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Winners and Losers in the Panel Stage of the WTO Dispute Settlement System

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Winners and Losers in the Panel Stage of the WTO Dispute Settlement System*

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Abstract

A significant body of research has sought to examine claims that developing countries are under-represented as complainants, and/or over-represented as respondents in the WTO dispute settlement system. Most of this literature has focused on their propensity to participate, the idea being that under-representation as complainants or over representation as respondents would suggest a bias in the system. This paper provides some descriptive statistics that could shed light on a different manifestation of a “bias” against developing countries. It employs a dataset containing information on the legal claims made in each WTO dispute between 1995 and 2006, as well as a rough classification as to whether each specific claim was accepted or not by the respective panel. The data is used to compare the extent to propensity by which G2 countries, other industrialized countries, and developing countries have won the claims that they have made before panels.

Keywords: WTO; Dispute Settlement; Developing Countries; Winners and Losers

JEL-codes: F13; F53; O19

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1. Introduction

Most research on the role of developing countries in the World Trade Organization (WTO) Dispute Settlement (DS) system has focused on their propensity to participate as complainants, respondents and third parties. Much of this line of research has sought to examine claims that developing countries are under-represented as complainants, and/or over-represented as respondents in the DS system. Several reasons have been suggested why such biases are likely. For instance, developing countries may lack economic/legal capacity to defend their rights; or, “power” considerations might play a role (fear of issue linkage). Alternatively, market size considerations may play a role, with the limited scope for credibly threatening retaliation acting as a disincentive to bring cases.¹ The research along these lines has looked for circumstantial evidence in terms of biased participation or operation of the DS system.

If the above-type of allegations are well founded, it can be argued that reduced participation does not capture the full damage done to developing countries. The same factors that deter developing country from participating as complainants in the first place may also cause disadvantages in those cases where developing countries do participate. For instance, lack of legal resources may adversely affect the quality of the legal argumentation by developing countries. Very little systematic evidence exists beyond the pioneering work of Hudec (1993) – at least as far as we are aware – on whether developing countries, when they actually *do* participate in the DS system, fare better or worse than richer countries. The purpose of this paper is to take a first small step in enhancing our knowledge on this subject by *examining whether the outcomes with regard to legal claims differ between developing and developed countries.*

This paper employs a data set describing various aspects of the DS system that have been compiled under a World Bank project (hereinafter, the “dataset”) to take a first cut at exploring what the experience to date suggests regarding this question.² The objective underpinning the assembly of the data set was to systematically compile information on various aspects of the DS system, in order, *inter alia*, to facilitate assessment of its implications for developing countries. The dataset contains a large number of variables that reflect various aspects of developing country participation in disputes, as well as the procedural aspects of disputes. The most recent

¹ There is also research arguing that there are good reasons why one would expect to see developing countries *under*-represented as respondents in the DS system, reflecting the fact that the small size of markets acts as a disincentive for trading partners to bring cases—the expected “rate of return” is too low.

² The dataset can be freely accessed and downloaded at www.worldbank.org/trade/wtodisputes.

version covers all 351 WTO disputes initiated through the official filing of a *Request for Consultations* at the WTO, from January 1, 1995 until December 31, 2006. For these disputes, the dataset covers exhaustively all stages of dispute settlement proceedings, from the moment when consultations are requested to the eventual implementation of the panel/Appellate Body (AB) rulings (or, if not yet finalized, the last stage of the DS process that has been officially reported). The dataset contains several hundred variables, providing information on various aspects of the legal procedure. Horn and Mavroidis (2008a) describe the structure of the dataset, and Horn and Mavroidis (2008b) provide some descriptive statistics employing the data.

The dataset contains information on the legal claims made in each dispute, as well as a rough classification as to whether each specific claim was accepted or not by the panel/AB. In this paper we use these data to examine whether there are any systematic differences between developing and developed countries in terms of the outcomes of cases at the panel stage. The approach we take to classify outcomes is straightforward: we simply count the share of claims made by complainants in each case that was upheld by the panel. While this tells us nothing about the relative economic importance of different claims to the complainants, it does allow us to explore whether there are substantial differences across country groups in terms of one objective measure of the outcomes of DS cases, and this is what we are interested in. More generally, an analysis of number of claims made by countries is of interest in its own right – to our knowledge this has not been the subject of analysis to date in the literature.

A problem with our unit of account in assessing outcomes is that some measures (and thus some claims) will be more important than others to the claimants. Our approach does not provide any insight into this very important practical dimension of dispute cases. However, it is very difficult if not impossible for researchers to determine from the data on a DS case what “really mattered” and what did not. Indeed, in some situations being found to have violated a WTO agreement or commitment may actually be the preferred outcome for a respondent: e.g., if a government sees this as helpful in pursuing a policy reform that is opposed by a powerful domestic constituency. For instance, it has been suggested to us that the Chilean alcoholic beverage dispute is a case in point. What should be meant by “winning” such a dispute, and how should the analyst be able to correctly classify the outcome?

This problem also affects the approach taken by Hudec (1993), who focused on whether respondents comply. Hudec argued that the appropriate measure of the outcome of a DS case is

the policy result of a dispute, that is, whether the case lead to the implementation of policy changes by the ‘losing’ party. While this has the advantage of being an objective measure that is comparable across cases, it is not necessarily a good measure of the outcome of a dispute. Indeed, there is no obvious “appropriate” measure of outcomes of DS cases. Even if the variable of interest is held to be implementation, this can occur on either substantive or procedural grounds. For example, if a complainant loses on all substantive claims but nonetheless wins the case on the grounds of lack of notification, the respondent will be requested to notify. But this is unlikely to make much of a difference in practice, even if the respondent would comply to 100%. More generally, as already mentioned, “losers” may actually perceive that they have won, e.g., if this helps the government concerned pursue policies that it thinks are beneficial but were impeded by domestic political economy constraints. Or, the objective may simply have been to raise the political profile of a policy matter, perhaps as part of a strategy to place the subject on the agenda of a negotiating round. Although obviously important, implementation as the benchmark is not necessarily the most appropriate indicator of outcomes given the absence of information regarding the “true” underlying objectives of the parties to a dispute. While our focus in this paper is narrower than the one advocated by Hudec, it is arguably a useful complement to the approach he pioneered. The number of claims can be readily observed and measured – there is no need for subjective assessments or interpretation by observers: the number of claims made in a dispute is simply a datum.

The analysis in the paper is limited to an initial exploration of the data with a view to identifying more precise hypotheses for future research, both qualitative and quantitative, that can be pursued using the database. The data on number of claims made by different groups of countries across different types of policy areas/WTO disciplines throw up many questions regarding the determinants of the expected payoffs of alternative legal strategies and the observed behavior of WTO Members – including whether to bring a dispute, whether to participate in one as a co-complainant, the importance of the identity of co-complainants, the number of claims to bring – and the factors that affect the rulings of WTO panels/AB (e.g., nationality of panelists, role of legal representation and legal precedent).

2. The data

The focus of our analysis is on *bilateral disputes*, where the term *bilateral* refers to a dyad of WTO Members (complainant, defendant). A bilateral dispute might contain more than one legal claim. Multiple complaints (for instance, DS27, *EC – Bananas III*, where four WTO Members challenged the consistency of EC practices), are disaggregated into a number of bilateral disputes equal to the number of complainants involved.³ The “unit of account” that is the center of attention in the analysis are *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.

Our interest is in the outcomes of the cases. The universe of outcomes that form our dataset comprises the findings of WTO adjudicating bodies as they appear in the Conclusions and Recommendations Section of each report. We classify outcomes into three groups: (1) claims where the complainant prevailed; (2) claims where the defendant prevailed; and (3) a residual group of claims where the outcome is unclear. While 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. One reason is that claims may not be addressed by a panel as result of the exercise of judicial economy. Outcomes also may not correspond to specific claims initiated by the complainant: this is the case where a panel, for instance, reviews, on its own initiative, its competence to adjudicate a particular claim.⁴ Insofar as they are reported, we also map intermediate findings – those that *might* have a bearing on the final finding (that is, the finding on the claim as presented by the complainant), but which are distinct from final findings – into the third category.

In this paper, WTO Members are classified into four groups: G2 – the European Community (EC)⁵ and the United States (US); IND – 15 other industrialized countries, including three high-income WTO Members that are (self-)classified as developing in the WTO (Hong Kong, South Korea and Singapore), DEV – developing countries other than LDCs; and LDC – the group of least developed countries. The exact classification is described in Appendix 1. The LDC group comprises the countries that the United Nations has defined to be least developed. All

³ So far, there has never been a case before a WTO panel where more than one defendant has been involved.

⁴ WTO adjudicating bodies have, according to standing case-law under Art. 6.2 DSU, the competence to unilaterally review their competence to adjudicate a dispute and are not, consequently, *necessarily* bound by the content of a request for establishment of a panel as submitted by the complainant.

⁵ 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, and as of January 1, 2007, it is EC-27.

OECD countries are mapped to IND, as are all current EC members in the period before they acceded to the EC. The DEV group consists of all other countries.

3. A broad characterization of the distribution of claims

We use information on all bilateral disputes between 1995 and 2006 in which a panel was formed and issued a report, and in which at least one legal claim was made. There are in total 144 such bilateral disputes.⁶

Table 1: Distribution of the number of bilateral disputes by group pairing

| Complainant | Respondent | | | |
|-------------|------------|-----|-----|-----|
| | G2 | IND | DEV | TOT |
| G2 | 20 | 22 | 13 | 55 |
| IND | 35 | 5 | 7 | 47 |
| DEV | 33 | 4 | 5 | 42 |
| TOT | 88 | 31 | 25 | 144 |

3.1 The distribution of bilateral disputes across groups

Table 1 provides a classification of these disputes across the various groups of complainants and respondents. As is often remarked, LDCs are completely absent, reflecting the fact the few instances where they have participated in the DS system, the cases have not gone beyond the consultations stage. The shares of the three groups as complainants in the bilateral disputes are fairly evenly distributed: G2 accounts for slightly more (55 cases or 38%) than IND (33%) and DEV (29%). The role of G2 as a respondent is much more highly concentrated: the EC or US are respondents in 88 of the disputes (61% of all cases), compared to 22% for IND and 17% for DEV. Noteworthy is that G2 countries are involved on one or the other side in 85% of the bilateral disputes in the dataset. Both IND and DEV mainly target G2 when acting as complainants – presumably reflecting the fact that these are the two largest markets in the world – while the G2 spread their complaints more evenly across each other and the two other groups.

⁶ The difference between the 351 formal disputes brought between 1996 and 2006 and the 144 that are the focus of this paper reflects cases that were settled, dropped or remain pending. The consultation process and more generally the role and effectiveness of the DS system in getting WTO members to settle cases “out of court” is an important and relatively neglected dimension of the WTO process. In this paper, as is true of most of the literature, the focus is on those cases that went to the panel stage. See, e.g., Davey (2005) for a discussion of the effectiveness of consultations.

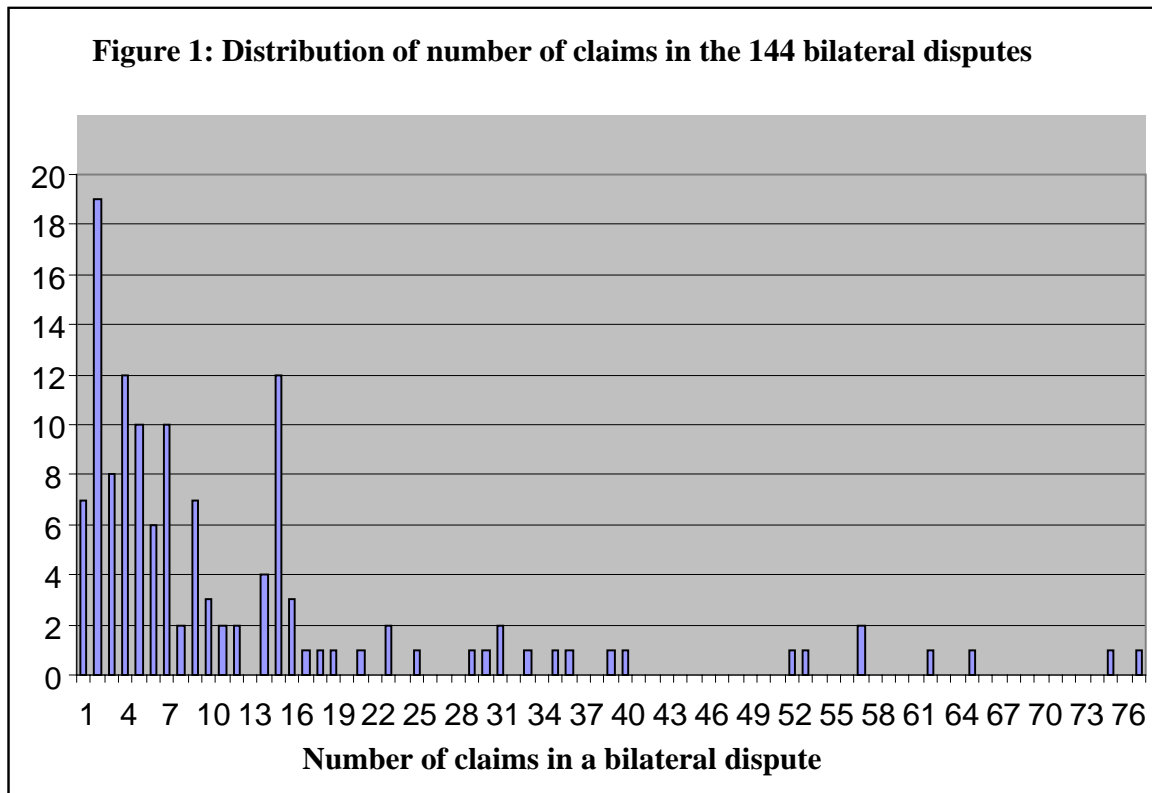
It should be noted that although the DEV group encompasses 74 countries, only 18 have brought a case. Of these 18 countries, Brazil and India account for more than half of the total number of bilateral disputes brought by DEV (Appendix 6 and 7).

3.2 The distribution of claims across groups

As noted above, the unit of account used in this study is a “legal claim”. The 144 bilateral disputes in the dataset involved a total of 2,369 claims. A total of 301 different legal grounds are quoted according to the data set. The majority of cases have a limited number of claims – between 1 and 15 – but a few have over 80 (Figure 1). The mode is two claims. Table 2 provides a breakdown of these claims across the three groups of Members. A first striking feature is that the IND group accounts for 1089 of the 2,369 claims, or almost half (46%) of all the claims that have been made during the first 12 years the WTO DS system was operational. This contrasts with IND’s 33% share of the 144 bilateral disputes in the dataset. Thus, in this crude sense IND is over-represented (they include more claims per bilateral dispute than any other group). DEV accounts for 27% of all claims, which is closely in line with their 29% share of all bilateral disputes. Consequently, G2 is “under-represented”, accounting for only 27% of all claims, while acting as complainants in 38% of all bilateral disputes. An interesting question therefore is why the G2 on average – across all the disputes in which they have been complainants – make fewer claims than DEV and IND.

Table 2: Distribution of number of legal claims by group pairing

| Complainant | Respondent | | | |
|--------------------|-------------------|------------|------------|------------|
| | G2 | IND | DEV | TOT |
| G2 | 380 | 201 | 48 | 629 |
| IND | 971 | 37 | 81 | 1089 |
| DEV | 489 | 79 | 83 | 651 |
| TOT | 1,840 | 317 | 212 | 2369 |



The claims by all three groups, but in particular by IND, are heavily skewed toward G2 as a respondent. While acting as a respondent in 61% of the bilateral disputes in the data set, they are the targets of 78% of all claims. The situation is the opposite for developing countries: they are respondents in 17% of the bilateral disputes, but only confront 9% of the claims. The role of G2 as a complainant against DEV is very modest compared with those of IND and DEV: G2 only accounts for 23% of the claims against DEV, while IND accounts for 38% and DEV for 39%.

There are two rather different ways to view the burden imposed by the DS system on DEV. If judged from the point of view of the number of bilateral disputes in which they have to put up a legal defense, 17.4% of the bilateral disputes are directed at DEV. On the other hand, if the burden is measured by the number of legal claims that need to be refuted, 8.9% of all claims are against DEV. Table 3 provides another way to characterize activity with regard to legal claims. It depicts the average number of claims for each pair (complainant group, respondent group). 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 28 claims. This pattern presumably reflects a complicated interaction between trade patterns, features of the various agreements under which the trade takes place, and all other factors going into the decision on legal strategy.

Table 3: Average number of claims within each group pairing

| Complainant | Respondent | | |
|-------------|------------|------|------|
| | G2 | IND | DEV |
| G2 | 19 | 9.14 | 3.7 |
| IND | 27.7 | 7.4 | 11.6 |
| DEV | 14.8 | 19.8 | 16.6 |

3.3 The distribution of claims across provisions/agreements

The majority of claims made in the disputes relate to the three contingent protection-related disciplines of the WTO: the agreements on antidumping (AD), subsidies and countervailing measures (SCM), and safeguards (SG) (Table 4; detailed information on the number of claims by WTO provision and country grouping is given in Appendices 2-5). This is not surprising given that in absolute terms the case-law on these three instruments constitute almost 25% of all disputes (Horn and Mavroidis, 2008b). In part this is simply a reflection of the significant increase in the use of these three instruments – see Table 5. The high share of SG claims is somewhat misleading in that they do not imply these types of cases have come to be an important share of all DS. The high number of claims instead reflects similar (identical) cases being brought by multiple WTO members. More specifically, the US steel safeguard cases alone (DS248-254, 258-9) represent almost 80% of the total number of SG claims made. This compares to the 15% share of the US in the total number of safeguard actions imposed during the 1995-2005 period (Bown, 2006).⁷

A similar point can be made in respect of disputes concerning the use of sanitary and phytosanitary (SPS) measures. Of the 286 claims made in respect of the SPS agreement, over 90% pertain to three related cases: the EC – Approval and Marketing of Biotech Products disputes (DS 291/292/293). Another factor that may explain why the majority of claims occur for these three instruments is the fact that detailed procedural requirements are laid out for actions under each to be WTO-compliant. Many of these requirements are not expressed in precise

⁷ The US launched 10 safeguard investigations during this period.

language. For example, a number of AD disputes concern Art. 12, which calls for the investigating authorities to publish the essence of their findings. However, it does not spell out exactly what must be published.⁸

Table 4: The distribution of claims across agreements/WTO provisions

| Provision/agreement | No of claims |
|---|---------------------|
| Antidumping (AD) | 615 |
| Agreement on Textiles and Clothing (ATC) | 13 |
| Agreement on Agriculture (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 |
| Subsidies and Countervailing Measures (SCM) | 269 |
| Safeguards (SG) | 580 |
| Sanitary & Phytosanitary Measures (SPS) | 285 |
| Technical Barriers to Trade (TBT) | 14 |
| TRIPs | 61 |
| WTO:XVI.4 | 30 |

Table 5. Use of the WTO Agreements on Safeguards and Antidumping, 1995-2005

| | Number of Safeguard Investigations Initiated | Number of Definitive Safeguard Measures Imposed | Number of Antidumping Investigations Initiated | Number of Definitive Antidumping Measures Imposed |
|---------------------------------------|---|--|---|--|
| Developing/transition economy members | 120 | 59 | 1,687 | 1,126 |
| Developed economies | 25 | 11 | 1,225 | 696 |

Source: Bown (2006).

⁸ While one may expect that if specific provisions have been interpreted in a consistent manner by panels/AB these should give rise to fewer disputes than for provisions where the case-law has not been uniform, this hypothesis remains to be tested. In practice it is not straightforward to identify a benchmark for establishing which provisions have been interpreted in a uniform manner, and which not.

4. A broad characterization of the distribution of outcomes

We next turn to the reaction by panels to the 2,369 legal claims recorded in our data set. As described above, the outcomes are coded using three categories: win, loss or unclear. Table 6 gives the number of successful claims for each pair of complainant and respondent, as well as totals for the various categories.⁹

Table 6: Total number of successful claims by group pairing

| Complainant | Respondent | | | |
|-------------|------------|-----|-----|-------|
| | G2 | IND | DEV | TOT |
| G2 | 237 | 127 | 43 | 407 |
| IND | 538 | 35 | 41 | 614 |
| DEV | 300 | 18 | 58 | 376 |
| TOT | 1,075 | 180 | 142 | 1,397 |

Of interest here is the average number of successful claims. This can be calculated in different ways. One is to simply divide 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. Data on this measure are reported in Table 7. It is striking that when comparing the three groups’ overall success rates, they are remarkably similar: when acting as complainants, G2, IND and DEV win between 56% and 65% of the claims they advance, when calculated as a share of all the claims each group makes (Table 7). Similarly, the complainant on average wins 56-67% of all claims regardless of whether it is directed vis-à-vis G2, IND or DEV.

Table 7: Share of successful claims, based on the sum of all claims by group pair (%)

| Complainant | Respondent | | | |
|-------------|------------|------|------|------|
| | 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 |

Although shares of successful claims are similar across many group pairs, Table 7 also reveals a significant variability across several complainant-respondent constellations. In

⁹ Detailed data by dispute is presented in Appendix 6.

particular, DEV countries have been much less successful against IND countries than they have been against the G2 or other DEV countries. However, the 22.8% success rate is to a significant degree explained by the large number of claims in DS 312 *Korea – Certain Paper*, where Indonesia acted as complainant. It thus, probably, suffers from selection bias. But DEV have also been less successful in two of the other three bilateral disputes they have had against IND. The other “outliers” in terms of success rates are IND against other IND countries and G2 versus DEV – in both instances registering around a 90% success rate. These numbers indicate that the cases brought were directed towards rather clear-cut violations of the relevant WTO disciplines.

Table 8 provides an alternative picture of the average success rates of claims. In order to compile it, we first calculate the fraction of claims that are successful for each dispute, and then compute the average of these fractions. This method in a certain sense takes greater account of the variability across disputes of success rates.¹⁰ The picture emerging from Table 8 appears to be rather similar to the one provided by Table 7. Again, the overall success rates of the three groups when acting as complainants are comparable, while there are greater differences across the bilateral disputes where each of the three groups acted as a respondent. In particular, 66% of all disputes against G2 succeeded, while the corresponding number for disputes against DEV is 75.5%.

Table 8: Average percentage successful claims for by group pairings, based on success rates for each bilateral dispute

| Complainant | Respondent | | | |
|-------------|------------|------|------|------|
| | G2 | IND | DEV | TOT |
| G2 | 68.7 | 70.8 | 94.1 | 77.9 |
| IND | 53.9 | 95.6 | 72.7 | 74.1 |
| DEV | 76 | 43.5 | 59.8 | 59.8 |
| TOT | 66.2 | 70 | 75.5 | 70.6 |

A natural question is whether the number of claims that are made affects the success rate. For instance, it might be thought that a large number of claims reflects a careful examination of

¹⁰ To see the difference between the two methodologies, consider the following example. Let there be two disputes A and B for some complainant-respondent pairing. In A there was one claim, and it was accepted, and in B there were two claims, one of which was accepted. One view of this is to say for this pairing, there were a total of 3 claims and two of these were successful so the average success rate is $2/3$ – this is how Table 6 is constructed. An alternative would be to do as in Table 7, and say that the success rate was 1 in dispute A and .5 in dispute B, so the average success rate is $(1 + .5)/2$ or $3/4$.

the legal situations, or alternatively, careless litigation. Figure 2 provides some information on this. An alternative hypothesis is that a large number of claims will lead the courts to use judicial economy, or to not adjudicate for other reasons. Figure 3 shows evidence compatible with such an argument. As can be seen, there is a clear tendency that with larger number of claims, an increasing fraction is not being adjudicated. It is also noteworthy, however, that 119 out of the 144 bilateral disputes, (over 80% of cases) record no instance of non-adjudication.

Another relevant question is whether success rates vary across types of disputes. Table 9 reports for each WTO agreement the number of claims that are won, lost, and unclear, as well as the percentage distribution for each type of outcome for claims under the agreement. Across WTO disciplines, the largest number of claims made in the DS system during 1995-2006 referred to the AD, GATT, SG, SPS, and SCM agreements (in declining order). The average “win rate” across all claims and agreements is 59%. Claims under AD have among the lowest win rates (30%), while win rates for claims under the SCM and SPS agreements are also below the average, at 44% and 51%. The SG is *sui generis* in that the US steel cases dominate this category – they account for 447 of the 580 SG claims (77%). Thus, of the agreements that have generated a large numbers of claims in the aggregate, only one – GATT – is generally associated with a high share of “wins” (68%). What underlies this disparity requires further research – possible explanations are that GATT articles are well understood, with an extensive case law that predates the formation of the WTO, and that they are relatively broad and unambiguous to interpret (e.g., disciplines such as national treatment, tariff bindings, MFN). Whatever the reason, there appears to be less certainty/clarity for claimants and/or the panels when it comes to assessing claims pertaining to the AD, SCM and SPS agreements.

Figure 2: Average success rate over all bilateral disputes

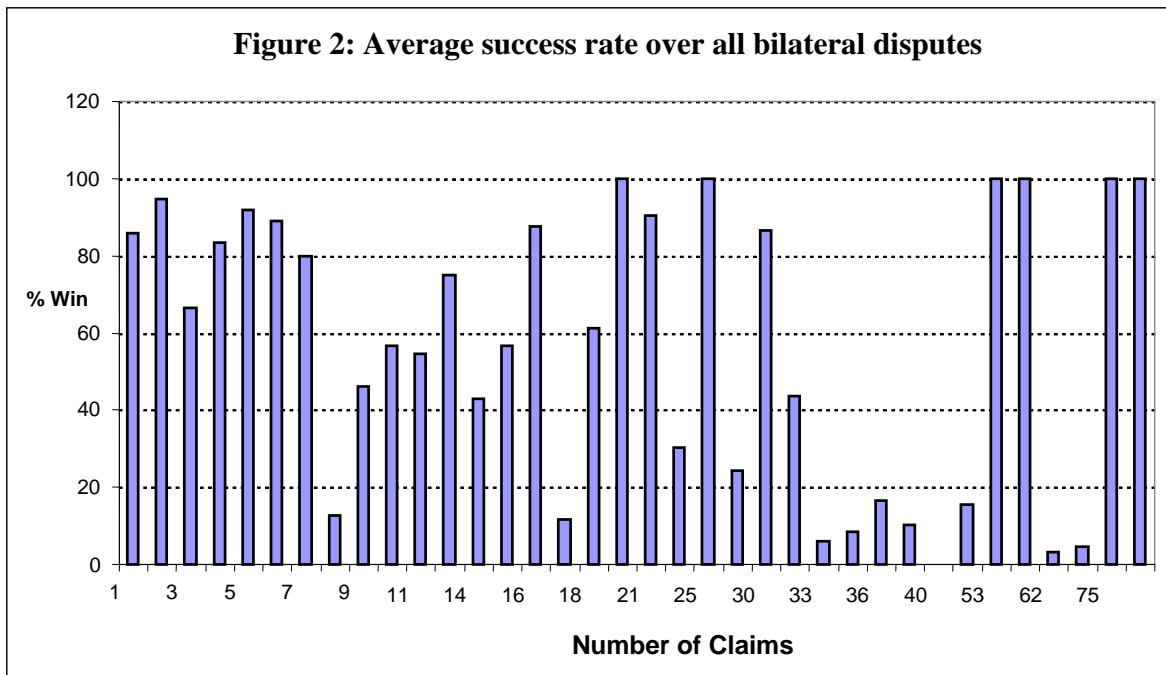


Figure 3: Average rate of non-adjudicated claims over all bilateral disputes

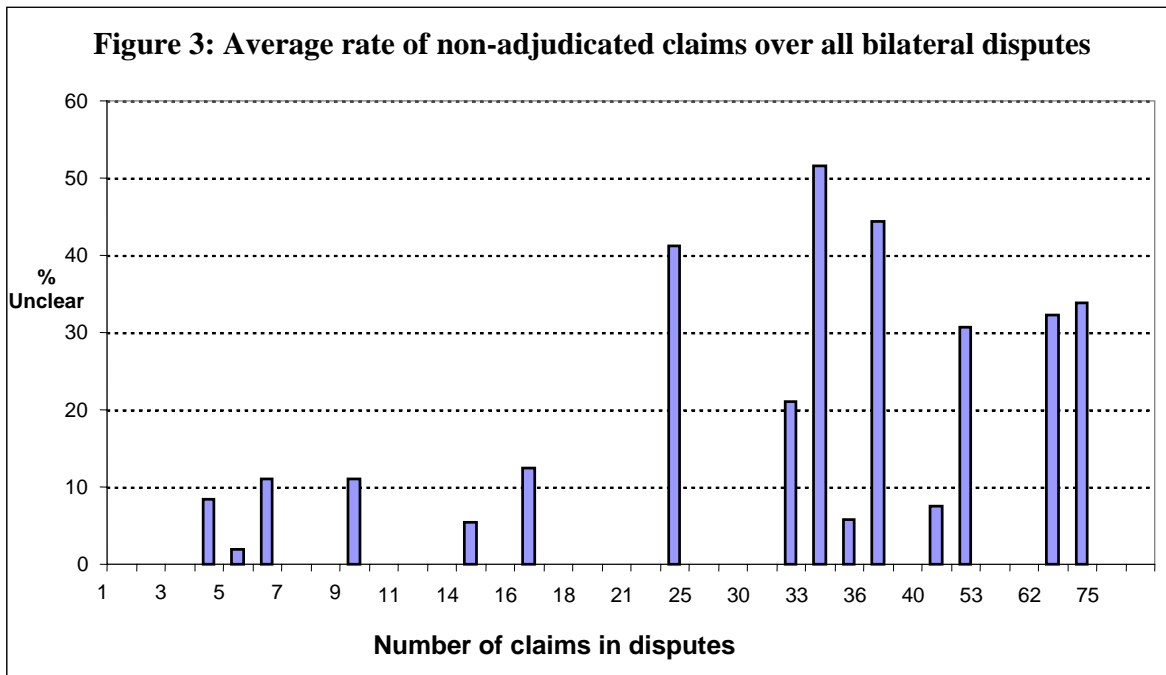


Table 9: Outcome of claims in bilateral disputes for various agreements

| Agreement | Data | Outcome | | | Total |
|------------------|------------------|---------|------|---------|-------|
| | | Win | Lose | Unclear | |
| AD | Number of claims | 183 | 329 | 103 | 615 |
| | Row percent | 30 | 53 | 17 | 100 |
| ATC | Number of claims | 12 | 1 | 0 | 13 |
| | Row percent | 92 | 8 | 0 | 100 |
| AA | Number of claims | 43 | 2 | 1 | 46 |
| | Row percent | 93 | 4 | 2 | 100 |
| DSU | Number of claims | 9 | 4 | 3 | 16 |
| | Row percent | 56 | 25 | 19 | 100 |
| Enabling Clause | Number of claims | 1 | 0 | 0 | 1 |
| | Row percent | 100 | 0 | 0 | 100 |
| GATS | Number of claims | 23 | 5 | 2 | 30 |
| | Row percent | 77 | 17 | 7 | 100 |
| GATT | Number of claims | 257 | 88 | 36 | 381 |
| | Row percent | 68 | 23 | 9 | 100 |
| GPA | Number of claims | 0 | 1 | 0 | 1 |
| | Row percent | 0 | 100 | 0 | 100 |
| Import Licensing | Number of claims | 6 | 2 | 0 | 8 |
| | Row percent | 75 | 25 | 0 | 100 |
| Rules of Origin | Number of claims | 0 | 8 | 0 | 8 |
| | Row percent | 0 | 100 | 0 | 100 |
| Ref Paper(GATS) | Number of claims | 2 | 1 | 0 | 2 |
| | Row percent | 67 | 33 | 0 | 100 |
| SCM | Number of claims | 118 | 112 | 39 | 269 |
| | Row percent | 44 | 42 | 14 | 100 |
| SG | Number of claims | 560 | 14 | 6 | 580 |
| | Row percent | 97 | 2 | 1 | 100 |
| SPS | Number of claims | 145 | 55 | 85 | 285 |
| | Row percent | 51 | 19 | 30 | 100 |
| TBT | Number of claims | 1 | 2 | 11 | 14 |
| | Row percent | 7 | 14 | 79 | 100 |
| TRIMs | Number of claims | 5 | 2 | 0 | 7 |
| | Row percent | 71 | 29 | 0 | 100 |
| TRIPS | Number of claims | 17 | 30 | 14 | 61 |
| | Row percent | 28 | 49 | 23 | 100 |
| WTO | Number of claims | 15 | 10 | 5 | 30 |
| | Row percent | 50 | 33 | 17 | 100 |
| Total | Number of claims | 1398 | 666 | 305 | 2369 |
| | Row percent | 59 | 28 | 13 | 100 |

5. Concluding remarks

This paper has presented and discussed one dimension of a new, comprehensive dataset on WTO dispute settlement – the number of claims made in cases, and the extent to which they are accepted by panels. The data reveal that on the one hand there is very substantial variation across

types of disputes (the WTO agreements that are invoked) and types of countries – with lower income countries (DEV) tending to put forward a significantly greater number of claims than higher income WTO members. But the data on the other hand suggest that the rate of success in WTO DS cases – if measured by the share of claims “won” – is broadly similar across industrialized and developing countries, despite the differences in ‘capacity’ and ‘administrative sophistication’ that presumably exist across the groups, in particular DEV relative to IND and G2. This is somewhat counter-intuitive in that it goes against the literature, which places a lot of emphasis on the importance of embedded, institutional expertise as a factor that importantly influences the outcome in WTO litigation.

While capacity constraints of various types certainly may constrain the use of the DS system – i.e., result in fewer cases being brought by DEV members – the data suggest that *conditional* on a case being brought that results in the formation of a DS panel, the success rate as measured by share of claims “won” is similar. As things stand, absent additional research on these questions, the data do not support the argument that the DEV group is disadvantaged because they cannot display expertise comparable to that of G2 and IND. Understanding the reasons for this finding requires further research, but may well reflect the fact that the countries in the DEV group that make most use of the DS system are generally either large or middle-income. Thus, the participation constraint for these countries may be much less than it is for lower-income countries. In addition, initiatives such as the Advisory Center on WTO Law (ACWL) should have helped to level the playing field with regard to access to legal expertise for smaller and poorer countries.

An interesting question for which we know fewer potential explanations is why we observe such large differences in the number of claims across complainant-respondent groupings. The type of case/dispute clearly plays a role: AD, SCM and SPS all have high numbers of claims. All three agreements are rather technical and impose numerous disciplines that can – and do – give rise to violation claims. Understanding this dimension of the DS case load is a subject on which further research is needed, in particular the extent to which it can explain the large discrepancy in the average number of claims brought by countries with different levels of per capita incomes. Even if the number of claims brought is just one, perhaps minor, dimension of the DS system, we believe that additional analysis of the determinants of the pattern of claims revealed by the dataset could generate useful insights into the behavior/strategy of countries.

Possible hypotheses that could be explored in empirical analysis using the database include the following:

- (a) Is legal capacity not an issue, because panels are quite intrusive and can make up for deficient arguments? How effective has been the use of discovery powers by panels?
- (b) Is it the case that legal expertise is not that costly and/or readily available (e.g., as a result of the ACWL), and that even WTO Members with limited institutional expertise can easily outsource/obtain it?
- (c) Is it the case that the picture emerging from the claims data is, in a way, flawed, since WTO Members with *very* limited administrative expertise do not participate as complainants in the first place? The argument to explore here would be whether those participating in WTO panel adjudication share a minimum level of internal government/administrative expertise that is required for successful litigation.
- (d) Do the chances for a developing country to succeed with a claim depend on the identity of the respondent?
- (e) Do the chances for a developing country to succeed with a claim depend on the number of complainants in a case, or whether a major trading power is a co-complainant?

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Appendix 1: Classification of WTO Members

G2

EC
US

LDCs

Angola
Bangladesh
Benin
Burkina Faso
Burundi
Cambodia
Central African Rep
Chad
Dem. Rep. Congo
Djibouti
Gambia
Guinea
Guinea-Bissau
Haiti
Lesotho
Madagascar
Malawi
Maldives
Mali
Mauritania
Mozambique
Myanmar
Nepal
Niger
Rwanda
Senegal
Sierra Leone
Solomon Islands
Togo
Uganda
Zambia

Industrialized (IND)

Australia
Canada
Croatia
Hong Kong – China
Iceland
Israel
Japan
Korea
Liechtenstein
Mexico
New Zealand
Norway
Singapore
Switzerland
Turkey

Developing (DEV)

Albania
Antigua and Barbuda
Argentina
Armenia
Bahrain
Barbados
Belize
Bolivia
Botswana
Brazil
Brunei Darussalam
Cameroon
Chile
China
Colombia
Congo
Costa Rica
Côte d'Ivoire
Cuba
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Fiji
FYR Macedonia
Gabon
Georgia
Ghana
Grenada
Guatemala
Guyana
Honduras
India
Indonesia
Jamaica
Jordan
Kenya
Kuwait
Kyrgyz Republic
Macao - China
Malaysia
Mauritius
Moldova
Mongolia
Morocco
Namibia
Nicaragua
Nigeria
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Qatar
Saint Kitts and Nevis
Saint Lucia
Saint Vincent & the Grenadines
Saudi Arabia
South Africa
Sri Lanka
Suriname
Swaziland
Chinese Taipei
Tanzania
Thailand
Trinidad and Tobago
Tunisia
United Arab Emirates
Uruguay
Venezuela
Zimbabwe

Appendix 2: Detailed description of no of claims per provision

| Provision | No. of claims | Provision | No. of claims | Provision | No. of claims |
|-------------|---------------|------------|---------------|-------------------------|---------------|
| AD:1 | 18 | AD:4.1 | 4 | ATC:6.2 | 3 |
| AD:10.1 | 2 | AD:5.1 | 1 | ATC:6.4 | 3 |
| AD:10.2 | 1 | AD:5.2 | 3 | ATC:6.6d | 1 |
| AD:10.4 | 1 | AD:5.3 | 6 | AoA | 1 |
| AD:10.6 | 2 | AD:5.4 | 12 | AoA:10.1 | 2 |
| AD:10.7 | 2 | AD:5.5 | 4 | AoA:3.1a | 1 |
| AD:11 | 2 | AD:5.6 | 2 | AoA:3.1b | 1 |
| AD:11.1 | 8 | AD:5.7 | 1 | AoA:3.2 | 4 |
| AD:11.2 | 7 | AD:5.8 | 12 | AoA:3.3 | 7 |
| AD:11.3 | 19 | AD:6 | 1 | AoA:4.2 | 4 |
| AD:12.1 | 4 | AD:6.1 | 3 | AoA:5.1b | 1 |
| AD:12.1.1 | 1 | AD:6.1.1 | 2 | AoA:6 | 2 |
| AD:12.1.1iv | 1 | AD:6.1.2 | 4 | AoA:7.2a | 2 |
| AD:12.2 | 6 | AD:6.1.3 | 1 | AoA:8 | 8 |
| AD:12.2.2 | 4 | AD:6.10 | 5 | AoA:9.1a | 7 |
| AD:12.3 | 2 | AD:6.2 | 9 | AoA:9.1c | 5 |
| AD:15 | 14 | AD:6.4 | 9 | AoA:9.1d | 1 |
| AD:17.6i | 1 | AD:6.5 | 2 | DSU:21.5 | 1 |
| AD:18 | 1 | AD:6.5.1 | 1 | DSU:22.6 | 1 |
| AD:18.1 | 12 | AD:6.6 | 2 | DSU:23.1 | 4 |
| AD:18.3 | 2 | AD:6.7 | 2 | DSU:23.2a | 4 |
| AD:18.4 | 23 | AD:6.8 | 15 | DSU:23.2b | 1 |
| AD:2 | 5 | AD:6.9 | 8 | DSU:23.2c | 4 |
| AD:2.1 | 6 | AD:7.4 | 1 | DSU:3.7 | 1 |
| AD:2.2 | 3 | AD:8.3 | 10 | EnC:2a | 1 |
| AD:2.2.1 | 1 | AD:9.1 | 2 | GATS: Telecom Annex ,5a | 2 |
| AD:2.2.1.1 | 1 | AD:9.2 | 3 | GATS: Telecom,55 | 2 |
| AD:2.2.2 | 4 | AD:9.3 | 11 | GATS:II | 7 |
| AD:2.4 | 29 | AD:9.4 | 1 | GATS:V | 2 |
| AD:2.4.1 | 4 | AD:9.5 | 2 | GATS:VI.1 | 1 |
| AD:2.4.2 | 16 | AD:AnnI.2 | 1 | GATS:VI.3 | 1 |
| AD:2.6 | 1 | AD:AnnI.7 | 1 | GATS:XI | 1 |
| AD:3.1 | 32 | AD:AnnII | 4 | GATS:XIV | 1 |
| AD:3.2 | 21 | AD:AnnII.1 | 1 | GATS:XIV.a | 1 |
| AD:3.3 | 7 | AD:AnnII.3 | 4 | GATS:XIV.c | 1 |
| AD:3.4 | 24 | AD:AnnII.5 | 2 | GATS:XVI.1 | 1 |
| AD:3.5 | 22 | AD:AnnII.6 | 7 | GATS:XVI.2 | 1 |
| AD:3.6 | 2 | AD:AnnII.7 | 4 | GATS:XVII | 9 |
| AD:3.7 | 4 | ATC:2 | 1 | GATT:6.1.3 | 1 |
| AD:3.7i | 1 | ATC:2.4 | 2 | GATT:I | 9 |
| AD:3.8 | 2 | ATC:6 | 2 | GATT:I.1 | 9 |
| AD:4 | 1 | ATC:6.10 | 1 | GATT:II | 4 |

Appendix 2: Detailed description of no of claims per provision (cont'd)

| Provision | No of claims | Provision | No of claims | Provision | No of claims |
|------------------|---------------------|---------------------------|---------------------|------------------|---------------------|
| GATT:II.1 | 3 | GPA:XXII.2 | 1 | SCM:21.1 | 5 |
| GATT:II.1(a) | 1 | Illustrative List (TRIMS) | 1 | SCM:21.2 | 1 |
| GATT:II.1(b) | 2 | ILA:1 | 1 | SCM:21.3 | 7 |
| GATT:II.1a | 4 | ILA:1.2 | 5 | SCM:22.3 | 1 |
| GATT:II.1b | 9 | ILA:1.4a | 1 | SCM:27.4 | 1 |
| GATT:III | 2 | ILA:3 | 1 | SCM:28.2 | 4 |
| GATT:III.2 | 25 | ROO:2b | 3 | SCM:3 | 1 |
| GATT:III.4 | 44 | ROO:2c | 3 | SCM:3.1a | 24 |
| GATT:III.8b | 1 | ROO:2d | 2 | SCM:3.1b | 3 |
| GATT:VI | 5 | Reference Paper(1.1) | 1 | SCM:3.2 | 8 |
| GATT:VI.1 | 12 | Reference Paper(2.2b) | 2 | SCM:32.1 | 19 |
| GATT:VI.2 | 26 | SCM:1 | 4 | SCM:32.5 | 14 |
| GATT:VI.3 | 17 | SCM:1.1 | 3 | SCM:4 | 1 |
| GATT:VI.4 | 2 | SCM:1.1a | 2 | SCM:4.10 | 10 |
| GATT:VI.6a | 1 | SCM:1.1b | 2 | SCM:5c | 2 |
| GATT:VIII | 2 | SCM:1.2 | 1 | SCM:7 | 1 |
| GATT:X | 1 | SCM:10 | 16 | SCM:7.9 | 10 |
| GATT:X.1 | 2 | SCM:11.4 | 11 | SCM:AnnI | 1 |
| GATT:X.2 | 2 | SCM:12 | 1 | SG:11 | 1 |
| GATT:X.3 | 8 | SCM:12.6 | 1 | SG:12.1 | 2 |
| GATT:X.3a | 33 | SCM:14 | 10 | SG:12.1a | 1 |
| GATT:XI | 9 | SCM:14.d | 2 | SG:12.1b | 1 |
| GATT:XI.1 | 8 | SCM:14d | 1 | SG:12.1c | 1 |
| GATT:XIII | 2 | SCM:15.1 | 1 | SG:12.2 | 2 |
| GATT:XIII.1 | 6 | SCM:15.2 | 3 | SG:12.3 | 5 |
| GATT:XIII.2 | 1 | SCM:15.4 | 2 | SG:2 | 4 |
| GATT:XIII.2a | 1 | SCM:15.5 | 2 | SG:2.1 | 192 |
| GATT:XIX | 4 | SCM:17.1b | 1 | SG:3 | 1 |
| GATT:XIX.1 | 52 | SCM:17.2 | 1 | SG:3.1 | 160 |
| GATT:XIX.1a | 13 | SCM:17.3 | 1 | SG:3.2 | 1 |
| GATT:XV.9a | 1 | SCM:17.4 | 1 | SG:4 | 5 |
| GATT:XVII.1 | 1 | SCM:17.5 | 1 | SG:4.1a | 1 |
| GATT:XVII.1a | 3 | SCM:18.3 | 10 | SG:4.1b | 6 |
| GATT:XVII.1b | 1 | SCM:19 | 2 | SG:4.1c | 5 |
| GATT:XVIII.11 | 1 | SCM:19.1 | 5 | SG:4.2 | 74 |
| GATT:XVIII.B | 1 | SCM:19.4 | 12 | SG:4.2a | 8 |
| GATT:XX | 6 | SCM:2 | 3 | SG:4.2b | 74 |
| GATT:XX.b | 3 | SCM:2.1 | 1 | SG:4.2c | 3 |
| GATT:XX.d | 14 | SCM:2.1c | 1 | SG:5 | 3 |
| GATT:XX.g | 2 | SCM:2.4 | 1 | SG:5.1 | 3 |
| GATT:XXIII.1b | 2 | SCM:20.6 | 2 | SG:7.1 | 1 |
| GATT:XXIV | 2 | SCM:21 | 2 | SG:8.1 | 2 |

Appendix 2: Detailed description of no of claims per provision (cont'd)

| Provision | No of claims | Provision | No of claims |
|------------------|---------------------|------------------|---------------------|
| SG:9.1 | 1 | TRIPs:49 | 1 |
| SPS3.1 | 1 | TRIPs:63.1 | 1 |
| SPS:2.2 | 5 | TRIPs:63.2 | 1 |
| SPS:2.3 | 1 | TRIPs:65.1 | 1 |
| SPS:3.1 | 1 | TRIPs:70.8a | 2 |
| SPS:3.3 | 2 | TRIPs:70.9 | 2 |
| SPS:5.1 | 4 | TRIPs:9.1 | 2 |
| SPS:5.5 | 3 | WTO:XVI.4 | 30 |
| SPS:5.6 | 4 | | |
| SPS:5.7 | 2 | | |
| SPS:7 | 1 | | |
| SPS:AnnB.1 | 1 | | |
| TBT:2.1 | 1 | | |
| TBT:2.2 | 1 | | |
| TBT:2.4 | 1 | | |
| TRIMs:2 | 6 | | |
| TRIPs:13 | 2 | | |
| TRIPs:33 | 1 | | |
| TRIPs:70.1 | 1 | | |
| TRIPs:70.2 | 1 | | |
| TRIPs:1.1 | 1 | | |
| TRIPs:15.1 | 1 | | |
| TRIPs:16.1 | 4 | | |
| TRIPs:2.1 | 12 | | |
| TRIPs:20 | 1 | | |
| TRIPs:22.2 | 1 | | |
| TRIPs:24.5 | 1 | | |
| TRIPs:27.1 | 1 | | |
| TRIPs:28.1 | 2 | | |
| TRIPs:3 | 1 | | |
| TRIPs:3.1 | 6 | | |
| TRIPs:4 | 2 | | |
| TRIPs:41 | 2 | | |
| TRIPs:41.1 | 1 | | |
| TRIPs:41.2 | 1 | | |
| TRIPs:41.3 | 1 | | |
| TRIPs:42 | 3 | | |
| TRIPs:43 | 1 | | |
| TRIPs:44 | 1 | | |
| TRIPs:45 | 1 | | |
| TRIPs:46 | 1 | | |
| TRIPs:48 | 1 | | |

Appendix 3: Detailed description of no of claims per provision with G2 complainants

| Provision | No of claims |
|------------------|---------------------|
| SG:2.1 | 26 |
| GATT:III.4 | 24 |
| SG:3.1 | 23 |
| GATT:III.2 | 20 |
| GATT:X.3a | 19 |
| GATT:XIX.1 | 11 |
| SG:4.2 | 10 |
| WTO:XVI.4 | 10 |
| SG:4.2b | 9 |
| GATT:VI.2 | 8 |
| GATT:XX.d | 8 |
| AD:1 | 7 |
| AD:18.4 | 7 |
| AD:2.4 | 7 |
| GATT:VI.1 | 7 |
| SCM:10 | 7 |
| SCM:21.3 | 7 |
| AD:2.4.2 | 6 |
| AD:9.3 | 6 |
| TRIPs:2.1 | 6 |
| GATT:I | 5 |
| GATT:XII | 5 |
| SCM:14 | 5 |
| AD:5.8 | 4 |
| SCM:19.4 | 4 |
| SCM:21.1 | 4 |
| SCM:3.1a | 4 |
| SG:12.3 | 4 |
| TRIMs:2 | 4 |
| AD:11.1 | 3 |
| AD:11.2 | 3 |
| AD:3.1 | 3 |
| AD:3.2 | 3 |
| DSU:23.1 | 3 |
| DSU:23.2a | 3 |
| DSU:23.2c | 3 |
| GATT:II.1 | 3 |
| GATT:XII.1 | 3 |
| SCM:32.5 | 3 |
| SG:4 | 3 |

Appendix 4: Detailed description of no of claims per provision with IND complainants

| Provision | No of claims |
|------------------|---------------------|
| SG:2.1 | 123 |
| SG:3.1 | 102 |
| SG:4.2 | 50 |
| SG:4.2b | 49 |
| GATT:XIX.1 | 31 |
| AD:11.3 | 18 |
| AD:3.1 | 15 |
| WTO:XVI.4 | 15 |
| AD:2.4 | 14 |
| GATT:III.4 | 14 |
| AD:3.5 | 13 |
| SCM:32.1 | 13 |
| AD:3.4 | 12 |
| AD:18.4 | 11 |
| GATT:VI.3 | 11 |
| AD:3.2 | 10 |
| GATT:VI.2 | 10 |
| SCM:10 | 9 |
| AD:1 | 8 |
| GATT:X.3a | 8 |
| SCM:19.4 | 8 |
| AD:2.4.2 | 7 |
| AD:18.1 | 6 |
| AD:2.1 | 6 |
| AD:3.3 | 6 |
| AD:5.8 | 6 |
| AD:6.2 | 6 |
| SCM:32.5 | 6 |
| TRIPs:2.1 | 6 |
| AD:2 | 5 |
| AD:5.4 | 5 |
| AD:AnnII.6 | 5 |
| GATT:VI.1 | 5 |
| GATT:X.3 | 5 |
| SCM:11.4 | 5 |
| SCM:14 | 5 |
| SG:4.1c | 5 |
| AD:11.1 | 4 |
| AD:15 | 4 |
| AD:6.8 | 4 |

Appendix 5: Detailed description of number of claims by DEV per provision

| Provision | No of claims |
|------------------|---------------------|
| SG:2.1 | 52 |
| SG:3.1 | 40 |
| SG:4.2b | 20 |
| SG:4.2 | 19 |
| SCM:3.1a | 18 |
| AD:3.1 | 14 |
| AD:3.4 | 11 |
| AD:6.8 | 10 |
| GATT:XIX.1 | 10 |
| AD:15 | 9 |
| GATT:XIX.1a | 9 |
| AD:2.4 | 8 |
| AD:3.2 | 8 |
| AD:6.4 | 8 |
| GATT:VI.2 | 8 |
| SCM:3.2 | 8 |
| AD:3.5 | 7 |
| AD:5.4 | 6 |
| AD:6.9 | 6 |
| GATT:II.1b | 6 |
| GATT:III.4 | 6 |
| GATT:X.3a | 6 |
| AD:18.1 | 5 |
| AD:18.4 | 5 |
| AD:8.3 | 5 |
| AoA:8 | 5 |
| GATT:VI.3 | 5 |
| GATT:XI.1 | 5 |
| SCM:11.4 | 5 |
| SCM:18.3 | 5 |
| SCM:32.1 | 5 |
| SCM:32.5 | 5 |
| SCM:4.10 | 5 |
| SCM:7.9 | 5 |
| WTO:XVI.4 | 5 |
| AD:12.2 | 4 |
| GATT:XX | 4 |
| SG:4.2a | 4 |
| AD:1 | 3 |
| AD:12.2.2 | 3 |

Appendix 6: The outcomes of claims made in the bilateral disputes

| DSNo | TitleOffAbb | Complainant | Defendant | No of win | No of lose | No of unclear | Tot no claims |
|------|----------------------------------|-------------|-----------|-----------|------------|---------------|---------------|
| 2 | US – Gasoline | Venezuela | US | 4 | 0 | 0 | 4 |
| 4 | US – Gasoline | Brazil | US | 4 | 0 | 0 | 4 |
| 8 | Japan – Alcoholic Beverages II | EC | Japan | 2 | 0 | 0 | 2 |
| 10 | Japan – Alcoholic Beverages II | Canada | Japan | 2 | 0 | 0 | 2 |
| 11 | Japan – Alcoholic Beverages II | US | Japan | 2 | 0 | 0 | 2 |
| 18 | Australia - Salmon | Canada | Australia | 5 | 0 | 0 | 5 |
| 22 | Brazil – Desiccated Coconut | Philippines | Brazil | 0 | 0 | 4 | 4 |
| 24 | US – Underwear | Costa Rica | US | 6 | 0 | 0 | 6 |
| 26 | EC – Hormones (US) | US | EC | 4 | 0 | 2 | 6 |
| 27 | EC – Bananas III | Ecuador | EC | 7 | 0 | 0 | 7 |
| 27 | EC – Bananas III | Guatemala | EC | III | 0 | 0 | 7 |
| 27 | EC – Bananas III | Honduras | EC | 7 | 0 | 0 | 7 |
| 27 | EC – Bananas III | Mexico | EC | 7 | 0 | 0 | 7 |
| 27 | EC – Bananas III | US | EC | 7 | 0 | 0 | 7 |
| 31 | Canada – Periodicals | US | Canada | 4 | 1 | 0 | 5 |
| 33 | US – Wool Shirts and Blouses | India | US | 2 | 0 | 0 | 2 |
| 34 | Turkey – Textiles | India | Turkey | 3 | 0 | 0 | 3 |
| 44 | Japan – Film | US | Japan | 0 | 3 | 0 | 3 |
| 46 | Brazil – Aircraft | Canada | Brazil | 5 | 0 | 0 | 5 |
| 48 | EC – Hormones (Canada) | Canada | EC | 4 | 0 | 2 | 6 |
| 50 | India – Patents (US) | US | India | 4 | 0 | 0 | 4 |
| 54 | Indonesia – Autos | EC | Indonesia | 4 | 1 | 0 | 5 |
| 55 | Indonesia – Autos | Japan | Indonesia | 3 | 1 | 0 | 4 |
| 56 | Argentina – Textiles and Apparel | US | Argentina | 2 | 0 | 0 | 2 |
| 58 | US – Shrimp | India | US | 2 | 0 | 0 | 2 |
| 58 | US – Shrimp | Malaysia | US | 2 | 0 | 0 | 2 |
| 58 | US – Shrimp | Pakistan | US | 2 | 0 | 0 | 2 |
| 58 | US – Shrimp | Thailand | US | 2 | 0 | 0 | 2 |
| 59 | Indonesia – Autos | US | Indonesia | 3 | 4 | 0 | 7 |
| 60 | Guatemala – Cement I | Mexico | Guatemala | 2 | 0 | 0 | 2 |
| 62 | EC – Computer Equipment | US | EC | 1 | 0 | 0 | 1 |
| 64 | Indonesia – Autos | Japan | Indonesia | 3 | 1 | 0 | 4 |
| 67 | EC – Computer Equipment | US | UK | 1 | 0 | 0 | 1 |
| 68 | EC – Computer Equipment | US | Ireland | 1 | 0 | 0 | 1 |
| 69 | EC – Poultry | Brazil | EC | 2 | 6 | 0 | 8 |
| 70 | Canada – Aircraft | Brazil | Canada | 4 | 10 | 0 | 14 |
| 75 | Korea – Alcoholic Beverages | EC | Korea | 2 | 0 | 0 | 2 |
| 76 | Japan – Agricultural Products II | US | Japan | 5 | 0 | 0 | 5 |
| 79 | India – Patents (EC) | EC | India | 2 | 0 | 0 | 2 |
| 84 | Korea – Alcoholic Beverages | US | Korea | 2 | 0 | 0 | 2 |
| 87 | Chile – Alcoholic Beverages | EC | Chile | 2 | 0 | 0 | 2 |

| DSNo | TitleOffAbb | Complainant | Defendant | No of win | No of lose | No of unclear | Tot no claims |
|-------------|-------------------------------------|--------------------|------------------|------------------|-------------------|----------------------|----------------------|
| 90 | India – Quantitative Restrictions | US | India | 4 | 0 | 0 | 4 |
| 98 | Korea – Dairy | EC | Korea | 3 | 6 | 0 | 9 |
| 99 | US – DRAMS | Korea | US | 1 | 0 | 0 | 1 |
| 103 | Canada – Dairy | US | Canada | 6 | 0 | 0 | 6 |
| 108 | US – FSC | EC | US | 4 | 0 | 1 | 5 |
| 110 | Chile – Alcoholic Beverages | EC | Chile | 2 | 0 | 0 | 2 |
| 113 | Canada – Dairy | New Zealand | Canada | 5 | 0 | 0 | 5 |
| 114 | Canada – Pharmaceutical Patents | EC | Canada | 1 | 2 | 0 | 3 |
| 121 | Argentina – Footwear (EC) | EC | Argentina | 2 | 0 | 0 | 2 |
| 122 | Thailand – H-Beams | Poland | Thailand | 6 | 6 | 0 | 12 |
| 126 | Australia – Automotive Leather II | US | Australia | 2 | 1 | 0 | 3 |
| 132 | Mexico – Corn Syrup | US | Mexico | 10 | 5 | 0 | 15 |
| 135 | EC – Asbestos | Canada | EC | 1 | 2 | 0 | 3 |
| 136 | US – 1916 Act (EC) | EC | US | 6 | 0 | 0 | 6 |
| 138 | US – Lead and Bismuth II | EC | US | 1 | 0 | 0 | 1 |
| 139 | Canada – Autos | Japan | Canada | 7 | 2 | 0 | 9 |
| 141 | EC – Bed Linen | India | EC | 3 | 8 | 0 | 11 |
| 142 | Canada – Autos | EC | Canada | 7 | 2 | 0 | 9 |
| 152 | US – Section 301 Trade Act | EC | US | 0 | 9 | 0 | 9 |
| 155 | Argentina – Hides and Leather | EC | Argentina | 5 | 0 | 0 | 5 |
| 156 | Guatemala – Cement II | Mexico | Guatemala | 19 | 0 | 0 | 19 |
| 160 | US – Section 110(5) Copyright Act | EC | US | 2 | 2 | 0 | 4 |
| 161 | Korea – Various Measures on Beef | US | Korea | 16 | 0 | 0 | 16 |
| 162 | US – 1916 Act (Japan) | Japan | US | 10 | 0 | 0 | 10 |
| 163 | Korea – Procurement | US | Korea | 0 | 1 | 0 | 1 |
| 165 | US – Certain EC Products | EC | US | 12 | 0 | 0 | 12 |
| 166 | US – Wheat Gluten | EC | US | 8 | 3 | 3 | 14 |
| 169 | Korea – Various Measures on Beef | Australia | Korea | 16 | 0 | 0 | 16 |
| 170 | Canada – Patent Term | US | Canada | 3 | 0 | 0 | 3 |
| 175 | India – Autos | US | India | 4 | 0 | 0 | 4 |
| 176 | US – Section 211 Appropriations Act | EC | US | 2 | 13 | 0 | 15 |
| 177 | US – Lamb | New Zealand | US | 6 | 1 | 0 | 7 |
| 178 | US – Lamb | Australia | US | 6 | 1 | 0 | 7 |
| 179 | US – Stainless Steel | Korea | US | 4 | 6 | 0 | 10 |
| 184 | US – Hot-Rolled Steel | Japan | US | 7 | 22 | 0 | 29 |
| 189 | Argentina – Ceramic Tiles | EC | Argentina | 5 | 0 | 0 | 5 |
| 192 | US – Cotton Yarn | Pakistan | US | 4 | 1 | 0 | 5 |
| 194 | US – Export Restraints | Canada | US | 0 | 2 | 0 | 2 |
| 202 | US – Line Pipe | Korea | US | 26 | 4 | 0 | 30 |
| 204 | Mexico – Telecoms | US | Mexico | 4 | 3 | 0 | 7 |
| 206 | US – Steel Plate | India | US | 2 | 5 | 0 | 7 |
| 207 | Chile – Price Band System | Argentina | Chile | 19 | 2 | 0 | 21 |

| DSNo | TitleOffAbb | Complainant | Defendant | No of win | No of lose | No of unclear | Tot no claims |
|-------------|---|---------------------|------------------|------------------|-------------------|----------------------|----------------------|
| 211 | Egypt – Steel Rebar | Turkey | Egypt | 3 | 30 | 2 | 35 |
| 212 | US – Countervailing Measures | EC | US | 25 | 0 | 0 | 25 |
| 213 | US – Carbon Steel | EC | US | 5 | 4 | 0 | 9 |
| 217 | US – Offset Act (Byrd Amendment) | Australia | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Brazil | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Chile | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | EC | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | India | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Indonesia | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Japan | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Korea | US | 9 | 6 | 0 | 15 |
| 217 | US – Offset Act (Byrd Amendment) | Thailand | US | 9 | 6 | 0 | 15 |
| 219 | EC – Tube and Pipe Fittings | Brazil | EC | 4 | 35 | 0 | 39 |
| 221 | US - Section 129(c)(1) URAA | Canada | US | 0 | 14 | 0 | 14 |
| 222 | Canada – Aircraft Credits and Guarantees | Brazil | Canada | 3 | 7 | 0 | 10 |
| 231 | EC – Sardines | Peru | EC | 1 | 0 | 0 | 1 |
| 234 | US – Offset Act (Byrd Amendment) | Canada | US | 9 | 6 | 0 | 15 |
| 236 | US – Softwood Lumber III | Canada | US | 11 | 5 | 7 | 23 |
| 238 | Argentina – Preserved Peaches | Chile | Argentina | 10 | 0 | 6 | 16 |
| 241 | Argentina – Poultry Anti-Dumping Duties | Brazil | Argentina | 20 | 9 | 2 | 31 |
| 243 | US – Textiles Rules of Origin | India | US | 0 | 8 | 0 | 8 |
| 244 | US – Corrosion-Resistant Steel Sunset Review | Japan | US | 0 | 37 | 3 | 40 |
| 245 | Japan – Apples | US | Japan | 3 | 0 | 0 | 3 |
| 246 | EC – Tariff Preferences | India | EC | 3 | 0 | 0 | 3 |
| 248 | US – Steel Safeguards | EC | US | 75 | 0 | 0 | 75 |
| 249 | US – Steel Safeguards | Japan | US | 57 | 0 | 0 | 57 |
| 251 | US – Steel Safeguards | Korea | US | 57 | 0 | 0 | 57 |
| 252 | US – Steel Safeguards | China | US | 77 | 0 | 0 | 77 |
| 253 | US – Steel Safeguards | Switzerland | US | 77 | 0 | 0 | 77 |
| 254 | US – Steel Safeguards | Norway | US | 77 | 0 | 0 | 77 |
| 257 | US – Softwood Lumber IV | Canada | US | 7 | 13 | 11 | 31 |
| 258 | US – Steel Safeguards | New Zealand | US | 77 | 0 | 0 | 77 |
| 259 | US – Steel Safeguards | Brazil | US | 53 | 0 | 0 | 53 |
| 265 | EC – Export Subsidies on Sugar | Australia | EC | 4 | 0 | 0 | 4 |
| 266 | EC – Export Subsidies on Sugar | Brazil | EC | 4 | 0 | 0 | 4 |
| 267 | US – Upland Cotton | Brazil | US | 12 | 2 | 0 | 14 |
| 269 | EC – Chicken Cuts | Brazil | EC | 2 | 0 | 0 | 2 |
| 276 | Canada – Wheat Exports and Grain Imports | US | Canada | 11 | 7 | 0 | 18 |
| 282 | US – AD Measures on Oil Country Tubular Goods | Mexico | US | 2 | 14 | 17 | 33 |
| 283 | EC – Export Subsidies on Sugar | Thailand | EC | 4 | 0 | 0 | 4 |
| 285 | US – Gambling Services | Antigua and Barbuda | US | 5 | 2 | 2 | 9 |
| 286 | EC – Chicken Cuts | Thailand | EC | 2 | 0 | 0 | 2 |
| 290 | EC – Trademarks and Geographical Indications | Australia | EC | 6 | 14 | 16 | 36 |
| 294 | US – Zeroing | EC | US | 3 | 40 | 22 | 65 |

| DSNo | TitleOffAbb | Complainant | Defendant | No of win | No of lose | No of unclear | Tot no claims |
|-------------|--|--------------------|--------------------|------------------|-------------------|----------------------|----------------------|
| 296 | US – Countervailing Duty Investigation on DRAMs | Korea | US | 3 | 8 | 12 | 23 |
| 301 | EC – Commercial Vessels | Korea | EC | 2 | 2 | 5 | 9 |
| 302 | Dominican Republic – Import and Sale of Cigarettes | Honduras | Dominican Republic | 9 | 2 | 0 | 11 |
| 308 | Mexico – Taxes on Soft Drinks | US | Mexico | 6 | 0 | 0 | 6 |
| 312 | Korea — Certain Paper | Indonesia | Korea | 8 | 28 | 16 | 52 |
| 315 | EC — Selected Customs Matters | US | EC | 2 | 15 | 0 | 17 |
| 322 | US — Zeroing | Japan | US | 2 | 40 | 20 | 62 |

Appendix 7: Percentage win and total number of claims by complainant-respondent pair

| COMPLAINANT | RESPONDENT | | | | | | | | | | | | | | | | | |
|---------------------|------------|-----------|----------|----------|----------|--------------------|----------|-------|-----------|----------|-----------|----------|-----------|--------|----------|----------|-----------|-----------|
| | Argentina | Australia | Brazil | Canada | Chile | Dominican Republic | EC | Egypt | Guatemala | India | Indonesia | Japan | Korea | Mexico | Thailand | Turkey | US | Total |
| Antigua and Barbuda | | | | | | | | | | | | | | | | | 56 9 | 56 9 |
| Argentina | | | | | 90 21 | | | | | | | | | | | | | 90 21 |
| Australia | | | | | | | 58 40 | | | | | | 100 16 | | | | 73 22 | 72 78 |
| Brazil | 65 31 | | | 29 24 | | | 59 53 | | | | | | | | | | 86 86 | 64 194 |
| Canada | | 100 5 | 100 5 | | | | 50 9 | | | | | 100 2 | | | | | 26 85 | 53 106 |
| Chile | 63 16 | | | | | | | | | | | | | | | | 60 15 | 61 31 |
| China | | | | | | | | | | | | | | | | | 100 77 | 100 77 |
| Costa Rica | | | | | | | | | | | | | | | | | 100 6 | 100 6 |
| EC | 100 12 | | | 56 12 | 100 4 | | | | | 100 2 | 80 5 | 100 2 | 67 11 | | | | 63 255 | 74 303 |
| Ecuador | | | | | | | 100 7 | | | | | | | | | | | 100 7 |
| Guatemala | | | | | | | 100 7 | | | | | | | | | | | 100 7 |
| Honduras | | | | | | 82 11 | 100 7 | | | | | | | | | | | 91 18 |
| India | | | | | | | 64 14 | | | | | | | | | 100 3 | 58 34 | 64 51 |
| Indonesia | | | | | | | | | | | | | 15 52 | | | | 60 15 | 38 67 |
| Japan | | | | 78 9 | | | | | | | 75 9 | | | | | | 48 213 | 57 231 |
| Korea | | | | | | | 22 9 | | | | | | | | | | 67 136 | 60 145 |
| Malaysia | | | | | | | | | | | | | | | | | 100 2 | 100 2 |
| Mexico | | | | | | | 100 7 | | 100 21 | | | | | | | | 6 33 | 77 61 |
| New Zealand | | | | 100 5 | | | | | | | | | | | | | 93 84 | 95 89 |
| Norway | | | | | | | | | | | | | | | | | 100 77 | 100 77 |
| Pakistan | | | | | | | | | | | | | | | | | 90 7 | 90 7 |

Appendix 7: Percentage win and total number of claims by complainant-respondent pair

(cont'd)

| COMPLAINANT | RESPONDENT | | | | | | | | | | | | | | | | | |
|--------------------|-------------------|------------------|---------------|---------------|--------------|---------------------------|-----------|--------------|------------------|--------------|------------------|--------------|--------------|---------------|-----------------|---------------|-----------|--------------|
| | Argentina | Australia | Brazil | Canada | Chile | Dominican Republic | EC | Egypt | Guatemala | India | Indonesia | Japan | Korea | Mexico | Thailand | Turkey | US | Total |
| Peru | | | | | | | 100 1 | | | | | | | | | | | 100 1 |
| Philippines | | | 0 4 | | | | | | | | | | | | | | | 0 4 |
| Poland | | | | | | | | | | | | | | | 50 12 | | | 50 12 |
| Switzerland | | | | | | | | | | | | | | | | | 100 77 | 100 77 |
| Thailand | | | | | | | 100 6 | | | | | | | | | | 80 17 | 90 23 |
| Turkey | | | | | | | | 9 35 | | | | | | | | | | 9 35 |
| US | 100 2 | 67 3 | | 85 32 | | | 80 33 | | | 100 12 | 43 7 | 75 13 | 67 19 | 75 28 | | | | 79 149 |
| Venezuela | | | | | | | | | | | | | | | | | 100 4 | 100 4 |
| Average % win | 88 | 83 | 50 | 69 | 97 | 82 | 74 | 9 | 100 | 100 | 68 | 83 | 64 | 75 | 50 | 100 | 65 | 71 |
| Total no of claims | 61 | 8 | 9 | 82 | 25 | 11 | 193 | 35 | 21 | 14 | 21 | 17 | 98 | 28 | 12 | 3 | 1254 | 1892 |