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WTO Dispute Settlement: Stages and Pending U.S. Activity Before the Dispute Settlement Body

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Summary

World Trade Organization (WTO) member countries resolve disputes pursuant to the WTO Dispute Settlement Understanding (DSU), which establishes the Dispute Settlement Body (DSB) to administer dispute proceedings and contains the rules and procedures that apply to these proceedings. Since the inception of the DSU in January of 1995, there have been 350 complaints filed. Of these complaints, the United States has been actively involved, either as a complainant or defendant, in slightly more than half, or 178 of these cases. This report briefly describes the various stages of the WTO dispute settlement process, and provides a statistical overview of the pending cases in which the United States is a party. This report will be updated as events warrant.

Stages of a WTO Dispute¹

Consultations.² When a dispute arises between WTO member countries, the complaining party may request that the other nation(s) enter into consultations to attempt to resolve the dispute. Consultations are required to be active for a period of 60 days before the complaining party can request the formation of a panel to resolve the dispute. If, however, the responding party fails to agree to consultations, or the parties agree that the dispute cannot be settled in consultations, then a panel may be requested before the expiration of the 60 days.

¹ For a more complete and detailed overview of DSB procedures, see CRS Report RS20088, *Dispute Settlement in the WTO: An Overview*.

² See generally, World Trade Organization, Dispute Settlement Understanding, Art. 4, available at [http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf].

Establishment of Panel and Panel Procedures.³ If a member party requests that the DSB establish a panel, the DSB must establish the panel unless there is a consensus not to do so. Panels are usually composed of three members who are proposed by the DSB Secretariat and approved by the disputing parties. If no agreement over panel members can be reached within 20 days of the panel's establishment, either party may request that the WTO Director General appoint the members of the panel.

Once the members have been selected, the panel receives written submissions from the parties and hears oral arguments. The panel then has six months, unless an extension is granted, to issue a final report to the disputing parties. The panel report is then circulated to the WTO membership for adoption. The time period from establishment of a panel to circulation of the final report should not exceed nine months.

Appellate Review.⁴ The panel report is to be adopted within 60 days of circulation to WTO members, unless a disputing party issues a notice of appeal. If a notice has been issued, the Appellate Body (AB) has 60 days to issue a report that either affirms, reverses or modifies the panel report. The appellate report is then circulated to the WTO membership who must adopt it, along with the original panel report as modified by the AB report, unless there is a consensus not to do so.

Implementation and Compliance.⁵ After the adoption of either a final panel or appellate report, a member will have 30 days to notify the DSB as to how the findings of the report will be implemented. Implementation, however, often cannot be achieved quickly, so a reasonable period of time is provided to the country for implementation. If a dispute arises as to how long a reasonable period of time should be, the compliance period will be determined by binding arbitration. If there is a dispute as to whether implementation or compliance has been achieved, the parties may also seek to settle the dispute through binding arbitration. If an arbitration panel is established to settle a dispute over implementation or compliance, it generally has 90 days to complete its report and issue its findings.

³ See generally *id.*, at Art. 6-12.

⁴ See generally *id.*, at Art.17.

⁵ See generally *id.*, at Art.21-25.

Pending U.S. Activity Before the DSB⁶

The following chart is compiled from documents produced by the WTO, and reports only the cases that involve the United States.⁷ The table does not indicate the outcome on the merits with respect to any of the reported cases, except for noting the number of cases in the implementation phase.⁸

⁶ World Trade Organization, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/24 (June 15, 2005), available at [<http://www.wto.org>]. According to the most current chronological list of disputes maintained by the WTO, there have been a total of 350 complaints filed since the inception of the DSU on January 1, 1995. See WTO, *Disputes Chronologically*, available at [http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm] (last visited Oct. 13, 2006). In addition, the Office of the United States Trade Representative (USTR) publishes a report that provides a statistical breakdown of WTO disputes involving the United States, however, USTR's report is divided based on the stages of the WTO dispute settlement process, as well as the general outcome of proceedings involving the United States. See USTR, *Snapshot of WTO Cases Involving the United States*, (Aug. 15, 2005), available at [http://www.ustr.gov/assets/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/asset_upload_file53_5696.pdf]. According to the USTR report, the U.S. has filed 75 complaints and been a respondent in 105 cases. *Id.*

⁷ World Trade Organization, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/27 (June 9, 2006), available at [<http://www.wto.org>].

⁸ The table provides a breakdown of only the cases that are actively pending. The figures reflecting the total number of cases filed includes the active cases, as well as cases that have completed the dispute settlement process and/or have been concluded in a manner mutually agreeable to the parties.

Table 1. Complaints Filed in Which the United States Is a Defendant

Established Panels ^a	Final Panel Reports	Appellate Body Panels	Appellate Body Reports	Cases Requiring Implementation ^c	Review of Implementation ^d	Total Active Disputes
9	0	0	1 ^b	7	6	23
Total complaints filed in which the U.S. is a defendant since 01/01/95						94 ^e

- a. This figure includes all cases in which panels have been established by the DSB, even cases where panels have not been constituted.
- b. The Appellate Body Reports include WT/DS296 US — Countervailing Duties Investigations on DRAMS.
- c. Currently, in five of these cases legislative action appears to be required to bring the United States into full compliance with the rulings of the DSB: WT/DS160 Section 110(5)(B) of the Copyright Act; WT/DS176 Section 211 of the Omnibus Appropriations Act of 1998; WT/DS184 Hot-Rolled Steel Products from Japan; WT/DS217/234 Continued Dumping and Subsidy Offset Act; and WT/DS285 US — Measures Relating to the Cross-Border Supply of Gambling. In the remaining cases, administrative action could be required to bring the United States into compliance: WT/DS264 US — Final Dumping Determination on Softwood Lumber from Canada and WT/DS268 US — Oil Country Tubular Goods Sunset Reviews. *See* CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne Grimmett.
- d. The 108th Congress enacted legislation to repeal the non-compliant measures in both WT/DS108 Foreign Sales Corporation (FSC) Statute and WT/DS136/162 Antidumping Act of 1916, however, because the U.S.'s actions are still subject to review by the DSB at the request of the affected countries, the disputes are still considered to be active. In addition, administrative action has been taken in the following cases: WT/DS212 European Communities- Countervailing Measures Concerning Certain Products; WT/DS257 US — Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada; WT/DS264 US- Softwood Lumber V; and WT/DS277 US — Investigation of the International Trade Commission in Softwood Lumber from Canada. A settlement agreement was entered into by the parties to the Softwood Lumber disputes in 2006. The agreement is intended to both end the litigation and provide for future trade procedures. It remains to be seen, however, whether these measures will actually result in a formal termination of the respective disputes. *See* CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne Grimmett.
- e. This figure reflects all requests for consultations that were notified to the WTO as of Oct. 13, 2006 including WT/DS350 US- Continued Existence and Application of Zeroing Methodology. *See* WTO, *Disputes Chronologically*, available at [http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm] (last visited Oct. 13, 2006); *see also* World Trade Organization, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/27 (Sept. 6, 2006), available at [<http://www.wto.org>].

**Table 2. Complaints in Which
the United States Is a Complainant**

Established Panels	Final Panel Reports	Appellate Body Panels	Appellate Body Reports	Cases Requiring Implementation ^a	Total Active Disputes
7	0	0	0	7	14
Total complaints filed in which the U.S. is a complainant since 01/01/95					84 ^b

- a. The cases included in this column are those in which, according to WTO documents, the parties have yet to report either completion of implementation, or a mutually agreed upon solution to the dispute or implementation procedures. These cases involved are: WT/DS27 EU-Banana Imports, WT/DS26 EU-Hormone-Treated Beef Imports, WT/DS 50 India-Patent Protection; WT/DS132 Mexico-Antidumping Duties on High-Fructose Corn Syrup; WT/DS161 Korea- Beef Imports; WT/DS170 Canada- Patent Law; and WT/DS245 Japan-Apples. See World Trade Organization, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/27 (Sept. 6, 2006), available at [<http://www.wto.org>].
- b. This figure reflects all requests for consultations that were notified to the WTO as of Oct. 13, 2006. See WTO, *Disputes Chronologically*, available at [http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm] (last visited Oct. 13, 2006); see also World Trade Organization, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/27 (Sept. 6, 2006), available at [<http://www.wto.org>].