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## The Case for Tradable Remedies in WTO Dispute Settlement

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## **The Case for Tradable Remedies in WTO Dispute Settlement**

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## **Non-technical Summary**

Of late there have been a lot of discussions as to the efficacy of the WTO dispute settlement system. Developing countries especially have voiced their concerns to this effect, pointing out that the existing system cannot deal in a satisfactory manner with the asymmetries in bargaining power between the players. Many call (in the official context provided by the review of the DSU) for drastic reforms in the field of remedies and Mexico most notably has tabled a proposal arguing in favor of introducing tradable remedies within the DSU. In very simple terms, the idea is that a country that has won cause before the WTO will be in a position when facing non-implementation by the author of the illegal act to auction off its right to impose countermeasures when it feels that its own capacity to exercise that right is unlikely to lead eventually to compliance.

Auctioning countermeasures in the WTO is a novel and potentially very controversial idea. The attractiveness of this idea is that it offers an additional possibility to injured WTO members to get something from the dispute settlement mechanism without putting into question the legal nature of the existing contract, that is, the predominantly de-centralized system of enforcement in the WTO. Examining all disputes brought to the WTO since its inception, we find some support for Mexico's perception that there is indeed a practical problem faced by small countries and especially developing countries when they attempt to carry through with effective retaliation within the WTO system. And based on the formal results of Bagwell, Mavroidis and Staiger (2003), we describe arguments that lend some support to the efficacy of Mexico's proposed solution from the perspective of formal economic theory.

We suggest, then, that auctioning countermeasures in the WTO is an idea that should be studied seriously. This is not to say that introducing such auctions into the WTO system is necessarily a good idea. It may possibly be a very bad idea. This possibility is especially apparent when one considers the likely political ramifications that would arise when one government, as a result of placing the winning bid in an auction, imposed WTO-sanctioned retaliatory tariffs against a second government with whom it had no unresolved WTO dispute. Needless to say, the political frictions and public misperceptions associated with such an action could impose costs on the workings of the WTO that far outweigh any possible benefits that we assess in this paper. Similar statements, however, could be made about *any* attempt to bring multilateral elements into WTO dispute resolutions for the purpose of helping small and developing countries take part more effectively in the WTO system. In this light, the auctioning of countermeasures in the WTO deserves serious study, because it represents one (in principle, particularly effective) way to multilateralize the WTO dispute procedures for this purpose.

## 1. Remedies in the WTO: Can We Get It Right This Time?

It has been almost two years since the process leading to the reform of the Dispute Settlement Understanding (DSU) was initiated. The Ministerial Conference in Doha provided the legal mandate (§30) to do so. Negotiations started in early March 2002 and were supposed to be concluded by end of May 2003. This has not been the case. The situation is quite ambivalent from a purely legal perspective right now: negotiators seem to take the view (WTO Doc. TN/DS/9 of 6 June 2003) that, although the deadline for concluding negotiations has lapsed, they still have the mandate to continue negotiating.

The negotiations so far reveal convergence on some issues and divergence on others. The proposals with a “high level of support” have been reflected in a document (WTO Doc. TN/DS/9 of 6 June 2003) and those that could not gather momentum are, at least for the time being, kept aside (although, technically, they are still on the negotiating table since it is up to the country proposing them to introduce them at some stage).<sup>1</sup> In this paper we focus on one proposal of the latter kind, the Mexican proposal to allow WTO Members to trade their rights for retaliation. This proposal is the most ambitious and innovative proposal (judging by the pace of institutional reforms throughout the history of dispute settlement in the GATT/WTO) ever submitted in this context. At the same time, it is a meritorious proposal and deserves to be discussed in a comprehensive manner. This paper aims to offer arguments in this perspective.

As it usually happens, proposals are largely based on a “learning by doing” approach. By now, we have had a critical mass of cases adjudicated in the WTO and some

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<sup>1</sup>By this we mean that there is absolutely no legal obligation to concentrate, during the remaining stages of multilateral negotiations, only on those proposals considered to have “high level support”.

patterns, regarding the various phases of adjudication (from request of bilateral consultations to enforcement) have emerged. The negotiations so far have been quite revealing: some delegations have tabled daring proposals instead of doing the usual “beat around the bush GATT dance” and opted for radical reforms of the DSU rather than cosmetic changes that might incrementally, if at all, change the face of the system. The European Community for example, proposed that we should move to a permanent panellists regime, something like a first instance court at the WTO. Many developing countries opted for a re-negotiation of the remedies regime in the WTO. The fact, for example, that a group of African states requested an introduction of monetary damages in the WTO legal system is at least evidence of the fact that the existing institutional possibility for countermeasures in case of non-compliance is not a big hit with developing countries. The Mexican proposal is in the same vein.

In Section 2 of the paper, we examine the empirical basis on which proposals requesting reform of enforcement procedures are based. The central question that we will address in this section is whether non-implementation depends on the identity of the complainant and the defendant. As will become apparent from the data we produce in this section, implementation is much more likely in a developed v developing country scenario than vice-versa. We will thus establish in this section that there is indeed a problem in the functioning of the DSU in this respect and developing countries' proposals are addressing a real issue and not a ghost. Of course, we do not realistically expect that through the negotiation of an international contract (like the WTO) all imbalances and asymmetries between players will be wiped out. But we do expect that players will realize that it is essential from an institutional perspective to strike a compromise that will not make the same sub-group of players consistently unhappy.

In Section 3 of the paper, we discuss the idea that auctioning the right to retaliate can have beneficial effects and boost the rate of implementation of WTO decisions. It is in this context that we refer specifically to the Mexican proposal, which is, for all practical purposes, based on the same reasoning. It is true that Mexico did not specifically refer to auction theory when submitting its proposal. In fact, Mexico did not even use the term “auctioning”, preferring to use the term “tradable rights” instead without any further detailed discussion. In this section, which draws heavily on Bagwell, Mavroidis and Staiger (2003), we will examine to what extent auction theory can lend useful support to the Mexican proposal. Finally, in Section 4 we briefly summarize our conclusions.

## **2. Implementation of WTO Obligations**

In a nutshell, the DSU makes it clear that WTO Members cannot unilaterally define inconsistencies with the WTO contract. Such definitions are the exclusive privilege of the WTO adjudicating bodies (Art. 23.2 DSU). To this effect, a WTO Member that believes that practices by another Member violate the WTO contract can request bilateral consultations (Art. 4DSU), which, if not fruitful, could lead to a procedure before a WTO panel (Art. 6 DSU). All Panel findings can be appealed (Art. 17 DSU). At the end of the adjudicating process, WTO Members will be granted an implementation period (in WTO parlance, the reasonable period of time, RPT) in case immediate compliance is not in the cards (Art. 21 DSU). In case there is disagreement as to the sufficiency of corrective actions taken during this period, a so-called compliance panel (Art. 21.5 DSU)—and, eventually, the Appellate Body (AB)—will be requested to pronounce on the issue. If a panel (or AB) decision has not been implemented during the appropriate implementation period, a WTO Member has the right to request countermeasures (Art. 22 DSU), which it can impose until implementation has occurred.

Countermeasures are thus the *ultima ratio* in the WTO enforcement process. Mutually agreed solutions can occur at any stage during the proceedings but have to be consistent with the WTO contract (Art. 3.5 DSU) and have to be notified to the WTO Dispute Settlement Body (DSB, Art. 3.6 DSU).

## 2.1 Our Data

In order to provide an assessment whether a remedies-reform is appropriate, we need to first establish the record for compliance in the WTO. To do that we need to check all disputes brought to the WTO since its inception (January 1, 1995). We follow the definition of dispute adopted in Horn, Mavroidis and Nordstrom (1999), that is, in case of multiple complaints we distinguish pairs of complainant-defendant and count them as separate disputes. As a consequence, the reader should not be surprised by finding a case, say DS266 in a given table more than once (or in multiple tables). It could simply be that in this particular dispute more than one WTO Member complained about the practices of another WTO Member. In cases where a request to join in consultations has not been accepted at the moment of writing, we count the dispute as one.

We are considering all bilateral disputes in the WTO Disputes Settlement system during the years 1995-2003 (our data run through 30 June 2003). In terms of WTO DS numbers, this includes DS1 to DS295.<sup>2</sup> With regard to the WTO Members included in the data, we take the WTO membership as of July 1, 2003 as a starting point (i.e., 146 Members). We treat the European Community (EC) as one unit, with complaints against individual EC Members treated as being directed against the EC.

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<sup>2</sup> The nomenclature DS followed by a number is the way that cases are identified in the WTO. A description of each case can be found on the WTO web site ([www.wto.org](http://www.wto.org)).



For the purposes of this paper, we distinguish between WTO Members that are and are not OECD-Members. This distinction is not unproblematic. Although the definition is, in principle, meant to distinguish between developed and developing countries, it suffers from at least two weaknesses. First, some OECD-Members are poorer than other countries that are not OECD members (e.g., Turkey, Mexico). Second, such a classification by implication puts all developing countries in one basket. Arguably, when it comes to dispute settlement participation, it is inappropriate to equate large, middle-income countries such as Brazil with poor, resource-scarce countries in Sub-Saharan Africa.<sup>3</sup> Nonetheless, the classification reflects to some extent the distinction between developed and developing countries. In an effort to correct for some of the more obvious anomalies, we count WTO Members that are acceding to the European Union in 2004 and are currently not Members of the OECD as OECD Members, even though formally they are not (i.e., Slovenia, Malta, Cyprus, Estonia, Latvia, and Lithuania).<sup>4</sup>

Our data are sub-divided in 6 categories, of which only the last category is the subject of this paper. The 6 categories of disputes are:

1. Abandoned Disputes. We treat as abandoned all disputes where the complainant has withdrawn the complaint or the authority of the panel has lapsed under Art. 12.12 DSU. Legally there is no dispute that such cases should be treated as abandoned. However, we have added two categories of cases under this

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<sup>3</sup> For a more elaborate sub-division among WTO Members in a dispute settlement context, see Horn and Mavroidis (2003).

<sup>4</sup> The current OECD Membership is as follows: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

heading: first, cases where more than two years have passed since the panel has been established and its composition has yet to see the light of the day; second, cases where the WTO adjudicating body has exonerated the defendant from any legal responsibility. (We regard it as irrelevant whether exoneration occurs at the panel stage and no appeal has been submitted or at the appellate level.) These cases are listed in Annex Table 1.

2. Ongoing disputes. These are listed in Annex Table 2 and are sub-divided in: Pending Consultations, Pending The Panel's Outcome, Pending the Appellate Body's (AB) Outcome, Pending the Art.21.5 DSU Panel's Outcome; Pending the Appeal Against A Report By An Art. 21.5 DSU Panel; and Other Cases.
3. Disputes With Uncertainty As To The Outcome. These are listed in Annex Table 3.
4. Disputes that were settled before the end of the process (consultations + panel/AB proceedings). These cases are listed in Annex Table 4, and are sub-divided into two categories: cases of unilateral withdrawal of the contested measure, and cases where mutually agreed solutions (MAS) were concluded before the end of process.
5. Disputes where Panel or AB reports were implemented (Annex Table 5). These are sub-divided in cases of unilateral implementation, and cases where a MAS was concluded following a multilateral finding of inconsistency.
6. Cases that led to countermeasures (suspension of concessions).

In this paper, we focus on the last category of cases as our interest is in the effectiveness of countermeasures to induce compliance. This implies that we need to first discard all cases that fall into categories 1-5. In terms of collecting data on cases, our "workhorse" is WTO Doc. WT/DS/OV/14 of 30 June 2003. This document describes the official WTO

record of the state of disputes. It is true that information about the outcome of disputes can be found in other fora as well.<sup>5</sup> We did take the liberty, however, to adjust some of the data re-produced in this document, as explained *supra*, and also correct some of the information provided in the document by looking at the official record before the WTO Dispute Settlement Body (DSB).<sup>6</sup> Our classification of data is to some extent explained by the exogenous “legal constraint” that is imposed by the WTO Dispute Settlement Understanding (DSU).<sup>7</sup>

## 2.2 Implementation of WTO Obligations

The outcome of many WTO disputes is uncertain. The reasons for this uncertainty vary. In some cases, we do not know if implementation actually occurred or not. One could speculate that the former is an unlikely event, since if the WTO Member at hand implemented in good faith its obligations, it would have little incentive not to notify the actual implementation. It may be that the parties failed to notify their MAS, or that the defendant failed to implement and no action by the complainant has been taken against such failure. These cases are of course relevant were one to measure the effectiveness of WTO remedies. It could, for example, be the case that the complainant fears that “pushing” the defendant could be counter-productive. It could also be that the complainant believes its countermeasures will not induce compliance. We prefer,

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<sup>5</sup> Horn, Mavroidis and Nordstrom (1999), for example, point to what they call a “third circle” of disputes that have never been notified to the WTO but concern cases of relevance to the world trading system whereby a change in trade policy has been requested through un-official channels.

<sup>6</sup> Sometimes there is a disjoint between information provided to the DSB and that included in the OV document. We privilege the former since it reflects the official stance of the WTO Member concerned, whereas the latter is simply information compiled by the WTO Secretariat.

<sup>7</sup> The reader might be surprised to see a number of very old disputes included in Annex Table 2. These disputes are present because there is no maximum limit in the DSU restricting the duration of bilateral consultations. The right to a panel can be exercised following the passage of statutory deadlines (see, for example, Art. 4.3 and 4.7 DSU), but there is no legal obligation to submit a dispute to a panel. Parties can

however, to discard these cases (reproduced in Annex Table 3), because of the high level of speculation involved as to what might have happened. The same is true for disputes where either the defendant withdrew the contested measure before the completion of the process, or a MAS was reached between the defendant and the complainant during the same time period. These cases are listed in Annex Table 4 and have also been discarded. Finally, we have to discard as well all disputes where the contested measure was unilaterally withdrawn *after* completion of the process (issuance of the panel or AB report, as the case may be) or a MAS between the interested parties was reached at the same stage (Annex Table 5).

We are now left with the data that are relevant for our paper. In what follows, we deal with cases where we know for sure that implementation did not occur and that the complainant had the option to request and impose countermeasures. As is well known, provided that countermeasures are equivalent to the trade damage suffered (Art. 22.4 DSU), a simple request to this effect suffices for the interested party to be authorized the right to impose countermeasures. Countermeasures in WTO law are a means to induce implementation of obligations and should not be understood as a perfect substitute to implementation (Art. 22.1 DSU). Hence, almost by definition, countermeasures must be withdrawn once implementation has occurred.

We distinguish between four scenarios: cases where countermeasures are still in place (Table 1), that is cases where countermeasures have not led to implementation; cases where countermeasures have been withdrawn as a result of subsequent implementation (Table 2); cases where countermeasures have been authorized but not been applied

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consult forever. Conversely, the panel's authority lapses twelve months after its work has been suspended (Art. 12.12 DSU).

(Table 3); and, finally, cases where, faced with non-implementation, the complainant did not request authorization to impose countermeasures (Table 4):

**Table 1: Counter-measures In Place**

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**Complainant OECD / Defendant OECD**

DS26: as of July 26, 1999 the US was authorized and imposed countermeasures against the EC for its failure to bring into conformity its “Hormones” legislation.

DS48: as of July 26, 1999, Canada was authorized and imposed countermeasures against the EC for its failure to bring into conformity its “Hormones” legislation.

**Complainant OECD / Defendant non-OECD: Nil.**

**Complainant non-OECD / Defendant OECD : Nil.**

**Complainant non-OECD / Defendant non-OECD : Nil**

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**Table 2: Counter-measures That Led To Implementation**

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**Complainant OECD / Defendant OECD**

DS27: on 19 April 1999, the US were authorized to impose countermeasures against the EC for the failure of the latter to implement the Bananas panel and AB report. The US imposed countermeasures soon thereafter that remained in place until 2003 when they were lifted as a result of, partially, an MAS (see WTO Doc. WT/DS58 & 59) and, partially, the waiver accorder to the EC at the Doha Meeting (2002).

**Complainant OECD / Defendant non-OECD : Nil**

**Complainant non-OECD / Defendant OECD : Nil**

**Complainant non-OECD / Defendant non-OECD : Nil**

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**Table 3: Counter-measures Authorized, No Action Taken**

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**Complainant OECD / Defendant OECD**

DS108: the complainant (EC) was authorized on 7 May 2003 to impose countermeasures of approximately \$4 billion against the US but has not exercised this to date.

**Complainant OECD / Defendant non-OECD**

DS46: The Arbitrator (Art. 22.6 DSU) established the level of countermeasures that Canada could impose against Brazil for the failure of the latter to implement the Aircraft Subsidies report (DS46/ARB, 28 August 2000). Canada subsequently obtained authorization to impose countermeasures but never exercised the option.

**Complainant non-OECD / Defendant OECD**

DS27: on 18 May 2000, Ecuador was authorized to impose countermeasures against the EC for the failure of the latter to implement the panel and AB report on Bananas. Ecuador has never exercised this option.

DS222: The Arbitrator (Art. 22.6 DSU) established the level of countermeasures that Brazil could impose against Canada for the failure of the latter to implement the Aircraft Subsidies report (DS222/ARB, 17 February 2003). Brazil subsequently obtained authorization to impose countermeasures but never exercised the option.

DS70: this case has been overtaken by DS222.

**Complainant non-OECD / Defendant non-OECD**

Nil.

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**Table 4: No Request For Counter-measures When Faced With Non-Implementation**

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**Complainant OECD / Defendant OECD**

DS27: Mexico did not request authorization to impose countermeasures against the EC for the failure of the latter to implement the panel and AB report on Bananas.

**Complainant OECD / Defendant non-OECD : Nil**

**Complainant non-OECD / Defendant OECD**

DS27: Guatemala did not request authorization to impose countermeasures against the EC for the failure of the latter to implement the panel and AB report on Bananas.

DS27: Honduras did not request authorization to impose countermeasures against the EC for the failure of the latter to implement the panel and AB report on Bananas.

**Complainant non-OECD / Defendant non-OECD : Nil**

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**2.3 What Do the Data Suggest?**

Our data<sup>8</sup> on the cases is quite revealing in some respects. **First**, there is not one single occasion where a developing country (non-OECD member) imposed countermeasures to induce compliance even when faced with non-implementation. **Second**, non-OECD Members when faced with non-compliance, with two exceptions (Brazil and Ecuador) do not even enter into the process of calculating their damage, that is, the first step towards requesting authorization to impose countermeasures. **Third**, even OECD Members when facing a recalcitrant opponent which happens to be a “larger” market (Mexico vs. EC in *Bananas*) have sometimes refrained from requesting the authorization to impose countermeasures. **Fourth**, the opposite is true when OECD Members face non-implementation: all countermeasures have been imposed by OECD Members. It is difficult to pronounce on the effectiveness of countermeasures, but it is certainly true that OECD Members (namely, the US and Canada) have used this instrument. The two cases when no use was made are quite odd: Canada did not impose countermeasures against Brazil most likely because Brazil could do the same in the same dispute (export subsidies in regional aircrafts where Bombardier and Embraer, Canadian and Brazilian producer respectively hold a joint dominant position in the world market); the EC did not impose countermeasures against the US in the *FSC* dispute, probably in light of the possible repercussions (the EC was granted the right to block trade worth approximately 4billion \$/ year).

Our data suggest even more: there is not one single case with uncertainty as to its outcome when an OECD Member is complainant and a non-OECD Member defendant. There are six cases in the opposite scenario and still no request to impose countermeasures. Thus, the data suggest that countermeasures are a more or less

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<sup>8</sup> At the moment of writing, the EC had announced its intention to request authorization to adopt countermeasures against the US (as a result of the latter's unwillingness to implement the AB rulings in

ineffective instrument in the hands of “smaller” players. Mexico’s proposal is therefore well supported in empirical analysis.

### 3. Theory

#### 3.1 Potential Benefits of Auctioning Countermeasures in the WTO

In proposing that WTO countermeasures be made tradable, Mexico (WTO, 2002) suggested that this might help small countries and especially developing countries solve a practical problem with effective retaliation that they otherwise might face. In Mexico’s words:

“The suspension of concessions phase poses a practical problem for the Member seeking to apply such suspension. That Member may not be able to find a trade sector or agreement in respect of which the suspension of concessions would bring about compliance without affecting its own interests...There may be other Members, however, with the capacity to effectively suspend concessions to the infringing Member.” (WTO, 2002, p. 5)

The Mexican proposal continues, identifying two potential benefits from making tradable the right to impose countermeasures within the WTO:

“Incentives for Compliance: Facing a more realistic possibility of being the subject of suspended concessions, the infringing Member will be more inclined to bring its measure into conformity.” (WTO, 2002, p. 6)

and

“Better readjustment of concessions, since the affected Member would be able to obtain a tangible benefit in exchange for its right to suspend.” (WTO, 2002, p. 6)

The data presented and reviewed in the previous section, while not conclusive, are nevertheless suggestive that small and developing countries may indeed face practical problems once they reach the suspension-of-concessions phase of a WTO dispute, as the Mexican proposal indicates. In this section we discuss the likelihood that permitting WTO countermeasures to be tradable might yield the benefits suggested in the Mexican

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the FSC dispute) but had not materialized its threat.



proposal. Our discussion, which is informal and intuitive, relies heavily on results from our technical paper on this topic (Bagwell, Mavroidis and Staiger, 2003). Readers interested in the technical conditions under which the informal and intuitive discussion that follows can be formalized into precise statements are referred to that paper.

Overall, the theoretical results of Bagwell, Mavroidis and Staiger (2003) lend support to Mexico's suggestion that auctioning countermeasures in the WTO can lead to both better incentives for compliance and better readjustment of concessions, if we gauge the incentive for compliance on the basis of the cost inflicted on the infringing government (more is better), and if we gauge the readjustment of concessions on the basis of the expected revenue generated by the government running the auction (more is better). Moreover, our theoretical results indicate a third potential benefit: by auctioning countermeasures in the WTO, the existing right of retaliation may be more efficiently allocated to the WTO Member who values this right most highly.

However, as we next discuss, the possibility of *externalities across bidders* in the auction arises naturally in this setting, and these externalities can "disrupt" auction performance with regard to each of the three benefit dimensions listed above. Further, the precise pattern of externalities depends on a key feature of auction design, namely, whether the "infringing" government is permitted to bid to "retire" the right of retaliation. After describing these externalities, and the way in which they depend on the design of the auction, we describe how different auction designs can imply different auction performance along each of these benefit dimensions, and we argue that the appropriate choice of auction design is therefore likely to depend on which of these three dimensions is the most important goal of permitting countermeasures to be auctioned in the WTO.

### 3.2 Externalities Across Bidders

We begin by describing the nature of the externalities across bidders that are likely to arise in an auction of WTO countermeasures. First we must define what we mean by an externality in this setting. We will say that an auction exhibits *positive externalities* across bidders if one bidder would rather lose to another bidder than have no bidder win the object. And we will say that an auction exhibits *negative externalities* across bidders if one bidder would rather have no bidder win the object than to lose to another bidder.

In a standard auction setting, it is typically assumed that every bidder is *indifferent* between losing to some other bidder and having no bidder win the object: that is, in traditional auction analysis, the *absence of externalities* across bidders is typically assumed.<sup>9</sup> To see why this standard assumption is not likely to be met in the case of auctioning off WTO countermeasures, let us suppose that Honduras has been granted the authority to impose countermeasures against the EC, that Honduras does not have the capacity to use this right, and that it puts this right (say, the suspension of concessions against the EC of \$100 million) up for auction. Suppose further that Canada and the U.S. choose to take part in the auction and bid for this right of retaliation against the EC, that there are no other bidders, and that each country will choose largely the *same* list of imported EC products upon which to retaliate if it wins the right by placing the winning bid in the auction. In fact, to fix ideas and to keep things simple, let us suppose that there is a single *retaliation good*: if either Canada or the U.S. obtains

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<sup>9</sup>Recently, the auction literature has begun to consider systematically the analysis of auctions with externalities. For important contributions to this literature, see Jehiel and Moldovanu (1996, 2000, 2001), Das Varma (2002), Ettinger (2002) and Haile (2000).

the right from Honduras to suspend concessions against the EC, it will use this right to block \$100 million of EC *feta cheese* imports from its markets.<sup>10</sup>

It may now be seen that an externality between Canada and the U.S. will naturally arise in the auction of WTO countermeasures. That is, it is highly unlikely that Canada, say, will be indifferent between (a) losing to a higher bid from the U.S., and (b) having no bidder win the right to retaliate against the EC. This is because, relative to the *status quo* that obtains if Canada loses and no bidder wins the right to retaliate against the EC, there will be an impact on Canada if it loses and the U.S. wins the right to retaliate against the EC, since at least a portion of the \$100 million of EC *feta cheese* exports that would have gone to the U.S. market will now be *diverted* into the Canadian market. Whether the trade diverted into the Canadian market in this circumstance is perceived by the Canadian government as a “good thing” relative to the *status quo*, in which case we have a positive externality across bidders, or a “bad thing” relative to the *status quo*, in which case we have a negative externality, will depend on the circumstances faced by the Canadian government, and we will examine this question next. But the essential point is that *an externality naturally arises between bidders in an auction of WTO countermeasures.*

Let us next consider whether the externality between Canada and the U.S. identified above is likely to be a positive externality or a negative externality. There will be two impacts on the Canadian economy when EC *feta cheese*, originally destined for the U.S. market, is diverted into the Canadian market: **first**, we may anticipate that the price

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<sup>10</sup> Implicit in this discussion is the presumption that Canada and the U.S. would each fully utilize the right to block \$100 million of EC *feta cheese* imports from its markets, if that right were bestowed upon it. Formally, this amounts to assuming that the magnitude of the right of retaliation up for auction is small relative to the distance between each country's unilateral best-response tariff and its negotiated GATT/WTO tariff binding (see Bagwell, Mavroidis and Staiger, 2003).

charged by EC feta cheese exporters will fall somewhat, and therefore Canada enjoys a terms-of-trade improvement and a consequent rise in its real national income. This impact suggests a positive externality between the bidders. But there is also a **second** impact, and that is the associated fall in the price of feta cheese within the Canadian market that occurs as a result of the fixed Canadian feta cheese tariff and the falling “world” (i.e., EC exporter) feta cheese price. If the Canadian government is not “too” concerned about the employment/factor-income-distributional consequences of this drop in the internal Canadian price of feta cheese, then the first impact dominates in the preferences of the Canadian government and there is a positive externality across bidders. But it is possible – if for example political pressure from Canadian feta cheese producers is sufficiently intense – that this second impact could be negative and weigh sufficiently heavily in the preferences of the Canadian government to overturn the terms-of-trade considerations, and a negative externality between bidders would then arise. We will adopt the view that the “normal” case is the one in which political pressures are not so intense, and so the case of positive externalities between bidders arises. This is the view adopted in Bagwell, Mavroidis and Staiger (2003).<sup>11</sup>

It is at this point important to observe that our focus on the case of positive externalities between bidders does not rule out the possibility that Canada and the U.S. each face very significant political pressures to protect their feta cheese industry from imports. In fact, in Bagwell, Mavroidis and Staiger (2003) we assume that this political pressure is privately observed by the respective government, but that it can range from “no significant political pressure” up to a high degree of political pressure that would make

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<sup>11</sup>We note in passing that the negative externality case is not an unreasonable case to consider (it would be consistent, for example, with an importing government wishing to negotiate VERs with exporting governments) and warrants investigation in its own right.

the government an aggressive bidder to win the right to unilaterally block feta cheese imports from the EC. That is, the assumption that a government faces an upper bound on its political pressure so that it always prefers to *lose* to the other bidder rather than to maintain the *status quo* (*nobody wins*) does *not* rule out the possibility that the political pressure faced by this government is nevertheless sufficiently intense that it would prefer (gross of its bid) to *win* the auction rather than to *lose* to the other bidder. Instead, the assumption only serves to guarantee that the externality between bidders is positive over the entire range of their possible political-pressure realizations.

At the same time, it is instructive to point out that, under sufficiently weak political pressure to protect its feta cheese industry, a government would prefer (gross of its bid) to *lose* the auction to the other bidder rather than to *win* the auction itself. This is because, either way it gets to enjoy the terms-of-trade benefits (lower EC exporter-price) of the retaliation against EC exports of feta cheese, while, if it loses, it can avoid the distortionary costs associated with the higher-than-world feta cheese prices that would prevail in its local economy as a result of the tariff if it won (and which it does not value highly for political reasons in this weak-political-pressure case). We will return to this observation in the next subsection.

Thus far, we have identified an externality between bidders who are *competing importers of the retaliation good*, and have suggested that this externality will be positive in the typical case faced in an auction of WTO countermeasures. Suppose, though, that the *infringing country* (the EC in our example) were also allowed to bid. In this case, if the EC placed the winning bid in Honduras' auction, the right of retaliation against the EC would be *retired* (i.e., it would not be used). If the EC is permitted to bid to retire the right of retaliation against it, the pattern of (positive) externalities across bidders that

we have identified above will become more complicated. On the one hand, both Canada and the U.S. will be indifferent between the *status quo* (nobody wins) and losing to the EC (the right of retaliation is retired), and so the presence of the EC as a bidder at the auction imposes no externality on Canada and the U.S.. On the other hand, the EC would ordinarily prefer the *status quo* (nobody wins) over losing to *either* Canada or the U.S. and facing retaliation, and so Canada and the U.S. each impose a *negative externality* on the EC when it is also bidding.

As a consequence of these observations, we may conclude that the pattern of externalities across bidders in an auction of WTO countermeasures will depend on whether the infringing country is permitted to bid to retire the retaliation right against it. In a *basic auction*, where the infringing country is not permitted to bid, we have argued that there will normally be *positive externalities* across bidders. In an *extended auction*, in which the infringing country is also permitted to bid, there will normally be both *positive and negative externalities* across (different) bidders.

With this essential point established, we now turn in the next subsection to begin a consideration of how different auction designs can imply different auction performance along each of the three benefit dimensions listed in section 3.1, and we argue that the appropriate choice of auction design is therefore likely to depend on which of these three dimensions is the most important goal of permitting countermeasures to be auctioned in the WTO. We begin with a consideration of the performance of the basic auction.

### **3.3 The Basic Auction: The Infringing Government Is Not Permitted to Bid**

As detailed in Bagwell, Mavroidis and Staiger (2003), an important feature of the basic auction that arises as a result of the positive externalities across bidders which we have described above is the possibility of *auction failure*. In the context of our example above, auction failure refers to a situation in which Honduras holds an auction of its right of retaliation against the EC and receives *no bids* from either Canada or the U.S., even though Canada and the U.S. would each “value” acquiring this right (that is, each would prefer *winning* to the status quo that would prevail if *nobody wins*). We observe that auction failure can occur in the basic auction even when the “reservation price” – the lowest (non-negative) bid permitted by the auction – is set at zero. In this case, as a result of the positive externality between bidders, Honduras would find that it cannot even *give away* its right of retaliation against the EC.

The basic intuition for the possibility of auction failure in this setting follows fairly directly from our description in the previous subsection of the positive externalities between bidders in the basic auction. If Canada, for example, faces a low (and privately observed) level of political pressure to protect its feta cheese industry, then as we have explained in the previous subsection Canada prefers (gross of its bid) to lose the auction to the U.S. rather than win. As observed just above, however, Canada prefers to win over the alternative that nobody wins. (Notice that these two statements can hold simultaneously only because there is a positive externality, so that Canada prefers to lose rather than the alternative that nobody wins). Hence, if Canada is sufficiently certain that the U.S. will bid, perhaps because Canada believes that the U.S. is likely to be facing a degree of (privately observed) political pressure that makes the U.S. prefer to win rather than lose, then Canada will not bid in the auction (thereby hoping to “lose” to the U.S.). If it happens that the U.S. *also* faces a low (and privately observed) level of political pressure to protect its feta cheese industry, and if the U.S. is sufficiently

certain that Canada will bid, then the U.S. will not bid in the auction either (hoping to “lose” to Canada). Arguing in this fashion, it can be seen (see Bagwell, Mavroidis and Staiger, 2003, for the formal proof) that the basic auction will *fail* to generate any bids if the degree of political pressure for import protection in the economies of the potential bidders is sufficiently low.

Obviously, when the degree of political pressure is sufficiently low across potential bidders so that auction failure occurs, the basic auction will fail to deliver on the first two potential benefits noted in section 3.1. It fails to provide any incentive for compliance, since the infringing government faces no new costs as a result of the basic auction in this case. And it fails to provide any readjustment of concessions, since the government running the auction fails to generate any revenue in this case. As for the third dimension of allocative efficiency, whether or not the basic auction delivers in this case depends on how costly retaliation is to the infringing government: if retaliation is sufficiently costly to the infringing government, then it is better from an efficiency standpoint that no retaliation occur, and so allocative efficiency is served by failure of the basic auction; if retaliation is not so costly to the infringing government, then allocative efficiency requires that the right of retaliation be allocated to the (competing-importer) government that most values its use, and the basic auction then fails to achieve allocative efficiency in this case.

On the other hand, if the degree of political pressure for import protection is sufficiently intense, then as we have noted in section 3.2 a government will prefer (gross of its bid) to win rather than lose, and in this case the outcome of the auction looks like a more standard auction, with the (competing-importer) country who most highly values the right of retaliation making the winning bid, and with bids reflecting individual



valuations. When the political pressure faced by at least one potential bidder is sufficiently intense, then, we can expect the basic auction to perform “well” on the first two dimensions listed in section 3.1: it inflicts the cost of retaliation on the infringing government; and it generates revenue for the government running the auction commensurate with the maximum amount consistent with the valuations of the potential bidders. As for the third dimension of allocative efficiency, whether or not the basic auction performs well in this case depends again on how costly retaliation is to the infringing government: as before, if retaliation is sufficiently costly to the infringing government, then it is better from an efficiency standpoint that no retaliation occur, and so in this case the basic auction now fails to achieve allocative efficiency; if retaliation is not so costly to the infringing government, then allocative efficiency requires that the right of retaliation be allocated to the (competing-importer) government that most values its use, and in this case the basic auction now achieves allocative efficiency.

Finally, given the bidding behavior that we have described over these two (sufficiently low, sufficiently high) ranges of political pressure, it can be shown (see Bagwell, Mavroidis and Staiger, 2003) that over an intermediate range of realizations for political pressure, all bids must be made at the auction’s reservation price, and a random sharing rule is then used to break the ties and allocate the retaliation right. Over this intermediate range of realizations of political pressure, then, bids do not rise with rising valuation, and the resulting allocation across countries is also independent of valuation. As a result, when the political pressure faced by each potential bidder falls in this intermediate range, we can expect the basic auction to perform in a “mediocre” fashion: on the bright side, it inflicts the cost of retaliation on the infringing government; but it does not generate revenue for the government running the auction commensurate with the maximum amount consistent with the valuations of the potential bidders; and it

does not (except by chance) allocate the right of retaliation efficiently to the government that values it most highly.

Overall, then, in an expected sense over the entire range of possible realizations of political economy pressure, we may conclude that the basic auction of WTO countermeasures can be expected to deliver something on each of the three benefit dimensions listed in section 3.1. However, the positive externalities between bidders that are likely to be present in this setting will tend to disrupt the auction performance on each dimension relative to what one might expect in a more standard (no-externalities) setting.

#### **3.4 The Extended Auction: The Infringing Government Is Permitted to Bid**

As we establish in Bagwell, Mavroidis and Staiger (2003), the outcome of the extended auction in which the infringing government is also permitted to bid differs strikingly from the outcome of the basic auction that we described in the previous subsection. Most importantly, at least when the auction's reservation price is set sufficiently low, there is *no* possibility of auction failure in the extended auction. That is, permitting the infringing government to bid to retire the right of retaliation against it will ensure that the auction of WTO countermeasures does not "fail."

In fact, continuing to focus on the low-reservation-price case, we can say more: in the extended auction, the infringing government *always* places the highest bid and retires the right of retaliation against it. Intuitively, this is because the positive externalities across the other (competing importer) bidders keep either of them from bidding sufficiently high to beat what the infringing (exporting) government – who faces *all* the costs of the retaliation – is willing to pay to avoid the retaliatory tariff. Hence,

continuing with our example, if the EC is permitted to bid to retire the right of retaliation against its feta cheese exporters in the auction run by Honduras, the EC will place a bid that “beats” the highest possible bid that either Canada or the U.S. could “conceivably” make, and the right of retaliation will be retired.<sup>12</sup>

How does the extended auction perform with respect to the three dimensions of benefits described in section 3.1? Here we discuss the ability of the extended auction to deliver on each of these dimensions relative to no auction. In the next subsection, we will compare the relative merits of the basic and the extended auctions.

Consider first the incentives for compliance. Interestingly, while we have just observed that there will be no retaliation against the infringing government when it is permitted to bid to retire the right of retaliation against it, it is nevertheless the case that incentives for compliance will be created by the extended auction: they simply take the form of *cash payments* made by the infringing government to the auctioneer. Hence, with regard to incentives for compliance, relative to no auction the extended auction accomplishes two things: it increases the cost of non-compliance faced by an infringing government; and it changes the form of payments normally associated with WTO “compensation,” from retaliatory tariffs to cash. In effect, then, the extended auction provides a way to *induce* infringing governments to pay cash compensation to successful claimants in a WTO dispute.

Consider next the readjustment of concessions. Of course, the flip side of the compliance effect of this cash payment is the readjustment of concessions for the

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<sup>12</sup>There are a number of more intricate technical issues that arise in constructing the equilibria of the extended auction, and we refer the interested reader to Bagwell, Mavroidis and Staiger (2003) for details.

government running the auction. Hence, relative to no auction, the extended auction also leads to better readjustment of concessions.

Finally, consider the efficient allocation of retaliation. Given that the infringing government always wins the extended auction and retires the right of retaliation against it, we may conclude that allocative efficiency is attained in the extended auction if and only if retaliation is sufficiently costly to the infringing government, so that it is better from an efficiency standpoint that no retaliation occur.

### **3.5 The Choice of Auction Design: Should the Infringing Government Be Permitted to Bid?**

We now compare the performance of the basic and extended auctions along the three benefit dimensions listed in section 3.1, in order to assess whether the infringing government should be permitted to bid to retire the right of retaliation in an auction of WTO countermeasures. We describe how the two auctions can perform differently along each of these dimensions, and we argue that the preferred auction design is therefore likely to depend on which of these three dimensions is the most important goal of permitting countermeasures to be auctioned in the WTO.<sup>13</sup>

Consider first the incentive for compliance. At one level, it might be thought that the infringing government will face the highest costs when it is prevented from bidding in the auction (i.e., under the basic auction). After all, it might seem that a “revealed

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<sup>13</sup>There are of course many other features of auction design, such as the setting of the reservation price or the nature of the bidding (e.g., sealed or open, ascending or descending, first-price or second-price) that can also have important implications in this auctions-with-externalities setting, but we follow Bagwell, Mavroidis and Staiger (2003) and emphasize the question of whether or not the infringing government should be permitted to bid as a novel and key feature of the design of auctions for WTO countermeasures.

preference” argument would indicate that the infringing government must face lower costs when it is permitted to bid (i.e., under the extended auction), because it chooses in this case to make a sufficiently high bid to guarantee that it will not face retaliation. However, this reasoning is incorrect: the presence of the infringing government at the extended auction *alters* the bidding behavior of the other governments in a way that can be so unfavorable to the infringing government that it would do better if it had been barred from the auction. In terms of our example, Canada and the U.S. will be induced to bid far more aggressively when they know that the EC is also bidding (and that it will retire the right of retaliation if it wins), and this means that the EC must in turn bid aggressively to beat the Canadian and U.S. bids and win the extended auction. In the basic auction, on the other hand, there is always the chance that the EC will “get lucky” and the basic auction will end in failure (with no retaliation against the EC).

As this discussion suggests, it can be shown that whether or not the EC would prefer the expected outcome of the basic auction or the extended auction depends on how likely auction failure is in the basic auction: if auction failure is sufficiently likely in the basic auction, then the EC fares better under the basic auction than under the extended auction, and the incentive for compliance is then served best under the extended auction; otherwise, compliance is best served under the basic auction. Hence, with regard to compliance, the choice between auctions depends on the likelihood of auction failure in the basic auction—the more likely is auction failure in the basic auction, the better is the extended auction from the point of view of providing incentives for compliance.

Consider next the readjustment of concessions. Here the choice between auctions is unambiguous: the extended auction always yields more revenue for the auctioneer than

the basic auction. In terms of our example, Honduras will get more cash compensation as a result of the infringement of the EC if it can run an auction of WTO countermeasures in which the EC is permitted to bid. This reflects the fact, as noted just above, that (i) Canada and the U.S. will be induced to bid far more aggressively when they know that the EC is also bidding (and that it will retire the right of retaliation if it wins), and (ii) this means that the EC must in turn bid aggressively to beat the Canadian and U.S. bids and win the extended auction (and therefore the EC must bid higher than what could conceivably be the winning bid in the basic auction).

Finally, consider the efficient allocation of the right of retaliation. As we described in the previous subsections, the extended auction always retires the right of retaliation, and so always ends with no retaliation, while the basic auction yields no retaliation under auction failure, allocates retaliation randomly across bidders when their political pressure is in an intermediate range, and allocates the right of retaliation to the highest value bidder when its political pressure is sufficiently strong. Clearly, then, if retaliation is sufficiently costly to the infringing government so that it is better from an (ex ante) efficiency standpoint that no retaliation occur, the efficient allocation of the right of retaliation will be best served by the extended auction. On the other hand, if retaliation is not so costly to the infringing government, then allocative efficiency requires that the right of retaliation be allocated to the (competing-importer) government that most values its use, and the basic auction may then out-perform the extended auction on this dimension.

On the basis of this discussion, we may conclude that the preferred auction design is likely to depend on which of the three dimensions of benefits listed in section 3.1 is the most important goal of permitting countermeasures to be auctioned in the WTO. If the

readjustment of concessions is paramount, then the infringing government should be permitted to bid to retire the right of retaliation. If the incentive for compliance is foremost, then the infringing government should be prevented from bidding in the auction, unless the likelihood of auction failure is sufficiently great. And to the extent that the efficient allocation across governments of the right to retaliate is dominant, then the infringing government should be prevented from bidding in the auction, unless the political costs it faces in the event of retaliation are sufficiently great.

#### **4. Conclusion**

Auctioning countermeasures in the WTO is a novel but potentially a controversial idea. Tradable retaliation rights have been formally proposed by Mexico (WTO, 2002) as a potential solution to a perceived practical problem. The attractiveness of Mexico's proposal is that it offers an additional possibility to injured WTO Members to get something from the dispute settlement mechanism *without* putting into question the legal nature of the existing contract, that is, the predominantly de-centralized system of enforcement in the WTO. The data we have reviewed in Section 2 of this paper, while not conclusive, lend some support to Mexico's perception that there is indeed a practical problem faced by small countries and especially developing countries when they attempt to carry through with effective retaliation within the WTO system. The auction theory lends some support to the efficacy of Mexico's proposed solution from the perspective of formal economic theory.

At this stage, we deem it precarious to set out the necessary formal amendments to the DSU for Mexico's proposal to fit in. Indeed, Mexico did not offer a concrete proposal beyond the idea of tradable rights. In this spirit, we have limited our observations to a discussion on the substantive merits of Mexico's proposal (by using auction theory

framework) and have refrained from proposing any concrete re-design of the DSU. We would argue, though, that auctioning countermeasures in the WTO is an idea that should be studied seriously. This is not to say that introducing such auctions into the WTO system is necessarily a good idea. It may possibly be a very bad idea. This possibility is especially apparent when one considers the likely political ramifications that would arise when one government, as a result of placing the winning bid in an auction, imposed WTO-sanctioned retaliatory tariffs against a second government with whom it had no unresolved WTO dispute. Needless to say, the political frictions and public misperceptions associated with such an action could impose costs on the workings of the WTO that far outweigh any possible benefits that we have assessed in the preceding sections.<sup>14</sup> Similar statements, however, could be made about *any* attempt to bring multilateral elements into WTO dispute resolutions for the purpose of helping small and developing countries take part more effectively in the WTO system. In this light, the auctioning of countermeasures in the WTO deserves serious study because it represents one (in principle, particularly effective) way to multilateralize the WTO dispute procedures for this purpose.

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<sup>14</sup> Anticipating the public firestorm that could be ignited in this circumstance, governments who are looking to re-impose protection might reasonably opt out of participating in such auctions, and might instead pursue more traditional (e.g. GATT Article XIX safeguards) WTO-approved channels. This observation suggests as well an important direction in which further study of auctioning WTO countermeasures is warranted, namely, framing the auction in the broader context of WTO rules, and evaluating its consequences for the broader performance of the world trading system.



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### **Annex Table 1 : Abandoned Disputes**

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DS255:	the complainant (Chile) withdrew the request for establishment of a panel in light of the modification of the contested legislation by the defendant (Peru).
DS240:	the complainant (Hungary) withdrew the request for establishment of a panel following an abrogation of the contested legislation by the defendant (Romania).
DS228:	this dispute (Colombia vs. Chile) has been replaced by DS230.
DS227:	the complainant (Chile) withdrew the complaint in light of the modification of the contested measure by the defendant (Peru).
DS221:	on 30 August 2002, the DSB adopted the panel report whereby it found that Canada failed to establish that Section 129(c)(1), a US statute, was WTO-inconsistent.
DS214:	the panel has been established on 10 September 2001 but has not been composed as of yet.
DS213:	on 19 December 2002, the DSB adopted the AB report which essentially exonerated the US from any responsibility regarding its provisions on sunset reviews (EC).
DS195:	the panel has been established on 17 November 2000 and has not been composed as of yet.
DS194:	the panel report was adopted by the DSB on 23 August 2001. The panel rejected Canada's claim and refused to make any recommendations regarding the treatment by the US of export restraints as subsidies.
DS193:	the parties to the dispute (EC vs. Chile) agreed on March 23, 2001 to suspend the process for constitution of the panel.
DS188:	the panel has been established on 18 May 2000 and has not been composed as of yet.
DS181:	the complainant (Thailand) withdrew the request for establishment of a panel since the defendant (Colombia) terminated the safeguard measure at hand.
DS173:	US vs. France (Flight Management System). This dispute is identical to DS172 which is currently being negotiated by the US and the EC.
DS165:	on 10 January 2001, the DSB upheld the AB report which reversed the panel rulings by essentially holding that the US measure at hand was not in existence any more and thus, it refrained from making any recommendations (EC).
DS164 :	the panel was established on 26 July 1999 but never composed. The EC has submitted a complaint on the same issue against Argentina and the panel and AB report have been adopted (DS121).
DS163:	on 19 June 2000, the DSB adopted the panel report whereby it was found that the US had failed to prove that Korea's practices in government procurement were WTO-inconsistent. No appeal was submitted.

- DS159: Czech Republic initiated this dispute vs. Hungary (safeguards on steel imports). Since both are now EC Member states, it is expected that the case will not be pursued any further.
- DS158 : this case has no object, at least for the time being, since the European Community benefits from a waiver for its Bananas régime.
- DS152: on 27 January 2000, the DSB adopted the panel report which requested from the US not to apply their Section 301 legislation in a WTO-inconsistent manner without, however, requesting from the US to modify its legislation. No appeal against the report was submitted by the EC.
- DS148 : the measure at hand has expired.
- DS143: the measure at hand has expired.
- DS138: the US announced that it had implemented the rulings of the panel and the AB, but the EC disagreed. It did not however pursue this case any further, since it filed a new complaint on the same issue (non recurring subsidies, DS212).
- DS135: on 5 April 2001, the DSB adopted the AB Asbestos report which exonerated the EC from any legal responsibility (Canada).
- DS123: the complainant has stated that it has no intention to pursue the matter any further.
- DS120: no request for the establishment of the panel, following the first request to this effect, has been submitted since October 2000.
- DS109: the subject-matter of this dispute has been overtaken by DS87 and DS110 (Chile has in the meantime implemented the final AB report).
- DS106: the complainant (US) withdrew the request for establishment (vs. Australia), since the dispute has been overtaken by DS126.
- DS105: *idem as per DS158.*
- DS101: this dispute has been overtaken by DS132. It concerned the imposition of preliminary AD duties. The complainant (US) subsequently attacked the imposition of definitive AD duties on the same product by Mexico.
- DS95: same as per DS88.
- DS89: the complainant (Korea) announced that it was withdrawing the request for panel in light of the fact that the defendant (US) had revoked the AD order.
- DS88: the panel's authority lapsed on 11 February 2000 (Art. 12.12 DSU; EC vs. US).
- DS77: the panel's authority lapsed on 29 July 1999 (Art. 12.12 DSU; EC vs. Argentina).
- DS71: Brazil vs. Canada on the same issue as per DS70.
- DS61: Philippines vs. US. This dispute concerns the shrimp-turtle litigation (DS58). The AB has found that the US have complied with their obligations.
- DS60: on 25 November 1998, the DSB adopted the AB report whereby Mexico's complaint against Guatemala was rejected since the legal basis invoked was inappropriate.
- DS62: on June 22, 1998, the DSB adopted the AB report which exonerated the EC from any responsibility regarding its customs classification of certain computer equipment (LAN). The US had complained.

- DS67: on June 22, 1998, the DSB adopted the AB report which exonerated the EC from any responsibility regarding its customs classification of certain computer equipment (LAN). The US had complained.
- DS68: on June 22, 1998, the DSB adopted the AB report which exonerated the EC from any responsibility regarding its customs classification of certain computer equipment (LAN). The US had complained.
- DS52: US vs. Brazil (Trade And Investment In Automotive Sector). This dispute has been overtaken by DS65.
- DS47: Thailand vs. Turkey (Imports Of Textile And Clothing Products). This dispute concerns the same subject-matter as DS34. Thailand chose not to participate as co-complainant in the latter litigation.
- DS44: on 22 April 1998, the DSB adopted the panel report which exonerated Japan from any legal responsibility for its treatment of film paper (US).
- DS39: the defendant (US) withdrew the measure at hand and the complainant (EC) decided not to pursue the measure any further.
- DS38: the panel's authority lapsed on 2 April 1998 (Art. 12.12 DSU; EC vs. US).
- DS32: the defendant (US) withdrew the safeguard measure and the complainant (India) stopped pursuing the case.
- DS30: Sri Lanka vs. Brazil (Desiccated Coconut). This dispute has been overtaken by DS22.
- DS29: this dispute has been overtaken by DS34 (see Table 6).
- DS23: the defendant terminated the AD order which formed the subject-matter of the dispute.
- DS22: on 20 March 1997 the AB rejected the complaint by Philippines regarding AD measures on desiccated coconut originating in Philippines.
- DS16: *idem as per* DS158.
- DS13: the complainant withdrew the panel request on 30 April 1997 (US vs. EC).
- DS9: the panel has been established on 11 October 1995 but has not been composed as of yet (Canada vs. EC).
- DS3: US vs. Korea (Inspection Of Agricultural Products). This dispute has been overtaken by DS41.
- DS1: the complainant (Singapore) withdrew the panel request on 19 July 1995 (vs. Malaysia).
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## Annex Table 2a : Disputes Where Consultations Are Still Pending

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### **Complainant OECD / Defendant OECD**

DS295:	US vs. Mexico (AD Beef And Rice)
DS294:	EC vs. US (Zeroing)
DS292:	Canada vs. EC (Biotech Products)
DS291:	US vs. EC (Biotech Products)
DS290:	Australia vs. EC (Biotech Products)
DS289:	Poland vs. Czech Republic (AD Pig Meat)
DS287:	EC vs. Australia (Quarantine Regime For Imports)
DS282:	Mexico vs. US (AD Tubular Goods)
DS281:	Mexico vs. US (AD Cement)
DS280:	Mexico vs. US (CVD Steel Plate)
DS274:	Japan vs. US (Steel Safeguard)
DS273:	EC vs. Korea (Trade In Commercial Vessels)
DS271:	EC vs. Australia (Importation Of Fresh Pineapple)
DS270:	EC vs. Australia (Importation Of Fresh Fruit And Vegetables)
DS266:	Australia vs. EC (Sugar Export Subsidies)
DS266:	Canada vs. EC (Sugar Export Subsidies)
DS265:	Australia vs. EC (Sugar Export Subsidies)
DS265:	Canada vs. EC (Sugar Export Subsidies)
DS262:	EC vs. US (Sunset Reviews Of AD Duties On Steel)
DS256:	Hungary vs. Turkey (Imports Of Pet Food)
DS247:	Canada vs. US (Provisional AD On Softwood Lumber)
DS225:	EC vs. US (AD Seamless Pipe)
DS223:	US vs. EC (Corn Gluten Feed Tariff Rate Quota)
DS203:	Mexico vs. US (Live Swine)
DS200:	EC vs. US (Section 306 Of 1974 Trade Act)
DS186:	EC vs. US (Section 337 Of 1930 Tariff Act)
DS180:	Canada vs. US (Reclassification Certain Sugar Syrups)
DS174:	US vs. EC (Trademarks, Geographical Indications For Agricultural Products)
DS174:	Australia vs. EC (Trademarks, Geographical Indications For Agricultural Products)
DS174:	Mexico vs. EC (Trademarks, Geographical Indications For Agricultural Products)
DS174:	New Zealand vs. EC (Trademarks, Geographical Indications For Agricultural Products)
DS172:	US vs. EC (Flight Management System)
DS167:	Canada vs. US (CVD Live Cattle)
DS153:	Canada vs. EC (Patent Protection For Pharmaceuticals)
DS147:	EC vs. Japan (Leather Subsidies And Tariff Quotas)
DS144:	Canada vs. US (Import Of Cattle, Swine And Grain)
DS137:	Canada vs. EC (Imports Of Wood And Conifers)

DS133: Switzerland vs. Slovak Republic (Dairy Products And Transit Of Cattle)  
 DS131: US vs. France (Tax Measures Constituting Subsidies)  
 DS130: US vs. Ireland (Tax Measures Constituting Subsidies)  
 DS129: US vs. Greece (Tax Measures Constituting Subsidies)  
 DS128: US vs. Netherlands (Tax Measures Constituting Subsidies)  
 DS127: US vs. Belgium (Tax Measures Constituting Subsidies)  
 DS118: EC vs. US (Harbour Maintenance Tax)  
 DS117: EC vs. Canada (Film Distribution)  
 DS104: US vs. EC (Processed Cheese)  
 DS100: EC vs. US (Poultry Products)  
 DS80: US vs. Belgium (Telephone Directory Services)  
 DS66: EC vs. Japan (Imports Of Porc)  
 DS63: EC vs. US (AD Solid Urea)  
 DS53: EC vs. Mexico (Customs Valuation)  
 DS45: US vs. Japan (Distribution Services)  
 DS41: US vs. Korea (Inspection Of Agricultural Products)

**Complainant OECD / Defendant non-OECD**

DS288: South Africa vs. Turkey (AD Blanketing)  
 DS279: EC vs. India (Import Export Policy)  
 DS279: US vs. India (Import Export Policy)  
 DS275: US vs. Venezuela (Import Licensing Agricultural Products)  
 DS275: Canada vs. Venezuela (Import Licensing Agricultural Products)  
 DS275: EC vs. Venezuela (Import Licensing Agricultural Products)  
 DS275: New Zealand vs. Venezuela (Import Licensing Agricultural Products)  
 DS215: Korea vs. Philippines (AD Resins)  
 DS197: US vs. Brazil (Minimum Import Prices)  
 DS191: Mexico vs. Ecuador (AD Cement)  
 DS183: EC vs. Brazil (Import Licensing And Minimum Import Prices)  
 DS182: Mexico vs. Ecuador (Provisional AD Cement)  
 DS157: EC vs. Argentina (AD Drill Bits)  
 DS150: EC vs. India (Customs Duties)  
 DS149: EC vs. India (Import Restrictions)  
 DS145: EC vs. Argentina (CVDs On Wheat Gluten)  
 DS116: EC vs. Brazil (Payment Terms For Imports)  
 DS107: EC vs. Pakistan (Hides And Skins)  
 DS81: EC vs. Brazil (Trade And Investment In Automotive Sector)  
 DS65: US vs. Brazil (Trade And Investment In Automotive Sector)  
 DS51: Japan vs. Brazil (Trade And Investment In Automotive Sector)

**Complainant non-OECD / Defendant OECD**

DS293: Argentina vs. EC (Biotech Products)

DS293: Brazil vs. EC (Biotech Products)  
DS293: India vs. EC (Biotech Products)  
DS286: Thailand vs. EC (Customs Classification Boneless Chicken Cuts)  
DS285: Barbuda vs. US (Gambling And Betting)  
DS285: Antigua vs. US (Gambling And Betting)  
DS284: Nicaragua vs. Mexico (Importation Of Black Beans)  
DS283: Thailand vs. EC (Sugar Export Subsidies)  
DS274: Chinese Taipei vs. US (Steel Safeguard)  
DS271: Philippines vs. Australia (Importation Of Fresh Pineapple)  
DS271: Thailand vs. Australia (Importation Of Fresh Pineapple)  
DS270: Thailand vs. Australia (Importation Of Fresh Fruit And Vegetables)  
DS270: Philippines vs. Australia (Importation Of Fresh Fruit And Vegetables)  
DS269: Brazil vs. EC (Customs Classification Boneless Chicken Cuts)  
DS266: Brazil vs. EC (Sugar Export Subsidies)  
DS266: Barbados vs. EC (Sugar Export Subsidies)  
DS266: Belize vs. EC (Sugar Export Subsidies)  
DS266: Colombia vs. EC (Sugar Export Subsidies)  
DS266: Congo vs. EC (Sugar Export Subsidies)  
DS266: Cote d'Ivoire vs. EC (Sugar Export Subsidies)  
DS266: Fiji vs. EC (Sugar Export Subsidies)  
DS266: Guyana vs. EC (Sugar Export Subsidies)  
DS266: India vs. EC (Sugar Export Subsidies)  
DS266: Jamaica vs. EC (Sugar Export Subsidies)  
DS266: Kenya vs. EC (Sugar Export Subsidies)  
DS266: Madagascar vs. EC (Sugar Export Subsidies)  
DS266: Malawi vs. EC (Sugar Export Subsidies)  
DS266: Mauritius vs. EC (Sugar Export Subsidies)  
DS266: St. Kitts and Nevis vs. EC (Sugar Export Subsidies)  
DS266: Swaziland vs. EC (Sugar Export Subsidies)  
DS266: Zimbabwe vs. EC (Sugar Export Subsidies)  
DS265: Barbados vs. EC (Sugar Export Subsidies)  
DS265: Belize vs. EC (Sugar Export Subsidies)  
DS265: Brazil vs. EC (Sugar Export Subsidies)  
DS265: Colombia vs. EC (Sugar Export Subsidies)  
DS265: Congo vs. EC (Sugar Export Subsidies)  
DS265: Cote d'Ivoire vs. EC (Sugar Export Subsidies)  
DS265: Fiji vs. EC (Sugar Export Subsidies)  
DS265: Guyana vs. EC (Sugar Export Subsidies)  
DS265: India vs. EC (Sugar Export Subsidies)  
DS265: Jamaica vs. EC (Sugar Export Subsidies)  
DS265: Kenya vs. EC (Sugar Export Subsidies)  
DS265: Madagascar vs. EC (Sugar Export Subsidies)

DS265: Malawi vs. EC (Sugar Export Subsidies)  
 DS265: Mauritius vs. EC (Sugar Export Subsidies)  
 DS265: St. Kitts and Nevis vs. EC (Sugar Export Subsidies)  
 DS265: Swaziland vs. EC (Sugar Export Subsidies)  
 DS265: Zimbabwe vs. EC (Sugar Export Subsidies)  
 DS263: Argentina vs. EC (Imports Of Wine)  
 DS242: Thailand vs. EC (GSP)  
 DS239: Brazil vs. US (AD Silicon Metal)  
 DS232: Chile vs. Mexico (Imports Of Matches)  
 DS224: Brazil vs. US (US Patents Code)  
 DS218: Brazil vs. US (CVDs On Carbon Steel)  
 DS216: Brazil vs. Mexico (Provisional AD Electric Transformers)  
 DS209: Brazil vs. EC (Soluble Coffee)  
 DS208: Brazil vs. Turkey (AD Steel Iron Pipe Fittings)  
 DS174: Argentina vs. EC (Trademarks, Geographical Indications For Agricultural Products)  
 DS174: India vs. EC (Trademarks, Geographical Indications For Agricultural Products)  
 DS174: Sri Lanka vs. EC (Trademarks, Geographical Indications For Agricultural Products)  
 DS154: Brazil vs. EC (Differential Treatment For Coffee)  
 DS140: India vs. EC (AD Cotton Fabrics)  
 DS134: India vs. EC (Duties On Rice)  
 DS111: Argentina vs. US (Imports Of Groundnuts)  
 DS97: Chile vs. US (Salmon CVD)  
 DS78: Colombia vs. US (Broom Corn Brooms Safeguard)

**Complainant non-OECD / Defendant non-OECD**

DS278: Argentina vs. Chile (Fructose Safeguard)  
 DS275: Argentina vs. Venezuela (Import Licensing Agricultural Products)  
 DS275: Chile vs. Venezuela (Import Licensing Agricultural Products)  
 DS272: Argentina vs. Peru (Provisional AD On Vegetable Oil)  
 DS233: India vs. Argentina (Imports Of Pharmaceuticals)  
 DS230: Colombia vs. Chile (Sugar Safeguard)  
 DS229: India vs. Brazil (AD On Jute Bags)  
 DS226: Argentina vs. Chile (Provisional Safeguards On Edible Oils)  
 DS220: Guatemala vs. Chile (Price Band)  
 DS205: Thailand vs. Egypt (Import Prohibition Canned Tuna)  
 DS201: Honduras vs. Nicaragua (Imports From Honduras And Colombia)  
 DS187: Costa Rica vs. Trinidad And Tobago (Provisional AD Macaroni And Spaghetti)  
 DS185: Costa Rica vs. Trinidad And Tobago (Imports Of Pasta)  
 DS168: India vs. South Africa (AD On Pharmaceuticals)  
 DS112: Brazil vs. Peru (CVDs on Buses)

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**Annex Table 2b : Disputes Where The Panel's Outcome Is Still Pending**

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**Complainant OECD / Defendant OECD**

DS204:	US vs. Mexico (Telecoms)
DS244:	Japan vs. US (Sunset Review of AD Duties)
DS245:	US vs. Japan (Imports of Apples)
DS257:	Canada vs. US (Softwood Lumber CVDs)
DS260:	US vs. EC (Steel Provisional Safeguard)
DS264:	Canada vs. US (Softwood Lumber AD)
DS276:	US vs. Canada (Export Of Wheat, Treatment Of Grain)
DS277:	Canada vs US (ITC Investigation On Softwood Lumber)

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

DS246:	India vs. EC (GSP)
DS250:	Brazil vs US (Excise Tax On Processed Orange).
DS267:	Brazil vs. US (Upland Cotton Subsidies)
DS268:	Argentina vs. US (Sunset Review AD On Tubular Goods)

**Complainant non-OECD / Defendant non-OECD**

DS261:	Chile vs. Uruguay (Tax Treatment On Certain Products).
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**Annex Table 2c: Disputes Where The AB's Outcome is Still Pending**

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**Complainant OECD / Defendant OECD**

Nil.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

DS21:	Brazil appealed on 23.4.2003 the panel report on AD duties on malleable fittings (vs. EC)
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**Complainant non-OECD / Defendant non-OECD**

Nil.

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**Annex Table 2d: Disputes Where the Art. 21.5 DSU Panel's / AB Outcome Is Pending**

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Nil.

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**Table 2e: Disputes Where The Appeal Of Cases Listed In Table 2c Is Still Pending**

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Nil.

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**Annex Table 2f : Other Cases**

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**(i) Circulation Of A Panel Report**

**Complainant OECD / Defendant OECD**

DS248: EC vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS249: Japan vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS251: Korea vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS253: Switzerland vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS254: Norway vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS258: New Zealand vs. US (Steel Safeguard), report circulated on July 11, 2003.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

DS243: Report circulated on June 20, 2003 (India vs. US).  
DS252: China vs. US (Steel Safeguard), report circulated on July 11, 2003.  
DS259: Brazil vs. US (Steel Safeguard), report circulated on July 11, 2003.

**Complainant non-OECD / Defendant non-OECD**

DS24: Report circulated on 22 April 2003 (Brazil vs. Argentina), and adopted by the DSB on 19 May 2003.

**(ii) Circulation Of An AB Report**

Nil.

**(iii) Circulation Of An Art. 21.5 DSU Panel Report**

Nil.

**(iv) Circulation Of An Art. 21.5 DSU AB Report**

**Complainant OECD / Defendant OECD**

Nil.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

DS141: the AB circulated its report condemning the EC practices on 8 April 2003.

**Complainant non-OECD / Defendant non-OECD**

Nil.

**(v) Implementation Period To Be Defined**

**Complainant OECD / Defendant OECD**

Nil.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

Nil.

**Complainant non-OECD / Defendant non-OECD**

DS238: Argentina requested the definition of an RPT to comply with the panel's rulings regarding its safeguard on imports of preserved peaches (Chile).

**(vi) Implementation Period Defined But Not Expired**

**Complainant OECD / Defendant OECD**

DS212: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 8 November 2003.

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Australia).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (EC).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Japan).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Korea).

DS234: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Canada).

DS234: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Mexico).

**Complainant OECD / Defendant non-OECD**

DS211: Egypt has to implement the panel's rulings by 31 July 2003 (Turkey).

**Complainant non-OECD / Defendant OECD**

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Brazil).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Chile).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (India).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Indonesia).

DS217: the RPT granted to the US to bring into compliance their Byrd Amendment expires on 27 December 2003 (Thailand).

**Complainant non-OECD / Defendant non-OECD**

DS207: the RPT granted to Chile to bring its price band system into compliance expires on 23 December 2003 (Argentina).

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### Annex Table 3: Disputes With Uncertainty As To The Outcome

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#### **Complainant OECD / Defendant OECD**

- DS15: telecoms dispute between the EC and Japan (US third party); no official communication to the WTO beyond the request for consultations.
- DS18: following the circulation of an Art. 21.5 DSU report which was adopted, Australia was found not to have brought its measures into consistency with its WTO obligations during the reasonable period of time. However, no official communication was made to the DSB ever since (20.3.2000) regarding the actual implementation of the report, nor has the complainant (Canada) pursued the matter any further.
- DS49: the defendant's (US) official (USDOC) releases the matter settled; however, no officially transmitted MAS has reached the WTO by either the defendant or the complainant (Mexico).
- DS57: the defendant's (US) official (USTR) releases the matter settled; however, no officially transmitted MAS has reached the WTO by either the defendant or the complainant (Australia).
- DS132: following a finding by an Art. 21.5 DSU panel and AB that Mexico had failed to implement its obligations, this item appeared on the DSB agenda for some time before it disappeared without notification of unilateral implementation or MAS to this effect (US).
- DS136: the US introduced legislation to repeal the 1916 Antidumping Act and make it thus inapplicable to all future cases but took no steps as to its applicability to pending cases. On 27 January 2003, the EC reiterated its concerns to this effect.
- DS162: the US introduced legislation to repeal the 1916 Antidumping Act and make it thus inapplicable to all future cases but took no steps as to its applicability to pending cases. On 27 January 2003, Japan reiterated its concerns to this effect.
- DS170: the RPT granted to Canada to bring its patent protection laws at issue in conformity with its WTO obligations expired on 12 August 2001 (WTO Doc. WT/DS170/10). No official communication has been received ever since.
- DS176: the reasonable period of time expired on 30 June 2003 and there is no information at this stage as to whether the defendant (US) has taken the steps to implement its obligations (Section 211 Act, EC).
- DS184: the last official statement dates from 27 January 2003 where complainant (Japan) and defendant (US) agreed that implementation had not occurred yet but that they were working towards this goal.
- DS236: on 28 November 2002, the defendant (US) announced to the DSB that since the measures found to be WTO-inconsistent were no longer in effect, they had to take no corrective action at all. Canada disagreed and stated that the US methodology found to be illegal by the panel continued to be applied in CVD determinations by US agencies.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

- DS17: the request (Thailand vs. EC) for consultations looks similar to DS9 and DS13; no official communication to the WTO beyond the request for consultations.
- DS25: the request (Uruguay vs. EC) for consultations looks similar to DS17; no official communication to the WTO beyond the request for consultations.
- DS34: the complainant (India) and the defendant (Turkey) reached an MAS on 6 July 2001. On 18.12.2001, India complained before the DSB that Turkey had not notified that it honoured the terms of the MAS. No official statement with regard to this dispute has been made ever since.
- DS69: a communication circulated on 23 October 1998 clarified that the RPT granted to the EC to bring its measures concerning imports of poultry into compliance with the WTO would expire on 31 March 1999. No official communication has been submitted to the WTO ever since either by the defendant or the complainant (Brazil).
- DS206: through a communication received on 19 February 2003, India (complainant) and US (defendant) reached an MAS to extend the RPT granted to the US to bring its measures into compliance (CVD on steel plate) by the 31 January 2003 (WTO Doc. WT/DS206/9). India reserved its right to introduce a request before an Art. 21.5 DSU panel, if need be. No official communication has been submitted to the WTO ever since.
- DS231: on 22 April 2003, an official communication (WTO Doc. DS231/17) was submitted to the WTO where it was made clear that the complainant (Peru) agreed that the RPT granted to the EC to bring into compliance its measures concerning trade description of sardines would expire by July 1, 2003. No official communication has been submitted to the WTO ever since.

**Complainant non-OECD / Defendant non-OECD**

Nil.

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**Annex Table 4a: Unilateral Withdrawal Of The Contested Measure Before Completion Of  
The Process**

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**Complainant OECD / Defendant OECD**

Nil.

**Complainant OECD / Defendant non-OECD**

Nil.

**Complainant non-OECD / Defendant OECD**

DS33 : US withdrew the measure before completion of the panel process (India).

**Complainant non-OECD / Defendant non-OECD**

Nil.

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**Table 4b: MAS Before Completion Of The Process**

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**Complainant OECD / Defendant OECD**

- DS5: on 31 July 1995, the complainant (US) and defendant (Korea) notified their MAS shortly after the start of consultations (GATT/TBT/SPS).
- DS6: on 19 July 1995, the complainant (Japan) and the defendant (US) notified their MAS on import of duties on automobiles.
- DS7: on 5 July 1996, the complainant (Canada) and defendant (EC) notified their MAS on trade description of scallops.
- DS20: the complainant (Canada) and defendant (Korea) notified on 24 April 1996 their settlement on measures concerning bottled water by the latter.
- DS21: the complainant (US) and defendant (Australia) notified on 27 October 2000 their MAS on imports of salmonids by the latter.
- DS28: the complainant (US) and defendant (Japan) notified on 24 January 1997 their MAS on measures concerning sound recordings and their TRIPs protection by the latter.
- DS35: the complainant (Australia) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.
- DS35: the complainant (Canada) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.
- DS35: the complainant (New Zealand) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.

- DS35: the complainant (US) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.
- DS37: the complainant (US) and defendant (Portugal) notified on 3 October 1996 their MAS regarding patent protection under Portuguese laws.
- DS40: on 22 October 1997, the complainant (EC) and defendant (Korea) notified their MAS on some laws and practices in the telecoms sector by the latter.
- DS42: on 7 November 1997, the complainant (EC) and defendant (Japan) notified their MAS regarding patent protection for sound recordings.
- DS43: on 14 July 1997, US and Turkey US notified their MAS regarding taxation of foreign film revenues by the latter.
- DS72: the complainant (New Zealand) and defendant (EC) notified their MAS on the treatment of butter products by the latter.
- DS73: on 19 February 1998, the complainant (EC) and defendant (Japan) notified their agreement on the treatment of procurement of navigation satellite by the latter.
- DS82: on 6 November 2000, the complainant (US) and defendant (Ireland) notified their agreement concerning the grant of copyright and neighbouring rights by the latter.
- DS83: on 7 June 2001, the complainant (US) and defendant (Denmark) notified their MAS concerning enforcement of intellectual property rights by the latter.
- DS85: on 11 February 1998, the complainant (EC) and defendant (US) notified their MAS concerning treatment of textile and apparel products by the latter.
- DS86: on 2 December 1998, the complainant (US) and defendant (Sweden) notified their MAS concerning enforcement of intellectual property rights by the latter.
- DS99: on 20 October 2000, the complainant (Korea) and defendant (US) notified to the DSB their MAS which included the revocation of the AD order at issue (DRAMS).
- DS115: on 6 November 2000, the complainant (US) and defendant (EC) notified to the DSB their MAS on granting of copyright and neighbouring rights by the latter.
- DS119: on 13 May 1998, the complainant (Switzerland) and defendant (Australia) notified to the DSB their MAS on AD measures on wood-free paper sheets imposed by the latter.
- DS124: on 20 March 2001, the complainant (US) and defendant (EC) notified to the DSB their MAS regarding enforcement of intellectual property rights for motion pictures and television programs by the latter.
- DS125: on 20 March 2001, the complainant (US) and defendant (Greece) notified to the DSB their MAS regarding enforcement of intellectual property rights for motion pictures and television programs by the latter.
- DS151: on 21 July 2000, the complainant (EC) and defendant (US) notified their MAS on treatment of textiles and apparel products by the latter.
- DS210: on 18 December 2001, the complainant (US) and defendant (Belgium) notified to the DSB their MAS regarding customs duties on rice by the latter.



DS235: on 11 January 2002, the complainant (Poland) and defendant (Slovak Republic) notified to the DSB their MAS concerning a sugar safeguard imposed by the latter.

#### **Complainant OECD / Defendant non-OECD**

DS36: the complainant (US) and defendant (Pakistan) communicated on 28 February 1997 their MAS regarding patent protection for pharmaceutical and agricultural chemical products by the latter.

DS74: on 12 March 1998, the complainant (US) and defendant (Philippines) notified their MAS on the treatment of pork and poultry products by the latter.

DS91: on 23 March 1998, the complainant (Australia) and defendant (India) notified to the DSB their MAS concerning quantitative restrictions on imports of agricultural, textile and industrial products in place by the latter.

DS92: on 25 March 1998, the complainant (Canada) and defendant (India) notified to the DSB their MAS concerning quantitative restrictions on imports of agricultural, textile and industrial products in place by the latter.

DS93: on 1 December 1998, the complainant (New Zealand) and defendant (India) notified to the DSB their MAS concerning quantitative restrictions on imports of agricultural, textile and industrial products in place by the latter.

DS94: on 23 February 1998, the complainant (Switzerland) and defendant (India) notified to the DSB their MAS concerning quantitative restrictions on imports of agricultural, textile and industrial products in place by the latter.

DS96: on 7 April 1998, the complainant (EC) and defendant (India) notified to the DSB their MAS concerning quantitative restrictions on imports of agricultural, textile and industrial products in place by the latter.

DS102: on 12 March 1998, the complainant (US) and defendant (Philippines) notified to the DSB their MAS regarding treatment of pork and poultry products by the latter.

DS171: on 31 May 2002, the complainant (US) and defendant (Argentina) notified to the DSB their MAS regarding patent protection for pharmaceuticals and test data protection for agricultural chemicals.

DS196: on 31 May 2002, the complainant (US) and defendant (Argentina) notified to the DSB their MAS regarding patent protection for pharmaceuticals and test data protection for agricultural chemicals (this dispute overlaps with DS171).

DS198: on 26 September 2001, the complainant (US) and defendant (Romania) notified to the DSB their MAS concerning minimum import prices by the latter.

DS199: on 5 July 2001, the complainant (US) and defendant (Brazil) notified to the DSB their MAS regarding certain Brazilian measures affecting patent protection.

#### **Complainant non-OECD / Defendant OECD**

DS12: on 5 July 1996, the complainant (Peru) and defendant (EC) notified their MAS on trade description of scallops.

- DS14: on 5 July 1996, the complainant (Chile) and defendant (EC) notified their MAS on trade description of scallops.
- DS19: on 16 July 1996, the complainant (India) and defendant (Poland) notified their MAS regarding the import regime for automobiles by the latter.
- DS35: the complainant (Argentina) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.
- DS35: the complainant (Thailand) and the defendant (Hungary) notified on 30 July 1997 their MAS whereby the latter would seek a waiver for its treatment of export subsidies on agricultural products.
- DS237 on 22 November 2002, the complainant (Ecuador) and defendant (Turkey) notified to the DSB their MAS regarding import procedures for fresh fruit by the latter.

**Complainant non-OECD / Defendant non-OECD**

- DS190 : in a communication dated June 2000, the complainant (Brazil) and defendant (Argentina) notified their MAS provided that Argentina implements it (transitional safeguard on woven fabrics). If not, Brazil reserves its right to resume procedures from where they stopped (composition of panel).
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### Annex Table 5a: Unilateral Implementation Of Panel's (or AB's) Report

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#### **Complainant OECD / Defendant OECD**

- DS8: Japan implemented the AB report on taxes on alcoholic beverages(EC).
- DS10: Japan implemented the AB report on taxes on alcoholic beverages Canada).
- DS11: Japan implemented the AB report on taxes on alcoholic beverages (US).
- DS31: Canada withdrew the contested measure (US).
- DS75: Korea, by imposing a flat rate on all drinks complied with the AB ruling (EC).
- DS84: Korea, by imposing a flat rate on all drinks complied with the AB ruling (US).
- DS98: Korea lifted the contested safeguard measure (EC).
- DS114: Canada informed that it had unilaterally implemented the panel's rulings (EC).
- DS139: on 18 February 2001, the defendant (Canada) announced that it had withdrawn the export subsidy found to be inconsistent with the WTO (Japan).
- DS142: on 18 February 2001, the defendant (Canada) announced that it had withdrawn the export subsidy found to be inconsistent with the WTO (EC).
- DS161: Korea announced on 25 September 2001 that it had withdrawn all measures concerning distribution of beef found to be WTO-inconsistent (US).
- DS166: the US implemented its obligations within the reasonable period of time (EC).
- DS169: Korea announced on 25 September 2001 that it had withdrawn all measures concerning distribution of beef found to be WTO-inconsistent (Australia).
- DS177: a communication (WTO Doc. WT/DS177/13) dated 28 September 2001 makes it clear that the US withdraw the safeguard measure on imports of lamb at issue as of 15 November 2001 (Australia).
- DS178: a communication (WTO Doc. WT/DS178/14) dated 28 September 2001 makes it clear that the US withdraw the safeguard measure on imports of lamb at issue as of 15 November 2001 (New Zealand).
- DS179: the defendant (US) announced that it implemented the panel's rulings on 10 September 2001 (Korea).
- DS202: on 18 March 2003 the defendant (US) announced that the measure at hand had been terminated (Korea).

#### **Complainant OECD / Defendant non-OECD**

- DS50: India announced on 28 April 1999 the passage of legislation aimed to eliminate the inconsistency found by the panel.
- DS54: Indonesia announced on 24 June 1999 its new automotive policy aimed at eliminating the inconsistencies found by the panel (US).
- DS55: Indonesia announced on 24 June 1999 its new automotive policy aimed at eliminating the inconsistencies found by the panel (Japan).
- DS59: Indonesia announced on 24 June 1999 its new automotive policy aimed at eliminating the inconsistencies found by the panel (US).
- DS64: Indonesia announced on 24 June 1999 its new automotive policy aimed at eliminating the inconsistencies found by the panel (Japan).

- DS79: India announced on 28 April 1999 the passage of legislation aimed to eliminate the inconsistency found by the panel (this case relates to DS50).
- DS87: Chile enacted legislation to eliminate all inconsistencies on the taxation of alcoholic drinks (EC).
- DS90: India enacted legislation to remove the remaining quantitative restrictions (US).
- DS110: Chile enacted legislation to eliminate all inconsistencies on the taxation of alcoholic drinks (EC).
- DS121: the defendant (Argentina) informed the DSB that the safeguard measure at hand would expire on 25 February 2000 (EC).
- DS146: India informed the DSB on 6 November 2002 that it had removed the trade balancing- and the indigenization-requirements found to be WTO-inconsistent (EC).
- DS156: the defendant (Guatemala) informed on 12.12.2000 the DSB that it had removed the measure found to be illegal with the WTO (Mexico).
- DS175: India informed the DSB on 6 November 2002 that it had removed the trade balancing- and the indigenization-requirements found to be WTO-inconsistent (US).
- DS189: Argentina revoked the antidumping order on 24 April 2002 (EC).

**Complainant non-OECD / Defendant OECD**

- DS2: US implemented the AB recommendations (Venezuela).
- DS4: US implemented the AB recommendation (Brazil)
- DS24: the measure found to be inconsistent expired before the DSB meeting and was not renewed. As a result, the defendant (US) automatically complied with the rulings and the complainant (Costa Rica) did not pursue the matter any further.
- DS58: the US unilaterally enacted legislation which was found by an Art. 21.5 DSU panel (and AB) to be in compliance with the WTO (Malaysia).
- DS192: the US announced on 9 November 2001 that they had implemented the panel's rulings (Pakistan).

**Complainant non-OECD / Defendant non-OECD**

Nil.

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**Annex Table 5b: Implementation Through MAS (Post-Circulation Of Panel (AB) Report)**

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**Complainant OECD / Defendant OECD**

- DS76: Japan and the US notified a MAS they reached for lifting prohibitions on imports of fruits and nuts.
- DS103: on 9 May 2003 complainant (US) and defendant (Canada) announced that they had reached an MAS to end their dispute over milk subsidies.

- DS113: on 9 May 2003 complainant (New Zealand) and defendant (Canada) announced that they had reached an MAS to end their dispute over milk subsidies.
- DS126: following the findings by a an Art. 21.5 DSU panel that Australia had not complied with its obligations, the defendant and the complainant (US) reached an MAS on the implementation of the panel's rulings.
- DS160: the complainant (EC) and the defendant (US) agreed to submit their dispute to an Art. 25 DSU arbitration trusted with quantifying the damage suffered by the EC and further agreed to abide by the final award.

**Complainant OECD / Defendant non-OECD**

- DS56: the defendant (Argentina) announced an MAs with the complainant (US) according to which the statistical tax imposed by the former would not go beyond a certain threshold.
- DS122: the defendant (Thailand) and complainant (Poland) reached an MAS on the implementation of the panel's rulings.
- DS155: the complainant (EC) and the defendant (Argentina) notified the DSB of their agreement on 8 March 2002.

**Complainant non-OECD / Defendant OECD**

Nil.

**Complainant non-OECD / Defendant non-OECD**

Nil.

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