



DEVELOPING COUNTRIES AND THE DISPUTE RESOLUTIONS SYSTEM OF THE WTO

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THE DISPUTE RESOLUTIONS SYSTEM OF THE WTO

SUMMARY:

1. Introduction;
2. History of the Dispute Settlement Negotiations at the Uruguay Round of GATT;
3. Procedural Rules of the Dispute Settlement System of the WTO;
4. Institutional and Procedural Failures of the System;
5. Operational Failures of the System;
6. The Developing Countries in the Dispute Settlement System of WTO;
7. Conclusions.



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AREAS OF INTERNAL LAW INFLUENCED BY INTERNACIONAL LAW:

1 - Formulation by IMF

- 1.1- Tax Law;**
- 1.2 - Social Security Law;**
- 1.3 - Monetary Policy; and**
- 1.4 - Fiscal Policy.**

2 - Formulation by the WTO

- 2.1 - Intellectual Propriety;**
- 2.2 - Foreign Trade;**
- 2.3 - Investments;**
- 2.4 - Customs Policy;**
- 2.5 - Agriculture;**
- 2.6 - Industry; and**
- 2.7 - Services, including professionals.**



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GLOSSARY OF LEGAL TERMS IN THE WTO PROCESS:

<i>English language</i>	<i>WTO jargon</i>
Action at law -	<i>Complaint</i>
Appreciation of appeal -	<i>Reconsideration</i>
Arbiter -	<i>Panellist</i>
Plaintiff -	<i>Complainant</i>
Hearing -	<i>Substantive meeting</i>
Plea -	<i>Formal Complaint</i>
Court -	<i>Panel</i>
Case -	<i>Complaint; dispute</i>
Hearing -	<i>Oral trial</i>
Decision -	<i>Recommendation</i>
Derogation -	<i>Prejudice</i>
Initial -	<i>Submission</i>



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GLOSSARY OF LEGAL TERMS IN THE WTO PROCESS:

<i>English language</i>	<i>WTO jargon</i>
Jurisprudence -	<i>Practice</i>
Award -	<i>Report</i>
Object of the action -	<i>Reference term</i>
Petition -	<i>Submission</i>
Execution proceeding -	<i>Implementation</i>
Procedure -	<i>Working Procedure</i>
Response -	<i>Submission</i>
Defendant -	<i>Respondent part</i>
Repeal -	<i>Nullification</i>
Session -	<i>Substantive meeting</i>
Rejoinder -	<i>Submission</i>



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SCHEDULE OF THE CHRONOLOGICAL PROPOSAL FOR THE WORK OF THE LOWER COURT PANEL:

a) Receipt of the first written submission of the parties:

- complaining party **3 to 6 weeks**

- defendant party **2 to 3 weeks**

b) Day, hour and place of the first substantive meeting with the parties; session of the third interested

1 to 2 weeks

c) Receipt of the written pleas of the parties

2 to 3 weeks

d) Day, hour and place of the first substantive meeting with the parties

1 to 2 weeks



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SCHEDULE OF THE CHRONOLOGICAL PROPOSAL FOR THE WORK OF THE LOWER COURT PANEL:

e) Issue of the descriptive party of the award to the parties

2 to 4 weeks

f) Receipt of the comments of the parties to the descriptive party of the award to the parties

2 weeks

g) Issue of the preliminary award, including the arguments and conclusions to the parties

2 to 4 weeks

h) Period for the party to request revision of party of the award

1 week



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SCHEDULE OF THE CHRONOLOGICAL PROPOSAL FOR THE WORK OF THE LOWER COURT PANEL:

- i) Period of revision for the panel, including possible additional meeting with the parties**
2 weeks
- j) Issue of final award to the dispute parties**
2 weeks
- k) Circulation of the final award to the members**
3 weeks



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APPEAL SCHEDULE:

Day

Appeal notice	0
Appellant submission	10
Other appellant submission	15
Appellee submission	25
Oral preliminary hearing (sic)	30
Appeal award circulation	60 a 90
ORD meeting for adoption	90 a 120

NON-EXHAUSTIVE LIST OF PROCEDURAL FAILURES OR SHORTCOMINGS OF THE DISPUTE SETTLEMENT SYSTEM OF THE WORLD TRADE ORGANISATION

by Prof. Dr. Durval de Noronha Goyos

- A. Deficiency in legal terminology.**
- B. Terms of reference given by Secretariat and not by the plaintiff.**
- C. Limited joinder of plaintiffs.**
- D. Joinder of defendants disallowed.**
- E. No counterclaims or cross-complaints are permitted.**
- F. Procedures do not accept deliberation on preliminary issues.**
- G. No rules on evidence.**

NON-EXHAUSTIVE LIST OF PROCEDURAL FAILURES OR SHORTCOMINGS OF THE DISPUTE SETTLEMENT SYSTEM OF THE WORLD TRADE ORGANISATION

(continuation)

by Prof. Dr. Durval de Noronha Goyos

H. No provisions for remanding a matter from the Appellate Body back to Panel for further evidence.

I. Non-expert ad-hoc panel.

J. No independent legal infra-structure for panellists.

K. Ineffective sanctions system.

L. The implications of lack of right of action for private parties.

M. Limited access to lawyers in the proceedings

N. Confidentiality of proceedings.



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SOME OPERATIONAL FAILURES OF THE DISPUTE SETTLEMENT SYSTEM OF THE WORLD TRADE ORGANISATION

by Prof. Dr. Durval de Noronha Goyos

A. Lack of transparency in the workings of the Secretariat:

A1. Choice of members of the Legal Division;

A2. Undue influence of the Legal Division of the Secretariat on decisions;

A3. Choice of panellists;

A4. Imprecise, biased or otherwise wrongful definition of terms of reference;

A5. Question of independence of members of the Legal Division and of panellists; and

A6. Question of ethnocentrism



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SOME OPERATIONAL FAILURES OF THE DISPUTE SETTLEMENT SYSTEM OF THE WORLD TRADE ORGANISATION

(continuation)

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B. Usurpation of rights and unlawful creation of obligations.

C. Attempts at the creation of precedents (practice).

D. Attempts at the imposition of the “stare decisis” doctrine.

E. Frequent imprecision of awards.

F. Duplication or multiplication of panels as a result of:

i. Failure to accept joinders; or

ii. imprecise awards.

G. Conflict of treaties matters resolved disastrously.

H. System biased against developing countries.

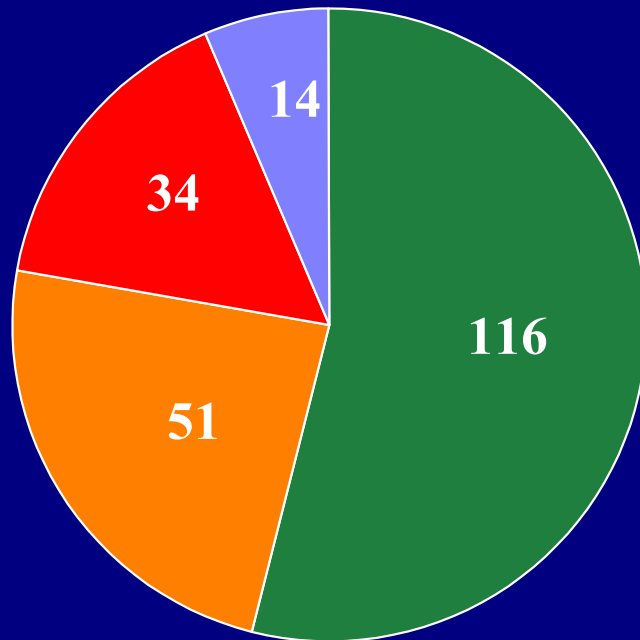


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Developing Countries and The Dispute Resolution System of the WTO

Figures as of January 15, 2001

220 COMPLAINTS AS OF JANUARY 15, 2001



■ Resolved During Consultations

■ Resolved by Definitive Decisions of the DSB

■ Semed or innactive

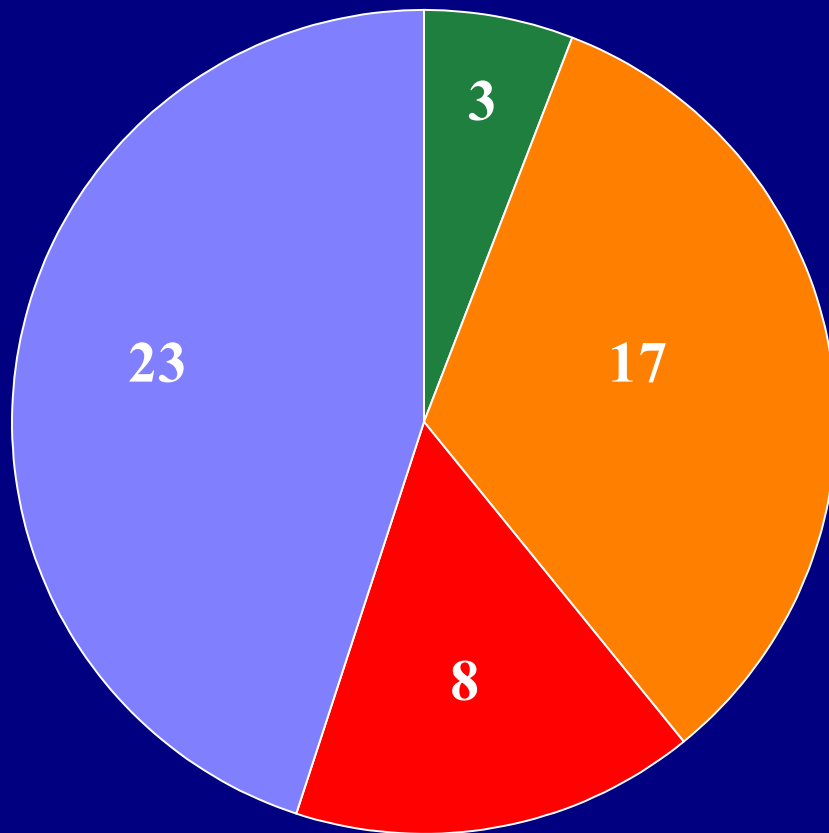
■ Pending



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DSB Nature of the Parties as of January 2001

51 CASES



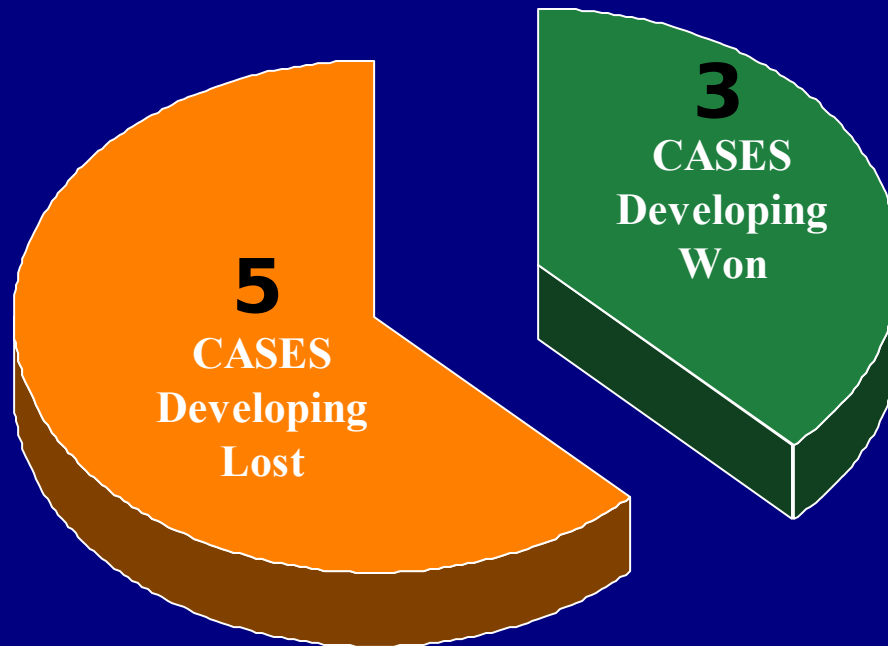
- Developing Country Against Developing Country
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8 Cases Developing Countries as Plaintiffs against Developed Countries

Jan.2001

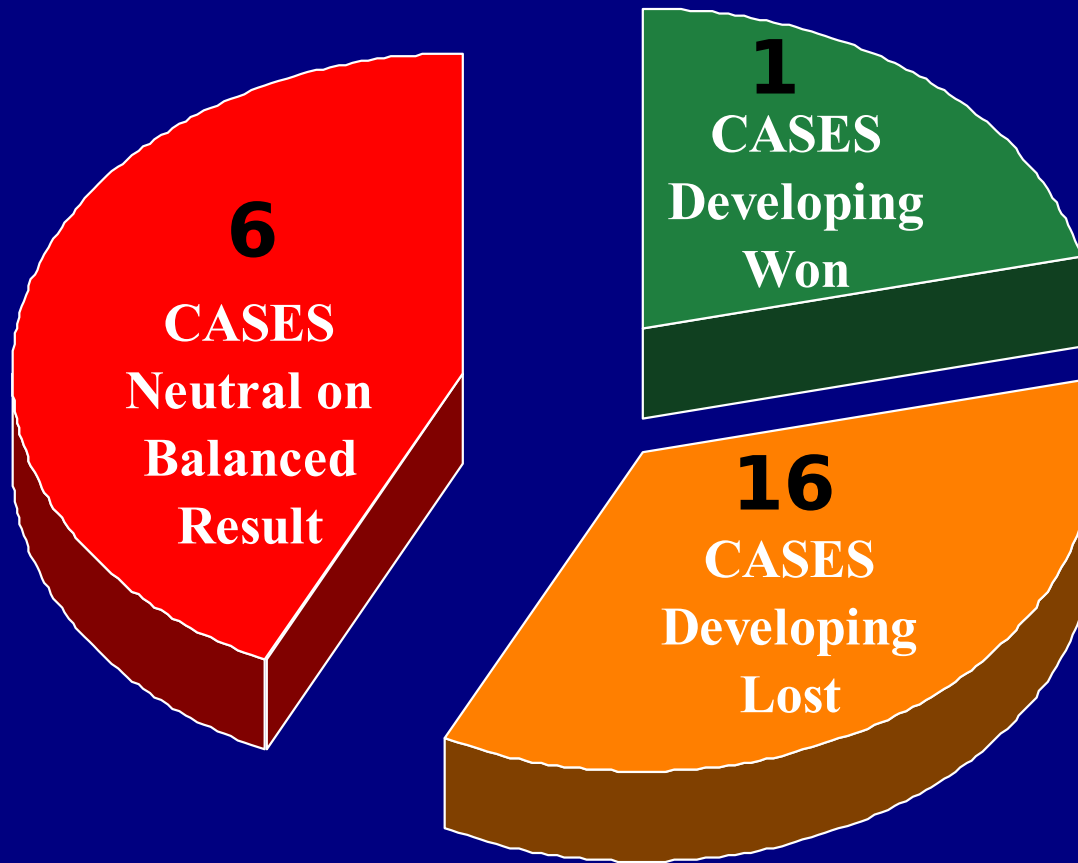




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23 Cases Developed Countries as Plaintiffs against Developing Countries

Jan.2001





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Total History of Developing vs. Developed Countries at the DSB

Jan. 2001

