Chapter VII

CRITICAL APPRAISAL OF WTO’S APPELLATE BODY REPORTS OVER A PERIOD OF TEN YEARS (2001-2010)

Introduction

In this chapter the researcher would like to highlight the performance of Panels and Appellate Bodies appointed by the Dispute Settlement Body for settlement of trade dispute among Members of the WTO. Panels and Appellate Bodies are constituted with well experienced persons of repute in legal and trade matters. They are judicial bodies, trying disputants in a legalistic approach. The Appellate Body procedures are reviewed from time to time through the Trade Policy Review Mechanism (TPRM). The TPRM is placed on a permanent footing within its association with the other WTO Members. It facilitates the smooth functioning of multilateral trading system by enhancing the transparency of the Members’ trade policies. The TPRM is widely considered as an efficient and well functioning institution.¹

A conspicuous advantage of the WTO framework over its predecessor GATT is that the enforcement mechanism is much stronger in WTO than under GATT. The violator country could be made to reverse the WTO’s incompatible policies practised against another Member country, and it is proved to be so before

the Dispute Settlement Body. Apart from that, the violator country would be subjected to retaliatory measures, unless the inconsistent policy of WTO is replaced within a reasonable period of time. It is admitted, that the present system of the WTO is much more beneficial than the former GATT system. This does not mean that this system is foolproof. There exists several loopholes in the system which might create hurdles in the smooth working of this seemingly unique process.

In order to file a complaint, the first and foremost duty of the complainant (say, Developing Country) is to lodge a complaint against another Member (say a Developed Country) with proof of WTO inconsistency of a particular policy in force in the case of another Member. Generally, most of the time, the developing countries do not possess the requisite legal and technical expertise to establish a casual link between the policies in force in another Member, and consequently loss is incurred by the domestic industry of the developing country. On the other hand, similar problems do not arise in the case of developed countries. This is a severe drawback on the part of the developing countries. This deficiency could be bridged if a number of developing countries pool their resources together and jointly move towards the Dispute Settlement Body (DSB), when dispute arises. This seldom happens. Another way of meeting the problem to their favour is to gather information relating to WTO’s inconsistent policies. Information could be available through the Trade Policy Review Report (TPRR) published by the WTO from time to time.

Trade Policy Review Reports, published by the WTO Secretariat, is a strong background note available to the developing countries
for defending / offending their cases. There is an urgent need to analyse whether there is any scope for improving the working of the system through systematic reform in the Dispute Settlement Procedure.

This section of the research is organised along the following lines. In the first part, the researcher considers the framework of dispute settlement mechanism focusing the developing countries’ concerns on the working of the current system. In the second section, a study relating to the country in question is considered. For this purpose, the researcher selects, at random, for of the Developed countries and six of the Developing Countries’, by considering the Appellate Body Reports published from time to time through TPR report, and an analysis is made on the basis of the result of the cases.

7.1 Dispute Settlement Framework

One of the most important features of the panel procedures is the provision of compulsory jurisdiction over a case brought by its Members, when negotiation fails. The next step in the dispute settlement procedure is the setting up of a panel at the request of the complainant. The Dispute Settlement Body establishes a panel unless there is consensus not to do so i.e., the consent of the defendant Member is no longer a must to establish a panel. The Dispute Settlement Understanding (DSU) deals with any dispute arising from WTO Agreements. There is only one set of rules for all disputes by name, “Understanding on Rules and Procedures Governing the Settlement of Dispute.” It is generally called Dispute Settlement Understanding (DSU). Finally, the Panel sends its report to the DSB for its adoption. As
soon as the DSB adopts its report, the report becomes binding on the parties to the dispute. If there is any objection to the panel report with regard to legal matters and legal interpretation developed in the panel report, the affected parties to the dispute can go for appeal to the Appellate Body. In this case, the Appellate Body Report, when adopted by the DSB, will be binding on the parties to the dispute as a matter to international law. Therefore, the losing party must bring its legislation consistent with the WTO Agreement.

7.2 Country Studies

In this section, a study of the selected Developed and Developing Countries is attempted one by one.

Developed countries include (1) United States (2) Canada (3) European communities and (4) Japan; The Developing countries include (1) India, (2) Brazil, (3) Mexico (4) Koria (5) Antigua and Barbuda and (6) Peru.

The purpose of this review is to ascertain the extent to which the developing countries could be in a position to make use of the existing provisions of the Dispute Settlement Understanding with a view to winning trade disputes to which a developed country is a party. With this end in view, four Developed Countries and six developing countries have been chosen, at random, to study their behaviour in the dispute settlement process. For the purpose of analysis, the researcher has taken the Appellate Body Report for a period of ten years from 2001-2010 from the WTO website. Only the essential parts of the Panel and Appellate Body Reports have been considered for this purpose. More details of the Panel and Appellate Body reports
are available in the WTO Annual Report of the relevant years, for those who are interested in the matter.

It may be noted that the researcher has considered the “Panel Report Year” as the beginning of the ten year period.

A1. The United States – European Community
Reference No. WTO-DS. 212/2002

From 2001 to 2010, there were 25 cases before the Appellate Body to which the United States had been a respondent, and another seven (7) cases to which United States had been a complainant. In an analysis, it is found that the United States lost fourteen cases out of the twenty five cases in which the US was the respondent. Three more cases are in progress. A case by European Community (D.S 212/2002) against the United States with regard to Countervailing Measures Concerning Certain Products from the European Communities’, it expressed its dissatisfaction at a meeting of the Dispute Settlement Body held on 17 March 2007. It stated that the European Community considered that the measures taken by the United States to comply with the WTO obligations were unsatisfactory.

Findings and Conclusions

On 1 February 2001, the European Community requested further consultation with the United States; but the consultation failed. At the request of the European Community the Dispute Settlement Body established a Panel at its meeting on 10 September 2001. Brazil, India and Mexico reserved their third party rights.
On 31 July 2002, the Panel Report was circulated to the Members. The panel found that all the 12 countervailing duty determinations under section 1677 (5) (F) were inconsistent with WTO Law.

On 9 September 2002, the United States notified its decision to appeal certain issues of law covered in the Panel Report and certain legal interpretation developed by the Panel.

On 9 December 2002 the Appellate Body Report was circulated to Members. The Appellate Body

- Upheld the Panel’s findings, in paragraphs 8.1(a), (b) and (c) of the Panel Report, that the United States had acted inconsistently with Articles 10, 14, 19.1, 19.4, 21.1, 21.2 and 21.3 of the SCM Agreement, by imposing and maintaining countervailing duties without determining whether a “benefit” continues to exist in the twelve countervailing duty determinations.

- Upheld the panel’s conclusions in paragraph 8.2 of the Panel Report, that in so far as the United States had infringed on its obligations under the SCM Agreement, as set out in paragraph 8.1(a), (b) and (c) of the Panel Report, these sections of the United States constitute prima facie nullification or impairment of benefits accruing to the European Communities pursuant to Articles 3.8 of the DSU; and, because the United States had failed to rebuild this presumption, the United States had nullified or impaired benefits accruing to the European Communities under the SCM Agreement. The Appellate Body recommended that the Dispute Settlement Body request
the United States to bring its measures and administrative practice in conformity with its obligation under that Agreement.

On 8 January 2003, the Dispute Settlement Body adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

At the Dispute Settlement Body meeting on 27 January 2003, the United States indicated that it intended to comply with the recommendations and rulings of the Dispute Settlement Body and request for a reasonable period of time for implementation.

On 10 April 2003, the parties notified the Dispute Settlement Body that they had agreed on 10 months as a reasonable period of time for implementation (8 January 2003 – 8 November 2003).

At the Dispute Settlement Body meeting on 19 June 2006 the United States said that it had implemented the Dispute Settlement Body’s recommendations and rulings in this dispute.

In another case, (DS 264/2004) Canada against the United States, the subject matter of the case is “Final Dumping Determination on Soft wood Lumber from Canada”. On 12 October 2006, the parties informed the Dispute Settlement Body that they had reached an agreed solution under Art. 3.6 of the DSU. It seems that the United States wanted to drag on the case for an indefinite period, without carrying out the Dispute Settlement Body’s recommendations and rulings.
A2. The United States – Canada

This is a case by Canada against the United States. The subject matter of the case is “Final Dumping Determination on soft wood Lumber from Canada.” The measures at issue include the initiation of the investigation, the conduct of the investigation, and the final determination.

Canada considered these measures, and in particular, the determinations made, and methodologies adopted therein by the DOC under authority of the United States Tariff Act of 1930, to violate Articles 1, 2.1, 2.2, 2.4, 2.6, 5.1, 5.2, 5.3, 5.4, 5.8, 6.1, 6.2, 6.4, 6.9 and 9.3 of the Anti-Dumping Agreement and Articles VI and V.3(a) of the GATT 1994.

Findings and Conclusions

On 6 December 2002, Canada requested the establishment of a Panel. The Dispute Settlement Body established the Panel at its meeting on 8th January 2003. The European Communities, India and Japan reserved their third party rights.

On 13 April 2004, the Panel report was circulated to Members. The Panel found that in its final dumping determination, the United States, DOC failed to comply with the requirements of Articles, 2.4.2 of the Anti-Dumping Agreement because the DOC did not take into account all export transactions by applying the “zeroing” methodology while calculating the margin of dumping. The Panel found that all other claims submitted by Canada failed.
On 13 May 2004, the United States notified its decision to appeal to the Appellate Body certain issues of law and legal interpretations.

On 11 August 2004, the Appellate Body report was circulated to Members. The Appellate Body upheld the Panel’s finding that the United States had acted inconsistently with the Anti-Dumping Agreement by calculating margins of dumping on the basis of a methodology incorporating the practice of “zeroing”.

At its meeting on 31 August 2004, the Dispute Settlement Body adopted the Appellate Body Report and the Panel report as modified by the Appellate Body report.

At the Dispute Settlement Body meeting on 27 September 2004, the United States stated that it intended to implement the recommendations and rulings of the Dispute Settlement Body, and that it would require a reasonable period of time to do so. On 18 October 2004, Canada requested that the reasonable period of time be determined through binding arbitration pursuant to Article 21.3 (c) of the DSU.

Subsequently, both parties mutually agreed that the reasonable period of time shall be seven and a half month ending on 15 April 2005.

On 14 February 2005, both the parties informed the Dispute Settlement Body that they had agreed to modify the reasonable period of time as to expire on 2 May 2005.

On 12 October 2006 the parties informed the Dispute Settlement Body that they had reached an agreed solution under Article 3.6
of the DSU. It seems that the United States wanted to drag on the case for an indefinite period without carrying out the Dispute Settlement Body’s recommendation and rulings.

**A3. The United States – Brazil**

**Reference No. WTO – DS 267/2004**

In another case-DS 267/2004 – in which Brazil was the complainant against the United States’ action on “subsidies on upland cotton by the United States”, the Panel found that the United States granted several prohibited subsidies in respect of cotton. On 12 February 2008 on an appeal by the United States, the Appellate Body upheld the panel’s finding. At the meeting held by the Dispute Settlement Body on 23 October 2012, Brazil said that the United States Farm Bill had expired and decided not to terminate the MoU and the Form Work Agreement and not impose any counter measures at this time. Even after eight (8) years, no settlement, as it appears, had been made in the above case.

**A4. The United States – Mexico**

**Reference No. WTO – DS. 282/2005**

In another case, WTO, dispute D.S 282/2005 Mexico is the complainant and the United States is the respondent. The case is that, United States imposed several anti-dumping measures on import of ‘Oil Country Tabular Goods’ (OCTG) from Mexico. Mexico considers that the above anti-dumping measures are incompatible with Articles 1; 2; 3.6; 11 and 18 of the Anti-Dumping Agreement, Articles VI and X of the GATT 1994 and Article XVI.4 of the WTO Agreement.
Findings and Conclusions

The Dispute Settlement Body established a panel at the second request of the complainant Mexico at its meeting on 29 August 2003. Argentina, China, the European Community, Japan, Chinese Tarpei, Venezuela and Canada reserved their third party rights.

On 20th June 2005, the report of the panel was circulated to its Members. The Panel found that the Sunset Policy Bulletin (SPB) as such was inconsistent with Art. 11.3. But the panel ruled that the sunset determination was not inconsistent with Art. 11.3. The panel also found that the USITC did not act inconsistently with Art. 11.3.

Against the Panel’s finding, Mexico appealed to the Appellate Body certain issues of law covered in the report of the Panel. The United States also made an appeal on certain issues of law covered in the Report of the Panel.

On 2nd November 2005, the Appellate Body circulated its report to Members. The Appellate Body upheld the Panel’s finding that the USITC did not act inconsistently with Art. 11.3. The Appellate Body found that the panel failed to make an objective assessment of the matter and the fact of the case as required by Art. 11 of the DSU.

At its meeting on 28 November 2005, the DSB adopted the Appellate Body Report and the panel report as modified by the Appellate Body Report.
At the implementation stage, though United States informed its intention to implement the recommendations and rulings of the Dispute Settlement Body, the United States asked for a reasonable period of time and that was fixed as six months time expiring on 28 May 2006. On 30th May 2006, Mexico said that the reasonable period of time had expired on 28 May 2006, and it appeared that the United States had not brought its measures in conformity with WTO Agreement. Subsequently, at the request of Mexico, a compliance panel was established on 24 April 2007. On 5th July 2007, Mexico requested the panel to suspend its work until further notice. The matter was informed to the Dispute Settlement Body by the compliance panel and it suspend its work.

Since the panel had not been requested to resume its work, pursuant to Art. 12.12 of the DSU, the authority for establishment of the panel lapsed on 6 July 2008.

Ultimately, what happened to the case is not known, whether it was withdrawn or terminated.

**Antigua and Barbuda – The United States**

**Reference- WTO Dispute D.S. No. 285/2004.**

Antigua and Barbuda are the complainants and the United States is the respondent. The subject of dispute is the Cross-border Supply of Gambling and Betting Services. On 21 March 2003, Antigua and Barbuda requested consultation with the United States regarding measures applied by the central, regional and local authorities in the United State which affect the Cross-Border supply of gambling and betting services. Antigua and Barbuda considered that the cumulative impact of
the United State measures is to prevent the supply of gambling and betting services from another WTO Member to the United States on a Cross-border basis.

According to Antigua and Barbuda, the measures at issue may be inconsistent with the United State obligations under the GATTs and in particular Articles II, VI, VIII, XI, XVI and XVII thereof.

**Finding and Conclusions**

At the second request by Antigua and Barbuda, the Dispute Settlement Body established a panel at its meeting on 21 July 2003. Canada, the European Community, Mexico, Chinese. Taipur and Japan reserved their third party rights.

The panel circulated its report on 10 November 2004 and found that the United States failed to accord services and service suppliers of Antigua provided for under the terms of limitations and conditions agreed and specified with the United States Schedule contrary to Art. XVI.1 and Art. XVI.2 of the GATTs.

Antigua failed to demonstrate that the measures at issue were inconsistent with Art. VI.1 and VI.3 of the GATTs.

The United States was not able to invoke successfully the GATTs exceptions provisions.

In January 2005, both complainant and respondent notified their intention to appeal certain issues of law and legal interpretation developed by the panel.
On 7 April 2005, the report of the Appellate Body was circulated to Members. The Appellate Body upheld the Panel’s finding that an alleged “total prohibition” on the Cross-border Supply of Gambling and Betting Service cannot constitute a measure subject to dispute settlement under the GATs. Generally, the Appellate Body upheld the Panel’s finding for different reasons.

At its meeting on 20 April 2005, the Dispute Settlement Body adopted the Appellate Body Report and the Panel Report modified by the Appellate Body Report.

At the compliance stage (i.e., on 6 July 2006) Antigua and Barbuda requested the establishment of Art. 21.5 panel. At the request of the chairman of the Panel to the Dispute Settlement Body, the period of time for circulation of the report, as expected by the Chairman was extended up to the end of March 2007.

On 30 March 2007, the Art. 21.5 panel report was circulated to members. The Panel concluded that the United States had failed to comply with the recommendation and rulings of the Dispute Settlement Body.

Art. 21.5 Panel Report was adopted by the Dispute Settlement Body at its meeting on 22 May 2007.

Later, Antigua and Barbuda requested authorization from the Dispute Settlement Body pursuant to Art. 22.2 of the DSU to suspend the application to the United States of concession and related obligation of Antigua and Barbuda under the GATs and TRIPS Agreements. On 23 July 2007, the United States objected to the level of suspension of concessions proposed by Antigua and Barbuda.
At its meeting on 24 July 2007, the Dispute Settlement Body agreed that the matter had been referred to arbitration as required under Article 22.6 of the DSU. On 21 December 2007, the decision of the Arbitrator was circulated to Members. The Arbitrator determined that the annual level of nullification or impairments of benefits accruing to Antigua and Barbuda in the United States $21 million and that Antigua may request authorization from the Dispute Settlement Body to suspend obligations under the TRIPS Agreement at a level not exceeding U.S.$21 million annually.

At the Dispute Settlement Body meeting on 24 April 2012, Domanica read a statement on behalf of the Antigua and Barbuda which stated that the United States was not in Compliance with the rulings of the Panel, the Appellate Body and the compliance Panel. Antigua and Barbuda formally notified the United States of its desire to seek recourse to the good offices of the Director General in finding a mediated solution to this dispute. Antigua and Barbuda requested that this matter remain under Dispute Settlement Body’s surveillance.

In the circumstances nobody knows what would happen in the future, if the United States’ practice is followed by other Members who are losers in the dispute settlement process.

**Mexico – The United States**

**Reference- W.T.O. DS No. 344/2007**

Mexico made a complaint against the United States on 20 December 2007 regarding a series of Final Anti-Dumping Determination by the United States Department of Commerce

On 12 October 2006, Mexico requested the establishment of a panel. The Dispute Settlement Body established a panel at its meeting on 26 October 2006. Chile, China, the European Communities, Japan and Thailand reserved their third party rights.

**Findings and Conclusions**

On 20 December 2007, the panel report was circulated to Members. The Panel concluded that model zeroing in investigations as such is inconsistent with Article 2.4.2 of the Anti-Dumping Agreement and the USDOC acted inconsistently with Art. 2.4.2 of the Anti-Dumping Agreement in the investigation of imported articles. The Panel applied judicial economy with regard to Mexico’s claims under different Articles of GATT 1994 and Anti-Dumping Agreement. On 31 January 2008, Mexico notified its decision to appeal to the Appellate Body.

On 30 April 2008, the Appellate Body Report was circulated to Members. The Appellate Body reversed the Panel’s finding that simple zeroing in periodic review in not, as such, inconsistent with Art. VI.1 and VI.2 of GATT 1994 and Art. 2.1, 2.4 and 9.3 of the Anti-Dumping Agreement. But the simple zeroing in periodic reviews is, as such, inconsistent with Art. VI.2 of GATT 1994 and Art. 9.3 of the Antidumping Agreement.
It reversed the Panel finding that the United States did not act inconsistently with Art. VI.1 and VI.2 of the GATT 1994 and Art. 2.1, 2.4 and 9.3 of the Anti-Dumping Agreement.

The Appellate Body recommended that the Dispute Settlement Body request the United States to bring its measures found in the Appellate Body Report and that in the Panel Report as modified by the Appellate Body to be inconsistent with the GATT 1994 and with the Anti-Dumping Agreement in conformity with its obligations under those Agreements.

On 20 May 2008, the Dispute Settlement Body adopted the Appellate Body Report and the Panel report as modified by the Appellate Body.

At the Dispute Settlement Body meeting on 2nd June 2008 the United States notified the Dispute Settlement Body of its intention to comply with its W.T.O. obligations, and requested reasonable period of time for implementation. Subsequently, at the request of Mexico, Director General appointed an Arbitrator. The Arbitrator determined that the reasonable period of time for United States to implement Dispute Settlement Body recommendation was 11 months and ten days from the date of adoption of the Panel and Appellate Body reports. i.e., the reasonable period of time expires on 30 April 2009. After the expiry of the reasonable period of time Mexico, on 7 September 2010, requested the establishment of a compliance panel and the Dispute Settlement Body agreed. After consultation with the parties, the compliance panel envisaged that the final report would be issued to parties by March 2012. The compliance Panel suspended its work at the request of Mexico three times i.e., 27
April 2002, 14 May 2012 and on 31 May 2012 until further notice.

The compliance Panel agreed to all the requests of the Mexico. The decision is pending without resolution.

**B. Canada – The United States**  
**Reference No. W.T.O; D.S. No. 276/2004**

During the period under analysis (i.e., 2001-2010) there were two cases before the Dispute Settlement Body wherein Canada is the Respondent and the Complainant is the United States. In the present case the subject matter under dispute is **Measures Relating to Exports of Wheat and Treatment of Imported Grain.**

According to United States, the actions of the Government of Canada and the Canadian Wheat Board related to export of wheat appear to be inconsistent with Art. XVII of GATT 1994.

As regards the treatment of grain imported into Canada, the United States maintain that the following Canadian measures are inconsistent with Art. III of GATT 1994 and Art. 2 of TRIMS, since they discriminate against imported grains.

**Findings and Conclusions**

At the request of the United States, Dispute Settlement Body established a Panel at its meeting on 31 March 2003.

On 6th April 2004, the Panel Report was circulated to Members. The Panel found that:
The United States had failed to establish its claim that Canada had breached its obligations under Art. XVII.1 of the GATT 1994 with respect to the Canadian Wheat Board (CWB).

Section 57(e) of the Canada Grain Act and section 56(1) of the Canada Grain Regulations were inconsistent with Art. III.4 of the GATT 1994 and were not justified under Article XX (d) of the GATT 1994.

Section 150(1) and (2) of the Canada Transportation Act were inconsistent with Art. III.4 of the GATT 1994.

On 1 June 2004, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel.

On 30 August 2004 the Appellate Body Report was circulated to Members. The Appellate Body upheld the Panel’s conclusion that the United States had not demonstrated that Canadian Wheat Board (CWB) Export regime is inconsistent with Article XVII.1 of the GATT 1994. At its meeting on 27 September 2004, the Dispute Settlement Body adopted the Appellate Body Report and the Panel Report, as modified the Appellate Body Report.

At the implementation phase, on 18 October 2004 Canada expressed its intention to implement the recommendations and ruling of the Dispute Settlement Body and requested reasonable period of time to implement.

On 15 November 2004 Canada and United States informed the Dispute Settlement Body that they had agreed upon the reasonable period of time as 10 months and 5 days, ending on 1st August 2005.
At the Dispute Settlement Body meeting on 31 August 2005, Canada announced that amendments to the ‘Canada Transportation Act’ and the ‘Canada Grain Act’ and associated regulatory changes had come into force on 1 August 2005. Thus bringing Canada into compliance with the Dispute Settlement Body’s recommendations and rulings.

C. European Community - Canada
Reference No. WTO Dispute Settlement DS. 321/2008

In this case, European Communities is the complainant and Canada is the respondent. The subject matter under dispute is Continued Suspension of Obligations in the European Community –Harmones Dispute.

The European Community considers that the continued use by Canada of retaliatory measures in this case, in the current circumstances, are violations of Art. I and II of GATT 1994 and Articles 21.5, 22.8, 23.1 and 23.2 (a) and (c) of the DSU.

Findings and Conclusions

On 13 January 2005 the European Community requested the establishment of a Panel. At its meeting on 17 February 2005, the Dispute Settlement Body established a panel on 31 March 2008 the Panel Report was circulated to Members.

The Panel concluded that with respect to the claims raised by the European Communities concerning the violation of Art. 23.2(a) read together with Articles 22.8 and 3.7 of the DSU, Canada made the following procedural violations:-
1. by seeking through the measure at issue, the redressal of a violation of obligations under the covered agreement without having recourse to and abiding by, the rules and procedures of the DSU, Canada has breached Article 23.1 of the DSU.

2. Canada has breached article 23.2 (a) of the DSU.

In addition to having addressed the claims raised by the European Community concerning Art. 23.1 read together with Arts. 22.8 and 3.7 of the DSU the panel concluded that,

1. to the extent that the measures found to be inconsistent with the S.P.S. Agreement in the European Community – Hormones dispute (WT/DS.48) has not been removed by the European Communities, Canada has not breached Art. 22.8 of the DSU.

2. to the extent that Art. 22.8 had not been breached, the European Communities has not established a violation of Art. 23.1 and 3.7 of the DSU, as a result of a breach of Art. 22.8.

In the light of these conclusions, the Panel recommended that the Dispute Settlement Body request Canada to bring its measure in conformity with its obligations under the DSU. The Panel further suggested that, in order to ensure the prompt settlement of this dispute, Canada should have recourse to the rules and procedures of the DSU without delay.

On 29 May 2008 the European Community notified its decision to request the Appellate Body to review certain issues of law covered in the panel report and certain legal interpretations developed by the Panel.
On 10 June 2008 Canada notified its decision to appeal to the Appellate Body certain other issues of law covered in the Panel report and certain legal interpretations developed by the Panel.

On 16 October 2008 the Appellate Body report was circulated to Members.

It found that the Panel did not err in stating that proceedings under Art. 21.5 of the DSU are open to the original complainant, as they may be initiated by original complainants and original respondents.

Appellate Body upheld the Panels findings that it had jurisdiction to consider the compatibility of the (EC) implementing measure with the SPS Agreement.

Appellate Body upheld Panel’s finding that the European Communities has not established a violation of Articles 23.1 and 3.7 of the DSU as a result of a breach of Arti. 22.8.

Appellate Body reversed the Panel’s findings with regard to the maintenance of suspension of concession even after the notification of Canada in seeking redress of a violation with respect to this (this Direction) within the meaning of Art. 23.1 of the DSU; and reversed the Panel’s finding that Canada made a determination with the meaning of Art. 23.2.

The Appellate Body also reversed the Panel’s finding that the European communities import ban relating to Oestradiol. 17-B is not based on a risk assessment as required by Art. 5.1 of the S.P.S Agreement. However, the Appellate Body is unable to complete the analysis and, therefore, makes no finding as to the
consistency or inconsistency of the import ban relating to Oestradiol-17.B with Art. 5.1 of the S.P.S. Agreement.

Appellate Body further found that, because it had been unable to complete the analysis as to whether Discrete 2003/74/EC has brought the European Communities into substantive compliance within the meaning of Article 22.8 of the DSU, the recommendation and rulings adopted by the Dispute Settlement Body in European Community-Hormones remain operative. In the light of the obligations arising under Art. 22.8 of the DSU, the Appellate Body recommended that the Dispute Settlement Body request Canada and the European Communities to initiate Art. 21.5 proceedings without delay in order to resolve their disagreements as to whether the European Community has removed the measure found to be inconsistent in European Community-Hormones and whether the application of the suspension of concessions by Canada remains legally valid.

At its meeting on 14 November 2008 the Dispute Settlement Body adopted the Appellate Body report and the panel report as modified by the Appellate Body report.

C.1. European Communities

During the period (i.e., 2001-2010) under analysis there were six cases to which European Community is the respondent. The researcher would like to analyses two cases, namely Peru and Brazil; they are complainants. These cases will be analysed one by one.
**C.1.1 Peru – European Community**  
**Reference No. WTO Dispute settlement D.S.231/2002**

In this case Peru is the complainant and the European Community is the respondent. The subject matter of dispute is Trade Description of Sardines. According to Peru, the European Community prevents Peruvian exporters to continue to use the trade description ‘Sardines’ for their products.

According to Peru, the relevant Codex Alimentarius Standards (STAN 94-181 rev 1995) the species “Sardinops Sagax Sagax” are listed among those species which can be traded on “Sardines”. Peru, therefore, considered that the above regulation constitutes an unjustifiable barrier to trade, and hence, in breach of Art. 2 and 12 of the TBT Agreement and Art. XI.1 of GATT 1994. In addition Peru argues that the regulation is inconsistent with the principle of non-discrimination, and, hence, a breach of Articles I and II of GATT 1994.

**Findings and Conclusions**

At its meeting on 24 July 2001, at the request of Peru, the Dispute Settlement Body established a Panel.

The Panel report was circulated to Members on 29 May 2002. The Panel concluded that the European Community Regulation was inconsistent with Art. 2.4 of the TBT Agreement.

On 28 June 2002 European Community notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel.
On 26 September 2002 the report of the Appellate Body was circulated. The Appellate Body found the following:

- the conditions attached to the withdrawal of the Notice of 25 June 2002 was permissible.

- found that the amicus curiae brief submitted were admissible, but their contents did not assist in deciding the appeal.

- upheld the Panel’s finding in paragraph 7.35 of the Panel Report, Para 7.60 of the Panel report, para 7.70 of the Panel Report and in para 7.112 of the Panel report.

- rejected the claim of the European Community that the panel made a determination in para 7.127 of the panel report.

- found it unnecessary to complete the analysis under Art. 2.2 of the TBT Agreement.

Therefore, the Appellate Body upheld the panel’s finding in para 8.1 of the Panel report that the European Community Regulation is consistent with Art. 2.4 of the TBT Agreement.

The Appellate Body recommended that the Dispute Settlement Body request the European Community to bring European Community regulations as found in its and in the panel report as modified by its report to be inconsistent with Art. 2.4 of the TBT Agreement into conformity with European Community’s obligation under that Agreement.
On 23 October 2002 the Dispute Settlement Body adopted the Appellate Body report and the panel report as modified by the Appellate Body report.

European Community stated that it was working towards implementing the rules and recommendation but it required a reasonable period of time. Subsequently the reasonable period of time was extended twice to 1 July 2003.

On 25 July 2003, the parties to the dispute informed the Dispute Settlement Body that they had reached a mutually agreed solution pursuant to Art. 3.6 of the DSU.

**C.1.2 Brazil – European Community**

**Reference - WTO Dispute Settlement No. DS 269/2005**

In this case Brazil is the complainant and European Community is the respondent. The subject matter of dispute is – “Customs classification of Frozen Boneless Chicken Cuts” imported to European Community.

According to Brazil, the new description includes a salt content to the product that did not exist before and subjects the imports of these products to a higher tariff than that applicable to salted meat (CN code 0210) in the European Community’s schedules under the GATT 1994.

As a result of this measure, Brazil considered that its commerce had been accorded treatment less favourable than that provided in the European Community Schedules, in contravention of the obligations of the European Community under Art. II and XXVIII of GATT 1994. In addition, Brazil claimed that the application of
this measure by the European Community nullified and impaired within the meaning of Articles XXVIII.1, benefits accruing to Brazil directly or indirectly under the GATT 1994.

**Findings and Conclusions**

In this connection, as per Brazil’s second request to establish a panel, the Dispute Settlement Body established a panel at its meeting on 7 November 2003. Chile, China, Thailand and the United States reserved their third party rights.

On 30 May 2005 the Panel report was circulated to Members. The Panel found the measure at issue is inconsistent with the European Community’s obligation under Articles II.1(a) and II.1(b) of the GATT 1994, because the products and issue covered the concession contained in heading 02.10 and the imposition of customs duties on the product at issue in excess of the duties provided for in respect of the concession contained in heading 02.10.

On 13 June 2005 the European Community notified its decision to appeal to the Appellate Body regarding certain issues of law covered in the report, and certain legal interpretation developed in the Panel Report. On 27 June 2005 Brazil notified its decision to appeal to the Appellate Body regarding certain issues of law covered in the panel report and certain legal interpretation developed in the panel report.

On 12 September 2005, the Appellate Body circulated its report to Members. The Appellate Body essentially upheld the procedural and substantive conclusions that the European Community’s measures to be WTO inconsistent.
At its meeting on 27 September 2005 the Dispute Settlement Body adopted the Appellate Body report and Panel report as modified by the Appellate Body report.

At the implementation stage of the Dispute Settlement Body meeting on 18 October 2005, European Communities announced its intention to implement the Dispute Settlement Body’s recommendation and rulings, but requested the Dispute Settlement Body a reasonable period of time to do so.

On 22 November 2005, Brazil requested a reasonable period of time to be decided by binding arbitration.

On 20 February 2006, Arbitrator decided that the reasonable period of time for implementation would be nine months and, therefore, would expire on 27 June 2006.

At the Dispute Settlement Body meeting on 19 June 2006, the European Community said that they were in the process of adopting the recommendation and ruling of the Dispute Settlement Body.

At the Dispute Settlement Body meeting on 19 July 2006, the European Community said that they had fully implemented the Dispute Settlement Body’s recommendations and rulings by adopting Commission Regulation (EC) No. 949/2006 on 27 June and implementing it on the same day. However, Brazil and Thailand (Third Party) said they were still assessing the scope and effect of amending the regulation and they would follow closely the European Community’s implementation.
On 26 July 2006 Brazil and European Communities informed the Dispute Settlement Body of an understanding regarding procedures under Articles 21 and 22 of the DSU.

**D1. Japan – The United States**

*Ref. WTO Dispute Settlement No. D.S 245/2003*

In this case, the United States is the complainant and Japan is the respondent. The subject matter of dispute is “Measures Affecting the Importation of Apples.”

The United States complaint arose from the maintenance by Japan of quarantine restrictions on apples imported into Japan, which restrictions were said to be necessary to protect against introduction of fire flight.

The United States claimed that these measures might be inconsistent with the obligation of Japan under:

- Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.6, 6.1, 6.2 and 7 and annex B of this SPS Agreement and
- Article 14 of the Agreement on Agriculture.

**Findings and Conclusions**

On 3 June 2002, the Dispute Settlement Body established a panel at the request of the United States on 7 May 2002. Australia, Brazil, European Community, Newzealand and Chinese Taipur reserved their third party rights.
On 15 July 2003, the panel report was circulated to Members. The Panel found that Japan’s phytosanitary measures imposed on imports of apples from the United States was contrary to Article 2.2 of the S.P.S. Agreement, and was not justified under Article 5.7 of the S.P.S. Agreement and that Japan’s 1999 Pest Risk did not meet the requirements of Article 5.1 of the SPS Agreement.

On 28 August 2003, Japan notified the Dispute Settlement Body of its decision to appeal to the Appellate Body.

On 26 November 2003, the Appellate Body report was circulated to Members. The Appellate Body rejected all four of Japan’s claim on appeal. The Appellate Body upheld the panel’s finding that Japan’s phytosanitary measure at issue was inconsistent with Japan’s obligation under Articles 2.2, 5.7 and 5.1 of SPS Agreement.

At its meeting on 10 December 2003, the Dispute Settlement Body adopted the Appellate Body report and the panel report as modified by the Appellate Body report.

At the Dispute Settlement Body meeting on 9 January 2004, Japan indicated its intention to comply with the recommendations and rulings of the Dispute Settlement Body, for which it requested for a reasonable period of time.

On 30 June 2004, Japan, and the United States notified the Dispute Settlement Body of conformed procedures under Articles 21 and 22 of the DSU.
On 19 July 2004, the United States requested the establishment of a compliance Panel under Article 21.5 of the DSU as it considered that Japan had failed to implement the DSB recommendations and rulings.

On 23 June 2005, the compliance panel report was circulated to Members. It found that Japan’s phytosanitary measures imposed on imports of apples from the United States is contrary to Article 2.2 and 5.1 of the SPS Agreement.

On 19 July 2004, the United States requested the Dispute Settlement Body to authorize the suspension of concessions or other obligations with respect to Japan under Article 22.2 of the DSU at a level of United States Dollar 143.4 million on an annual basis.

On 29 July 2004, Japan objected the proposed level of suspension of concessions or other obligations and requested this matter to be referred to arbitration in accordance with Article 22.6 of the DSU.

On 30 August 2005, Japan and the United States informed the Dispute Settlement Body that they had reached a mutually agreed solution pursuant to Article 3.6 regarding the matters raised by the United States in this dispute.

**D.2 Koria - Japan**

**Reference - WTO Dispute Settlement No. DS 336/2007**

In this case Koria is the complainant and Japan is the respondent. The subject matter of the dispute is “Countervailing Duties on Dynamic Random Access Memories from Korea.”
According to Korea notice of the imposition of such duties was provided by Japan in Cabinet order No. 13 and Finance Notice 35 published respectively in issue No. 4264 and special issue No. 17 of the Official Gazette dated 27 January 2006. Korea considered that the foregoing determinations are inconsistent with Japan’s obligation under GATT 1994 and SCM Agreement.

**Findings and Conclusions**

At its meeting on 19 June 2006 the Dispute Settlement Body established a panel at the request of Korea dated 18 May 2006. China, European Community and the United States reserved their third party rights.

On 13 July 2007 the Panel report was circulated to Members. The Panel rejected Korea’s claim that:

- Japan improperly found government “entrustment or direction” of the four creditors to participate in the October 2001 restructuring contrary to Articles 1.1(a) (I) (IV) of the SCM Agreement.

- Japan improperly found that the October 2001 restricting conferred a benefit on Hymix, Contrary to Article 1.1(b) and 14 of the SCM Agreement.

- Japan improperly treated certain Hymix creditors as “interested parties.”

- Japan improperly found that the October 2001 and December 2002 restructuring constituted direct “transfers of fund” contrary to Article 1.1(a) (1) (i) of the SCM Agreement etc.
In the light of its finding the panel upheld the Korea’s claims in respect of the above and the panel declined to rule separately on Korea’s claims that:

- Japan acted inconsistently with Articles 1 and 2 of the SCM Agreement.
- Japan improperly imposed countervailing duties on the basis of a flawed analysis of benefits, contrary to article 19.4 of the SCM Agreement and Article VI.3 of the GATT 1994 etc.

On 30 August 2007, Japan notified its decision to appeal to the Appellate Body relating to certain issues of law covered in the panel report and certain legal interpretation developed by the panel.

On 28 November 2007, the Appellate Body Report was circulated to Members.

The Appellate Body upheld the panel’s finding that JIA acted inconsistently with Article 1.1(b) and Article 14 of the SCM Agreement by determining that the December 2002 Restructuring conferred a benefit on Hymix

Upheld, albeit for different reasons, the Panel’s finding that the JIA calculated the amount of benefits conferred on Hymx by October 2001 and December 2002 Restructures inconsistently with Articles 1.1(b) and 14 of the SCM Agreement and found that the panel did not fail to conduct an objective assessment of the matter before it, as required by Article 11 of the DSU.
As a whole Appellate Body upheld many of the panel's findings with regard to the issues.

On 17 December 2007, the Dispute Settlement Body adopted the Appellate Body report and the panel report as modified by the Appellate Body report.

Subsequently on 15 January 2008, Japan announced its intention to implement the recommendation and rulings of the Dispute Settlement Body. On 25 February 2008, Korea requested a reasonable period of time to be determined through binding arbitration.

On 4 March 2009, in a letter addressed to the Chairman of the Panel, Korea indicated that bilateral consultations were going on to reach a mutually acceptable solution in this dispute. In that respect, Korea requested the panel to suspend its work pursuant to Article 12.12 of the DSU. The chairman of the panel agreed to do so and suspended its work until further notice.

Since the panel had not been requested to resume its work pursuant to Art. 12.12 of the DSU; the authority for the establishment of the panel lapsed on 5 March 2010. It indicates either the withdrawal or termination of the compliance.

The researcher has analysed selected cases against developed countries during the past ten years from 2001 to 2010, and drew certain conclusions about the nature of the developed countries in handling cases of trade disputes. The result of the analysis is stated at the end of the chapter under the heading, “The overall Scenario”.
Now the researcher attempts to analyse trade disputes of developing countries during the same period.

E.1 INDIA - European Community and the United States

India- As Respondent

Reference No. WTO. DS. No. 146/2001

This is a case against India by the European Community and the United States. The subject matter of dispute is “Measures Affecting the Automotive Sector” being appealed by India. The European Community stated that the measures included the documents entitled “Export and Import policy, 1997-2002”, ITC Export and Import Policy 1997-2002 and Public Notice No. GO(PN/97-02) of 12 December 1997 under these measures, import of complete automobiles and of certain parts and components were subject to a system of non-automatic import licenses also in accordance with Public Notice No. 60, issued by the Indian Government import licences might be granted only to the local joint venture manufactures that had signed the MoU with the Indian Government, whereby, they undertook inter alia to comply with certain local content and export balance requirements and more over the measures violated Articles III and XI of the GATT 1994 and Article 2 of the TRIMs Agreement.

Findings and Conclusions

On 15 May 2000, the United States requested the establishment of a Panel. The Dispute Settlement Body established a Panel at its meeting on 27 July 2000 (WT/DS 175). The European Community, Japan and Korea reserved their third party rights.
On 21 December 2001, the Panel circulated its report to the Members. The Panel concluded that:

India had acted inconsistently with its obligation under Article III.4 and XI of the GATT 1994, by imposing on automotive manufacturers an obligation to use a certain proportion of local parts and components in the manufacture of cars and automotive vehicles.

The Panel recommended that the Dispute Settlement Body request India to bring its measures in conformity with its obligation under the WTO Agreements.

On 31 January 2002, India appealed to the above panel report. In particular, India sought the review of the following Panel’s conclusion on the ground that they are in error and based upon erroneous findings on issues of law and related legal instruments. Article 11 and 19.1 of the DSU required it to address the question of whether the measures found to be inconsistent with Articles III.4 and XI.1 of the GATT had been brought in conformity with the GATT as a result of measures taken by India during the course of the proceedings and the enforcement of the export obligations that the automobile manufactures incurred until 1 April 2001 under India’s former import licensing scheme is inconsistent with Articles III.4 and XI.1 of the GATT.

On 14 March 2002, India withdrew its appeal. Further to India’s withdrawal of its appeal, the Appellate Body issued a short report outlining the procedural history of the case. At the Dispute Settlement Body on 5 April 2002, the United States commended India’s decision to withdraw its appeal and shared
some of India’s reservations with regard to section VIII of the Panel Report.

On 2 May 2002, India informed the Dispute Settlement Body that it would need a reasonable period of time to implement the recommendations and rulings of the Dispute Settlement Body. On 18 July 2002, the parties informed the Dispute Settlement Body that they had mutually agreed that the reasonable period of time shall be five months, that is from 5 April 2002 to 5 September 2002.

On 6 November 2002, India informed the Dispute Settlement Body that it had fully complied with the recommendations of the Dispute Settlement Body in this dispute by issuing Public Notice No. 31 on 19 August 2002 terminating the trade balancing requirement. The Dispute Settlement Body adopted the Appellate Body and Panel reports on 5 April 2002.

**E2. INDIA – European Community**

**India – As Complainant**

**Reference No. WTO; DS. No. 246/2003**

In this case India is the complainant and the European Union is the respondent. The subject matter in the dispute is “Conditions for Granting the Tariff Preferences to Developing Countries” under its current scheme of generalized tariff preference (G.S.P Scheme).

India considered that the tariff preferences accorded by the European Community under the special arrangements, (i) for combating drug production and trafficking and (ii) for the protection of labour rights and the environment, create undue
difficulties for India’s exports to the European Community, including for those under the general arrangements of the European Community’s GSP scheme and nullity or impair the benefits accruing to India under the most favoured nation provisions of Article I.1 of the GATT 1994 and paragraphs 2(a), 3(a) and 3(c) of the Enabling Clause.

Findings and Conclusions

On 6 December 2002, India requested the establishment of a Panel. At its meeting on 27 January 2002, the Dispute Settlement Body established a Panel. During the meeting, Brazil, Colombia, Costa Rica, Cuba, Equador, El-salvador, Guatemala, Honduras, Paraguay, Peru, Sri Lanka, Venezuela, the United States, Nicaragua, Panama, Mauritius, Pakistan and Bolivia reserved their third party rights.

On 1 December 2003, the Panel report was circulated to the Members. The Panel found that:

(i) India had demonstrated that the tariff preferences under the Special Arrangements to Combat Drug Production and Trafficking provided in the European Community’s GSP scheme are inconsistent with Article 1.1 of GATT 1994; (ii) the European Community had failed to demonstrate that the Drug Arrangements were justified under paragraph 2(a) of the enabling clause, which requires that the GSP benefits be provided on “non-discriminatory” basis and (iii) the European Community had failed to demonstrate that the Drug Arrangements were justified under paragraph 2(a) of the enabling clause, which required that the GSP benefits be provided on a “non discriminatory basis” and (iii) the EC had
failed to demonstrate that the Drug Arrangements were justified under Articles XX(b) of GATT 1994. Since the measure is not “necessary” for the protection of human life or health in the European Community, nor was it in conformity with the Chapter of Article XX. (One panelist presented a dissenting opinion to Article 1:1 and that India has not made a claim under the Enabling Clause).

On 8 January 2004, the European Communities notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report.

On 7 April 2004 the Appellate Body Report was circulated to Members, generally the report was in favour of India. The Appellate Body upheld two of the Panel’s findings (i) the Enabling clause operate as an exception to Article 1:1 of the GATT 1994 and (ii) the Enabling clause does not exclude the applicability of Article 1:1 of the GATT 1994. Based on these findings, and because the European Community did not appeal any other aspect of the Panel’s reasoning with respect to Articles 1:1, the Appellate Body found that it need not rule on the Panel’s conclusion as to the consistency of the challenged measure with Article 1:1 of the GATT 1994.

The Appellate Body reversed the Panel’s legal interpretation of paragraph 2(a) of the Enabling Clause” and foot note 3 thereto. With respect to the consistency of the challenged measure with the Enabling Clause, the Appellate Body upheld, albeit for different reasons, the Panel’s conclusion that the European Communities failed to demonstrate that the challenged measure was justified under paragraph 2(a) of the Enabling Clause.
As its meeting on 20 April 2004, the Dispute Settlement Body adopted the Appellate Body report and the Panel report, as modified by the Appellate Body.

As for implementation, European Community reaffirmed its intention to fully comply with the recommendations and rulings of the Dispute Settlement Body at the Dispute Settlement Body meeting on 19 May 2004. European Community in this respect, requested a reasonable period of time to implement the recommendations and rulings of the Dispute Settlement Body. India requested that the reasonable period of time be determined through binding arbitration pursuant to Article 21.3(c) of the DSU due to the failure of agreement with the European Community on this matter. The Director General appointed an Arbitrator under Article 21.3(c) of the DSU. The Arbitrator decided that the reasonable period of time for implementation would expire on 1 July 2005.

The European Communities announced that a new regulation (980/2005) had been promulgated, bringing the European Communities into compliance with the Dispute Settlement Body’s recommendations and rulings. India expressed its doubt, if the new European Community Regulations and rulings, reserved its right to return to this matter in the future.

7.3 The Overall Scenario

The researcher would like to make an overall assessment of the Dispute Settlement Mechanism for the past ten years ending on 2010. For this purpose, four developed countries and six developing countries are chosen for analysis. Panels and
Appellate Body proceedings of the WTO are considered as base. The findings of the Panel and Appellate Body Report to the Dispute Settlement Body have been seriously considered. In this analysis, the researcher presents the outcome of the complaints lodged before the Dispute Settlement Body by Members of the WTO. These outcome is categorized as:

1. Winning and losing of a particular case.
2. Joint request of the disputing parties for suspension of proceedings.
3. Mutually agreeable solutions being notified to the Dispute Settlement Body.
4. Request for reasonable period of time for implementation of recommendation of the Dispute Settlement Body.
5. Seeking help from the Good office of the Director General.
6. Cases are placed before the Dispute Settlement Body, after discontinuing the alleged measures and initial notification.
7. Withdrawal or Termination of the case.

The analysis is summarized as follows:

In the case of the United States it has been found that the United States lost twenty four out of the twenty five cases to which it was the respondent. It won only one case (DS. 244/2003) with the remarks that the Appellate Body did not make any finding that the United States has acted inconsistently with its obligation under the Anti-Dumping Agreement or the WTO Agreement, while, the United States won seven out of eight cases to which United States had been the complainant. Thus, the United States has, however, been a major victim of the Dispute Settlement Mechanism. Four cases resulted in mutually
agreed solution (See Appendix). Besides, that, the United States had taken longer periods for resolving trade disputes to which the United States was a party. (For example WTO DS. 267-6 years. WTO DS. 288-8 years; WTO DS 282-7 years). It is the practice of the United States to invoke all necessary provisions of the WTO Agreement and the DSU rules by virtue of its expertise to win trade cases.

**7.3.1 The European Community** is the next in the series of trade disputes. European Community was a party to the trade disputes in fifteen cases, of which it won six cases, to which it was respondent during the period under analysis.

**7.3.2 Canada** is another developed country in the WTO; it had trade dispute in five cases of which it won three cases to which it was a complainant. As part of the compliance procedure, Canada has amended the “Canada Transportation Act” and Canada Grains Act to implement Dispute Settlement Body’s recommendations and rulings.

**7.3.3 Japan** is another developed country chosen for analysis. It had 5 cases during the period of analysis, at the Dispute Settlement Body. In three cases as complainant and in two cases as respondent, Japan won three of the cases as complainant. It carried out the Dispute Settlement Body’s recommendation and rulings in the cases to which Japan was the respondent. In DS. 322, the respondent United States had not complied with the Dispute Settlement Body’s recommendations and rulings. Finally, both parties – Japan and US-mutually agreed to suspend the work of the Arbitrator, consequent to the withdrawal of Japan from its request under Article 22.2 and made a joint communication to the Dispute Settlement Body.
7.3.4 India

Among the developing countries, India stands in the forefront. India had five cases at the Dispute Settlement Body, of which it won three cases to which India had been the complainant. D.S. 217, had been a joint complaint against the United States. The case was won by the complainant. The respondent, United States had to change the law in conformity with the WTO obligations.

In another case India, as complainant against the European Community, the case was decided in favour of India. On the implementation side, though the European Community reaffirmed its intention to fully comply with the recommendations and rulings of the Dispute Settlement Body, it requested for more time for implementation. But instead of compliance of the rulings, it announced that a new regulation had been promulgated, bringing the European Community into compliance with the Dispute Settlement Body’s recommendations and rulings.

In a similar case, India had been the respondent and the United States and European Community were the complainants. That case was decided in favour of the complainants. India informed the DSB that it had fully complied with the recommendations and rulings of the Dispute Settlement Body, and a Public Notice was issued in that respect.

7.3.5 Brazil is the next in the series. It too had five cases. It had been a complainant in four cases at the Dispute Settlement Body and had won the four cases. In DS. 267, though the case
was won by Brazil, it did not impose any counter measures against the United States.

7.3.6 Mexico had four cases before the Dispute Settlement Body. In two cases it was complainant and in the other two, respondent. Mexico won the cases as complainants. Though the case (DS. 344) was won by Brazil against the United States, the parties, finally entered into an agreement under Articles 21 and 22 of the DSU. As the result, Mexico requested the Compliance Panel to suspend its work until further notice. The same tactics was followed by Mexico against the United States in DS. 282 also. In DS. 295, Mexico withdrew its measure that was subject to dispute.

7.3.7 Korea had two cases at the Dispute Settlement Body as complainant, and both cases were won by Korea. In DS 202 the net result of the complaint was termination. At the Dispute Settlement Body meeting on 18 March 2001, the United States informed that its safeguard measures on “line pipe” from Korea had been terminated on 1st March 2003.

7.3.8 Peru had only one case during the period at the Dispute Settlement Body against the European Community; Peru won that case. But instead of implementing the Dispute Settlement Body’s recommendations and rulings, both the parties to the dispute informed the Dispute Settlement Body that they had reached a mutually agreed solution under Article 3.6 of the DSU.

7.3.9 Antigua and Barbuda made a complaint against the US (Case No. DS. 285). Though the case was decided in its favour, Antigua and Barbuda initiated for authorization from Dispute Settlement Body to suspend concession and other obligations.
But later, Antigua and Barbuda sought the good office of the Director General of WTO to find out a mediated solution to the dispute.

This chapter analyses many of the cases brought before the panel and the Appellate Body for adjudication. Of them, some one and some failed, certain others went for mutually agreeable solutions, or sought help of the good offices of the Director General, and a few withdrew or terminated their cases.
Chapter VIII

A PROFILE OF PROFESSIONALS AND THEIR PERCEPTION ABOUT WTO AND DISPUTE SETTLEMENT MECHANISM