The WTO Dispute Settlement System 1995-2006: Some descriptive statistics

by

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Abstract

The purpose of this paper is to report some initial findings based on the WTO Dispute Settlement Data Set (Ver. 2.0) that the authors have compiled for the World Bank. The data set contains approximately 28 000 observations on the workings of the Dispute Settlement (DS) system. It covers all 351 WTO disputes initiated through the official filing of a *Request for Consultations* from January 1, 1995, until October 25, 2006, and for these disputes it includes events occurring until December 31, 2006. Each dispute is followed through its legal life via the panel stage, the Appellate Body stage, through to the implementation stage.

The descriptive statistics in the paper points to three observations. The first and obvious observation is the almost complete absence of least developed countries. Secondly, less poor developing countries are much more active, and much more successful than the authors would have expected. Third, the EU and the US dominate less than expected, being much more often the subject of complaints, than a complaining party, and they have a very low share of all panellists.

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1. Introduction

The purpose of this paper is to report some initial findings based on the WTO Dispute Settlement Data Set (Ver. 2.0) that we have compiled for the World Bank.[1] The data set contains approximately 28 000 observations on the workings of the Dispute Settlement (DS) system. It covers all 351 WTO disputes initiated through the official filing of a *Request for Consultations* from January 1, 1995, until October 25, 2006, and for these disputes it includes events occurring until December 31, 2006.[2] We have used exclusively official WTO documents. The data has been collected for the purpose of promoting research on various aspects of the WTO.

In order to shed some light on differences across WTO Members as far as their participation in the DS system is concerned, we will group Members into four groups (Table 1):

- G2: The European Community (EC) and the United States (US)
- IND: Other industrialized countries
- Developing countries other than LDC
- LDC: Least developed countries

The group G2 needs no further explanation, except that we counted EC-15 as one of its two constituent members.[3] The LDC group corresponds largely to the list of LDCs according to the United Nations. A more discretionary line is drawn between IND and DEV. We have here classified OECD Member under IND; we have also classified under IND, non-OECD Members which have become members of the EC, or are at an advanced stage of their accession negotiations. Finally, under IND we have also classified countries which are not OECD Members but have a very high per capita income, countries such as Singapore. The DEV group consists of all countries which do not fit into either of the above mentioned categories.

[1] The data can be downloaded from www.worldbank.org/trade/wtodisputes.
[2] These correspond to disputes DS1-DS351, according to the number given to the dispute by the WTO Secretariat when a *Request for Consultation* is filed.
[3] 12 additional countries acceded the EU up until 2006, but at such a late stage that they have not been included in our definition of "EC".

Table 1: Country classification

G2	**LDC**	**DEV**		
EC	Angola	Albania	India	Tanzania
US	Bangladesh	Antigua and Barbuda	Indonesia	Thailand
	Benin	Argentina	Jamaica	Trinidad and Tobago
	Burkina Faso	Armenia	Jordan	Tunisia
IND	Burundi	Bahrain	Kenya	Unit. Arab Emirates
	Cambodia	Barbados	Kuwait	Uruguay
Australia	Central Afr. Rep	Belize	Kyrgyz Republic	Venezuela
Bulgaria	Chad	Bolivia	Macao - China	Zimbabwe
Canada	Dem. Rep. Congo	Botswana	Malaysia	
Croatia	Djibouti	Brazil	Mauritius	
Cyprus	Gambia	Brunei Darussalam	Moldova	
Czech Republic	Guinea	Cameroon	Mongolia	
Estonia	Guinea-Bissau	Chile	Morocco	
Hong Kong - Ch.	Haiti	China	Namibia	
Hungary	Lesotho	Colombia	Nicaragua	
Iceland	Madagascar	Congo	Nigeria	
Israel	Malawi	Costa Rica	Oman	
Japan	Maldives	Côte d'Ivoire	Pakistan	
Korea	Mali	Cuba	Panama	
Latvia	Mauritania	Dominica	Papua New Guinea	
Liechtenstein	Mozambique	Dominican Republic	Paraguay	
Lithuania	Myanmar	Ecuador	Peru	
Malta	Nepal	Egypt	Philippines	
Mexico	Niger	El Salvador	Qatar	
New Zeeland	Rwanda	Fiji	St Kitts and Nevis	
Norway	Senegal	F. Yug.. Rep Maced.	St Lucia	
Poland	Sierra Leone	Gabon	St Vincent & the Gr.	
Romania	Solomon Islands	Georgia	Saudi Arabia	
Singapore	Togo	Ghana	South Africa	
Slovak Republic	Uganda	Grenada	Sri Lanka	
Slovenia	Zambia	Guatemala	Suriname	
Switzerland		Guyana	Swaziland	
Turkey		Honduras	Chinese Taipei	

The paper is structured as follows. Section 2 discusses some aspects of participation of the groups defined above in dispute proceedings, when acting as complainants or respondents. Section 3 deals with the subject-matter of disputes. Section 4 highlights a few aspects of countries' success with regard to the legal claims they made before panels. Section 5 provides information as to the nationality and the appointment process of WTO panelists. Section 6 focuses on the duration of dispute settlement procedures at different stages of the adjudication process. Section 7 very briefly concludes.

In what follows, we reflect some *very* preliminary and partial observations stemming from a first look at the data. We do not claim to highlight the most interesting aspects of the data. Nor do we undertake any statistical analysis of the material. We only display a small fraction of the data, and point to certain features. It is indeed our hope that researchers using this data set will offer more penetrating analyses.

2. Who are the complainants and respondents?

A natural first question to ask is who participates in the DS proceedings? This research area has attracted a lot of attention in literature. It is impossible to address this issue, absent a definition of "a dispute", indeed the *unit of account* in this context. There are various ways in which this could be done, and the particular method chosen may importantly affect the outcome of the investigation. Unfortunately, there is no single correct method applicable across research interests. Instead, the correct procedure depends on the question at stake.

The basic idea behind the approach adopted here, as in some of the literature, is to view disputes between WTO Members at a bilateral level. That is, if two Members are complaining against a third Member, we count each one of them having a "dispute" with the third Member – that is, there are two "bilateral" disputes in this example. Naturally, all original complainants are involved in such bilateral disputes. In many disputes there are also countries that file a Request to Join in Consultations. They clearly have some form of interest in the dispute, but as a general matter, it is not clear whether they are on the side of the original complainant. If they are, it is

natural to include them among the countries that have a bilateral dispute with the respondent. But it is also possible that they are on the side of the respondent, either because they are pursuing policies that are similar to the challenged one, or because they are in terms of trade structure on the complaining side, but still benefit from the contested measure. In the latter case, one would not want to include these countries among those having a dispute with the respondent. In practice, it normally seems more common that countries that request to join in consultations are on the complaining side.[4] We will therefore in Table 2 include these countries among those having a bilateral dispute. This will increase the number of bilateral disputes by almost 300%, making the total number of disputes equal to 965. But we want to emphasize that doing this, we will no doubt erroneously include some instances where countries joining in did not do so because of a conflict with the respondent.[5] We will also in Table 3 examine whether there is any systematic difference with regard to the propensity to join in consultations across country groups.

A natural starting point is to examine the number of times the Members of the WTO have participated in a dispute. The G2 countries have complained 266 times, that is, 27.6% of all the 965 bilateral disputes, making it the third most active group. IND leads with 369 bilateral complaints, that is, 38.2% of all disputes, followed by DEV with 322 bilateral disputes, or 33.3%. LDC has complained only 8 times, that is, in 0.8% of all bilateral disputes (and as emphasized above, even this low number may exaggerate their participation.

G2 is the most active group as respondent. Its practices have been challenged 541 times, which accounts for 56.1% of all bilateral disputes. DEV follows with 256, that is, 26.8%. IND countries finally have acted as respondents on 165 occasions, that is, in 17.1% of all bilateral disputes. LDC countries have never acted as respondents.

[4] A look into their pleadings is the best possible way to classify them as complainants or respondents. With very few exceptions indeed, countries that join in consultations have sided with the complainant's claims.

[5] We are grateful to Greg Shaffer for alerting us to the likelihood that we through this procedure exaggerate the extent to which LDCs are represented on the complaining side.

Table 2a: Distribution of bilateral complaints over complaints and respondent groups

Status Complainant	Complainant	Status respondent			Grand Total
		G2	IND	DEV	
G2	EC	49	32	54	135
	US	41	46	44	131
	G2 total	90	78	98	266
IND	Australia	23	9	12	44
	Bulgaria	2			2
	Canada	44	16	19	79
	Cyprus	2			2
	Czech Republic	2	1		3
	Hong Kong - China	4	1	1	6
	Hungary	2	5	1	8
	Iceland	1			1
	Israel	1			1
	Japan	44	9	21	74
	Korea	17	3	7	27
	Malta	2			2
	Mexico	28	2	14	44
	New Zealand	17	4	7	28
	Norway	11	1		12
	Poland		2	1	3
	Romania	2			2
	Singapore			1	1
	Slovak Republic	2			2
	Slovenia	2			2
	Switzerland	6	4	11	21
	Turkey	2		3	5
	IND total	214	57	98	369

Table 2a cont'd

Status Complainant	Complainant	Status respondent			Grand Total
		G2	IND	DEV	
DEV	Antigua and Barbuda	1			1
	Argentina	14	1	7	22
	Barbados	2			2
	Belize	3			3
	Bolivia	1			1
	Brazil	28	6	3	37
	Chile	10	2	6	18
	China	8		1	9
	Chinese Taipei	4		4	8
	Colombia	11		5	16
	Costa Rica	5		5	10
	Côte d'Ivoire	3			3
	Cuba			2	2
	Dominican Republic	8			8
	Ecuador	10	1		11
	El Salvador	1		2	3
	Fiji	2			2
	Guatemala	9	2	6	17
	Guyana	2			2
	Honduras	10		3	13
	India	34	4	3	41
	Indonesia	2	1	1	4
	Jamaica	5			5
	Kenya	2			2
	Malaysia	1	1		2
	Mauritius	2			2
	Nicaragua	3	1	3	7
	Pakistan	6		2	8
	Panama	5		1	6
	Peru	6	1	2	9
	Philippines	1	4	2	7
	Saint Lucia	3			3
	Sri Lanka	1		1	2
	St. Kitts and Nevis	2			2
	Swaziland	2			2
	Thailand	14	6	3	23
	Uruguay	1			1
	Venezuela	5			5
	Zimbabwe	3			3
	DEV total	230	30	62	322
LDC	Bangladesh	1		1	2
	Congo	2			2
	Madagascar	2			2
	Malawi	2			2
	LDC total	7		1	8
	Grand Total	541	165	259	965

Table 2b: Distribution of bilateral complaints across complainant and respondent groups in %

		Respondent			
		G2	**IND**	**DEV**	**Total**
Complainant	**G2**	9,3	8,1	10,2	27,6
	IND	22,2	5,9	10,2	38,2
	DEV	23,8	3,1	6,4	33,4
	LDC	0,7	0,0	0,1	0,8
	Total	56,1	17,1	26,8	100,0

We can note that, when comparing participation as complainant and respondent, the G2 group is appearing as a respondent roughly twice as often (541/266). IND countries, on the other hand, have been twice as often a complainant (369/165). In DEV's case, the discrepancy is not so pronounced, although DEV countries are still is more active complainants than respondents (322/259).

Let us now turn to the question of who targets who? Table 2a shows the distribution of complainants over the individual Members of the WTO, and Table 2b provides a summary view of this pattern. It emerges from these Tables, that G2 targets almost evenly G2, IND and DEV: G2 complaints against G2 constitute 33,8% of its total complaints (90/266), against IND, 29.3% (78/266), and against DEV 38.4% of its total complaints (98/266).

The other three groups target G2 much more often than they target any other group: 58.0% of all IND complaints are directed against G2 (214/369); 71.4% of all DEV complaints concern G2 practices (230/322), and finally, 87.5% of all LDC complaints (few as they are) aim at the G2 countries (7/8). We can, thus, conclude that the majority of bilateral disputes involve a G2 country as either a complainant or respondent.

Table 3a provides information about the extent to which the different groups have become complainants (using the definition of bilateral disputes above) by participating in the original Request for Consultations, or by joining in at a later stage. We here observe an asymmetry

between G2 and the other groups. In complaints against G2 or IND, G2 will more often act as original complainant: only 31.1% of all G2 complaints against G2, and 37.2% against IND, are cases where G2 joined in consultations. However, in the case of complaints against DEV, G2 has joined in 53.1% of its total cases against this group. Hence, G2 seems more proactive in trade disputes against developed economies, and it rarely takes the initiative to launch a dispute as original complainant against a DEV country.

Table 3a: Propensity to join complaints rather than to complain

	Complainant												
	G2			IND.			DEV			LDC			
Respondent	G2	IND	DEV	G2	IND	DEV	G2	IND	DEV	G2	IND	DEV	Total
Request for Cons.	62	49	46	59	22	20	68	18	34	0	0	1	379
Requests Join Cons.	28	29	52	155	35	78	162	12	28	7	0	0	586
Total	90	78	98	214	57	98	230	30	62	7	0	1	965
Joined as % of total	31,1%	37,2%	53,1%	72,4%	61,4%	79,6%	70,4%	40,0%	45,2%	100,0%	0,0%	0,0%	60,7%

DEV countries, on the other hand, have a high propensity to join in when the target is the G2 (in 70.4% of all their complaints against G2, DEV joined in consultations). But DEV countries act more often as original complainants when targeting practices of either IND countries or other DEV countries. IND countries consistently join in consultations more frequently than they act as original complainants, no matter what the target group is. Hence, in conclusion, we might say that IND and DEV countries prefer to join in, whereas G2 to act as original complainants.

Table 3b gives data on individual WTO Members' participation as third parties in panel proceedings. DEV emerges as the highest represented group, with 398/831, or 47.9% of all appearances as third parties in all disputes. IND is second, with 308 appearances (37.8%), followed by G2 with 114 appearances (13.7%), and LDC with 11 appearances (1.3%).

Table 3b: Third party participation

G2		**DEV cont.**	
EC	58	Colombia	15
US	56	Costa Rica	6
G2 total	114	Côte d'Ivoire	4
		Cuba	16
IND		Dominica	3
Australia	38	Dominican Republic	2
Canada	58	Ecuador	7
Hong Kong – China	9	Egypt	2
Hungary	2	El Salvador	9
Iceland	6	Fiji	3
Israel	3	Ghana	1
Japan	65	Grenada	1
Korea	27	Guatemala	10
Mexico	38	Guyana	3
New Zealand	20	Honduras	9
Norway	21	India	43
Poland	1	Indonesia	3
Singapore	4	Jamaica	7
Switzerland	2	Kenya	3
Turkey	14	Malaysia	10
IND total	308	Mauritius	5
		Nicaragua	6
LDC		Nigeria	1
Bangladesh	1	Pakistan	4
Benin	1	Panama	1
Chad	1	Paraguay	13
Madagascar	3	Peru	7
Malawi	3	Philippines	4
Senegal	2	Saint Kitts and Nevis	3
LDC total	11	Saint Lucia	3
		Saint Vincent and the Grenadines	1
DEV		Sri Lanka	3
Argentina	12	Suriname	1
Barbados	4	Swaziland	3
Belize	4	Tanzania	3
Bolivia	1	Thailand	24
Brazil	31	Trinidad and Tobago	3
Cameroon	1	Uruguay	4
Chile	15	Venezuela	16
China	39	Zimbabwe	1
Chinese Taipei	28	DEV total	398
		Grand total	831

Interestingly, more members have been third parties than complainants, despite the fact that only some of the disputes go to the panel stage, and despite our generous definition of complainants (which include also those that request to join in consultations; the numbers are 72 and 67, respectively. There is no complete overlap between the two categories: 12 Members appeared as third parties without having appeared as complainants. Importantly, all of them belong to the DEV/LDC groups (Dominica, Egypt, Ghana, Grenada, Nigeria, Paraguay, Saint Vincent & the Grenadines, Suriname, Tanzania, Benin, Chad, Senegal).

3. Which agreements and provisions have been invoked?

We next turn to the subject-matter of the disputes. We first consider the WTO Membership as a whole, and examine how the total number of disputes is distributed across agreements and provisions. We then turn to see if any broad pattern can be discerned with regard to the matters being raised.

(i) *A view across agreements*

Table 4 provides a broad overview of the total number of invocations of GATT with Annexes, GATS with Annexes, and the TRIPs.[6] In contrast to Section 2, where we relied on our notion of bilateral complaints, we here use Request for Consultation as our unit of account. An illustration may be warranted: if Art. I GATT, and Art. III GATT have been both invoked in a Request for Consultation, we would count this as one invocation of GATT. Furthermore, we count it as one invocation, irrespective of the number of Members participating in the original Request, and the number of Members joining in at a later stage. What we are looking for here is the response to the question: in how many disputes has, say, the GATT been invoked. If both GATT provision(s) and GATS provision(s) are invoked in a dispute, it will in this Table be counted as one GATT invocation and one GATS invocation. Of course, this is by no means the only way in which this could be measured.

[6] For an explanation of the abbreviations of the agreements, see the Annex to this paper

Table 4: Number of times the GATT, the GATS and the TRIPs and their Annexes are invoked in Request for Consultations

Agreement	Number of disputes*	% of total
GATT and Annexes	657	94.1
GATS and Annexes	16	2.3
TRIPS	25	3.6
Total	698	100

* The GATT Annexes included here are AD, AG, ATC, CV, ILA, ROO, SCM, SG, SPS, TBT, TRIMS, and the Enabling Clause.

As can be seen from Table 4, GATT (and the other Annex 1A agreements, that is the agreements regulating trade in goods) strands for the vast majority of invocations, or 94.1% of the total number. There are 50% more TRIPs invocations than GATS invocations, but they both dwindle in comparison to the invocations of the agreements governing trade in goods. This might *prima facie* look surprising. However, the fact that developing countries enjoyed a long transitional period to implement TRIPs, probably explains the few invocations of this agreement. GATS is still largely a *terra incognita* for most trading nations. This could tempt countries to complain, in order to clarify the law. But the uncertainty concerning the outcome of a dispute may also deter countries from complaining. Also, empirical evidence suggests that it did not generate any meaningful trade liberalization beyond the status quo in 1995, which could be part of the explanation for how rarely it has been invoked.

Table 5 specifies in more detail the WTO agreements that have been invoked. Not surprisingly, GATT 1947 completely dominates as the most frequently invoked agreement, accounting for roughly a third of all instances. There are then three agreements that between themselves are invoked roughly as frequently, all of them GATT Annexes: AD, AG and SCM. But with 9.5%, 7.5% and 9.3%, they jointly do not stand for more than about a quarter of all invocations.

Table 5: Agreements invoked in Requests for Consultations

Agreement	Invoked in number of Requests*	% of total no. of invoked agreements
GATT	270	36.0
AD	71	9.5
SCM	70	9.3
AG	56	7.5
SG	34	4.5
ILA	33	4.4
TBT	33	4.4
WTO Agree	33	4.4
SPS	30	4.0
TRIPS	25	3.3
TRIMS	23	3.1
ATC	16	2.1
GATS	14	1.9
CV	12	1.6
DSU	11	1.5
ROO	5	0.7
GPA	4	0.5
Enabling Clause	4	0.5
ChinaAA	3	0.4
MDTruth	1	0.1
1979Understanding	1	0.1
ALL	749	99.8

*The number of times various WTO Agreements have been invoked in Request for Consultations. If reference is made to both Arts. III.1 and III.2, this will count as one invocation. No account is taken of the number of complainants in the dispute.

Tables 6-10 take further steps in disaggregating the data by considering the number of times specific provisions have been invoked. Starting with the use of GATT, Table 6 shows that the basic non-discrimination principles (Arts. I and III of the GATT) have been invoked in 29.2% of the disputes (193 out of 661 invocations). They are followed by concerns over alleged quantitative restrictions, which account for 12.1% of all GATT disputes (Art. XI, 80/661), and concerns over the lawful imposition of duties, which stand for 10.3% of all GATT disputes (Art. II, 68/661) (we disregard Art. XXIII invocations). Consequently, the total number of challenges concerning the legality of trade instruments is 22.4% of all GATT disputes ((80+68)/661). The transparency provision Art. X emerges as an important concern as well: in 9.1% of all GATT disputes, WTO Members have claimed that had been violated (60/661).

Let us next take a look at how some of the other agreements have been used, starting in Table 7 with the AD. The most frequently invoked provision concern the definition of the dumping margin (Art. 2, 50 invocations, 11.7% of all invocations), the investigation process (Art. 5, 48, 11.2%), evidence (Art. 6, 48, 11.2%), injury (Art. 3, 47, 11.0%), principles (Art. 1, 42, 9.8%), and transparency obligations (Art. 12, 34, 9%).

Table 6: GATT

Article	Number of times invoked in disputes*
I	91
II	68
III	102
V	5
VI	62
VII	6
VIII	9
X	60
XI	80
XIII	31
XV	2
XVI	6
XVII	6
XVIII	7
XIX	32
XX	5
XXI	2
XXIII	73
XXIV	8
XXVIII	6
ALL	661

* The number of times various provisions (Articles) have been invoked in the Request for Consultations by the original Complainants. An Article is counted only once even if referred to several times. Hence, if for instance Arts. III.1 and III.2 have been both invoked, the Table counts this as one invocation of Art. III.

Table 7: AD

Article	Number of times invoked in disputes*
1	42
2	50
3	47
4	18
5	48
6	48
7	19
8	3
9	28
10	5
11	19
12	34
15	6
16	1
17	1
18	30
Annex I	5
Annex II	25
ALL	429

* The number of times various provisions (Articles) have been invoked in the Request for Consultations by the original Complainants. An Article is counted only once even if referred to several times. Hence, if for instance Arts. 3.1 and 3.2 have been both invoked, the Table counts this as one invocation of Art. 3.

Table 8 provides a breakdown for the SCM agreement, under which a WTO Member can challenge the legality of a subsidy and/or impose duties against injurious subsidies. The first possibility occupied 26.7% of all SCM claims (Arts. 3-7, 73 out of 273 claims), whereas the second 45.8% (Arts. 10-23, 125/273). The first category can be further broken down: 15.4% of all SCM claims concerned prohibited subsidies (Arts. 3 and 4, 42/273); 11.4% concerned actionable subsidies (Arts. 5-7, 31/273). Finally, 16.5% of all SCM claims concerned the constitutive elements of the subsidy-definition in the SCM (Arts. 1 and 2, 45/273).

Table 9 breaks down invocations of the GATS, showing that its various provisions have been very sparsely invoked. This is of course not surprising given that the GATS *as such* has been rarely invoked. Consequently, it is probably premature to draw any conclusions from practice so far. But for what it is worth, we can point to two features: 39.2% of all claims concern specific commitments (Arts. XVI, XVII and XVIII, 20/51); 41.1% of all claims concern alleged violations of the non-discrimination principle (Arts. II and XVII, 21/51), with the Most-Favored Nation and the National Treatment clauses being invoked almost as often.

Finally, the overall number of TRIPs invocations as well is, as noticed above, quite small. When invoked, the particular provisions mentioned in the Requests for Consultations tend to be remarkably evenly spread across the agreement, as demonstrated in Table 10. But three provisions stand out as the most frequently invoked: 12.0% of all TRIPs claims concern transitional arrangements (Art. 65, 14/117), 9.4% concern the existing subject matter (Art. 70, 11/117), and a further 8.5% the patentable subject matter (Art. 27, 10/117).

Table 8: SCM

Article	Number of times invoked in disputes*
1	27
2	18
3	37
4	5
5	13
6	14
7	4
10	26
11	19
12	8
13	3
14	11
15	10
16	2
17	8
18	2
19	15
20	2
21	11
22	8
27	8
28	2
30	1
32	17
Annex I	2
ALL	273

* The number of times various provisions (Articles) have been invoked in the Request for Consultations by the original Complainants. An Article is counted only once even if referred to several times. Hence, if for instance Arts. 3.1 and 3.2 have been both invoked, the Table counts this as one invocation of Art. 3.

Table 9: GATS

Article	Number of times invoked in disputes*
I	1
II	9
III	3
IV	1
VI	8
VIII	2
XI	1
XVI	7
XVII	12
XVIII	1
XXIII	3
TRP	1
AnnTelecoms	1
AnnMovPers	1
ALL	51

* The number of times various provisions (Articles) have been invoked in the Request for Consultations by the original Complainants. An Article is counted only once even if referred to several times. Hence, if for instance Arts. III.1 and III.2 have been both invoked, the Table counts this as one invocation of Art. III.

Table 10: TRIPs

Article	Number of times invoked in disputes*
1	1
2	4
3	6
4	4
9	4
10	2
11	2
12	2
13	2
14	4
15	1
16	3
17	1
18	1
19	1
20	3
21	1
22	2
24	2
27	10
28	4
31	1
33	3
34	1
39	2
41	5
42	3
49	1
50	4
51	1
61	3
62	2
63	6
65	14
70	11
ALL	117

* The number of times various provisions (Articles) have been invoked in the Request for Consultations by the original Complainants. An Article is counted only once even if referred to several times. Hence, if for instance Arts. 3.1 and 3.2 have been both invoked, the Table counts this as one invocation of Art. 3.

(ii) *The pattern of complainants/respondents for select agreements and subject matters*

Tables 11-12 provide information on the invocation of five main agreements, broken down on the 16 possible constellations of complainant group/respondent group. The two Tables contain the same information, but exhibit a slightly different structure. Thus, in Table 11 the categorization is by country classification of the complainant, while in Table 12 of the respondent.

When constructing these Tables we face the question of how to treat disputes where complaining countries stem from different groups. For instance, countries A and B may file a Request for Consultation against country C, in which they invoke GATT. Assuming that A belongs to G2 and B to DEV, how should this be counted? One possibility would be to count this as both a G2 complaint under GATT and an IND complaint under GATT. But this would raise the question of why not also take account of complainants that have joined in? It may seem natural to treat these countries in the same manner as the original complainants. The problem with this is, however, that whereas the initial complainants jointly referred to the GATT in their Request for Consultations, the countries joining in have not done this. If we treat them symmetrically with the original complainants, we must thus make the bold assumption that they are implicitly invoking the same agreements. Its shortcomings notwithstanding, we will follow this approach.

Tables 11 and 12 show that, with regard to the GATT, IND dominates as complainant in absolute numbers with 332 (bilateral) invocations, followed by 290 for DEV, and 197 for G2 (we disregard LDC in this discussion since the impact of this groups is marginal). G2 has been the main target of GATT complaints, having been so four times more often than IND (474 invocations compared to 119) and more than twice as often as DEV (233). The role of the GATT for IND as a complainant and G2 as a respondent can be seen from the fact that complaints by IND against G2 account for 23.5% (194/826) of all GATT complaints. But the complainant that has launched the most complaints against G2 is actually DEV, which account for 44.7% (212/474) of all GATT complaints against G2.

A similar pattern can be seen with respect to AD and TRIPs, where IND has been the most active invoker; in the case of AD they account for 36.8% (56/152), and in the case of TRIPs 50.0% (40/80), of all invocations. The prime target of such complaints has been G2, which in the case of

AD was the target for 73.7% (112/152) of all complaints, and in the case of TRIPs for 67.5% (54/80) of all complaints. G2 is also the main target of SCM complaint: 63.4% (118/186) of all such complaints are directed against it; here, IND and DEV share the burden as complainants more equally, accounting for, respectively, 35.5% (66/186) and 32.2% (60/186) of all complaints.

As we have already seen, there are very few GATS disputes. Examining the few invocations that have occurred, DEV complaints against G2 account for almost half of these instances, and G2 and IND have together been respondents in 84.8% (39/46) of the instances where it GATS was invoked.

Table 11: Invocation of agreements by complainant and respondent group*

	Complainant																			
	G2					IND					DEV					LDC				
Resp.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Grand Tot
GATT	62	52	83	0	197	194	46	92	0	332	212	21	57	0	290	6	0	1	0	826
AD	18	8	5	0	31	44	2	10	0	56	50	4	10	0	64	0	0	1	0	152
SCM	20	13	21	0	54	36	4	26	0	66	56	3	1	0	60	6	0	0	0	186
GATS	5	5	3	0	13	3	1	2	0	6	24	1	2	0	27	0	0	0	0	46
TRIPs	13	7	12	0	32	33	2	5	0	40	8	0	0	0	8	0	0	0	0	80

* The number of times five major WTO Agreements have been invoked in Request for Consultations, by country group. Includes all bilateral disputes with both original and joining member countries.

Table 12: Invocations of agreements by complainant and respondent group*

	Complainant																			
	G2					IND					DEV					LDC				
Resp.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Tot.	G2	IND	DEV	LDC	Grand Tot
GATT	62	194	212	6	474	52	46	21	0	119	83	92	57	1	233	0	0	0	0	826
AD	18	44	50	0	112	8	2	4	0	14	5	10	10	1	26	0	0	0	0	152
SCM	20	36	56	6	118	13	4	3	0	20	21	26	1	0	48	0	0	0	0	186
GATS	5	3	24	0	32	5	1	1	0	7	3	2	2	0	7	0	0	0	0	46
TRIPs	13	33	8	0	54	7	2	0	0	9	12	5	0	0	17	0	0	0	0	80

* The number of times five major WTO Agreements have been invoked in Request for Consultations, by country group. Includes all bilateral disputes with both original and joining member countries.

4. Winners and losers of legal claims

The data set contains information on the legal claims made by the parties, and on whether adjudicating bodies have accepted these claims or not. In this section, we will take a brief look at some of these data, drawing on Hoekman *et al* (2007), where the data are presented in much more detail.

A few preliminary observations are required. First, WTO disputes with multiple complainants have been disaggregated into a number of bilateral disputes equal to the number of complainants involved. The "unit of account" in the analysis is *legal claims,* as defined in the WTO case law on Art. 6.2 DSU: a legal claim comprises a factual matter and the legal provision that it allegedly violates. A legal claim is, thus, an invocation of a provision, or even a paragraph of a provision which allegedly has been violated by the action of a WTO Member. We have considered invocations already above, but the focus is now different. We are only concerned with the panel stage, since our ultimate concern in this section is whether claims are won or not, whereas in the above, we looked at invocations in Requests for Consultation. Second, we follow the evolution of the EC membership in the sense that up to January 1, 2004 EC is EC-15, after that date EC-25 (since we here do not reflect the recent expansion of the EU to 27 members).

There are in total 144 bilateral disputes with the definition just mentioned, involving a total of 2,369 legal claims. Table 13 shows how these are distributed across pairs of complaining and responding Members, grouped by their country status. The IND group accounts for almost half (46%) of all the claims, DEV for 27.5% of all claims, whereas G2 for 26.5% of all claims.

Table 14 depicts for each pair (complainant group, respondent group) the average number of claims. There is significant variation, both for each complainant group across respondents, and for each respondent group across complainants. At the lower end, a G2 complaint against a DEV country on average involves 3.7 claims, while an IND complaint against a G2 country on average comprises almost 26 claims.

Table 13: Distribution of number of legal claims by group pairing

	Respondent			
Complainant	**G2**	**IND**	**DEV**	**Tot.**
G2	380	201	48	629
IND	971	37	81	1089
DEV	489	79	83	651
Tot.	1 840	317	212	2 369

Table 14: Average number of claims within each group pairing

	Respondent		
Complainant	**G2**	**IND**	**DEV**
G2	19	9.1	3.7
IND	27.7	7.4	11.6
DEV	14.8	19.8	16.6

The distribution of the claims across agreements is shown in Table 15. The majority of claims are under the three contingent protection instruments AD, CVD, and SG (see Hoekman *et al* (2007) for an explanation of why this picture may exaggerate the quantitative importance of these disputes in the DS system).

Table 15: The distribution of claims across agreements/provisions

Provision/agreement	No of claims
AD	615
ATC	13
AA	46
DSU:3.7	16
GATS	30
GATT:II	23
GATT:III	88
GATT:VI	69
GATT:X	46
GATT:XI	19
GATT:XIII	10
GATT:XIX	69
GATT:XX	25
SCM	269
SG	557
SPS	286
TBT	11
TRIPs	61
WTO:XVI.4	30

The outcomes of the cases are classified in the data set on the basis of the findings by WTO adjudicating bodies as they appear in the Conclusions and Recommendations Section of each panel report. We classify outcomes into three groups: (1) those claims where the complainant prevailed; (2) claims where the defendant prevailed; and (3) a residual group of claims where the outcome is unclear. While the last category is not self-explanatory given that in principle a panel should either find for or against a claim by a complainant, practice has made inclusion of this third category a necessity, for instance because of the exercise of judicial economy.

For Table 16, the average number of successful claims is calculated by simply the total number of successful claims ("wins") for a given group by the total number of claims made by the group for a specific pairing. It can be noted that overall success rates are remarkably similar for the three active groups: when acting as complainants, G2, IND and DEV win around 65% of the claims they advance, when calculated as a share of all the claims each group makes. Similarly, the total win percentage for the three complainant groups ranges between 56% and 65% of all the claims they advance. But the Table also reveals a significant variability across different complainant-respondent constellations. Most successful are IND countries when complaining against other

countries in the same group, winning almost 95% of the claims. It is also noticeable that G2 succeed with almost 90% of their claims against DEV. At the other end of the spectrum we find the DEV group, which wins less than 23% of the claims they advance against IND.

Table 16: Average percentage successful claims by group pairing, based on the sum of all claims for the pairing

	Respondent			
Complainant	**G2**	**IND**	**DEV**	**Tot.**
G2	62.4	63.2	89.6	64.7
IND	55.4	94.6	50.6	56.4
DEV	61.3	22.8	69.9	57.8
Tot.	58.4	56.8	67.0	59.0

5. Where do the panelists come from, who selected them, and how many panels have they served on?

Table 17 provides data on the nationality of individuals that have served as panelists (chair + non chair) in the 154 panels in the data set; since each panel is composed by three panellists, the data set contains a total of 462 panellist-slots. A striking feature in this context is that individuals originating in IND and DEV have appeared as panelists (chair, non chair) in 405/462 times, that is, in almost 88% of all times. 47 different nationalities have been represented, which means that more than two-thirds of all WTO Members have never had a panelist. But, only 57 times has a G2 citizen acted as panelist (chairman + non chairman). This is less than 13% of all panelists used. The US here tops the list with 13 times (8 of which chair). However, US citizens account for 13/57 panelists, that is, less than 25% of the total G2 representation. Germany comes second with 10 (2 chair), and Sweden third with 9 (8 chair) panelists.

Table 17: Distribution of panelists by nationality and function

G2 Member	Chair	Non-chair
Austria	0	1
Belgium	1	4
Finland	1	4
France	0	2
Germany	2	8
Ireland	0	3
Italy	0	1
Netherlands	0	1
Sweden	8	1
United Kingdom	0	7
United States	8	5
Total G2	**20**	**37**

DEV Member	Chair	Non-chair
Argentina	1	7
Brazil	2	17
Chile	2	16
Colombia	3	7
Costa Rica	3	0
Ecuador	0	3
Egypt	7	4
India	10	17
Jamaica	0	1
Malaysia	0	1
Mauritius	0	2
Morocco	2	0
Pakistan	1	4
Philippines	1	3
South Africa	5	13
Taiwan	0	1
Thailand	0	7
Uruguay	6	3
Venezuela	3	6
Total DEV	**46**	**112**

IND Member	Chair	Non-chair
Australia	3	25
Bulgaria	0	1
Canada	5	13
Czech Republic	4	7
Hong Kong - China	14	5
Hungary	0	2
Iceland	8	1
Israel	0	6
Japan	1	11
Korea	4	7
Mexico	0	10
New Zealand	18	27
Norway	5	6
Poland	6	5
Singapore	3	12
Slovenia	0	2
Switzerland	17	19
Total IND	**88**	**159**

Percent of all panelists	
G2	12.3
IND	53.5
DEV	34.2

53.4% of all panellists come from IND, the largest representation in this context. New Zealand tops the list with 45 (18 chair), and Switzerland comes second with 36 (17 chair). Australia is third with 28 (3 chair). Hong Kong, China is fourth with 19 (14 chair). Canada comes fifth with 18 (5 chair). Singapore follows with 15 (3 chair), whereas Japanese citizens have been selected 12 times (1 chair). 11 Koreans have been selected (4 as chair), and Icelanders have also been frequently represented (9 panelists, 8 chair). 34.2% of all panelists come from DEV. India tops the list with 27 (of which, 10 chair). Brazil is second with 19 (2 chair), followed by Chile 18 (2 chair) and South Africa with 18 (3 chair).

As revealed in Table 18, the composition of panels has been decided exclusively by agreement between the parties to the dispute on 64 occasions. Much more common has been that the DG has been involved in appointing the panel; this has occurred on 90 occasions. This does not mean, however, that on each of these occasions the DG has appointed all 3 panelists; it could well be the case that the DG appointed only 2, or even 1 panelist and thus "completed" its composition (Art. 8.7 DSU).

Table 18: Composition of panels by the parties or the DG, and the respondent's country status

	Respondent			
Chosen by:	G2	IND	DEV	Total
DG*	53	20	17	90
Parties	36	17	11	64
Total	89	37	28	154

Table 19 shows the propensity for panellists to serve more than once. As can be seen, a total of 195 individuals have served as panelists in 154 panel proceedings so far. 88 individuals served only once as panellists, whereas 107 individuals served at least twice. Hence, more than 50% of the panelists have served more than once. 20 out of 195, that is, 10.3%, have served 5 times or more. The record man among repeat players is Mohan Kumar from India, who served on 14 occasions, followed by Mamoon Abdel-Fattah (Egypt, 10), Peter Palečka (Czech Republic, 10),

Michael Cartland (Hong Kong, China, 9), Crawford Falconer (New Zealand, 9), Margaret Liang (Singapore, 9), Ole Lundby (Norway, 8), Hugh McPhail (New Zealand, 8), and Stefan Johannesson (Iceland, 8).

Table 19: Repeat panelists

Number of panels that panelist has served on	Number of panelists	Cumulative
1	88	88
2	43	86
3	36	108
4	8	32
5	6	30
6	4	24
8	3	24
9	4	36
10	2	20
14	1	14
Total	195	462

*Note that each dispute has its own DS number and therefore is counted separately. Accordingly, it is possible for a panelist to have served on more than one dispute involving more than one complainant even thought the respondent is the same for the particular dispute.

5. The duration of the process

Table 20 provides some simple data on the duration of the various stages of the DS process. Starting with the bilateral leg of the process -- consultations -- we observe that their average length is 210.2 days. Since the length of the consultations process depends solely on the will of the consulting parties, one cannot talk of delays etc. However, with regard to the other DS stages, one can compare the statutory deadlines and the *de facto* duration and draw such conclusions. One should be careful, nevertheless, not to attribute responsibility for delays to the institution without further examination: the process can slow down because of the parties as well.

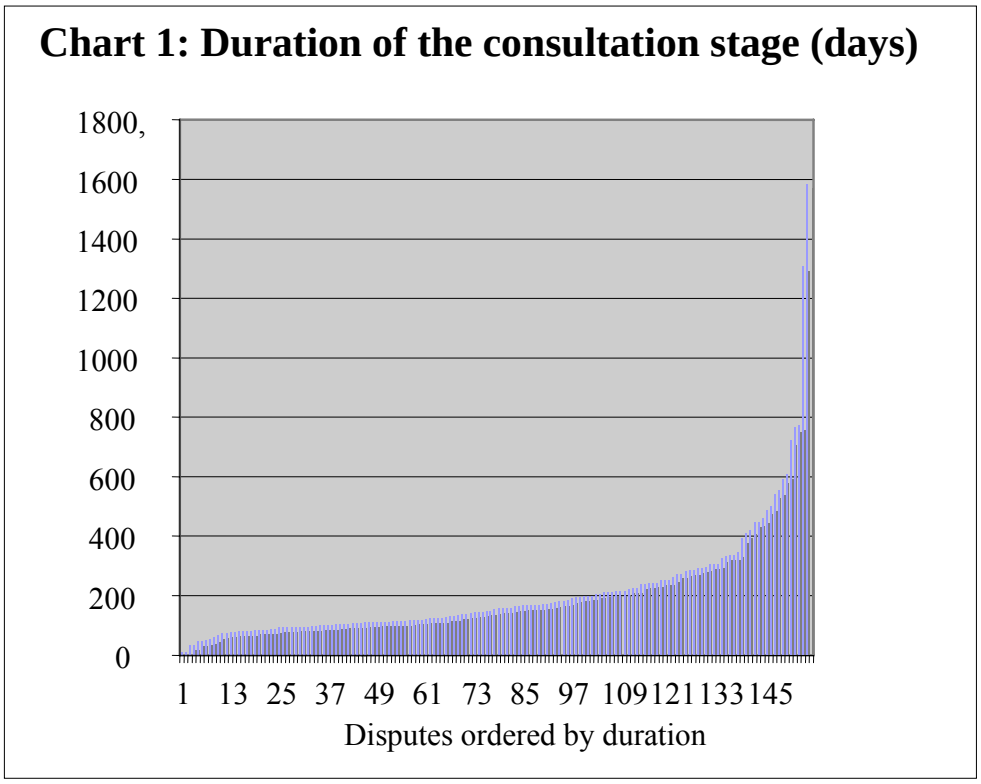
Table 20: Average length of various DS processes*

Proceeding	Average length of the process	Explanation
Consultations	210.2 days	From the date of Request for Consultations until the date the Panel was established.
Panel	406.4 days	From the date the Panel was established until the date of the circulation of the Panel Report.
Appellate Body	89.3 days	From the date of the Notice of Appeal until the date of the circulation of the Appellate Body report.
RPT when awarded by arbitrator	12.0 months	The average RPT awarded by the arbitrator in the awards circulated.
RPT when agreed bilaterally	9.5 months	Total length of agreed period between parties of RPT during which implementation must occur.
Compliance panel	225.9 days	From the date of the request to establish a first compliance panel until the date of circulation of the Compliance Panel Report.
Appellate Body (compliance)	87.7 days	From the date of the first Notice of Appeal until the date of circulation of the Appellate Body compliance report.

* Average length of the period of time of the following dispute settlement proceedings under the *Dispute Settlement Understanding*.

Charts 1-3 display the variation in terms of process length for the consultation stage, the panel stage, and the AB stage, respectively. In each Chart the disputes are ordered horizontally according to increasing process length.

The statutory duration of the panel process is 6 months. This deadline for completion of the process can be extended to 9 months, if need be, but the DSU seems to suggest (Art. 12.9) that this period should not be extended any further. The average panel process of the disputes reflected in the data is 406.36 days, that is, over 13 months. Chart 2 (or rather the data underlying the Chart) shows that the panel process had been completed within the statutory limits in only 10 instances. At the other end there are 23 disputes with duration of over 500 days.



Turning to the duration of the Appellate Body (AB) process, we first note that the statutory deadline for its completion is 60 days, but with the possibility to extend it to 90 days. *De facto*, the AB manages to complete its work within this deadline: the average duration is 89.31 days. On 78 out of 89 occasions, that is, 87.6% of the total number, the AB completed its work within the statutory deadline. There are only four disputes where the AB process exceeded 4 months.

Chart 2: Duration of panel stage (days)

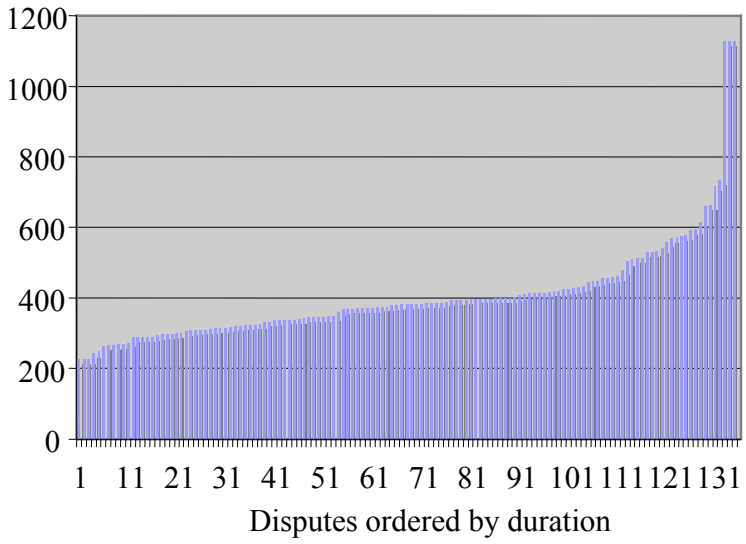
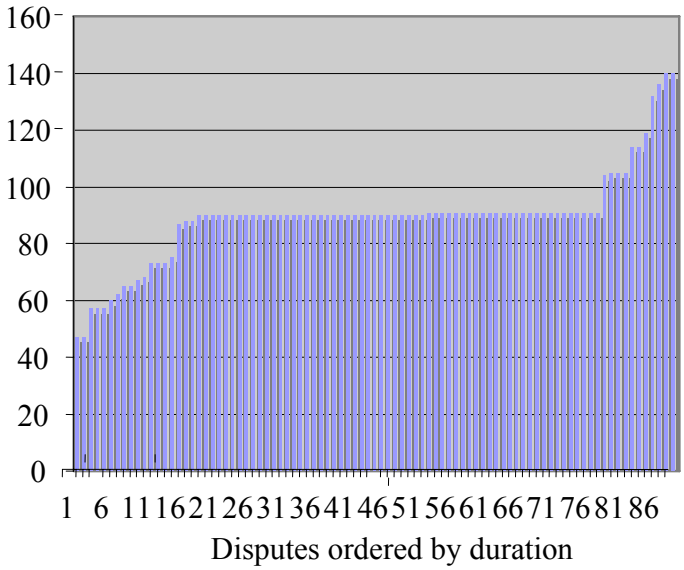


Chart 3: Duration of the AB stage (days)



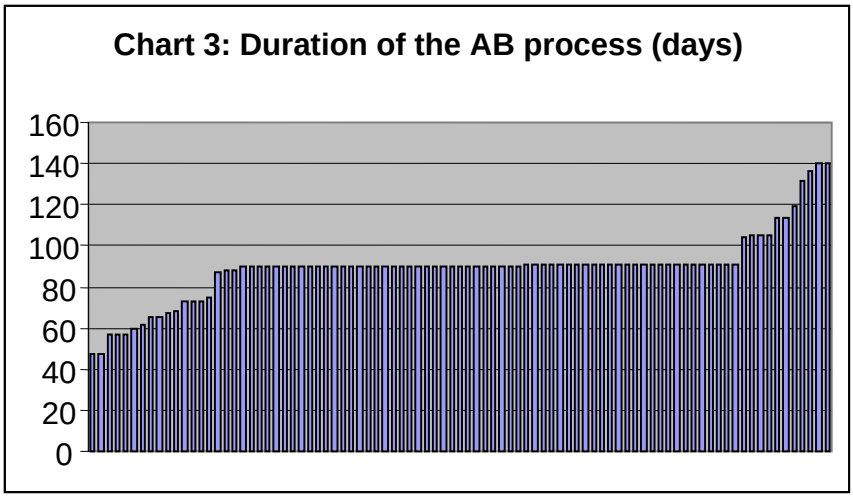


Chart 3: Duration of the AB process (days)
160
140
120
100
80
60
40
20
0

Compliance panels (Art. 21.5 DSU) have to observe a statutory 90 days-deadline. They can, however, take a longer time, if need be. Contrary to what is the case under Art. 12.9 DSU, Art. 21.5 DSU does not provide for a maximum delay of the process. Compliance panels enjoy some flexibility when deciding the time for completion of the process. In practice, they take on average 225.94 days to complete their work. The AB completes its work even faster when discussing an appeal against a compliance panel report (Art. 21.5 DSU) than when adjudicating an appeal against an ordinary panel report: on average it does so within 87.72 days.

Finally, Table 20 also yields information on the average reasonable period of time (RPT) for implementation of the WTO adjudicating bodies' recommendations/suggestions. The RPT has in practice been determined either through agreement between the parties, or through recourse to an Arbitrator. There are no statutory deadlines imposing a time-frame during which parties to a dispute must reach an agreement as to the extent of the RPT, so the type of analysis undertaken above cannot be repeated for the bilateral determination of Rots. There is a statutory deadline that the Arbitrator must respect (Art. 21.3c). This is not, however, an interesting feature of the process and in what follows we focus on the length of the RPT that the Arbitrator has awarded, rather than ask the question whether he/she has respected the statutory deadlines when determining its extent. It should be noted that the DSU (Art. 21.3c) provides a guideline to the Arbitrator when it comes to fixing the RPT: it should not be longer than 15 months. The DSU acknowledges, however, that the RPT can extend beyond 15 months if need be.

What can be done, however, is to compare the awarded RPT depending on whether it is determined through a bilateral agreement or through arbitration. As reported in the Table, the average length of bilaterally RPT is 9.48 months, while the average RPT fixed by the Arbitrator being 12 months. Hence, the average RPT is significantly shorter when determined by the parties than by the Arbitrator.

7 Instead of conclusions

In the above we have merely displayed the data, and have not in any sense tried to statistically explain why the data looks the way it does, nor have we presented any benchmark against which to compare whether countries are over- or under-represented in the system, or whether it is working satisfactory in other respects. It is therefore impossible to draw any firm conclusions from the above – the study is only meant to serve as food for further thought. There are in this regard a couple of features that we find somewhat striking.

A first observation, and there is no surprise here, is the almost complete absence of the large LDC group. One could add to this group a large number of countries in DEV that have never been active neither as participants in disputes, nor in the adjudication process. It is therefore hard to escape the conclusion that a large fraction of the WTO Membership is passive as it comes to the WTO DS system.

A second observation is the, to our mind, surprisingly high participation rate by the DEV group. It should be recalled that we have classified as IND several countries that would in the WTO be treated as developing countries; this includes, for instance, Hong Kong – China, Korea, Mexico and Turkey. These are all countries that are relatively active in the DS system. Despite having excluded them from the DEV group, the latter nevertheless appears as a significant player, as measured here.

Our third, and final, observation is that the G2 group is less dominant than we would have guessed. It tends to be much more often the subject of complaints than a complaining party, and G2 has a very low share of all panellists. This is not to take a stand on the "weight" of these countries in the organization, but just to point out how our numbers come out.

ANNEX: List of abbreviations of agreements

AD	*Agreement on Implementation of Art. VI of GATT 1994* (antidumping)
AG	*Agreement on Agriculture*
ATC	*Agreement on Textiles and Clothing*
ChinaAA	China Accession Agreement
CV	*Agreement on Implementation of Art. VII of GATT 1994* (customs valuation)
EnC	*Enabling Clause*
GATS	*General Agreement on Trade in Services*
GATT	*General Agreement on Tariffs and Trade*
GPA	*Agreement on Government Procurement*
IL	Illustrative List (annexed to the TRIMs)
ILA	*Agreement on Import-Licensing Procedures*
MDTruth	*Ministerial Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of Declared Value*
ROO	*Agreement on Rules of Origin*
SG	*Agreement on Safeguards*
SCM	*Agreement on Subsidies and Countervailing Measures*
SPS	*Agreement on the Application of Sanitary and Phyto-Sanitary Measures*
TBT	*Agreement on Technical Barriers to Trade*
TRIMs	*Agreement on Trade-Related Investment Measures*
TRIPs	*Agreement on Trade-Related Intellectual Property Rights*
TRP	*Telecoms Reference Paper* (GATS)
1979Und	1979 *Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance*