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## Trends of Trade Disputes During the WTO Regime

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# Trends of Trade Disputes during the WTO Regime

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## *Abstract*

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Patterns and trends of trade disputes reveal vital information about the users of the Dispute Settlement Understanding (DSU) of the World Trade Organization (WTO). Despite WTO has detailed guidelines regarding how the multilateral trade should be practiced by the Member Countries, the DSU is the ultimate Agreement that promises fair justice against unfair trade practices. Analyses of trade disputes show that the developed countries use the Dispute Settlement Mechanism (DSM) more than the developing or the newly industrialized countries. The rate of participation of the least-developed countries (LDC) in the dispute settlement process is particularly very low. The direction of disputes shows that the disputes are mostly targeted to the developed countries. All categories of countries- i.e. developed, developing, newly industrialized and transitional economies- lodged disputes against the developed countries more frequently compared to the disputes they lodged against other categories of countries. This indicates that developed countries are targeted in the trade disputes. However, the rate of winning disputes for the developed countries is also higher than those of the other categories. This indicates that despite the developed countries are targeted in the disputes, they manage to survive quite successfully.

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# Trends of Trade Disputes during the WTO Regime

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## I. Introduction

The prime concern of all the countries in the world now is to ensure economic security. The age of globalization has given world trade two distinctive features- 1) ability of the developed countries to control world trade and 2) intense fight for survival of the developing countries. Combination of these two factors disproportionately created differences between the developed and the developing countries. To remove this difference and to create a level playing field for all, there have been numerous attempts to create a sound multilateral trading system that can meet the objectives mentioned above. A sound and desirable trading system is supposed to have a set of rules that provide the aggrieved countries swift and accurate remedies in case of unfair trade practices. Intuitively, these set of rules can be divided into two categories- 1) the set of rules that will guide the code of conduct for the countries and 2) the set of rules that will provide remedies against unfair trade practices that violate the set of rules in the first category. In chapter-4, major Agreements of WTO that provide the rules of the first category have been discussed. Then in chapter-5, the Agreement on Dispute Settlement Understanding that falls in the second category has been discussed. We have seen the positive and negative sides of those rules. Now, it would be interesting to find out how, in the practical field of world trade, those rules are being played by the countries.

However, it is not easy to evaluate how the rules are being followed by the countries. The only indicator we can get on that is via the trade dispute data. Data on trade dispute can tell us what the issues that are being challenged are, how the challenged issues are being settled, who are gaining from those challenges etc. And from that information we can have some idea about the weaknesses in the system. Therefore, analyzing data on trade disputes is vital to evaluate the performance of the whole system. This chapter aims at doing that.

## II. Trends of Trade Disputes during the WTO Regime

### II.1. Notes on the Database

We collected information about trade disputes from the WTO web site and compiling those information we built a database containing the basic quantitative and qualitative indicators. The fields that we included in the database are- (1) the year the dispute started (Year); (2)

disputed measure/area; (3) dispute reference number (case no.); (4) who the complainant was (complainant); (5) what is the category<sup>3</sup> that the complainant falls in (complainant category); (6) who the defendant was (defendant); (7) what is the category that the defendant falls into; (8) who the winner of the dispute was<sup>4</sup> (winner); (9) how long the dispute took to get settled (duration of dispute)<sup>5</sup>; and (10) how the dispute was settled (settlement method)<sup>6</sup>. The main dataset, then, again have been divided into separate databases according to the measure/sector associated with the dispute. For example, disputes that are related to the agriculture sector have been put into a separate database headed as “Agriculture”. Similarly a dispute related to, for example, anti-dumping measure has been put into a separate database headed as “Anti-dumping”.

It is, however, noteworthy that there are disputes that include a sector and a measure at the same time. For example, dispute case number 311 is between Canada (complainant) and the USA where Canada requested consultations with the United States concerning: (i) the failure of the US Department of Commerce (DOC) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada in order to promptly establish an individual countervailing duty rate for each requesting exporter; and (ii) the refusal and failure of USDOC to conduct company-specific administrative reviews of the same countervailing duty order in order to establish a final individual countervailing duty rate for each requesting exporter. In this case, the concerned product of Canada is softwood lumber that falls into the category of “agriculture” and the concerned measure that the USA was maintaining is “countervailing duty”. In this case, we included this case in both the databases headed as “Agriculture” and “Countervailing Duty”. Lastly, we have identified the cases where there are multiple complainants. In such cases, we have made separate entries of the same dispute for each complainant. For example, dispute case number 234 has two complainants- Canada and Mexico- against one defendant- the USA. In this case, we have added to records in the database- one for Mexico and the other for Canada. We have included in our database all the disputes that took place from January 1995 to June 2006. The total number of cases that we have included is 346. However, the database shows that the total number of cases we have included is 374<sup>7</sup>.

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<sup>3</sup> We have separated countries into four categories- 1) Developed (DD); 2) Developing (DG); 3) Newly Industrialized Countries (NIC); and 4) Transitional Economies (TEC). A complete list of the countries with their respective category is available in the annex.

<sup>4</sup> If there is no winner then we filled in that field with “n.a.” For example, in case number DS-5, where the complainant was the USA and the defendant was South Korea, we filled in this field with “n.a.” as the case was mutually settled. For mutual settlement we have decided not to determine the winner, for it is beneficial for both the countries.

<sup>5</sup> In case where the case has not yet reached a conclusion, we filled in the field with “pending”.

<sup>6</sup> We have identified the following categories of settlement method of disputes- 1) mutually solved (mutual); 2) solved by a Panel (panel); 3) solved by the Appellate Body (appellate body); and 4) n.a. Where the case is still pending we used “n.a.” to fill in the field.

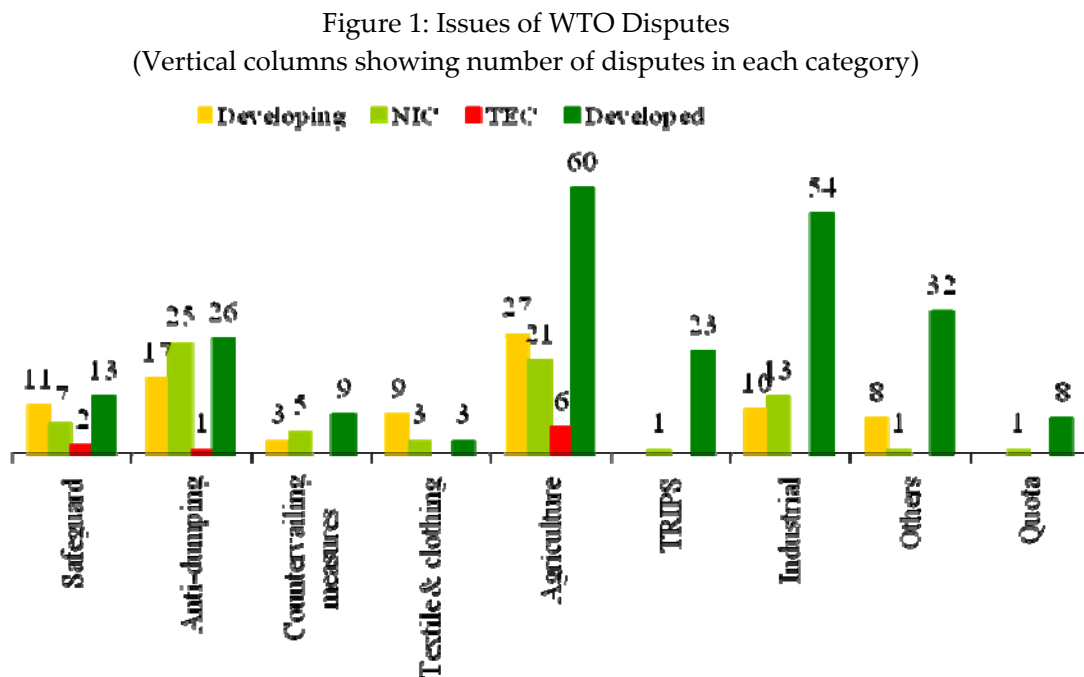
<sup>7</sup> The actual number of cases between January 1995 and June 2006 is 346. However, in some disputes there are several complainants against one defendant. In such cases we have included in our database separate records and considered these separate records as separate disputes for each of the complainants. Thus the total number of disputes increased to 374.

## II.2. Major Issues/Areas of the Disputes

An initial look into the database gives the primary idea that the disputes are not distributed evenly if they are classified into different categories based on the issues of the disputes. For analytical purpose, in our database we have classified disputes into the following sectors/measures-

- Agriculture
- Anti-dumping measures
- Safeguard measures
- Countervailing measures
- Textiles and clothing
- Trade related intellectual property rights
- Quota
- Industrial products and
- Others

The following figure shows the number of disputes associated with each of this sector/measure between January 1995 and June 2006<sup>8</sup>.



<sup>8</sup> WTO Dispute Settlement Mechanism allows a dispute to take at least 15 months to be settled. Therefore, we did not take into account of the dispute that arose in or after July 2006.

### II.2.1. Disputes on Agriculture:

Our database shows that the most of the disputed are concentrated on the Agriculture sector. From January 1995 to June 2006 there have been 96 cases filed related to products or measures in this sector. 115 complainants and 96 defendants participated in these disputes<sup>9</sup>. Among the 115 disputes 61 disputes have been lodged by the developed countries, 27 disputes have been lodged by the developing countries, 21 disputes have been lodged by the newly industrialized countries and 6 disputes have been lodged by the transitional economies. If we translate these into percentage figures we get that more than 53 percent cases have been filed by the developed countries, 23 percent by the developing countries, 18 percent by the newly industrialized countries and the rest 5 percent by the transitional economies.

Among the complainants USA lodged the maximum number of cases. It lodged 27 cases, followed by the European Commission with 14 cases, Canada with 10 cases, Thailand with 7 cases, Brazil with 6 cases, and Hungary with 5 cases. Australia, Chile, Guatemala, Mexico and Philippines each filed 4 cases. Argentina, Ecuador, Honduras, and New Zealand each filed 3 cases. India, Norway and Panama each filed 2 cases. Malaysia, Nicaragua, Pakistan, Peru, Poland, Sri Lanka, Switzerland and Uruguay each lodged 1 case. From this figures it seems that the developed countries are far more active than the countries in the other categories.

Among the Defendants European Commission stands on the top facing 30 cases. The USA faced 15 cases, followed by South Korea 6 cases, Australia and Canada each 5 cases, and Argentina 4 cases. Japan, Chile, Mexico and Turkey each faced 3 cases. Pakistan, Philippines, Brazil, Czech Republic and Slovak Republic each faced 2 cases. Belgium, Egypt, India, Panama, Peru, Venezuela, Croatia, Hungary and Romania each faced 1 case. Again we see that the developed countries faced most of the disputes related to the agriculture sector. In total, the developed countries faced 73 cases (63 percent) followed by the developing countries with 15 cases (13 percent), newly industrialized countries with 15 cases (13 percent) and transitional economies with 12 cases (10 percent).

The direction of disputes reveals more interesting scenarios. One can anticipate that as most of the developing countries are agro-based, they will appear in disputes more frequently than the developed countries. However, the data presented above say just the opposite. More importantly, when we look at the direction disputes we find that the developed countries are, in fact, fighting with each other. Our data show that developed countries lodged 61 cases, out of which 37 cases (61 percent) were against other developed countries. Developed countries lodged 13 percent of their cases against the developing countries, 18 percent of their cases against the newly industrialized countries and only 9 percent cases against transitional economies. On the other hand, developing countries lodged only 11 percent of their total agriculture related cases against other developing countries. Therefore, the intra-developing country fight does not seem that much intense. Developing country lodged 74 percent of their agriculture related cases against the developed countries and 15

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<sup>9</sup> The numbers of complainants and defendants vary because there are multiple complainants in some cases.

percent against the newly industrialized countries. The newly industrialized countries also follow the same pattern filing 76 percent of their total agriculture related cases against the developed countries and only 14 percent against the developing countries. The transitional economies, however, do not follow the pattern. They, like the developed countries, fight with their own category. The total number of agriculture related cases lodged by the transitional economies is 6; and 5 of them were lodged against other transitional economies. Only one case was against a developing country.

Table 1: Different Categories of Countries Appeared as Complainants and Defendants in the Agriculture Related Disputes.

Country Category	Appearance (no. of cases)	
	As defendant	As complainant
Developed countries (DD)	59	61
Developing countries (DG)	15	27
Newly industrialized countries (NIC)	15	21
Transitional economies (TEC)	7	6

Source: Author's own database.

Table 2: Direction of Disputes on Agriculture

		Defendant				
		DG	NIC	TEC	DD	Total
Complainant	DG	3	4	0	20	27
	NIC	3	0	2	16	21
	TEC	1	0	5	0	6
	DD	8	11	5	37	61
	Total	15	15	12	73	115

Source: Author's own database.

## II.2.2. Disputes on Anti-Dumping Measures

Between January 1995 and June 2006, the total number of disputes arose on account of anti-dumping measure is 60. There are 69 complainants and 60 defendants in these disputes. Among the 69 disputes 26 (38 percent of the total disputes on anti-dumping measures) have been lodged by the developed countries, 17 (25 percent of the total disputes on anti-dumping measures) by the developing countries, 25 (36 percent of the total disputes on anti-dumping measures) by the newly industrialized countries and only 1 (1.5 percent of the total disputes on anti-dumping measures) by the transitional economies. As defendant developed countries faced 31 (51 percent of the total disputes on anti-dumping measures) disputes followed by the developing countries faced 16 (27 percent of the total disputes on anti-dumping measures) disputes and newly industrialized countries faced 13 (22 percent of the total disputes on anti-dumping measures) disputes. One interesting point is that, between January 1995 and December 2005 one thousand eight hundred and four anti-dumping measures were taken all around the world of which only sixty were challenged.



Among the complainants Mexico, a newly industrialized country member, lodged the highest number of cases. Mexico lodged 10 (14 percent of the total disputes on anti-dumping measures) case followed by the European Union with 9 (13 percent of the total disputes on anti-dumping measures) cases, India and Brazil each with 7 cases (10 percent each of the total disputes on anti-dumping measures). USA, Japan and Canada each lodged 5 (7 percent each of the total disputes on anti-dumping measures), and Korea 4 (6 percent of the total disputes on anti-dumping measures). Costa Rica, Turkey, Thailand, Indonesia and Argentina each lodged 2 cases (3 percent each of the total disputes on anti-dumping measures). Poland, Guatemala, Chinese Taipei, Chile, Bangladesh, Switzerland and Australia each lodged 1 case.

Among the defendants USA stands on the top facing 24 cases (40 percent of the total disputes on anti-dumping measures). Mexico and European Union each lodged 6 (10 percent each of the total disputes on anti-dumping measures) cases. India and Argentina lodged 3 cases each followed by Trinidad & Tobago, South Africa, South Korea, Guatemala, and Ecuador each 2 cases. Venezuela, Turkey, Thailand, Philippines, Peru, Egypt, Brazil and Australia each lodged 1 case.

Looking at the direction of disputes we find that developed countries lodged most of their cases against other developed countries. This is very much similar to the pattern we found in the disputes related to agriculture. Out of their 26 cases Developed countries lodged 19 cases (73 percent of their total cases) against other developed countries, while they lodged 1 case (4 percent of their total cases) against a developing country and 6 cases (23 percent of their total cases) against the newly industrialized countries. Developed countries did not file any case against the transitional economies. Out of their 25 cases the newly industrialized countries lodged 15 cases (60 percent of their total cases) against the developed countries, 8 cases (32 percent of their total cases) against the developing countries and 2 cases (8 percent of their total cases) against their own category. They also did not file any case against the transitional economies. Developing countries, out of their 17 cases, lodged 7 cases (47 percent of their total cases) against the developed countries. They lodged same number of cases against their same category, too. Against the newly industrialized countries they lodged 3 cases (18 percent of their total cases). Finally, the transitional economies lodged only one case and that was against a newly industrialized country. The transitional economies were not targeted at all in case of anti-dumping measures.

Figure 2: Different Categories of Countries Appeared as Complainants and Defendants in the Anti-Dumping Measure Related Disputes.

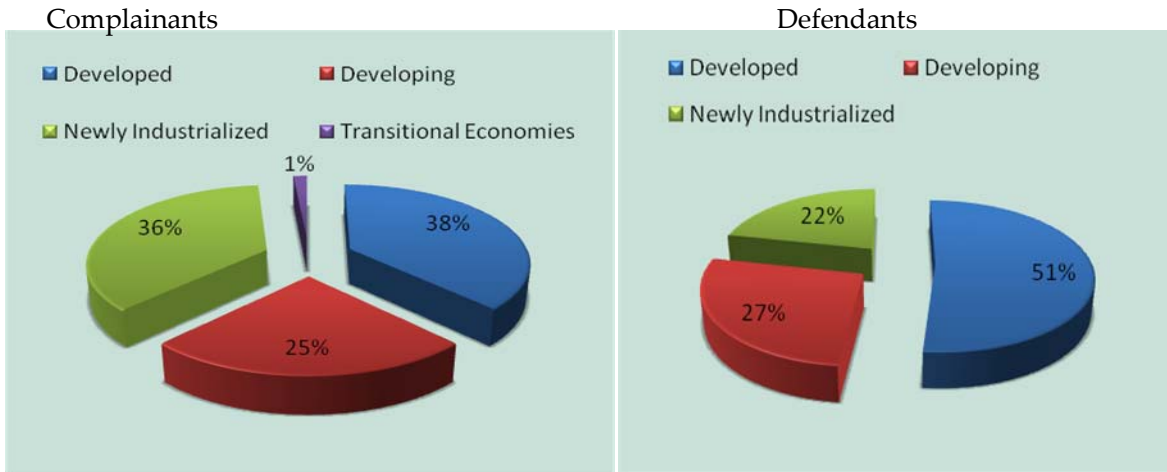


Figure 3: Complainants and Defendants in the Anti-Dumping Measure Related Disputes

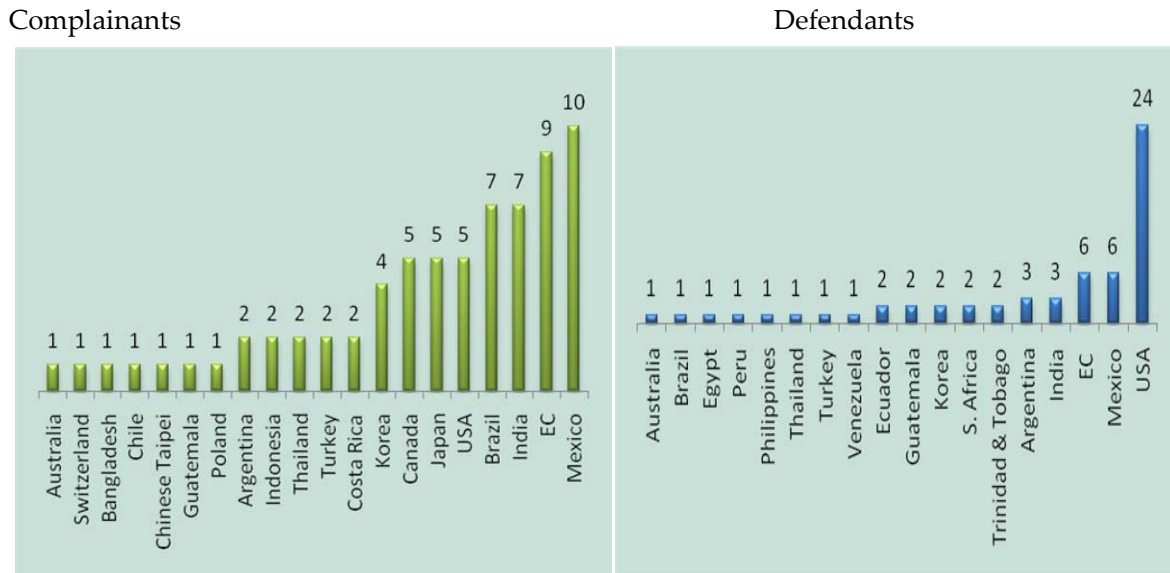
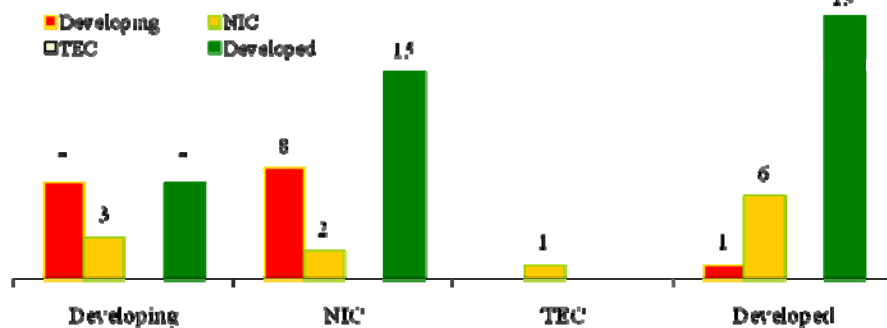


Figure 4: Direction of Disputes on Anti-Dumping Measures (Complainants on the X-axis, defendants on the vertical columns)



Source: Author's own database

### II.2.3. Disputes on Safeguard Measures

The frequency of challenging safeguard measures is higher than that of anti-dumping. Between 1996 and 2006 there were 72 safeguard measures taken by the member countries all around the world, and 33 of them were challenged and brought to the DSB for settlement. It represents that the proportional rate of challenge is obviously higher than anti-dumping. However, the number of disputes, on account of safeguard measure, is lower than anti-dumping. From January 1995 to June 2006 total thirty three cases were filed against safeguard measures. Among these 33 disputes, 13 cases were filed by the developed countries, 11 by the developing countries and 3 by the newly industrialized countries. Transitional economies did not file any case. If we translate these into percentage figures, we get that developed countries lodged 39 percent cases, developing countries lodged 33 percent cases and newly industrialized countries lodged 21 percent cases. On the other hand, as defendant developed countries faced 20 cases (61 percent of all the cases), developing countries faced 7 cases (21 percent of all the cases), newly industrialized countries faced 4 cases (12 percent of all the cases and the transitional economies faced 2 cases (6 percent of all the cases).

Among the complainants India lodged the maximum number of cases. It lodged 6 cases (18 percent of all the cases). Argentina, Chile, and Czech Republic faced 3 cases (9 percent of all the cases each) each. Indonesia, New Zealand, Norway, and Poland faced 2 cases each (6 percent of all the cases each). Australia, Brazil, China, Chinese Taipei, Colombia, European Union, Japan, Korea, Switzerland and Thailand faced 1 case each.

Among the defendants only USA alone faced 18 cases (55 percent of all the cases). Chile faced 5 (15 percent of all the cases), Argentina faced 3 (9 percent of all the cases), and European Union faced 2 cases (6 percent of all the cases). Colombia, Ecuador, Hungary, South Korea, and Slovak Republic faced 1 case each.

The direction of disputes shows that developed countries lodged most of the cases against other developed countries. The number of such cases is 11, which constitutes almost 85 percent of the developed country cases on safeguard measures. Only in case of safeguard measures, developed countries did not lodge any complaint against developing countries. The rest of the 2 cases of developed countries were against newly industrialized countries. As for the developing countries, they lodged most of their safeguard-cases against developed countries that show very much similar trend to the disputes on other sectors/measures. Developing countries lodged 3 cases against their same category and 2 cases against newly industrialized countries. Developing countries did not file any case against the transitional economies. Newly industrialized countries lodged 4 cases against the developing countries and 3 cases against the developed countries. Transitional economies filed only 2 cases and those were against their same category.

As we saw in the third paragraph of this section that the USA is facing most of the cases and most of those cases were filed by the developing countries, we can deduce from this piece of information that may be the USA is heavily using the safeguard measures against the developing countries, and consequently the aggrieved developing countries are filing suits.

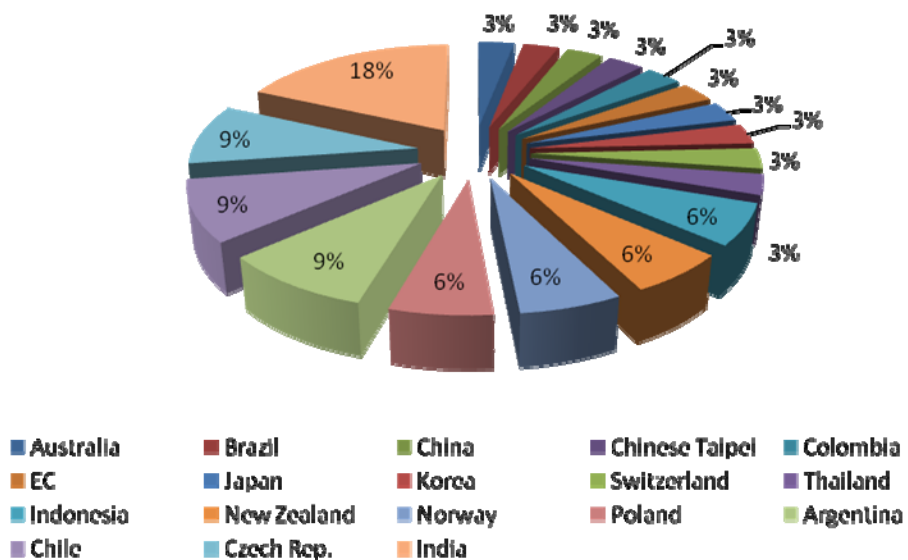
It is noteworthy here that more than 50 percent of the developing country cases were filed by only one country- India (6 cases). Further, from this piece of information, we can deduce that among the developing countries may be only India has the highest level of expertise and resources to continue a legal fight with the developed countries. However, these are only assumptions from a surface reading of the data. Proving the hypothesis needs rigorous statistical procedures.

Table 3: Number of Safeguard measures Taken and Challenged between 1996 and 2006

Year	No. of Dispute	No. of Measures Taken
1996	1	1
1997	1	3
1998	2	5
1999	2	5
2000	5	7
2001	3	9
2002	5	16
2003	11	15
2004	1	4
2005	2	5
2006	0	2
Total	33	72

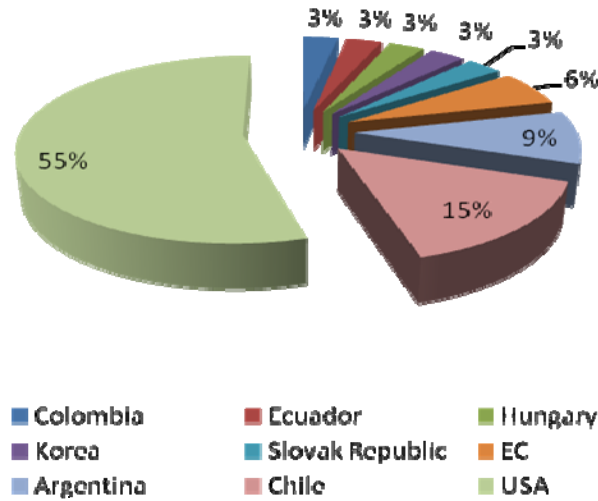
Source: WTO.

Figure 5: Complainants in the Safeguard Measures Related Disputes



Source: Author's own database

Figure 6: Defendants in the Safeguard Measures Related Disputes



Source: Author's own database

Table 4: Direction of Disputes Related to Safeguard Measures  
(Number of disputes)

Complainants	Defendant				Total
	DG	NIC	TEC	DD	
DG	3	2	0	6	11
NIC	4	0	0	3	7
TEC	0	0	2	0	2
DD	0	2	0	11	13
Total	7	4	2	20	33

Source: Author's own database.

#### II.2.4. Disputes on Countervailing Measures

Between January 1995 and June 2006, total seventeen disputes against countervailing measures were brought to the DSB for negotiation. Among these seventeen cases nine cases were lodged by the developed countries, 3 by the developing countries and 5 by the newly industrialized countries. Translating these into percentage figures we get that developed countries lodged 53 percent of the cases related to countervailing measures, developing countries lodged 18 percent and newly industrialized countries lodged 29 percent of the cases related to countervailing measures. As defendant, developed countries faced 12 cases, developing countries faced only 1 case and newly industrialized countries faced 4 cases. Again translating these figures we get that developed countries faced 71 percent of the total cases, developing countries faced 6 percent and newly industrialized countries faced 24

percent of the cases. Transitional economies did not take part at all in the disputes related to countervailing measures.

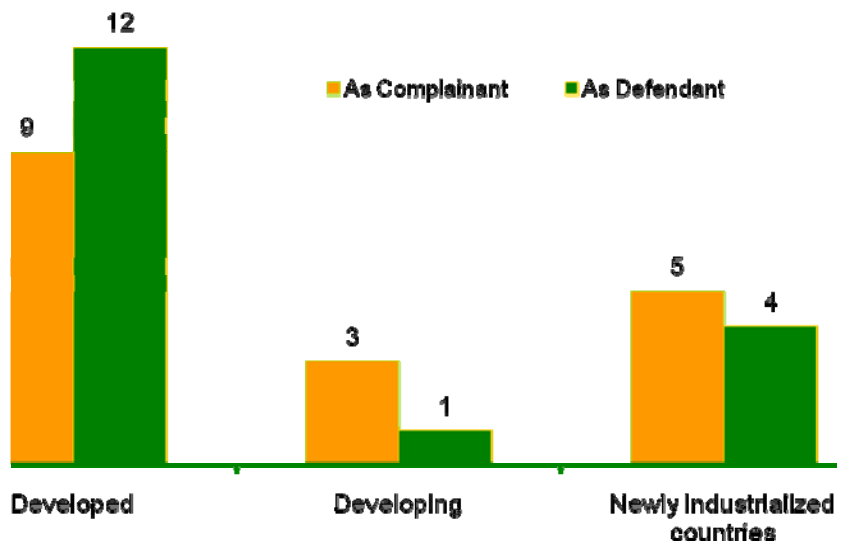
Among the complainants European Union stands on the top of the list with 5 cases (29 percent of the total cases), followed by Canada with 4 cases (24 percent of the total cases), and Brazil and Korea each with 2 cases (12 percent of the total cases). Chile, Mexico, Philippines and Sri Lanka each faced 1 case (6 percent of the total cases). Clearly, in this case also the developed countries are dominating again.

Among the defendants USA stands on the top of the list facing 11 cases (65 percent of the total cases). Argentina and Brazil each faced 2 cases (12 percent of the total cases). European Union and Peru each faced only 1 case (6 percent of the total cases). This is interesting to note that in almost all the disputed sectors/measures either USA or the European Union stands on the top of the list. This proves how active they are in the field of disputes.

The direction of disputes follows the same patterns as in the other disputed fields. Developed countries have again been found to be engaged in fighting mostly other developed countries. Out of the 9 cases lodged by the developed countries 7 of them were against other developed countries (almost 78 percent of the total developed country cases), while they lodged no cases against the developing countries and lodged 2 cases (22 percent of the total developed country cases) against the newly industrialized countries. Out of the 3 cases lodged by the developing countries, 2 were lodged against the newly industrialized countries (67 percent of the total developing country cases) and only one against a developed country. Newly industrialized countries lodged 5 cases, out of which 4 were against the developed countries and only 1 against a developing country.

Figure 7: Different Categories of Countries in the Disputes on Countervailing Measures





Source: Author's own database

Table 5: Direction of Disputes on Countervailing Measures  
(Number of disputes)

		Defendant			Total
		DG	NIC	DD	
Complainant	DG	0	2	1	3
	NIC	1	0	4	5
	DD	0	2	7	9
	Total	1	4	12	17

Source: Author's own database.

Figure 8: Complainants in Disputes on Countervailing Measures  
(Figures in percentages)

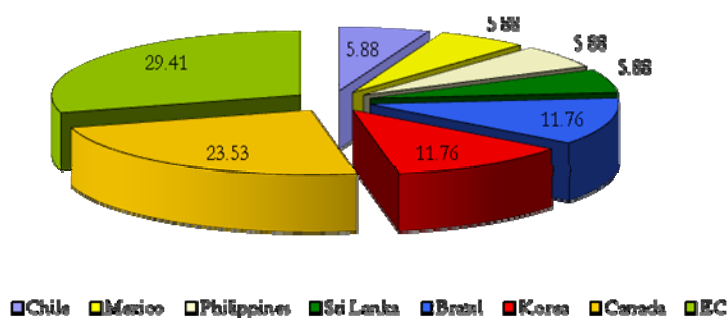
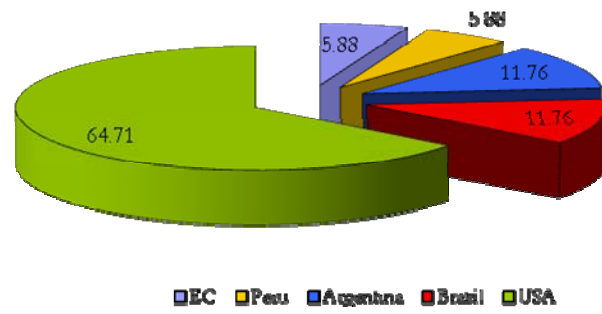


Figure 9: Defendants in Disputes on Countervailing Measures  
(Figures in percentages)



Source: Author's own database

## II.2.5. Disputes on Textiles and Clothing

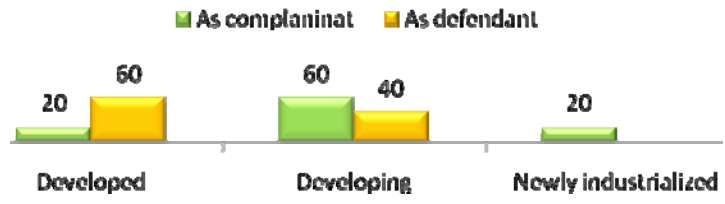
The textiles and clothing sector is one of the most intensely debated and fought area where a number of developing countries actually have the power to compete in the world market. The bargaining and competition power of the developing countries mainly arise from the base of cheap labor available there. During the Uruguay Round of WTO the Agreement on Textiles and Clothing were signed with a view to phase-out the quota system gradually by the end of the year 2004 to create the market more competitive. However, we have already seen in chapter 4 how the provisions of ATC were exploited due lack of clarification and misunderstanding on the part of the developing countries.

In this sector, between the years 1995 and 2006, there have been 15 cases filed so far. But this time in this sector the developing countries exceeded the developed ones in lodging complaints. Out of those 15 cases 9 cases were lodged by the developing countries (this is 60 percent of the total cases filed in this sector). The developed countries, on the other hand, lodged only 3 cases (20 percent of the total disputes on this sector). The newly industrialized countries also lodged 3 cases (20 percent in the total). As defendant, on the contrary, the developed countries faced 9 cases (60 percent of the total cases on this sector) and developing countries faced the rest 6 cases (40 percent in the total). It is noteworthy that the transitional economies are totally missing from the scenario. They did not lodge or defend any dispute.

Among the complainants India stands on the list with 6 cases filed (40 percent of the total), followed by European Union and Thailand each with 2 cases (13 percent each in the total). Honk Kong, Turkey, Pakistan, Costa Rica and the USA each lodged 1 case (7 percent each in the total). On the other hand, as defendant, the USA tops the list facing 7 cases (47 percent in the total), followed by Turkey with 3 cases (20 percent in the total) and European Union with 2 cases (13 percent in the total). South Africa, Colombia and Egypt each faced 1 case (7 percent each in the total).

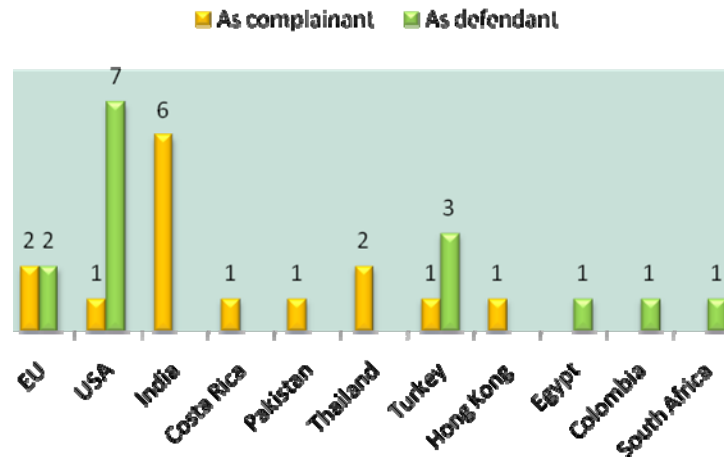
The direction of disputes in this area shows that developing countries lodged 7 cases against developed countries (this is 78 percent of the developing country cases) and 2 against their same category. On the other hand, developed countries lodged 2 cases against their same category (this is 67 percent of the developed country cases) and 1 against a developing country. The newly industrialized countries 3 cases and all of those were against developing countries. One interesting thing to note is that the last dispute brought to the DSB by a developing country was in the year 2002 (India vs. the USA, DS-243). Since then the developing countries did not lodge any complaint. On the whole, the last case filed in this sector was 4 years ago- in the year 2003 (USA vs. Egypt, DS-305). No case has been filed since then. In the meanwhile the quota system has been abolished as of 1 January 2005.

Figure 10: Different Categories of Countries in the Disputes on Textiles and Clothing  
(Figures in percentages)



Source: Author's own database

Figure 11: Complainants and Defendants in Disputes on Textiles and Clothing



Source: Author's own database

### II.2.6. Disputes on Trade Related Intellectual Property Rights

There are twenty four disputes on the issue of trade related intellectual property rights between the years 1995 and 2006. Among these twenty four disputes 23 have been lodged by the developed countries and the rest one case have been lodged by a newly industrialized country (Brazil, DS-224). Translating these figures into percentages we get that developed countries have lodged about 96 percent cases on the TRIPS issues. On the other hand, developed countries faced 18 cases as defendant (75 percent of the cases), newly industrialized countries and developing countries faced 3 case each (12.5 percent each of the total cases).

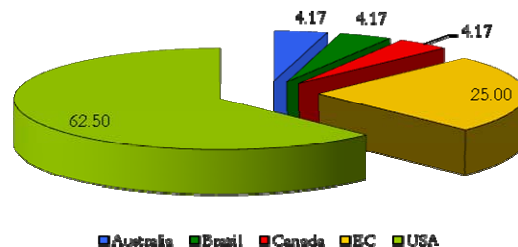
Among the complainants the USA tops the list with 15 cases out of that 24 (62.50 percent) followed by the European Union with 6 cases (25 percent). Canada, Brazil and Australia each lodged 1 case (4.17 percent each). Among the defendants the European Union tops the list facing 5 cases (21 percent of the cases) followed by the USA facing 4 cases (17 percent of the cases). Japan, India, Canada, and Argentina each faced 2 cases (8 percent of the cases each). Sweden, Portugal, Pakistan, Ireland, Greece, Denmark and Brazil each faced 1 case (4 percent of the cases each).

Our expectation was that as developed countries mostly undertake new inventions and developing countries collects those from them, there would be a considerable number of cases lodged by the developed countries against the developing countries. However, the direction of disputes on TRIPS issues shows that the scenario is not like that. Instead of developing countries, the developed countries targeted mostly other developed countries in the TRIPS issues related disputes. This might seem a little strange, but in fact quite all right for a number of reasons. First, laws to protect intellectual property rights are still quite

inadequate in the developing countries, and hence probably it would be difficult for the developed countries to find any fruitful results by suing a developing country. Second, on the contrary, as developed countries in most of the cases have strong laws to protect intellectual property rights together with effective implementation system it is much easier to compete and bargain over a dispute with a developed country. Third, developing countries have protection clauses in the TRIPS Agreement that save them from the bindings of implementing TRIPS. Fourth, there are constant competitions among the developed countries to improve technologies. A new technology invented by different countries in a slightly differentiated version may give the feeling that some might have copied the state-of-the-art one. As the laws of the developed countries are strong enough to go for litigation, this background also may have induced developed countries to fight against other developed countries.

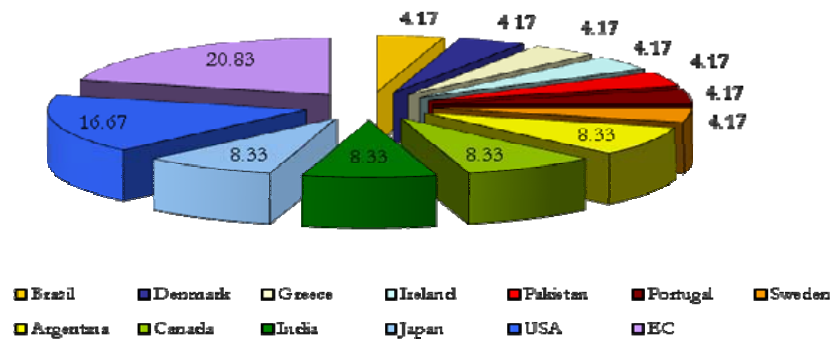
From the direction disputes we see that developed countries, out of their 23 cases, lodged 17 against their same category (74 percent of the developed country cases). They also lodged 3 cases against newly industrialized countries and 3 cases against developing countries. The developing countries did not file any case, so did the transitional economies. Newly industrialized countries only one case against a developed country (the USA, DS-224). Another point seems to be noteworthy is that like the disputes on textiles and clothing sector, the last TRIPS dispute was filed in the year 2003, which is almost 4 years ago. Since then, no case on TRIPS related issue has been lodged.

Figure 12: Complainants in the Disputes on TRIPS Issues  
(Figures in percentage)



Source: Author's own database

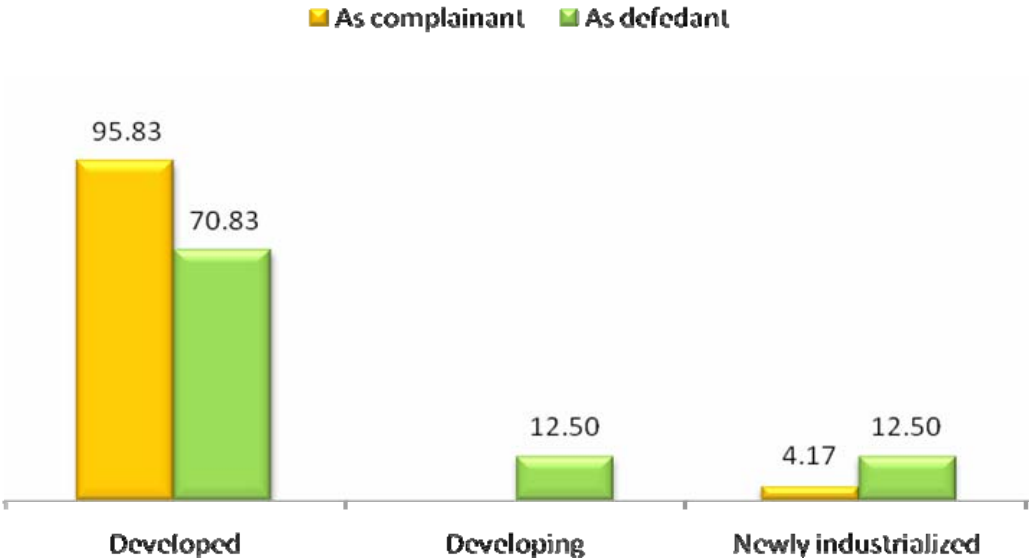
Figure 13: Defendants in the Disputes on TRIPS Issues  
(Figures in percentage)



Source: Author's own database

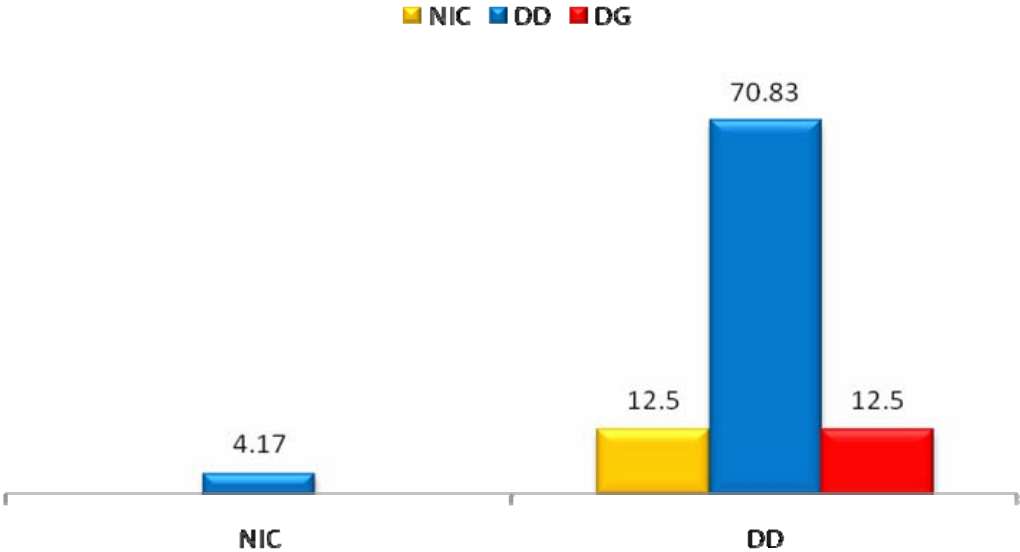


Figure 14: Different Categories of Countries in TRIPS Related Disputes  
(Figures in percentages)



Source: Author's own database

Figure 15: Direction Disputes on TRIPS Issues  
(Figures in percentages)



Source: Author's own database

### II.3. Summary Trends of WTO Disputes

Notable patterns of the WTO disputes are that the developed countries' rate of participation is higher than other countries and that developed countries are being targeted more than any other countries. This is evident from the following table (DD = developed; DG = developing; NIC = newly industrialized countries; TEC = transitional economy).

Table 6: Participation in disputes (percentage)  
Coverage: All cases (total 346) up to June 2006.

	As Complainant	As Defendant
DD	57.49	59.89
DG	20.05	20.32
NIC	20.05	15.51
TEC	2.41	4.28

Source: Author's own database

Table 6 above shows that all the country categories have the same pattern in the dispute participation. The rate of participation as a complainant of any category is almost the same as the rate of participation as a defendant. The correlation coefficient between column 2 and column 3 of Table 6 is 0.995, which is very high. This indicates that if a country appears as a complainant then it is highly likely that it will also appear as defendant. However, in total, developed countries participate more in the disputes than other categories. The direction of these disputes are as below (for a detailed country-wise participation please see Annex- 2).

Table 7: Direction of disputes (percentage)  
Coverage: all cases up to June 2006

		Defendant			
		DG	NIC	TEC	DD
Complainant	DG	5.88	2.94	0.27	10.96
	NIC	4.55	1.07	0.53	13.90
	TEC	0.27	0.27	1.87	0.00
	DD	9.63	11.23	1.60	35.03

Source: Author's own database

Table 7 above shows that while developing countries lodged 10.96 percent of total cases against the developed countries, developed countries lodged 9.63 percent of total cases against the developing countries. The newly industrialized countries initiated slightly more complaints against the developed countries than the developed countries initiated against them. From this, it seems that there is no significant bias in the pattern of cases brought by different country categories. However, it seems that there is an apparent bias in the outcome of disputes. Looking at Table 8 might give us an idea about the pattern of this bias.

Table 8: Dispute results (percentage)

Coverage: 116 settled disputes

		Win	Lose
As Complainant	DD	87.50	12.50
	DG	80.00	20.00
	NIC	85.19	14.81
As Defendant	DD	18.75	81.25
	DG	6.25	93.75
	NIC	10.00	90.00

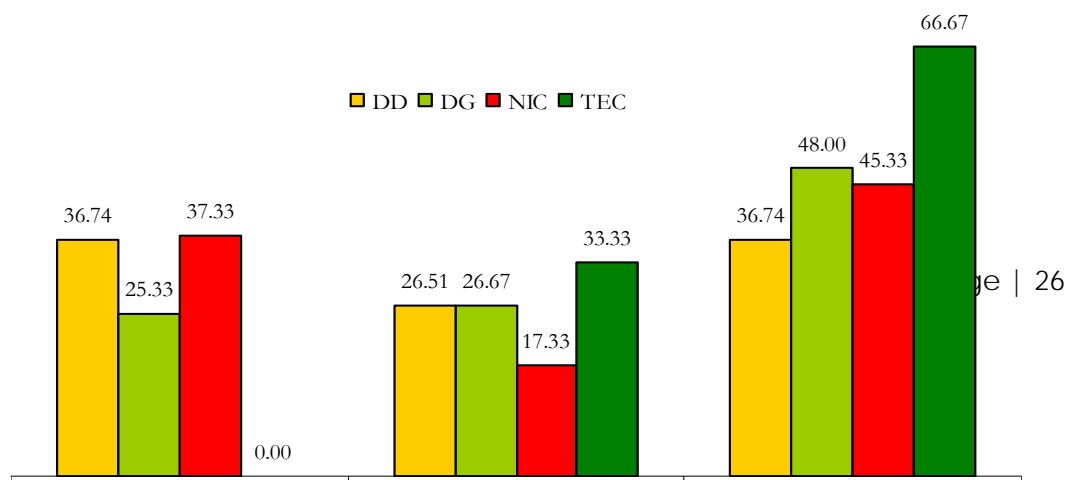
Source: Author's own database

Table 8 shows that as a complainant, a country wins more than 80 percent of the disputes. This is true for any country category. However, the rate of winning is naturally quite the opposite for defendants. From table 12 we also find that when a developed country appears in dispute as a defendant then it wins 12.50 percentage points more than the developing countries. This gap is narrower when countries appear as complainants. Considering that in both cases (as complainant and as defendant) developed countries win more than the developing countries, one can feel the presence of an apparent bias against the developing countries.

Looking at the status of cases filed by different country categories adds further logic in favor of the existence of a bias against the developing countries. Figure 16 below shows that developed countries failed to settle 36.74 percent of their cases, while this rate of failure of developing countries is 48 percent (11.26 percentage points higher). Newly industrialized countries also fail to settle a considerable amount (45.33 percent) of their cases. At same time, the settlement rate of developed countries' cases is higher than that of the developing countries'. This is reflected by the developed countries' share in the settled cases. Out of the total 374 cases developed countries participated as complainant in 215 cases. Out of those 215 cases, they got 79 cases (36.74 percent of developed countries' total disputes) solved by the Dispute Settlement Body (DSB) of WTO. On the other hand, developing countries lodged only 75 cases and they got only 19 cases (25.33 percent of developing countries' total disputes) solved by the DSB.

Figure 16: Case status by country category (percentage)

Total pending: 155 cases. (DD: 79, DG: 36, NIC: 34, TEC: 6)  
 Total Mutually Solved: 93 cases. (DD: 57, DG: 20, NIC: 13, TEC: 3)  
 Total DSB Solved: 126 cases. (DD: 79, DG: 19, NIC: 28, TEC: 0)



Source: Author's own database

However, data on duration of the disputes does not apparently show any bias (Table 9 below). The DSB takes almost the same time to give ruling on a dispute irrespective of the country category. For developed country it takes on an average slightly more than 25 months to give its verdict, while for the developing countries it takes two and a half months less. For NICs the DSB takes almost the same time it takes for the developed countries. Mutually solved cases also follow a similar pattern considering that the differences between the times of different country categories are not high. We have calculated the duration of the pending cases by counting the months between its starting date and 30 June 2006. We found pending cases following similar trends to those solved by the DSB and solved mutually. The only difference between the trend of pending cases and other cases is that pending cases are hanging for a long time (on an average almost 67 months).

Table 9: Average Duration of cases (months)

Country category	Solved by DSB	Mutually solved	Pending
DD	25.14	20.28	69.87
DG	22.42	22.65	69.81
NIC	24.18	16.23	62.62
TEC	NA	18.67	65.50

Source: Author's own database

It is interesting to see the pending cases hanging for such long periods despite the Dispute Settlement Understanding clearly devise time frames for settling disputes. We understand that starting from a case brought to the DSB by a country until the end of the procedures taken by the Appellate Body (including ruling by the Appellate Body) it should not take more than 15 months<sup>10</sup>. Therefore, the lengths of pending cases are far beyond the guideline of the WTO.

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<sup>10</sup> 60 days for consultation, 45 days for Panel set up, 6 months for Panel Report, 3 weeks to final Panel Report to members, 60 days for adopting Panel Report, 90 days for Appellate Body Report and 30 days for adopting Appellate Body Report.

### III. Conclusion

One thing is very clear- the developed countries are far more active in the dispute settlement process than any other categories. Intuitively, as fighting over the disputes requires financial strength and the developed countries have that quite in plenty, this observation seems logical. Conversely, as the developing countries' financial strength is usually much lower than the developed countries, their rate of participation is also low<sup>11</sup>. Besson et. al. (2004) in their regression analysis showed that financial strength is statistically significant for determining the rate of participation in the trade disputes. Apparently, the WTO has nothing to do with the financial strength of a country. But we suggest that this initial bias against the developing countries can be neutralized to some extent if the WTO intensifies its legal and technical assistance for the developing countries at dispute.

The average time taken by a dispute shows that the dispute settlement mechanism often fails to comply with the time-frame stipulated in the Dispute Settlement Understanding (DSU). It is conceivable that as the developing countries have fewer resources available for trade disputes, the opportunity cost of their resources is higher than that of the developed countries. This implies that if a dispute is simultaneously participated by a developed and a developing country, it will penalize the developing countries more as the duration of the dispute gets extended. In addition it is alarming to see that the Dispute Settlement Body (DSB) is not being able to provide solutions to a large number of disputes. Out of the 374 disputes raised between January 1995 and June 2006, the DSB could provide solution to approximately only 33 percent cases. In 25 percent cases the disputing countries found their own solutions and the rest 42 percent cases are still pending.

Finally, trends of trade disputes show that most of the disputes are concentrated on the agricultural issues, followed by disputes on anti-dumping and safeguard measures. Intuitively, one may expect to see a number of developing countries participating in the disputes on agriculture related issues as most of the developing countries are agro-based. However, the real scenario is quite the opposite. Holmes et. al. (2003) suggested that this can be explained by the volume of trade. As there are a number of developed countries, e.g. Australia, New Zealand, that deal in considerable amounts of agricultural products, this observation seems valid.



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<sup>11</sup> The LDCs are almost absent from the dispute settlement process. So far, only one LDC has participated in only one dispute (Bangladesh vs. India, Case number- 306).

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## Annex-1

Table 10: List of countries classified into different categories

Country Groups	Complainants and Defendants in the WTO Dispute Settlement Process	WTO Members Who have not yet Appeared Either as a Complainant or a Defendant
Developed countries (DD)	Australia, Canadá, EC, Japan, New Zealand, Norway, Switzerland, USA.	Iceland, Liechtenstein
Newly Industrialized Countries (NIC)	Argentina, Brazil, Hong Kong, Korea, Malaysia, Mexico, Singapore, Thailand.	--
Developing Countries (DG)	Antigua and Barbuda, Bangladesh, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Guatemala, Honduras, India, Indonesia, Nicaragua, Pakistan, Panama, Peru, Philippines, South Africa, Sri Lanka, Trinidad and Tobago, Turkey, Uruguay, Venezuela.	Angola, Bahrain, Barbados, Belize, Benin, Botsowana, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Central African Rep., Chad, Congo, Cote d'Ivoire, Cuba, Cyprus, Djibouti, Dominica, El Salvador, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Israel, Jamaica, Jordan, Kenya, Kuwait, Lesotho, Macau, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mojambique, Mongolia, Morocco, Myanmar, Namibia, Niger, Nigeria, Papua New Guinea, Oman, Paraguay, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Senegal, Sierra Leone, Solomon Islands, Suriname, Swaziland, Tanzania, Togo, Tunisia, UAE, Uganda, Zambia, Zimbabwe.
Transitional Economies (TEC)	Czech Rep., Hungary, Poland, Slovak Rep., Croatia.	Albania, Bulgaria, Estonia, Georgia, Rep. of Kyrgyz, Latvia, Slovenia.

## Annex-2

Table 11: Participation of countries at dispute by region

	Country	Region	Involvement as complainant (no. of disputes)	Involvement as defendant (no. of disputes)	Total (no. of dispute)	Total involvement by region (no. of dispute)
1	Egypt	Africa	0	4	4	6
2	S. Africa	Africa	0	2	2	
3	China	East Asia	1	4	5	61
4	Chinese Taipei	East Asia	2	0	2	
5	Hong Kong	East Asia	1	0	1	
6	Japan	East Asia	12	15	27	
7	Korea	East Asia	13	13	26	
8	Belgium	Europe	0	3	3	168
9	Croatia	Europe	0	1	1	
10	Czech Rep.	Europe	1	2	3	
11	Denmark	Europe	0	1	1	
12	EC	Europe	72	54	126	
13	France	Europe	0	2	2	
14	Greece	Europe	0	2	2	
15	Hungary	Europe	5	2	7	
16	Ireland	Europe	0	3	3	
17	Netherlands	Europe	0	1	1	
18	Norway	Europe	3	0	3	
19	Poland	Europe	3	1	4	
20	Portugal	Europe	0	1	1	
21	Romania	Europe	0	2	2	
22	Slovak Rep.	Europe	0	3	3	
23	Sweden	Europe	0	1	1	
24	Switzerland	Europe	4	0	4	
25	UK	Europe	0	1	1	
26	Canada	North America	27	14	41	218
27	USA	North America	83	94	177	



28	Australia	Oceania	7	9	16	22
29	New Zealand	Oceania	6	0	6	
30	Antigua and Barbuda	South and Central America	1	0	1	
31	Argentina	South and Central America	10	16	26	
32	Brazil	South and Central America	22	13	35	
33	Chile	South and Central America	10	10	20	
34	Colombia	South and Central America	4	1	5	
35	Costa Rica	South and Central America	4	0	4	
36	Dominican Rep.	South and Central America	0	3	3	
37	Ecuador	South and Central America	3	3	6	
38	Guatemala	South and Central America	6	2	8	163
39	Honduras	South and Central America	6	0	6	
40	Mexico	South and Central America	16	14	30	
41	Nicaragua	South and Central America	1	2	3	
42	Panama	South and Central America	2	1	3	
43	Peru	South and Central America	2	4	6	
44	Trinidad & Tobago	South and Central America	0	2	2	
45	Uruguay	South and Central America	1	1	2	
46	Venezuela	South and Central America	1	2	3	
47	Bangladesh	South Asia	1	0	1	
48	India	South Asia	17	17	34	41
49	Pakistan	South Asia	3	2	5	
50	Sri Lanka	South Asia	1	0	1	
51	Indonesia	South-east Asia	3	4	7	
52	Malaysia	South-east Asia	1	1	2	
53	Philippines	South-east Asia	4	4	8	31
54	Singapore	South-east Asia	1	0	1	
55	Thailand	South-east Asia	12	1	13	
56	Turkey	West Asia	2	8	10	10
	<b>Total</b>		<b>374</b>	<b>346</b>	<b>720</b>	<b>720</b>