

WORLD TRADE ORGANIZATION

TN/DS/W/7
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**Dispute Settlement Body
Special Session**

Original: English

THE EUROPEAN COMMUNITIES' REPLIES TO INDIA'S QUESTIONS

Communication from the European Communities

The following communication, dated 21 May 2002, has been received from the Permanent Delegation of the European Commission.

By its Communication to the Dispute Settlement Body (DSB) (TN/DS/W/5) India sought clarification and information from the European Communities (EC) on its proposal relating to the improvement of the Dispute Settlement Understanding (DSU) (TN/DS/W/1).

The EC welcomes the Indian document, which raises important issues, that would help in the process of clarifying the implications of the EC proposal.

In order to take full advantage of the Indian contribution and with a view to foster the dialogue among DSB's Members on the important questions raised by India, the EC submits to the Members the attached document.

India structured its document in four main subject matters, which are further explored through 39 questions. The EC's reply follows the four-tier structure of the Indian paper, and clusters some of the questions when they appear to refer to similar matters.

The text submitted by the EC does not pretend either to be complete or to state fixed and final positions by the EC on the various issues discussed.

Accordingly, the EC is ready to enter meaningful discussion on all such issues and would be pleased to give orally or in writing any further explanation, information and clarification that India or other Members might request.

PERMANENT PANELISTS

Question 1-2

How would adequate number (15-24) of suitable individuals be available for consideration as permanent panelists? Please point specific instances or trends of the growing quantitative discrepancy between the need for panelists and the availability of ad hoc panelists since the establishment of the WTO.

When the EC refers to the limited availability of *ad hoc panelists*, it does not mean that there are not enough *ad hoc panelists* potentially available, but that it is becoming more and more difficult to find and agree on them at short notice. The growing number of panels (see Annex 1) requires more and more *panelists* to serve, but at present the available *panelists* do not work full time, but only on an ad hoc basis. This inevitably reduces the number of panels that the available candidates can handle. Due to this factor, together with the delays related to the selection process, the composition of panels takes considerably more amount of time than in the past.

This is confirmed by the fact that in 1996 the average time for the selection of *panelists* was 30 days, while in 2001 it had increased to 67 (see Annex 1). Article 8.7 of the DSU gives to the parties to a dispute the possibility of requesting the WTO Director-General to appoint the members of the panel 20 days after the date of the establishment of a panel. This suggests that the intention of the Members was that panels would be composed more quickly than this occurs at present. The creation of a restricted roster of permanent *panelists* would eliminate these delays in all cases. So, instead of losing time in the selection process the Members will engage actively in the actual resolution of the dispute at once. Depending on the quality of the *panelists* to be selected in the permanent roster, this is also expected to increase the quality and consistence of panel reports.

Question 3

Is the requirement that panelists should not be nationals of Members involved in the dispute a constraint on the choice of potential panelists?

Yes, the experience shows that it is the case. In principle, under the EC's proposal nationality of the panelists would be irrelevant for the selection purposes. Nevertheless, some exceptions could be envisaged, to ensure participation of panelists from developing countries (DCs) in certain disputes. In particular, the EC considers that the rule enshrined in Article 8.10 of the DSU should be maintained.

Question 4-5

Please provide details on recourse to the Director General under Article 8.7 of the DSU. Is the increasing recourse to Article 8.7 an undesirable trend? Why?

Up until February 2000, 22 of 54 panels composed under the WTO were appointed by the Director-General.

Lately, recourse to Article 8.7 have become the rule (see Annexe 2). Of 24 panels established in the period 2000 to April 2002, 14 were composed by the Director-General under Article 8.7 of the DSU (58%). The trend is on the increase. Of the 9 panels in 2000, only 4 were composed by the Director-General (44%). Of the 15 established since then, 10 were composed by the Director-General (75%).

A potential advantage of a system of ad hoc panelists is that the parties are involved in the selection process. Accordingly, resort to appointment of panels by the Director-General should have been an exceptional procedure. On the contrary, the data show that the exception has become the rule and that, therefore, the involvement of the parties in the selection process is more illusory than real. The question is not whether this is an undesirable trend but whether, in the systemic structure of the dispute settlement mechanism of the WTO, this is an optimum development.

Question 6

Why would permanent panelists take less time in handling various procedural developments?

The EC paper does not argue that permanent panelists will take "less time" in handling procedural developments. It rather maintains that a system of qualified permanent panelists would better deal with the increasing complexity of the cases, as regards both substance and procedure. Ad hoc panelists often have not much experience in dealing with procedural matters or to become fully acquainted with WTO case law. Of course, the WTO Secretariat assists panelists and informs them of how previous panels have ruled on similar issues. However, final decisions rightly belong to the panelists, who can decide in a different way. A system of permanent panelists would help in attaining more consistent rulings both procedurally and on substance.

Questions 7-9, 14 and 20

Please explain the reasons why a system of permanent panelists would most likely result in better rulings and in fewer reversals of panel reports by the Appellate Body.

This set of questions is closely related to the previous one. The argument made in the EC's proposal is that most ad hoc panelists face a steeper learning curve in their work, as they cannot develop enough experience. According to a recent study, the average panelist has served on 1.5 panels since 1995: i.e. one panel every 5 years. It is clear that creating a system of permanent panelists would allow each of them to participate more often in panels. Consequently, they would develop the knowledge required to better deal with procedural and substantial complexities of today's panel proceedings.

Of course, the fact that some panelists have previously served in a WTO/GATT panel does not give any absolute guarantee on the fact that the panel report will not be partly overruled by the AB. Other factors have to be taken into account as the complexities and novelty of the legal claims at issue. Nevertheless, generally speaking, an experienced permanent panelist should be better prepared to deal with the substantial and procedural matters involved in a panel work than a panelist serving *una tantum*.

Question 10

Legitimacy and credibility of a system of permanent panelists.

The EC does not consider that ad hoc panelists lack legitimacy or credibility. Nevertheless, it considers that a system of permanent panelists would appear to both WTO Members and the general public as more independent and more credible, due to the more limited likelihood of potential conflict of interests that such a system is likely to entail and the full time dedication of panelists to their tasks.

Question 11

Which number of permanent panelists from developing countries would be representative of the WTO Membership?

As noted in the EC's proposal, the permanent roster of panelists would be broadly representative of the WTO membership. While it is difficult to assess precisely the number of panelists from developing countries without having established the total number of the permanent panelists, it is clear that panelists from DCs would probably constitute a substantial part of the roster. A clear improvement when compared to the relatively low average (about 35%) of ad hoc panelists from developing countries, which served in WTO panels since 1995.

It should be noted that the limited number of ad hoc panelists from developing countries is probably due to the fact that it is difficult for a developing country diplomat to assume the additional duties derived from serving in a panel. This would be corrected under a system of permanent panelists.

Question 12

Collegial consultations among all the permanent panelists.

On issues of general and horizontal relevance and importance, the EC could envisage a system of collegial consultations among all the permanent panelists. This is likely to help the consistency and predictability of the findings both on substantial and on procedural matters, an objective expressly set out in Article 3.2 of the DSU.

Question 13

Estimate of the time saved in various stages of the proceedings.

It is difficult to give a precise estimate of the time that a system of permanent panelists would allow to save during the various stages of the DS procedure. As noted above, the fact that the permanent panelists will get progressively better acquainted with procedural matters is expected to accelerate the proceedings. However, the main saving of time will take place in the initial stage, since the composition of the panels instead of taking two to three months will be decided immediately.

Question 15

Additional costs.

From an approximate calculation made by the EC services, it would appear that such additional costs would not be disproportionate compared to the expected benefits. In any event, the financial aspects and implications of the EC's proposal should not overshadow or prime over the most important systemic reason which are behind it.

Questions 16-17

The principles of the DSU and the evolution of the dispute settlement system since the Uruguay Round.

A system of permanent panelists would not deviate from the basic principles established by the DSU. The modification proposed by the EC aims at better enabling compliance with important

principles embodied in the DSU, i.e. the need for a consistent and predictable solution of trade disputes and an efficient and timely system for settling these disputes.

Question 18

Potential difficulties to find permanent panelists on a full-time basis.

It could be that academic institutions and other professional bodies would be reluctant to agree with secondment of staffs for a long period to the WTO. On the other hand, such a difficulty would not apply to retired government officials, whose experience could make a valuable contribution to the permanent panel body. All in all, the EC considers that it would be possible to find 15 to 24 highly qualified personalities willing to take up the job.

As far as assignment to the roster of permanent panelists of government officials, see questions 19 and 21.

Question 19 and 21

Nationality of permanent panelists and conflict of interests.

In the EC's view, nationality could only cause a problem of conflict of interests in the case of government officials, due to the fact that, after having served as permanent panelist in the WTO, the official will have to be reintegrated in his/her national administration. Accordingly, in the system proposed by the EC, secondment of government officials is not, in principle, envisaged.

In the EC's view, as a general rule, the fact that one selected panelist is national of one of the Members parties or third parties to a dispute would not constitute, a priori, a situation of conflict of interest. Of course, each panelist will have the responsibility to declare himself/herself in conflict of interests in relation with a specific dispute as appropriate, for any reason, including those related to his/her nationality.

IMPLEMENTATION ISSUES

Questions 22-25

The EC entirely agrees that the key objective of the dispute settlement mechanism is to secure withdrawal of WTO inconsistent measures. The EC proposals on "compensation" in no way seek to reduce the incentive to comply, rather their aim is to make compensation a more realistic alternative to suspension of concessions when compliance has not proved feasible. Indeed, WTO practice has shown that suspension of concessions, while creating disruption in international trade, is not always an efficient means to induce prompt compliance.

Under the EC's proposal, any compensation agreement would remain voluntary, temporary and based on an agreement between complaining and defending party.

Indeed, the initiative to request compensation would always be with the complainant. If such a request is made, the requirement to present a compensation offer would introduce an important discipline for the defendant, which will have to go through the domestic procedures to offer compensation, thereby making clear that non-compliance is not a cost-free option. This is likely to be of particular importance to induce compliance in those cases in which the complainant has limited retaliation power or is, for political and/or economic reasons, reluctant to suspend concessions.

An additional possibility to "encourage" the acceptance of a compensation package, as noted in the EC's proposal, could be to require that, if the defending party decides to present a compensation package, its value should be higher than the level of nullification and impairment, so as to allow the complaining party to choose within that package up to the level of nullification and impairment. The EC is open to reflect on other means to encourage the non-complying party to offer meaningful compensation.

The EC also recognises that an inconsistent measure may adversely affect trade interests of countries not party to the dispute. However, the EC does not agree that making trade compensation a more realistic alternative would go against the premise that the DSU serves to preserve the rights and obligations of all the Members. In particular, the EC notes that trade compensation, while based on a bilateral agreement, will have to be applied *erga omnes* on a MFN basis, whereas suspension of concessions is a measure only available to the parties of the dispute. Thus, the EC proposal is further expected to induce compliance with DSB recommendations.

TRANSPARENCY

Questions 26-27

The EC is in principle of the view that all Member countries, independently on whether they are party to the dispute or not, should have right of attendance during panel/AB proceedings. There may be, however, a need to develop special rules to deal with business confidential information in specific cases.

Under the EC's proposal, the general public would as a general rule be allowed to attend proceedings of the panel or the Appellate Body, but not to make oral interventions during such proceedings. At the same time, no restrictions on reporting of proceedings that are open to the public should be imposed.

REGULATION OF *AMICUS CURIAE* SUBMISSIONS

Questions 28-39

Amicus curiae briefs are already permitted

The EC does not discuss in its proposal the issue of whether *amicus curiae* should or should not be allowed. The question has already been largely resolved by the Appellate Body and by now a developing practice allows the submission of *amicus curiae* briefs on a case by case basis: the EC's proposal simply aims at setting clear rules for such practice.

Procedures for dealing with amicus briefs

The EC maintains that the acceptance of *amicus curiae* submissions should not slow down the proceedings. This can be achieved by retaining the present two-stage approach, *i.e.* an application for leave and an effective submission. In the EC's view, the panel and/or the AB will have the responsibility to decide whether *amicus curiae* submissions are directly relevant for the factual and legal issues under consideration by the panel, or the legal issues raised in the appeal. It will also be the panel/AB that would have to evaluate all information on any relationship between the entity (Member or natural or legal person) submitting the brief and any party or third party to the dispute. In the EC's view, the adjudicating body would have to provide the reasons for which it decides to admit or dismiss *amicus* briefs. On the other hand, the AB/panel would be free to address as they see fit arguments included in *amicus briefs* that have been admitted.

In the EC's view, all parties should be given the opportunity to present their views on these matters and to respond to the arguments emanating from *amicus curiae* briefs accepted by the panel and/or the AB. The EC consider that this could be resolved in a manner that would not put an excessive burden on the parties, nor that it would impose on them substantive new additional obligations not presently provided by the DSU.

Of course, the panel/AB would not address new claims raised in the *amicus briefs*: the terms of the dispute will continue to be set by the request of the establishment of the panel. On the other hand, in the EC's view, the panel/AB could be free to address new arguments made in *amicus* briefs, even if such arguments were not otherwise made by the parties to the dispute.

Amicus briefs and developing countries

The EC's proposal expressly stresses that the acceptance of *amicus briefs* should not create substantial additional burdens for the developing Members. While it is true that some entities with the capacities to make *amicus curiae* submissions may at present exist more in developed countries than in developing ones, this does not mean that such entities will always take positions in favour of the interests of developed countries. Indeed, recent experience shows the opposite: on various issues (e.g.: access to medicines), non-governmental organisations in developed countries have frequently taken positions radically different from those adopted by their governments.

Amicus briefs and third party rights

There is a clear qualitative difference between the wide-ranging rights of a Member third party to a dispute (participation in the proceedings, oral statements, access to parties' submissions), which the EC would like to see substantially enhanced, and the minimal right for a Member or natural or legal person to file an *amicus brief*. In particular, the EC would like to point out that the entity submitting the briefs would not have any standing before the panel/AB, nor any rights comparable to those accruing to third parties. They simply have the possibility to submit a brief, which the panel/AB could address in the proceedings and in the report, if they consider this appropriate.

ANNEX 1

case	complainant	respondent	consultation	panel			report/ <i>agreement</i>
			request	request	establishment	panelist	

1996

WT/DS 11	United States	Japan	07/07/1995	14/09/1995	14/09/1995	30/10/1995	11/07/1996
WT/DS 2	Venezuela	United States	23/01/1995	25/03/1995	10/04/1995	28/04/1995	29/06/1996
WT/DS 4	Brazil	United States	10/04/1995	19/05/1995	31/05/1995	31/05/1995	29/06/1996
WT/DS 24	Costa Rica	United States	22/12/1995	22/02/1996	05/03/1996	04/04/1996	08/11/1996
WT/DS 22	Philippines	Brazil	27/11/1995	05/02/1996	05/03/1996	16/04/1996	14/10/1996
WT/DS 7	Canada	EC	19/05/1995	07/07/1995	19/07/1995	06/09/1995	05/08/1996
WT/DS 12	Peru	EC	18/07/1995	18/09/1995	11/10/1995	12/10/1995	05/08/1996
WT/DS 14	Chile	EC	24/07/1995	25/09/1995	13/09/1995	12/10/1995	05/08/1996
WT/DS 8	EC	Japan	21/06/1995	14/09/1995	14/09/1995	30/10/1995	11/07/1996
WT/DS 10	Canada	Japan	07/07/1995	14/09/1995	27/09/1995	30/10/1995	11/07/1996

1997

WT/DS 31	United States	Canada	11/03/1996	24/05/1996	19/06/1996	25/07/1996	14/03/1997
WT/DS 27	United States	EC	05/02/1996	11/04/1996	08/05/1996	29/05/1996	22/05/1997
WT/DS 43	United States	Turkey	12/06/1996	09/01/1997	/	/	14/07/1997
WT/DS 26	United States	EC	26/01/1996	25/04/1996	20/05/1996	02/07/1996	18/08/1997
WT/DS 50	United States	India	02/07/1996	07/11/1996	20/11/1996	05/02/1997	05/09/1997
WT/DS 56	United States	Argentina	04/10/1996	09/01/1997	25/02/1997	04/04/1997	25/11/1997
WT/DS 33	India	United States	30/12/1994	14/03/1996	17/04/1996	24/06/1996	06/01/1997
WT/DS 48	Canada	EC	28/06/1996	27/09/1996	16/10/1996	04/11/1996	18/08/1997

1998

WT/DS 62	United States	EC	08/11/1996	11/02/1997	25/02/1997	18/04/1997	05/02/1998
WT/DS 67	United States	EC	14/02/1997	07/03/1997	07/03/1997	18/04/1997	05/02/1998
WT/DS 68	United States	EC	14/02/1997	07/03/1997	07/03/1997	18/04/1997	05/02/1998
WT/DS 44	United States	Japan	13/06/1996	20/09/1996	16/10/1996	17/12/1996	20/03/1998
WT/DS 59	United States	Indonesia	08/10/1996	12/06/1997	12/06/1997	29/07/1997	02/07/1998
WT/DS 84	United States	Korea	23/05/1997	10/09/1997	16/10/1997	05/12/1997	17/09/1998
WT/DS 76	United States	Japan	07/04/1997	03/10/1997	18/11/1997	18/12/1997	27/10/1998

case	complainant	respondent	consultation	panel			report/ agreement
			request	request	establishment	panelist	

WT/DS 58	India	United States	08/10/1996	25/02/1997	10/04/1997	15/04/1997	15/05/1998
WT/DS 69	Brazil	EC	24/02/1997	12/06/1997	30/07/1997	11/08/1997	12/03/1998
WT/DS 18	Canada	Australia	05/10/1995	07/03/1997	10/04/1997	28/05/1997	12/06/1998
WT/DS 54	EC	Indonesia	03/10/1996	12/05/1997	12/06/1997	29/07/1997	02/07/1998
WT/DS 79	EC	India	28/04/1997	09/09/1997	16/10/1997	27/11/1997	24/08/1998
WT/DS 75	EC	Korea	02/04/1997	10/09/1997	16/10/1997	05/12/1997	17/09/1998
WT/DS 55	Japan	Indonesia	04/10/1996	17/04/1997	12/06/1997	29/07/1997	02/07/1998
WT/DS 64	Japan	Indonesia	29/11/1996	17/04/1997	17/04/1997	29/07/1997	02/07/1998
WT/DS 60	Mexico	Guatemala	15/10/1996	04/02/1997	25/02/1997	01/05/1997	19/06/1998

1999

WT/DS 90	United States	India	16/07/1997	03/10/1997	18/11/1997	20/02/1998	06/04/1999
WT/DS 103	United States	Canada	08/10/1997	02/02/1998	25/03/1998	12/08/1998	17/05/1999
WT/DS 126	United States	Australia	04/05/1998	11/06/1998	22/06/1998	27/10/1998	25/05/1999
WT/DS 108	EC	United States	18/11/1997	01/07/1998	22/09/1998	09/11/1998	08/10/1999
WT/DS 152	EC	United States	25/11/1998	26/01/1999	02/03/1999	31/03/1999	22/12/1999
WT/DS 138	EC	United States	12/06/1998	14/01/1999	17/02/1999	16/03/1999	23/12/1999
WT/DS 99	Korea	United States	14/08/1997	06/11/1997	16/01/1998	19/03/1998	29/01/1999
WT/DS 70	Brazil	Canada	10/03/1997	10/07/1998	23/07/1998	22/10/1998	14/04/1999
WT/DS 46	Canada	Brazil	18/06/1996	03/10/1996	23/07/1998	22/10/1998	14/04/1999
WT/DS 87	EC	Chile	04/06/1997	03/10/1997	18/11/1997	01/07/1998	15/06/1999
WT/DS 110	EC	Chile	15/12/1997	09/03/1998	09/03/1998	01/07/1998	15/06/1999
WT/DS 98	EC	Korea	12/08/1997	09/01/1998	22/07/1998	20/08/1998	21/06/1999
WT/DS 121	EC	Argentina	03/04/1998	10/06/1998	23/07/1998	15/09/1998	25/06/1999
WT/DS 34	India	Turkey	21/03/1996	02/02/1998	13/03/1998	11/06/1998	31/05/1999
WT/DS 113	New Zealand	Canada	29/12/1997	12/03/1998	12/03/1998	12/08/1998	17/05/1999
WT/DS 72	New Zealand	EC	24/03/1997	06/11/1997	18/11/1997	13/01/1998	24/11/1999

2000

WT/DS 132	United States	Mexico	08/05/1998	08/10/1998	25/11/1998	13/01/1999	28/01/2000
WT/DS 163	United States	Korea	16/02/1999	11/05/1999	16/06/1999	30/08/1999	01/05/2000
WT/DS 170	United States	Canada	06/05/1999	15/07/1999	22/09/1999	22/10/1999	05/05/2000
WT/DS 161	United States	Korea	01/02/1999	15/04/1999	25/05/1999	04/08/1999	31/07/2000
WT/DS 178	Australia	United States	23/07/1999	14/10/1999	14/10/1999	21/03/2000	21/12/2000
WT/DS 136	EC	United States	04/06/1998	11/11/1998	01/02/1999	01/04/1999	31/03/2000
WT/DS 160	EC	United States	26/01/1999	15/04/1999	26/05/1999	06/08/1999	15/06/2000

case	complainant	respondent	consultation	panel			report/ agreement
			request	request	establishment	panelist	

WT/DS 165	EC	United States	04/03/1999	11/05/1999	16/06/1999	08/10/1999	17/07/2000
WT/DS 166	EC	United States	17/03/1999	03/06/1999	26/07/1999	11/10/1999	31/07/2000
WT/DS 162	Japan	United States	10/02/1999	03/06/1999	26/07/1999	11/08/1999	29/05/2000
WT/DS 177	New Zealand	United States	16/07/1999	14/10/1999	19/11/1999	21/03/2000	21/12/2000
WT/DS 179	Korea	United States	30/07/1999	14/10/1999	19/11/1999	24/03/2000	22/12/2000
WT/DS 169	Australia	Korea	13/04/1999	12/07/1999	12/07/1999	04/08/1999	31/07/2000
WT/DS 190	Brazil	Argentina	29/06/1999	11/02/2000	/	/	27/06/2000
WT/DS 135	Canada	EC	28/05/1998	08/10/1998	25/11/1998	29/03/1999	18/09/2000
WT/DS 142	EC	Canada	17/08/1998	14/01/1999	14/01/1999	15/03/1999	11/02/2000
WT/DS 114	EC	Canada	19/12/1997	11/11/1998	01/02/1999	29/03/1999	17/03/2000
WT/DS 155	EC	Argentina	23/12/1998	31/05/1999	26/07/1999	31/01/2000	19/12/2000
WT/DS 141	India	EC	03/08/1998	07/09/1998	27/10/1999	12/01/2000	30/10/2000
WT/DS 139	Japan	Canada	03/07/1998	12/11/1998	01/02/1999	15/03/1999	11/02/2000
WT/DS 156	Mexico	Guatemala	05/01/1999	26/07/1999	22/09/1999	12/10/1999	24/10/2000
WT/DS 122	Poland	Thailand	06/04/1998	13/10/1999	19/11/1999	20/12/1999	28/09/2000

2001							
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WT/DS 210	United States	Belgium	12/10/2000	01/03/2001	12/03/2001	07/06/2001	18/12/2001
WT/DS 199	United States	Brazil	30/05/2000	08/01/2000	/	/	05/07/2001
WT/DS 175	United States	India	02/06/1999	15/05/2000	27/07/2000	24/11/2000	21/12/2001
WT/DS 192	Pakistan	United States	24/12/1998	03/04/2000	19/06/2000	30/08/2000	31/05/2001
WT/DS 194	Canada	United States	19/05/2000	24/07/2000	11/09/2000	23/10/2000	29/06/2001
WT/DS 176	EC	United States	07/07/1999	30/06/2000	26/09/2000	26/10/2000	06/08/2001
WT/DS 202	Korea	United States	15/06/2000	14/09/2000	23/10/2000	22/01/2001	29/10/2001
WT/DS 184	Japan	United States	18/11/1999	11/02/2000	20/03/2000	24/05/2000	28/02/2001
WT/DS 189	EC	Argentina	26/01/2000	07/11/2000	17/11/2000	12/01/2001	28/09/2001
WT/DS 193	EC	Chile	19/04/2000	06/11/2000	/	/	23/03/2001
WT/DS 146	EC	India	12/10/1998	12/10/2000	12/10/2000	24/11/2000	21/12/2001

Time for the selection of the panelists (in days)

1996

WT/DS 11	United States	Japan	46	_____
WT/DS 2	Venezuela	United States	18	
WT/DS 4	Brazil	United States	1	_____
WT/DS 24	Costa Rica	United States	30	
WT/DS 22	Philippines	Brazil	42	
WT/DS 7	Canada	EC	49	
WT/DS 12	Peru	EC	1	
WT/DS 14	Chile	EC	29	
WT/DS 8	EC	Japan	46	<u>AVERAGE:</u>
WT/DS 10	Canada	Japan	33	30

1997

WT/DS 31	United States	Canada	36	
WT/DS 27	United States	EC	21	
WT/DS 43	United States	Turkey	no panelist	
WT/DS 26	United States	EC	43	
WT/DS 50	United States	India	77	_____
WT/DS 56	United States	Argentina	38	
WT/DS 33	India	United States	68	_____
WT/DS 48	Canada	EC	19	<u>AVERAGE:</u>
				43

1998

WT/DS 62	United States	EC	52	
WT/DS 67	United States	EC	42	
WT/DS 68	United States	EC	42	
WT/DS 44	United States	Japan	62	
WT/DS 59	United States	Indonesia	47	
WT/DS 84	United States	Korea	50	_____
WT/DS 76	United States	Japan	30	
WT/DS 58	India	United States	5	_____

Time for the selection of the panelists (in days)

WT/DS 69	Brazil	EC	12	
WT/DS 18	Canada	Australia	48	
WT/DS 54	EC	Indonesia	47	
WT/DS 79	EC	India	42	
WT/DS 75	EC	Korea	50	
WT/DS 55	Japan	Indonesia	47	
WT/DS 64	Japan	Indonesia	103	<u>AVERAGE:</u>
WT/DS 60	Mexico	Guatemala	65	46.5

1999

WT/DS 90	United States	India	94	
WT/DS 103	United States	Canada	140	_____
WT/DS 126	United States	Australia	127	
WT/DS 108	EC	United States	48	
WT/DS 152	EC	United States	29	
WT/DS 138	EC	United States	27	_____
WT/DS 99	Korea	United States	62	
WT/DS 70	Brazil	Canada	91	
WT/DS 46	Canada	Brazil	91	
WT/DS 87	EC	Chile	225	
WT/DS 110	EC	Chile	114	
WT/DS 98	EC	Korea	29	
WT/DS 121	EC	Argentina	54	
WT/DS 34	India	Turkey	90	
WT/DS 113	New Zealand	Canada	153	<u>AVERAGE:</u>
WT/DS 72	New Zealand	EC	56	89

2000

WT/DS 132	United States	Mexico	49	
WT/DS 163	United States	Korea	75	
WT/DS 170	United States	Canada	30	_____
WT/DS 161	United States	Korea	71	
WT/DS 178	Australia	United States	159	
WT/DS 136	EC	United States	59	
WT/DS 160	EC	United States	72	
WT/DS 165	EC	United States	114	
WT/DS 166	EC	United States	77	
WT/DS 162	Japan	United States	16	
WT/DS 177	New Zealand	United States	123	_____
WT/DS 179	Korea	United States	126	

Time for the selection of the panelists (in days)

WT/DS 169 Australia	Korea	23	
WT/DS 190 Brazil	Argentina	no panelist	
WT/DS 135 Canada	EC	124	
WT/DS 142 EC	Canada	60	
WT/DS 114 EC	Canada	56	
WT/DS 155 EC	Argentina	189	
WT/DS 141 India	EC	77	
WT/DS 139 Japan	Canada	42	
WT/DS 156 Mexico	Guatemala	20	<u>AVERAGE:</u>
WT/DS 122 Poland	Thailand	31	76

2001

WT/DS 210 United States	Belgium	87	
WT/DS 199 United States	Brazil	no panelist	_____
WT/DS 175 United States	India	120	
WT/DS 192 Pakistan	United States	72	
WT/DS 194 Canada	United States	42	
WT/DS 176 EC	United States	30	
WT/DS 202 Korea	United States	91	_____
WT/DS 184 Japan	United States	65	
WT/DS 189 EC	Argentina	56	
WT/DS 193 EC	Chile	no panelist	<u>AVERAGE:</u>
WT/DS 146 EC	India	43	67

ANNEX 2

Panel composition 2000-2002 (April)

	DS Number (and document number)	DSU Article	Date of composition
	DS238/3	-	16.04.02
	DS236/3	8.7	08.02.02
21.5 Panel	DS103/26, DS113/26	-	17.01.01
	DS213/4	8.7	15.11.01
	DS212/5	8.7	07.11.01
	DS217/6, DS234/14	8.7	05.11.01
	DS206/3	8.7	31.10.01
	DS221/5	-	31.10.01
	DS231/7	8.7	25.09.01
	DS219/3	-	11.09.01
	DS211/3	-	20.07.01
	DS210/3	8.7	08.06.01
	DS207/3	8.7	23.05.01
	DS222/3	8.7	17.05.01
21.5 Panel	DS103/19, DS113/19	-	12.04.01
21.5 Panel	DS46/27	-	22.02.01
	DS202/5	8.7	22.01.01
	DS189/4	-	16.01.01
21.5 Panel	DS108/19	-	05.01.01
	DS146/5, DS175/5	8.7	30.11.00
21.5 Panel	DS132/7	-	16.11.00
21.5 Panel	DS58/18	-	08.11.00
	DS176/3	8.7	27.10.00
	DS194/3	-	27.10.00
	DS192/2	-	04.09.00
	DS184/3	8.7	24.05.00
21.5 Panel	DS99/9	-	11.05.00
	DS179/3	-	24.03.00
	DS177/5, DS178.6	-	23.03.00
	DS155/3	-	02.02.00
	DS141/4	8.7	24.01.00

Summary (excluding 21.5 panels)

Of 24 panels established in the period 2000 to April 2002, 14 were composed by the Director-General under Article 8.7 of the DSU (58%).

The trend is on the increase. Of the 9 panels in 2000, only 4 were composed by the Director-General (44%). Of the 15 established since then, 10 were composed by the Director-General (75%).