules"; in *WTO Reporter*, 23 October 2002; and "Appellate Body to Clarify Working Procedures on Role of Third Parties"; in: *Inside US Trade*, 15 November 2002.

104 WT/AB/WP/8. The new procedures entered into force on 1 January 2005.

105 For more information on the ACWL, see http://www.acwl.ch – in particular http://www.acwl.ch/e/quickguide_e.aspx.

106 See CONSULTATIVE BOARD (2004).

The Dispute Settlement Understanding Rules and procedures of the World Trade Organization (WTO) came into existence on 1 January 1995. It was the dissatisfaction over the abilities of the General Agreement on Tariffs and Trade in the settlement of disputes, which led to the dispute settlement system of the WTO. This dispute settlement system is apparently more successful than the GATT which was in force since 1947. There has been a continual effort to reform the Dispute Settlement Understanding by making changes in the practical difficulties. The World Trade Organization (WTO) is the only global international organization, which deals with the rules of trade between nations. Essentially, it is to help in the export and import of goods and services and conduct business in relation to it.

It is perceived that the World Trade Organization (WTO) and its various rules of international trade have made trade between different countries more manageable and smooth. It is the rule-oriented dispute settlement system of the WTO rather than a power-oriented international trade order, which provides stability and fairness in the international trade relationships. A rule-oriented international trading system is beneficial to developing countries wherein a developing country member can bring a case against a powerful developed country. A number of important cases have been settled by the Dispute Settlement System and it has been observed that the dispute settlement system of the WTO is probably one of the most successful international tribunal of the international dispute resolution system.

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