

Chile's Participation in the Dispute Settlement System: Impact on Capacity Building

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Introduction

As part of its DSU Program, the International Centre for Trade and Sustainable Development asked me to prepare this paper on the participation of my country in the WTO Dispute Settlement Mechanism and how that has impacted on capacity building. Although this paper tries to address the issue from different angles, it is basically the reflection of my experience in the matter at the Chilean Mission to the WTO in Geneva during more than five years and back in Santiago as head of the DS office of the Ministry of Foreign Affairs. A disclaimer is appropriate now to clearly indicate that the views and opinions expressed in this study are my own and do not reflect the position of the government of Chile, specially regarding the disputes and negotiations mentioned in the paper. Additionally, general references to specific disputes are given in order not to compromise confidentiality at the intra and inter governmental level.

A draft of this paper was submitted at the South American Dialogue on WTO Dispute Settlement and Sustainable Development that took place in Mogi das Cruzes, Brazil last June. The comments received and in general the discussions during the event are in some way reflected in the paper.

The paper starts with a brief description of the participation of Chile in the WTO, especially in terms of cases it has been involved in. The conclusion of this first section is that the active participation in the DS mechanism is not proportional to the country's share in world trade. More interesting is the fact that, as analysed in the second section, this high profile in the WTO DS mechanism is not reflected domestically. Not only the private sector has little awareness of the importance of these matters but there were no institutional structures nor procedures to handle disputes in an harmonious way. Different explanations can be found for this reality as well as different initiatives have been taken to remedy it. Section three of the paper deals with some of these initiatives both in the public and private sector and both at the institutional and human resource level. The concluding section summarises the recommendations that can be extracted from the Chilean national experience and the measures taken to increase capacity, awareness and experience in the handling of trade disputes.

I would like to thank ICTSD for the opportunity to address this issue of importance for developing countries and Chile in particular hoping that our experience, as explained in this paper, can help others to understand the challenges in creating capacity in trade dispute settlement and design strategies to achieve similar objectives. That has been the spirit of the paper and the way I undertook this task so it should not be read as promoting litigation or encouraging developing countries to use more often the WTO DSU as some times the idea of "promoting the participation of developing countries in the DS mechanism" is interpreted.

Finally my thanks to Ambassador Mario Matus, Permanent Representative of Chile to the WTO, Olga Lucia Lozano and Luz Sosa for their useful and valuable comments.

1. Chile in the WTO

One of the aims of the trade policy of Chile, which due to its size is a small actor in global trade but whose export sector represents close to 50 percent of GDP, has been to have an effective, quick and inexpensive mechanism at hand to solve potential trade disputes with its trade partners. A mechanism that can also serve a dissuasive purpose avoiding measures which might conflict with internationally agreed disciplines. This is what was understood when it signed the General Agreement on Tariffs and Trade in 1947 and what was confirmed when it approved the agreements resulting from the Uruguay Round. During legislative debates in Chile, which led to the approval of the Marrakech Agreement, the authorities at the time highlighted the importance of the Dispute Settlement Understanding for the country, as it reinforced the system “in such a way as to operate under the rule of law which, ultimately, is the only defence that medium-sized or small-sized countries have to protect themselves faced with protectionism and discrimination which infringe the rules of international trade”¹.

If the DSU is a keystone of the WTO, then so are, on a bilateral level, the dispute settlement mechanisms under regional trade agreements. As a result of the regional opening and the signing of Economic Complementarity Agreements (ECAs) under the auspices of the Latin American Integration Association (LAIA), bilateral mechanisms were established to settle disputes which may have arisen in the interpretation, application or non-compliance of the provisions of these Agreements.

These systems are relatively basic and often include political aspects which hinder their application, including the fact that in some cases, after several years of an ECA’s operation, the exchange of lists of arbitrators is still to take place, which, in the context of potential requests, makes it impossible to establish an arbitration group. These same political considerations render the implementation of the judgements of the Arbitration Tribunals² even more complex, calling into question the security and predictability which such mechanisms should bestow. All the above has encouraged the search for even more complex mechanisms, following the line taken by WTO’s DSU, meaning more expeditious decision making processes as well as explicit measures that the complainant can take in case of non compliance.

This is how the Free Trade Agreements with extra-regional countries or blocs included elements which have clarified the rules of procedure. They include greater transparency and automaticity of procedures and limit some political factors which could interfere with decision-making. For example, the clear rules on the choice of forums provided by the Association Agreement with the European Union³ does not appear to allow two interpretations on which routes are open to parties faced with an infringement of such an Agreement. While Article 189 establishes the alternatives which can normally be found in this type of bilateral agreement – that is, the DSU to remedy non-compliance of a WTO obligation and the bilateral mechanism in the case of an RTA obligation – it explicitly adds that if a Party seeks redress of a violation of an obligations under the

¹ Message of the President sent to Congress for approval of the Marrakech Agreement (1994).

² These are some of the reasons why Chile has only been involved in a couple of procedures under bilateral mechanisms. Although this does not necessarily mean that other, “quicker” channels have been favoured to settle regional trade disputes, such as the WTO.

³ Text in English at http://ec.europa.eu/comm/trade/issues/bilateral/countries/chile/euchlagr_en.htm and Spanish at www.direcon.cl

Agreement which is equivalent in substance to an obligation under the WTO, it shall use the rules and procedures of the DSU.

Eliminating the requirement of lists of arbitrators in what is known as P4 (*Trans-Pacific Strategic Economic Partnership Agreement*)⁴ – still not in force – also contributes to the quasi-automatic nature of the processes and avoids unnecessary delays. Article 15.7 of P4 states that within a very short period of time, each Party designates a member of the Arbitral Tribunals (who must possess the qualifications described therein) and that the third member is appointed jointly. However, if some or none of the three members are not appointed within a time limit, any of the Parties may call on the Director-General of WTO who will carry out the selection. In other words, none of the Parties may block the composition of the Arbitral Tribunal.

Furthermore, Chile has been bilaterally adopting figures which are still not blessed by the WTO. These include, for instance, rules on transparency on the Agreement with the EU and the FTA with the United States⁵ which go beyond those of the DSU. A specific example of this is the incorporation of *amicus curiae* in the dispute settlement mechanism of the FTA with the United States (Article 22.10.1.b)⁶⁷.

The next step is to integrate these improvements, as much as possible, into the bilateral mechanisms under the ECAs. Logic states that the more liberalization of market access is being accomplished in bilateral agreements and the more disciplines and sectors are incorporated, the more effective and reliable the dispute settlement system should be.

However, the lack of Chilean experience in bilateral disputes, that is, those submitted to mechanisms included in ECAs or FTAs, lead us to focus this paper on the WTO and specifically the perspective of Chile's participation as both a country and as individuals in the system.

1.a Chile's participation in WTO's disputes

Chile has been a complainant on ten occasions and respondent on the same number of disputes⁸, representing nearly 3% of the disputes initiated in the WTO (*DS numbers*)⁹. This active participation which places the country among the top ten users of the system doesn't reflect its share of global trade, approximately 0.3%, - Chilean exports and imports in international trade¹⁰.

⁴ Text in Spanish at www.direcon.cl and in English at <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Trans-Pacific/0-sep-index.php>

⁵ Text in Spanish at www.direcon.cl and in English at www.ustr.gov

⁶ Article 22.10: Procedural Rules

1. The Commission shall establish, by the date of entry into force of this Agreement, Rules of Procedure, which shall ensure:

(d) that the panel will consider requests from non-governmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties.

⁷ From the above it should not necessarily be assumed that Chile supports all the proposals on greater transparency which have been submitted at negotiations on DSU in the current round of multilateral negotiations, nor that it would unreservedly support the appearance of *amicus curiae* in WTO.

⁸ Statistics taken from worldtradelaw.net

⁹ A list of all the disputes in which Chile has been involved is included in Annex A.

¹⁰ According to the *WTO Statistics Database* in 2004 the participation of Chile in the total world exports was 0.35% and 0.26% as regards imports. And its contribution to the WTO's budget in 2006 was 0.289%.

While these figures are impressive in terms of quantity, in terms of quality there are elements that merit further analysis. Thus for example, Chile has been involved as a complainant in important cases that have served as precedents for later disputes, for example, the claim against the EU for the appellation “*Coquille Saint Jacques*” (an important TBT case). Or disputes which have tested the DSU as in the case of the joint claim against the United States due to what is known as the “Byrd Amendment”. Indeed an illustration was the decision of Canada to individually request the adoption of the reports of the Panel and Appellate Body, raising different interpretations of the scope and meaning of articles 16.4 and 17.14 of the DSU, particularly if a non party to a dispute (Canada was complainant in only one of the processes) can request the DSB to adopt particular reports. In this debate Chile was of the idea that only the parties to a dispute could request the adoption of the reports of that dispute, precluding any other member or even the Secretariat to make such a request (Chile added that Canada was a party to the dispute).

On the other hand, important aspects of Chilean trade policy have been questioned in the WTO, such as its legislation on alcoholic beverages or even more relevant, its regime for the protection of its agricultural sector in the face of distortions in global markets affecting certain goods. These disputes have put on the table sensitive issues to many Members and have led to difficult legislative changes in Chile. Additionally, specific aspects were unseen until then in Geneva, such as the large number of third parties in the dispute on price bands (which over time has become less unusual).

While Chile has frequently participated as complainant or respondent, it has more frequently been a third party. Until June 2006, Chile had reserved its third-party rights in 14 Panels. In addition, it requested to be joined in consultations in a couple of disputes which did not move on to the next step. Chile’s participation as a third party is relevant because while there have been varied reasons to do so – generally a concrete trade interest - , it has led to more direct contact with the dispute settlement mechanism and allowing a better understanding of the various procedural stages as well as the logic behind the system.

1.b Chileans in the WTO System

When the names of members of panels are analyzed, it is again surprising to find that Chile’s participation is disproportionate to its share in world trade. According to *worldtradelaw.net*, until last June there have been 357 members of panels (this is not the same as the number of people who have sat as panellists). Of these, 11 have been Chileans (eight persons), which again represents approximately 3% of the total and places Chile on the same level as the USA and among the 12 countries with the most panellists. In many cases, these Chileans have participated in disputes of both trade and systemic importance, such as *Mexico – Telecommunications*; *USA – Cotton*; *EC – Sugar* and one of the panels in the *Boeing/Airbus* dispute. The reason why Chilean panellists enjoy such confidence could be the subject of another report.

The number of Chilean professionals who have taken specialized courses as part of technical assistance programs of the WTO is another good way to measure the country’s involvement in the system. Indeed, since 1995, 78 Chileans have taken part in dispute settlement courses provided by the WTO Secretariat whether in Geneva, regional or national activities or as part of the general Trade Policy Courses. Of these, approximately 60% correspond to civil servants and the remaining come from the private or academic sector. Of note is the fact that 24 of these professionals have also taken part in advanced courses on dispute settlement. The above figures do not take into

account Chilean lawyers or other professionals who have taken postgraduate studies in which they have been taught the basics of the WTO dispute settlement mechanism.

2. National reality

The above figures might be seen as indicative of the existence of a structure within the government with clear procedures on how to deal with potential trade problems and how to defend the interests of the country before various trade tribunals, whether at WTO or bilateral level. The reality however is quite different.

To start with only in 2005 a specialized office in charge of trade disputes was created. Until then, international disputes were handled on a case-by-case basis and sometimes in an ad hoc manner. While WTO disputes were taken care of by the Legal Division of the Trade Directorate of the Ministry of Foreign Affairs (“DIRECON”) with the support of other agencies, the absence of pre-established internal procedures on the steps to follow in the case of problems from when the issue was known – or even before in the case of future measures – until the last instance possible could hamper the country’s efforts to effectively defend its interests. Different was the case for disputes on investments where an office dependant on the Ministry of the Economy was established long before.

While there is no single reason which explains this lack of systematic handling of trade disputes, the figures analyzed in the previous section show that this did not prevent Chile from being an active user of dispute settlement mechanisms, particularly that of the WTO. However, this is not an ideal scenario and there are instruments and measures which can be adopted to build capacity in this area and which in practice have been put to use, as will be explained in Section 3. Before that let us analyze some of the reasons which would seem to have been behind this deficiency.

2.a. Lack of awareness of the importance of preparing these matters

The problem can be approached from two different angles. On the one hand, companies do not invest enough resources in getting experience in these issues nor in the general disciplines of international trade. On the other hand, there are no specialized private lawyers who work full time on such matters. The lack of awareness and very often of interest, by the former results in little demand for the latter who consequently have to spend more time on more “profitable” legal matters.

Even when for over a quarter of a century, Chile has experienced an opening of its economy and a significant percentage of its GDP comes from foreign trade, there is still a lack of awareness in some sectors of the country on the importance of knowing the true reach of the rights and obligations of international trade law. While tariff or non-tariff barriers (for example, sanitary and phytosanitary issues are particularly important for a country that wishes to convert itself into a major food producer) are recurrent and important issues for businesses and therefore, are perfectly managed¹¹, in general this is not what happens in other cases. Let us address two examples: trade remedies and draft technical regulations.

¹¹ Annually the Ministry of Economy publishes a report on foreign barriers to trade (*Catastro de Barreras Externas al Comercio*) that helps identify and make transparent a series of obstacles faced by Chilean exporters in international markets. It is prepared on the basis of reports and complaints by the private sector.

2.a.i. Infrequent use of trade defence measures

One of the pillars of the economic model of Chile over the last thirty years has been the constitutional recognized principle of equal treatment between all sectors of the Economy¹² as well as between foreigners and nationals. This provides economic operators free rein to produce and participate in economic activities, including foreign trade, without discrimination or favouritism to some rather than others and eliminating possible interference of the State particularly to protect certain sectors. In foreign trade this principle takes the form of a single across the board MFN tariff, with a few exceptions¹³.

Additionally, similar treatment for all production sectors results in a near absence of subsidy or assistance programs for some of them. From a budget point of view it also makes sense since the best excuse to not support a sector is to deny support to all.

The above reasoning is also translated in the conduct of the authorities and its reluctance to apply trade remedy measures. In 1986 the *National Commission in charge of investigating the existence of distortions in the prices of imported goods* was created (known as the “Comisión de Distorsiones”)¹⁴ to receive complaints concerning distortions in prices in international markets for commodities for which in each case an investigation is required. With the entry into force of the WTO agreements, it was empowered to hear complaints regarding the application of the Agreements on Subsidies and Countervailing Measures, on Safeguard and on Application of Article VI of GATT (the Anti Dumping Agreement). Usually it acts after a request is made by the domestic industry but it may self initiate an investigation if the evidence justifies it.

The procedure before the Chilean Distortions Commission, as well as the determination of the elements which allow remedial action, are regulated by the Law and its Regulations¹⁵ (which also regulates the collection of duties, taxes and other charges resulting from the application of anti-dumping duties, countervailing duties, surcharges and minimum customs duties)¹⁶. There are those who view that the provisions of the respective WTO agreement, for which all effects are national

http://www.economia.cl/aws00/Estatico/repositorio/j/e/P/AOIL9qiypE5VJZYj_IR_8yXk=.pdf has an electronic version in Spanish of the latest report.

¹² Article 19 n° 22 of the Political Constitution:

Art. 19. The Constitution guarantees all persons:

22°. No arbitrary discrimination in the treatment meted out by the State and its bodies in economic matters.

Only by virtue of a law, and inasmuch as it does not imply any such discrimination, may certain direct or indirect benefits favouring any sector, activity or geographical region be authorized, or special charges affecting individuals or groups of individuals be established. In cases of franchises or indirect benefits, the estimated costs must be included annually in the Budgetary Act;

¹³ Currently the MFN tariff is 6% for all products, except for some goods such as computers which are tariff-free. For its part, the consolidated tariff of Chile is 25% on all goods except for a limited list of agricultural products (again, the same products which have been the object of disputes) which are bound at 31.5% and sugar at 98%.

¹⁴ Article 9 of Law 18.525, published in the Official Journal on June 30, 1986.

¹⁵ Finance Decree n° 575, published in the Official Journal on August 20, 1993.

¹⁶ In the case of safeguard measures, Law 18.525 is regulated by Finance Decree n° 909, published in the Official Journal on June 23, 1999.

law, are also applicable. As regards safeguard measures, there is a specific rule which provides that in the case of inconsistency between the rules for the application of an emergency or safeguard measures in a trade agreement and Law 18.525, the former will prevail to the extent of the conflict¹⁷.

The Chilean system has three specific features. Firstly, the members of the Commission are representatives of various public agencies: two representatives of the Central Bank (a body which is also the Technical Secretary of the Commission); one representative each from the Ministries of Finance, Agriculture, the Economy, Development and Reconstruction and Foreign Affairs as well as the National Director of Customs and chaired by the National Anti Trust Authority. This composition ensures that different viewpoints are reflected in each decision and guarantees that they are necessarily adopted on the basis of technical criteria and on the records of the investigation, considerably reducing arbitrariness and abuse. Decisions are adopted by a majority vote and in the case of draw the chair decides. In fact, the minutes of the Commission show that in general no decisions have been taken unanimously.

A second feature is that the decisions of the Commission (such as applying provisional measures, definitive measures or modifying or ending a measure) are not self-executing but rather recommendations submitted to the President of the Republic for final decision. The President may ratify the recommendation of the Commission, modify it or simply refrain from its implementation, the latter never being the case in recent history.

Lastly, Chilean legislation establishes considerable limitations on the application of such trade remedies. From the outset, maximum durations have been set out and are significantly shorter than those established by the WTO agreements. For instance, anti-dumping measures cannot exceed 12 months¹⁸; this period also applies to safeguard measures which may be extended by a further 12 months (instead of the maximum period of up to ten years under the Safeguard Agreement)¹⁹. Although the overall objective is to prevent the abusive use of such measures or that they can be considered by certain sectors as protectionist tools available to them, it also has to be said that reducing the duration eliminates the need for compensation as required by the WTO when safeguards last for more than three years.

An additional limitation is the legal prohibition to employ quantitative restriction as trade measures. Not only does Law 18.525 only refer to surcharges and minimum customs duties, but various representatives before the Commission of Distortions, particularly the Central Bank, have argued that Article 88 of the Constitutional Organic Law of the Central Bank²⁰ establishes a general prohibition on the use of quotas²¹. Furthermore, in the case of safeguard measures, if the Commission decides to recommend applying a surcharge which, in addition to existing tariffs, is higher than the bound duty in the WTO, 75% approval by its members is required. That is, the legislator wished that the general rule is for the safeguard measures to

¹⁷ Article 7 of Law 18.525

¹⁸ Article 8 of Law 18.525

¹⁹ Article 7 of Law 18.525

²⁰ Published in the Official Journal on October 10, 1989.

²¹ The relevant part of article 88 states:

“Any merchandise may be freely exported or imported on the condition that legal provisions and regulations in effect at the time of the respective transaction are duly complied with. Under no circumstances may prior deposits be required of the execution of export or import transaction, nor may quotas of any nature be imposed thereon”

remain below the bound tariff²² and only exceptionally can a measure be taken which would exceed the above level, but this would require a greater quorum.

If these legal restrictions to impose remedies were not enough, the Free Trade Agreements with Canada²³ and with EFTA (European Free Trade Agreement)²⁴, prohibit anti-dumping measures. With Canada, Parties obligated themselves to not applying their domestic anti-dumping legislations to goods from another Party from the date on which the tariff of both Parties was eliminated and in all cases from January 1, 2003. A commitment to adopt an equivalent prohibition was included in the FTA with México but its implementation is still pending. With EFTA the prohibition was applied from the entry into force of the Treaty, with the Parties recognizing that the effective implementation of competition rules may solve the economic causes which lead to dumping.

In practical terms, although the Commission of Distortions has conducted various investigations, they have resulted in few positive determinations and therefore in trade measures being effectively applied, especially when compared to similar bodies in other countries. From 1999, the Commission has carried out 18 investigations (five of which were self-initiated) of which only three involved dumping and the rest safeguard measures (three of which were to extend an existing measure). Only 13 investigations resulted in measures being applied (including 3 extensions) and all of them had the form of tariff surcharges. But interestingly, they refer only to six sectors (edible vegetable oils, sugar and fructose, socks, milk, steel products as well as wheat and wheat flour)²⁵.

In contrast to this is the situation in Peru and Argentina, for example. In the former country, according to statistics of the *National Institute for the Defence of Competition and Intellectual Property* (INDECOPI)²⁶ since 1992, it has carried out 97 investigations, in their vast majority for dumping (seven for subsidies, five for safeguard measures and five “confidential”) of which, 42 resulted in at least the application of provisional measures. Furthermore, such measures encompass larger range of sectors from manufactured goods to agricultural products, textiles, foodstuffs and non-metallic ores.

As regards Argentina, the figures are even more impressive. The *National Commission of Foreign Trade*²⁷ has carried out 163 investigations since 1993 – mostly for dumping, except 13 for safeguard measures, 6 for subsidies and 3 under the Agreement on Textiles and Clothing. Of these, only 10 ended without the application of duties. In fact, as of March 1st 2006, there were more than forty measures in place and as in Peru, they covered all types of goods. Also, 21 investigations are underway and have still to be finalized.

In summary, the use by of trade remedies has been exceptional and hence the limited interest of the industry in such actions reduces the demand for experts in this area – particularly lawyers. Only those industries which have suffered such measures are perhaps better prepared to face future “attacks” and are capable of preventing damage and defending accusations. Some have even retained foreign law firms which are on hand when consulting and defence is needed in case of problems. The best example is that of the salmon industry which is

²² The bound tariff is at 25%, except wheat, wheat flour and milk products at 31.5% and sugar at 98%.

²³ Article M-01 of the FTA Chile – Canada (www.direcon.cl)

²⁴ Article 18 of the FTA Chile – EFTA (www.direcon.cl)

²⁵ www.cndp.cl

²⁶ www.indecopi.gob.pe

²⁷ www.mecon.gov.ar

periodically investigated and unfortunately faces trade measures, and has contacts in legal offices in various markets which enable it to appropriately manage potential disputes.

However most industries when facing an accusation of dumping or safeguard have no-one to turn to and when they finally do seek assistance (normally the State) they have probably lost precious time complicating whatever possible defensive action remains. Consequently, even though questions about trade defence measures are an important part of the history of the WTO Panels and Appellate Body of the WTO, there are probably few lawyers in Chile who monitor such “jurisprudence”, except for government technical experts in the “Comisión de Distorsiones”. This is frequently reflected in an erroneous understanding of the impact of this kind of measures on Chilean exports in foreign markets. And the end result is a poor defence of the interests at stake.

We are recommending a greater use of trade defence measures or greater involvement by the private sector, as some have suggested recently in Chile, nor suggesting that this is a form of capacity building, but an area which requires further analysis by lawyers and professionals. This experience would not only be relevant when bringing complaints before the national investigation authority but in particular, also when appropriately defending national interests in terms of investigations carried out in foreign markets, all of which follow, at least, WTO disciplines.

2.a.ii. Draft technical regulations

Periodically Chilean industry is faced with new proposed regulations, in important destination markets, which are not always taken seriously into account. This is partly due to the lack of transparency of some markets, in spite of rules established by the WTO, but in most cases due to a lack of awareness of the implications which the new regulations may have on Chilean exports. And here blame can perhaps be shared with the Chilean public structure, which we will explore later.

An example of this is the proposed European regulation on chemicals (REACH) which might affect a significant percentage of Chilean exports to the European Union. However, the mining sector (for obvious reasons) was the first to concern themselves with the matter, organizing joint actions with other mining countries and putting forward their point of view. The chemicals industry reacted later, but what about other industries? Do they realize the potential cost of the implications of REACH to their exports? Have they expressed their opinions to the European authorities? While at country level, Chile has sent its comments to the different projects and carried out concrete actions, this is not the case for every sector concerned, except for the two above.

2.b. Lack of international litigation

In a country with one of the highest rates of lawyers per capita it would be an exaggeration to state that one cultural characteristic of Chileans is their preference for negotiated solutions to their problems avoiding conflicts. Actually the opposite would be closer to reality. So if its not a cultural problem, as in other parts of the world, why are there so few international conflicts in the field of trade?

On the one hand, by means of a unilateral opening of its economy, Chile has not only lowered its barriers to imported products but has also engaged in a process of adapting its regulatory frameworks to international standards and requirements as the only means of competing in international markets. The same regulations simultaneously limited the entry of goods (and services) which may have competed unfairly. This has led to national industry building capacity to adjust to the changing requirements of international markets, particularly to those industrialized

countries which not only have strict sanitary, phytosanitary and general quality specifications, but which are also ready to pay a premium for goods that meet these added requirements.

This self-regulatory process was strengthened by the requirements imposed by the free trade agreements which Chile began to sign in the mid 1990's and which entailed significant legal and institutional changes to a series of agencies, programs, taxation frameworks and in general to measures applied to foreign trade. In other words, adaptations demanded by our partners, adopted by the authorities and implemented by the national industry. Chile's adjustments to its intellectual property protection system, the result of the Free Trade Agreements with the EU and the United States, are perhaps the best example of this.

All the above means that, by and large, Chile does not have significant "grey areas" in its trade policy and institutions and therefore possible areas of concern for our trade partners have been drastically reduced. The remaining issues deal in general with some areas of the traditional agricultural sector – as opposed to agro-industry. Statistics show that the majority of the cases brought against Chile before the WTO and bilateral DS mechanisms relate precisely to a couple of very specific agricultural products.

In other words, the sources of potential conflicts are few and decreasing as the country adapts to the international requirements of its trading partners or more frequently, to the demands of the market which enable its export industry to maintain its competitiveness.

But what about Chile as complainant? The same above international trade agreements have built trust and institutional frameworks for the discussion of problems, especially when measures are still at the draft stage. Cooperation mechanisms on technical matters included in recent FTAs are particularly significant. This has been the case, for example, of the dialogue between specialized agencies on the sanitary and phytosanitary issues of each Party in the agreements with the EU and the United States or on environmental matters in the context of the FTA with Canada. These cooperation mechanisms are a vehicle for building mutual trust between regulators and facilitate the exchange of information, debates on issues and negotiation of solutions to potential problems.

Therefore, the possibilities of using dispute settlement bodies such as the WTO has been decreasing at the same time as the use of channels for dialogue has increased, particularly as concerns technical matters. But this kind of channels do not exist with every country and even when there is one, do not always function properly, hence dispute settlement mechanisms continue to be a necessity for Chile, as we have previously explored.

2.c. Availability and expertise of private lawyers

The question that follows is how all of the above impacts in the availability, interest and expertise of lawyers in issues of International Trade Law and, for the sake of this study, in DS procedures.

Surprisingly, while awareness and sometimes interest of the industry on these issues is not very high and the possibility of formal final disputes is gradually reduced with the legal and institutional adjustments, the interest lawyers, both in the public and private sector, is raising. An example is the fact that the main universities of the country run postgraduate programs on international trade where issues such as dispute settlements are taught – including investor-State -, international arbitrations and trade remedies. There are also highly specialized initiatives such as the recent creation of the *Centre of International Trade of the Law School of the Catholic University of Chile* exclusively

devoted to debate, research and teaching on such matters. One of its projects is a *Diploma in International Trade* which includes a workshop on dispute settlements before the WTO (*Moot Court*). Another interesting example was a cycle of conferences organized by the *Faculty of Law of the University of Chile* on “Regulating International Trade: a Jurisprudential Approach”, in which various topics such as anti-dumping, subsidies and intellectual property were examined from the point of view of WTO Panels and the Appellate Body.

It is worth noting that in recent years a growing number of Chilean lawyers have specialized in international trade law in foreign universities. They have brought not only the necessary knowledge but also the drive to carry out concrete actions to identify work opportunities and to keep abreast of issues in this field.

In spite of this recent interest and the current initiatives and in spite of the fact that it is recognized that experience on international trade law is increasingly necessary, there is still a gap in reality. Part of the reason for this is that the export sector comprises many small and medium sized enterprises that use their scarce resources to produce for the export market and adjust to current regulations. But they do not have additional resources for legal counselling to help them adapt more easily or react to the changes due to the regulations, unlike the mining sector which has taken steps (or attempted) to deal with measures such as REACH.

For a large majority of the export industry the State continues to provide the bulk of information on current affairs in foreign markets and is essentially the body which defends these markets in the case of problems. However, as we will see below, the State also does not have the resources or structures to meet this increasing demand.

In other words, even when there are more and more lawyers trained in WTO matters and in general in international trade, including dispute settlement, there is still no market for specialists in these fields. After having consulted the main law firms of Santiago, most indicate that they have a section or department dedicated to international trade. However, under closer inspection, none of them have lawyers who dedicate 100% of their time to WTO international trade matters as they all share responsibilities with other “international” areas such as foreign investment, commercial law (companies, mergers), mining law and national law. As has been stated, there is simply no market in Chile for lawyers who spend 100% of their time on such matters, even when there is interest.

2.d. Domestic institutional framework was inadequate

The previous sections outlined the problems that were perceived from the private sector perspective. I will try now to address the constraints in the public sector, mainly the lack of an adequate structure to deal with trade problems and their solution.

For decades, the primordial mission of Chilean trade policy has been the opening of foreign markets to Chilean goods and services, as well as the establishment of regulatory frameworks which guarantee protection of foreign investments both in Chile and Chilean capitals abroad. This resulted in the conclusion of trade agreements with most countries and regional blocks, with a significant rise in their number in the last years.

Institutional structures accordingly were designed having this mission in mind. In 1979 the General Directorate of International Economic Affairs of the Ministry of Foreign Affairs was created (DIRECON)²⁸, as part of the restructuring and merging of already existing agencies. DIRECON

²⁸ Decree Law 53, published in the Official Journal on April 27, 1979.

executes presidential policy as regards foreign economic relations and assists in developing exports, analyzes Chile's participation in international trade, proposes and negotiates treaties and other international economic agreements. Most of these actions have to have the agreement of Finance Ministry. DIRECON also intervenes in all working groups, bilateral and multilateral negotiations, participates in international bodies and coordinates their policies, disseminates abroad not only the economic policy of the country, but also the national production in order to stimulate demand for it, formulates proposals to the public and private sectors to ensure maximum impact on such international markets and studies and submits measures in connection with the physical integration of Chile with other countries (when they affect border zones, work is coordinated with the National Directorate of Frontiers and Border).

While continuing its export promotion activities via ProChile, DIRECON has invested significant human and material resources to the negotiation of trade agreements. There has been special emphasis on regional units for economic bilateral relations (especially with Europe, North America, Latin America and recently Asia) and on functional units in charge of cross-cutting issues particularly market access and services and investment. Due to the latest generation of trade agreements the Trade and Sustainable Development, Labour Affairs and Intellectual Property department have become increasingly important. All this has meant that issues such as the WTO and APEC have been regarded as less urgent, gaining some significance in specific moments such as for example in the APEC Chile 2004 year or when WTO Ministerial Conferences take place. Other governmental agencies including the Ministries of Finance, Agriculture and the Economy adopted similar structures in their fields of expertise.

Until then little or nothing was done to implement agreements, particularly in the field of interest to this study: dispute settlement. When disputes arose often the reactions were tailor-made and *ad hoc* procedures were set in place to respond while coordination and management was put under the responsibility of the regional division, that is, the same unit that negotiated. This resulted in each problem generally being dealt with differently by different people and without procedural guidelines. The lack of systematization in the way how to deal with trade problems was also reflected in the absence of clear roles each possible agent involved. So for instance, on some occasions the respective Chilean Embassy was capable of playing an important task in managing a problem and its solution (for example in dumping investigations conducted in that foreign market), on others it was only a spectator in direct dealings between the capitals. Similarly, faced with a like problem, for example, a sanitary measure for some Chilean product, the unit in charge of coordinating responses and seeking solutions to it was not always the same – on some occasions this was left to the regional unit, on others, to the Market Access Division or even the WTO Department when the issue was brought before it.

However, with more and more problems affecting Chilean exports, particularly in relevant or “star” sectors and major markets, the need to systematize the methodology of dealing with trade disputes became more pressing. This was also a demand on the private sector, especially via the Public Private Council for Exports Development which brings together the private and public sectors and one of whose areas of action is implementing negotiated trade agreements.

One of the first measures adopted was the creation of a unit to implement and administer agreements which include concrete measures to enable bring into full and effective force trade agreements to come into force and to monitor the fulfilment of reciprocal commitments. These actions can allow an effective functioning of the institutional structures of each agreement as well as optimizing the leveraging of advantages and opportunities which they

generate. To this end transversal coordination bodies were created with the involved actors, the public sector, the legislature, the private sector (including the above Public Private Council) and civil society.

A further step was the creation of a trade dispute unit under the legal department of DIRECON (DEJUR) whose responsibility was to coordinate the defence of Chilean interests both when dealing with administrative aspects of trade problems and before formal bodies such as the WTO or bilateral dispute settlement mechanisms. In under a year it generated a space for internal coordination and with other public agencies for effectively detecting possible trade disputes, their early settlement and when necessary, the defence of Chilean interests before the mechanisms provided for in trade agreements. Additionally, it played an important role in offering legal interpretation and consulting to regional and functional divisions which contributed to the adoption of positions at an early stage of the issue or problem. This is the case even when the definitive interpretation of the agreements is the responsibility of the international department of DEJUR. Lastly, the unit may also propose outsourcing external consulting (national or international) for assistance in specific disputes.

Also, as part of the national program to improve the management of the state apparatus (PMG), an indicator on trade dispute was established to assess twice a year how DIRECON has been dealing with trade problems brought to its attention by the private sector. This has resulted in greater internal coordination. Furthermore, the need to meet the obligations of such indicators has led to the keeping of updated statistics.

On the other hand, this structure enabled the private sector to have a single contact point when faced with trade barriers or disputes in a destination market and who is also responsible for providing satisfactory responses to the business sector.

On this point it is worth mentioning the creation in parallel of the *Defence Program for Foreign Investment Arbitrations* of the Ministry of the Economy. As its name implies, its role is to coordinate, by means of a joined-up approach, the defence of Chile's interests when dealing with the demands of foreign investors. Similarly to the DIRECON dispute settlement unit, the program may recommend the outsourcing of external consulting services which, according to type, duration and scale, are channelled through the Chilean public procurement procedures.

3. Adopted measures and recommendations

In this section we will concentrate on some of the actions taken by Chile to build capacity at the level of lawyers and professional as well as institutional changes gone through recent years to deal more effectively with trade disputes. While raising awareness in the private sector on the need to have adequate preparation to handle trade problems may not have been a primary objective of the government, the fact that private lawyers gain experience in this matters may help in that way.

3.a. Capacity building actions with Chilean lawyers and professionals

A first set of measures adopted in the past few years have been targeted to Chilean lawyers both private practitioners and government officials. In this sense, trade courses and technical assistance activities continues to be the most direct way of building capacity in dispute settlements. The main vehicle has been WTO technical assistance activities, particularly two courses which took place in Santiago. Experience has shown that compared to regional courses or general courses in Geneva, national activities allow for focalization on issues related to the realities of each Member. So when

the *Advanced course on WTO dispute settlement and relevant jurisprudence* (which took place in November 2005) was designed, together with the WTO Secretariat, emphasis was placed on the issues and areas of interest to Chile. That is, the most recurrent problems which the country has faced in foreign markets and which will probably remain so in years to come. In addition to adapting the original content of the course, a whole day was devoted to explaining the evolution of WTO “jurisprudence” around issues such as national treatment (Article II of GATT, 1994) and safeguard measures. Due to time constraints, it was not possible to explore other issues of equal or greater relevance to Chilean foreign trade, such as sanitary and phytosanitary matters or technical barriers to trade.

Similarly, taking advantage of the presence of WTO experts a short course on dispute settlements with business leaders was organized with the largest business association of the country.

Considering the above, a first recommendation would be to design technical assistance activities of WTO or other organizations as regards dispute settlements having in mind the realities and interests of each country, taking into account current or future problems. This requires appropriate coordination between the WTO Secretariat, the organizing body at national or regional level and the participants.

In parallel, as already mentioned, various initiatives in universities and study centres in Chile have focussed on exploring issues in connection with international dispute settlements. In fact, several Chilean universities have included modules on the study of dispute settlement mechanisms in postgraduate courses on international trade law. They have also even developed specific programs on this subject and concrete ideas have taken place such as the creation of the Centre for International Trade of the Law School of the Catholic University of Chile or conferences and lectures organised by the Universities of Chile and Adolfo Ibañez²⁹. Another interesting project was a Diploma Course on International Trade for journalists structured by the Institute of International Studies of the University of Chile, where various aspects of international economic relations were explored, including dispute settlement, from the perspective of journalists involved in these matters on a daily basis.

All of these programs and initiatives have the support of the public sector, usually by means of contributing with the experience of their professionals who teach or deliver speeches.

Then a concrete recommendation it that governments should stimulate and support even more activities of this type and seek ways of connecting these with WTO technical assistance activities. For instance, WTO professionals could teach such courses or course study materials provided by the WTO Secretariat (in the form of practical exercises) could be distributed. Encouragement should also be given to the creation of discussions groups on these topics.

3.b. IDB Project

Within this new notion of a DIRECON dedicating a considerable amount of resources to the administration and implementation of the network of existing trade agreements, an understanding was reached with the Inter-American Development Bank (IDB) for the carrying out of a pilot

²⁹ In September 2006, as part of the Master in Business Law, a group of students visited Geneva and had seminars and presentations in various International Organizations, including WTO as well as a full day on dispute settlement procedures under the DSU. It included a visit to the World Trade Institute in Bern as well.

project with the objective to modernize and strengthen the institutional capacity of DIRECON in both these areas, to better meet these new challenges. Specifically, it aims to support compliance and effective application of the commitments undertaken in trade agreements and to develop and apply policies, programs and strategies to leverage their opportunities.

This DIRECON-IDB program has been structured around four broad action areas or components. The first concerns strengthening the management capacity of DIRECON to implement and administer trade agreements. The second concerns support for compliance and effective application commitments undertaken by Chile under those agreement. The third component aims to expand the development of exports, using the opportunities and advantages provided by trade agreements contributing in that way to the integration of Chile's regions to foreign trade. Finally the improvement of information processes and technologies is also an goal.

Within the second component on compliance with agreements, a "Training program for capacity building in trade disputes and conflicts" has been designed. Its objectives are to build the institutional capacity of DIRECON so as to defend Chilean interests in trade disputes and conflicts in terms of having a critical mass of professionals trained to research, develop and defend the trade interests of Chile in international disputes, as well as to support and co-ordinate possible future external legal services.

With these objectives in mind two activities have been developed involving a group of DIRECON lawyers. The first is an intensive specialization course in procedural aspects of international trade dispute settlement mechanisms. This will take place in Geneva taking advantage of the availability of many experts in these fields, both in private law firms and international organizations such as the WTO or the Advisory Centre on WTO Law (ACWL). In addition to analysing the basic principles of the DSU as well as other similar mechanisms, during the course relevant cases of jurisprudence of WTO and other international for a will be looked at in detail. Participants will learn to prepare cases and defences, as well as written communications and interventions in hearings before arbitration panels, panels and the Appellate Body. Also, their stay in Geneva will give them the opportunity to contact law firms, lawyers of the Secretariat of the WTO and of other organisms.

Subsequently, participants of the program will be placed in private law firms specialized in international trade/WTO. The firms that have accepted to participate in the program are taking all possible precautions, such as for example, to ensure confidentiality of work carried out or to avoid potential disputes of interest with clients, particularly in the case of foreign governments. These internships will last six months, which is regarded as a minimum for the lawyers to fully appreciate the issues of a dispute. Although the law firms are not expected to remunerate the lawyers participating in the project, they will be obliged to involve them in the day-to-day tasks and specifically in current disputes (always with the necessary precautions). Unfortunately WTO's staff policies prevented some of the DIRECON lawyers from undertaking internships in the Legal Affairs Division or the Secretariat of the Appellate Body. Since Chile's is not currently involved in many trade disputes the possibility to place some of the lawyers in the Mission in Geneva was ruled out.

The full program lasts 20 months at the end of which DIRECON expects to have a team of professionals with sufficient knowledge and experience to deal with possible future disputes. All of the above is closely related to the internal changes in DIRECON as will be explained bellow. Additionally, the training program will be evaluated as part of the IDB project and there may consequently be adjustments or changes to adapt the internal structures to better and more effectively meet the challenges of international trade, including those which it creates.

The IDB project is a novel initiative in Latin America and certainly without the financial resources involved, a country such as Chile would not have had the opportunity of designing a training program on such a scale. Nevertheless similar actions can be taken on by government with similar objectives, although probably on a smaller scale. Some of these are described above, such as redefining WTO technical assistance programs to better reflect national realities or country-specific issues. The possibility of placing governmental lawyers in private firms abroad is not a simple matter as there are sensibilities that have to be taken into consideration but is an alternative with mutual benefits to both parties: private firms appreciate the qualified and free labour, while governments in exchange receive civil servants trained in such specialized issues. Similar internship programs like the ones carried out by other missions in Geneva, such as Brazil and Mexico, also provide benefits for both the hosting government and the private lawyer/student, increasing capacity in this highly technical field.

3.c. Optimising institutional structures

3.c.i. National offices on dispute settlements

There is no question on the need to create specialized offices for dispute settlements in charge of coordinating actions for defending national interests. The experience of the office created in DIRECON is proof of this, but also highlights some of the challenges faced and the adjustments that could be made to improve its efficiency. Firstly, there is no one-size-fits-all solution to the organic dependence of this type of offices. While it seems logical from the point of view of its specific competence that such an office should be part of a legal department, in terms of work, it is much more closely linked to operational department (regional and functional). Furthermore, if the political importance of a specific conflict is included in the analysis then it makes sense to put the specialized office under the highest authority possible. This would enable them to respond to such disputes with strong support and facilitating the coordination between divisions that may have different organic dependence. This could also help bypass bureaucratic bodies on issues in moments when time is pressing. But this alternative of having more autonomous dispute settlement offices without strict dependency on organic structures is not always feasible in administrations subject to strict laws and controls – such as in Chile – or when the head of such an office does not necessarily have the political weight or the confidence of the authorities.

Another aspect to take into consideration and which in the case of Chile is still to be definitively solved is the participation of a unit in charge of dispute settlements in the negotiations of the respective mechanisms of trade agreements. From one side, it would seem logical that those who use mechanisms to settle disputes should participate in their design. In other words, that they can negotiate the procedures that will apply in future cases. Of specific relevance for instance is the participation in the DSU review, where new issues are being discussed that may not only fundamentally change the WTO mechanism but the bilateral systems as well as described before.

From the other side, usually the interests of the negotiator and the user of the DS mechanism are very different and their logic obey to different objectives, hence keeping both tasks separately is not always a bad idea.

The experience of Chile – and other countries as well - support the recommendation that specialized offices on dispute settlement should be created which would enable the coordination of the defence of the trade interests of the respective country. But these offices need to dispose of the sufficient resources, necessary autonomy and appropriate dependency to be able to develop their functions, which are delicate and, frequently under time constraints.

3.c.ii. Internal Coordination

Internal coordination is a problem which affects the vast majority of governmental administrations and has a negative impact on the appropriate implementation of its international commitments. And even when various forums constantly highlight the benefit of creating inter-agency coordination bodies – for example, in the implementation of multilateral environmental agreements to ensure their application is consistent with the WTO – there are various reasons why such an ideal remains out of reach.

Settling trade disputes is not an exception as in general they involve various public and private agencies, all of which have an interest at stake or at least an opinion to give on the process. For instance, a sanitary measure imposed on a shipment of Chilean agricultural products in a foreign market will probably bring the matter to the attention of the Chilean sanitary authorities (Ministry of Agriculture and/or of Health), the Ministry of Foreign Affairs (both via the Embassy and/or Trade Office in the respective country, as well as DIRECON) and representatives from the industry concerned. An appropriate and systematic coordination between all parties would facilitate the adoption of swift decisions with one voice to deal with the problem. However, when each agency, without consulting others, acts on its own, the results are very much worse than the initial measure.

The above is even more valid when new institutional structures and channels of communication between technical agencies are established as a result of trade agreements, as examined above. While these are always positive, this can lead to domestic coordination problems and effective solutions are not always forthcoming if other agencies or relevant bodies are not involved.

It remains the case that there are no one-size-fits-all solutions to improve internal coordination. In Chile there are permanent bodies as well as ad hoc solutions. Among the first ones, is the Inter Ministerial Committee for International Negotiations chaired by the Minister of Foreign Affairs and including the Ministers of Finance, the Economy and Agriculture (with the presence of other Ministers if needed) and which operates via the Technical Committee where the above Ministers are represented at the level of senior officials, chaired by the Director General for International Economic Affairs. This body coordinates positions on international trade negotiations and discusses issues relevant to Chilean trade policy, adopting decisions which fix the position of the country in specific matters. It is also the one who adopts decisions on how to deal with trade disputes of national importance or involve fundamental aspects of Chilean trade policy.

There are also bodies for technical coordination of specific issues, very often created when necessary and without a legal basis. For example, the National Committee on Technical Barriers to Trade which includes most of the Chilean regulatory agencies, or its equivalent on Intellectual Property Rights which brings together representatives of the Ministries of Agriculture, the Economy, Education, Foreign Affairs and Health, among others. All these bodies give form to a common vision of international affairs, even when their informality is not always reflected in shared decisions.

However, faced with specific problems or disputes, it is the creation of working groups with representatives of the agencies involved which has been privileged. These operate at expert level and their decisions are necessarily approved by representatives at the highest level or directly by the Technical Committee for International Negotiations described above.

A significant feature of these coordination mechanisms is the possibility to maximise the use of contact networks with outside counterparts which may help in the search for a negotiated solutions. Without coordination these networks might miss opportunities, particularly when the messages they send are different or even inconsistent.

Relevant actors in these coordination efforts are the Chilean diplomatic missions abroad. These are interested and important parties of whatever mechanism is used to deal with trade problems. Firstly, they are, by and large, the first to hear of a problem – whether contacted by the local authority, the private sector affected by the measure or simply because they are the nearest to the events. Even more importantly, they are the first that can take responsive action to seek solutions at an early stage avoiding an aggravation of the problem. Lastly, they are generally responsible for conducting the negotiation process with local authorities.

However, it is not infrequent that missions facing problems ignore how to deal with the matter or are unaware of which actions to take. This is partly because as has been seen there are no clear procedures as to which steps to follow to deal with such problems and partly because some missions are not sufficiently informed of the nature of the measures concerned or their implications for Chilean exports. This is very often due to the lack of specialized training of diplomats – which itself is due to a lack of incentive to undergo training – as well as the increasing complexity of international trade. It is only in recent years that issues in connection with trade remedies, dispute settlement or technical aspects of trade agreements have been taught at the Diplomatic Academy.

The lesson of the above is that coordination between relevant actors is urgent in order to appropriately deal with potential trade disputes in a joined-up manner and taking into account all the interests at stake. This is independent of the form the coordination body takes, as what is important is that its members legitimize it through their daily work and the decisions they take. An important aspect of this need for coordination is the role played by the diplomatic missions abroad, which should entail ongoing and specialized training of diplomats and other civil servants in matters which have an everyday effect on Chilean foreign trade. This would help them to react rapidly and appropriately in the face of trade problems.

Annex A

Chile's participation in the WTO Dispute Settlement Procedures

A. As Complainant

DS number	Respondent	DS title	Last developments
326	European Communities	<i>Definitive Safeguard Measure on Salmon</i>	Chile withdrew its request for consultations as the safeguard measure was terminated.
303	Ecuador	<i>Definitive Safeguard Measure on Imports of Medium Density Fibreboard</i>	Consultations requested but no panel established nor settlement notified.
261	Uruguay	<i>Tax Treatment on Certain Imported Products</i>	Parties notified the DSB a Mutually Agreed Solution after the panel was established and composed.
255	Perú	<i>Tax Treatment on Certain Imported Products</i>	Chile withdrew the complaint because the contested measure was removed after the Panel was established.
238	Argentina	<i>Definitive Safeguard Measure on Imports of Preserved Peaches</i>	Panel and AB reports adopted. The Argentinean measure was withdrawn in accordance with the agreement between the Parties.
232	Mexico	<i>Measures Affecting the Import of Matches</i>	Chile formally withdrew its request for consultations.
227	Peru	<i>Taxes on Cigarettes</i>	Chile withdrew the complaint because the contested measure was removed after the Panel was established.
217	United States	<i>Continued Dumping and Subsidy Offset Act of 2000</i>	DSB authorized Chile to suspend concessions, but measure haven't been imposed.
97	United States	<i>Countervailing Duty Investigation of Imports of Salmon from Chile</i>	Consultations requested but no panel established nor settlement notified.
14	European Communities	<i>Trade Description of Scallops</i>	Mutually Agreed Solution (also Canada and Peru) notified to the DSB.

B. As Respondent

DS number	Complainant	DS title	Last developments
278	Argentina	<i>Definitive Safeguard Measure on Imports of Fructose</i>	Consultations requested but no panel established nor settlement notified.
230	Colombia	<i>Safeguard Measures and Modification of Schedules regarding Sugar</i>	Consultations requested but no panel established nor settlement notified.
228	Colombia	<i>Safeguard Measures on Sugar</i>	This request was merged to DS230 proceedings.
226	Argentina	<i>Provisional Safeguard Measure on Mixtures of Edible Oils</i>	Consultations requested but no panel established nor settlement notified.
220	Guatemala	<i>Price Band System and Safeguard Measures relating to Certain Agricultural Products</i>	Consultations requested but no panel established nor settlement notified.
207	Argentina	<i>Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i>	Currently under article 21.5 procedures.
193	European Communities	<i>Measures affecting the Transit and Import of Swordfish</i>	Parties have been notifying the DSB their agreement to suspend the composition of the Panel.
110	European Communities	<i>Taxes on Alcoholic Beverages</i>	Chile adopted the DSB rulings and recommendations.
109	United States	<i>Taxes on Alcoholic Beverages</i>	Consultations requested but no panel established nor settlement notified.

C. As Third Party

DS number	Complainant	Respondent	DS title
335	Ecuador	United States	<i>Antidumping Measure on Shrimp from Ecuador</i>
302	Honduras	Dominican Republic	<i>Measures Affecting the Importation and Internal Sale of Cigarettes.</i>
291/292/293	US, Canada, Argentina	European Communities	<i>Measures Affecting the Approval and Marketing of Biotech Products</i>
286	European Communities	Australia	<i>Quarantine Regime of Imports</i>
276	United States	Canada	<i>Measures Relating to Exports of Wheat and Treatment of Imported Grain</i>
275	United States	Venezuela	<i>Import Licensing Measures on certain Agricultural Products</i>

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244	Japan	United States	<i>Sunset Review of Antidumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i>
241	Brazil	Argentina	<i>Definitive Antidumping Duties on Poultry from Brazil</i>
231	Peru	European Communities	<i>Trade Description of Sardines</i>
221	Canada	United States	<i>Section 129 (c)(1) of the Uruguay Round Agreement Act</i>
219	Brazil	European Communities	<i>Antidumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil</i>
211	Turkey	Egypt	<i>Definitive Antidumping Measures on Steel Rebar from Turkey</i>
206	India	United States	<i>Antidumping and Countervailing Measures on Steel Plate from India</i>
184	Japan	United States	<i>Antidumping Measures on certain Hot-Rolled Steel products from Japan</i>
7	Canada	European Communities	<i>Trade Description of Scallops</i>