

Egypt's Challenges and Future Options for Participating in the WTO Dispute Settlement System

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The WTO dispute settlement system and developing countries



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Abstract

In spite of its uniqueness and its widely recognized efficacy, the WTO Dispute Settlement System (DSS) has largely failed in its ten-year working period to address the needs of developing and least developed countries, especially in Africa. Except for Brazil and India, which have used the system extensively and erected the right institutions for that purpose, with the exception of a few stand-alone cases, developing countries have hardly made adequate use of the system. The fact is that the less countries are integrated in the trading system, the lower their perceived relevancy of the DSS. This is best shown through the African countries' experience with the system, which is extremely modest and timid. African countries, in spite of their strong and rightful case in cotton, have shied away from going to litigation and using the DSS to their advantage.

This paper investigates the challenges facing developing countries hindering their participation in the DSS with special emphasis on Egypt. A brief institutional overview of how Egypt addresses international trade issues shows a relatively feeble engagement in WTO matters, of which knowledge remains highly concentrated with government officials. The absence of an engaged Egyptian private sector, weak public-private partnership and lack of sufficient awareness impact negatively on the use of WTO DSS. The capacity and ability of Egypt to make effective use of the DSS when its trade interests and rights are at stake is being scrutinized and highly questioned.

Finally, a section on the 'Way Forward' suggests a number of practicable and viable measures for Egypt to take at various levels: educational, academia, governmental, media, private sector (law firms, private traders), to civil society (think tanks, NGOs).

¹ Ambassador at the Ministry of Foreign Affairs, Egypt. I am indebted to Daniel Crosby, White & Case and to Dr. Arthur E. Appleton, 'Appleton Luff', International Lawyers for their valuable comments and assistance. The responsibility lies solely on me for any mistakes.

I- Introduction

It is largely acclaimed – and rightly so – that the dispute settlement mechanism in the WTO is the “Jewel of the Crown” of the multilateral trading system. The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) was established to offset the legal-institutional inadequacies of the GATT international trading system. Though it has existed for just over ten years, the dispute settlement mechanism in the WTO has proven its efficiency in arbitrating between disputing Parties through its extremely broad application covering a whole range of WTO agreements. Article 1:1 of the DSU establishes the wide area of its application to the “covered Agreements” that are set out in appendix 1 and include the Multilateral Agreements on Trade in Goods, including the General Agreement on Tariffs and Trade (GATT 1994) (Annex 1A)², the General Agreement on Trade in Services (GATS) (Annex 1B), and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) (Annex 1C). In addition, two plurilateral agreements, the Government Procurement and Trade in Civil Aircraft, are also covered by the DSU.

The current state suggests that the dispute settlement system of the WTO is effective, indeed more effective than any other part of the WTO. While this judgment is harsh, it is not without substance. In fact, hailing the DSU as the basis for the WTO’s rules-based system, in contrast to the power-based system characterizing its predecessor the GATT, counts among the most visible achievements of the Uruguay Round. This does not mean, however, that it has not encountered its problems and is not confronted with certain challenges. Shaffer acknowledges that the system remains far from a neutral technocratic process in its operation. Larger and wealthier countries are much better positioned to take advantage of the resource-demanding procedures of the legal system and have, not surprisingly, done so³. Developing countries will have to become more aware of the implications of the use of WTO Dispute Settlement Mechanism (DSM) on their economies and to participate much more in the process of its evolution.

Without undermining the successes and accomplishments of the WTO dispute settlement system, the paper will briefly address the challenges facing developing countries and the problems of effective participation in the WTO DSM. Among the main problems we refer to are the lack of financial resources, but also the lack of faith in our ability to force developed countries respondents to comply, the lack of our capacity to retaliate, the fear of being retaliated against, (especially for small and African countries), and lastly our aggregate volume of trade. The relevance of addressing the cotton initiative by the four Western African countries cannot be sufficiently stressed, as it denotes the reticence of those four countries in particular and African countries in general to have recourse to the DSM.

The focus of this paper will be, however, on Egypt as a case in point for middle-income countries hesitant in the first place to resort to the dispute settlement mechanism, yet drawn into several cases as respondent. Looking at the likely benefits emanating from Egypt’s participation in the WTO DSM should help engage the private sector and increase its interest towards a better understanding of the system and its functioning. This, in turn, will induce the private sector to make better use of the system to its advantage,

²Under Annex A 12 WTO multilateral agreements on trade in goods are covered: GATT 1994, agriculture, customs valuation, licensing, anti-dumping, subsidies and countervailing measures, trade-related investment measures, product standards, sanitary and phytosanitary measures, pre-shipment inspection, rules of origin, and safeguards.

³Gregory Shaffer: “Developing Country Use of the WTO: Why it Matters, the Barriers Posed, and its Impact on Bargaining”. gshaffer@wise.edu

thus enticing the national law firms in the country to become more involved.

II- The Dispute Settlement Understanding: A Developing Country Perspective

1. Developing Country Use of the WTO Dispute Settlement System:

No one doubts that the WTO Dispute Settlement System (DSS) has added considerable stamina and vitality to the settlement of trade disputes through the prevalence of law over power politics. The automaticity of establishing a panel and the negative consensus⁴, two major differences compared to the GATT DSS, render the dispute settlement process in the WTO credible and reliable. Another novelty to the system was integrating an effective appeal process with an independent and permanent seven-member Appellate Body⁵.

Since the establishment of the dispute settlement mechanism in the WTO, 376 dispute cases were brought before the body between the years 1995-2006⁶, of which developing countries were party in approximately half of them⁷. These figures came in sharp contrast with the dispute settlement cases brought under the GATT that amounted to less than 300 cases in 47 years, of which developing countries seldom made use, and of which about one-third were adopted by the Contracting Parties. The number of cases brought before the WTO dispute settlement body by developing countries, however, should not be overestimated. The statistics show that the US and the EC remain by far the predominant users of the WTO legal system⁸. It is also useful to note that most developing countries' cases that have been made were initiated by a limited number of developing countries, notably Brazil, India, Argentina, Chile, Mexico, Korea and few others. With the exception of a few cases, however, developing countries have lost many of the cases they brought before the Dispute Settlement Body (DSB). In illustration of the few cases developing countries won, we count:

- (a) The dispute on standards for reformulated and conventional gasoline brought by

⁴Negative consensus refers to unanimity among the WTO Members in order not to accept a panel report, as compared to the procedures of the GATT, where it would have sufficed the disagreement of one country with the report to bloc its adoption, including the country complained against.

⁵Two Egyptian nationals have served on the Appellate Body since its establishment. Dr. Said el Naggar and Dr. George Abi Saab.

⁶“World Trade and Development Report 2006: Building a Development Friendly World Trading System”, Research and Information System for Developing Countries (RIS), India Habitat Center. “Dispute Settlement Understanding: A Developing Country Perspective”, pp. 103-114.

⁷Developing countries were party in 167 cases filed, i.e. 48%. “Facts and Figures on WTO Dispute Settlement” at www.WorldTradeLaw.net

⁸*Ibid.* Gregory Shaffer; See also: Gregory Shaffer, “How to make the WTO DSS work for developing countries: Some proactive developing country strategies”, in ICTSD Resource Paper No.5 (ICTSD, Geneva, March 2003).

Overall, during the WTO's first eleven years (as of December 2005), collectively the US and EC were complainants in about 45.1% of the complaints filed and defendants in 42.7% of the total cases filed, not Panel or Appellate Body decisions adopted. The US and the EC are typically third parties when they are not a plaintiff or defendant. This raises their respective participation rates in cases fully litigated before WTO panels (1995-2005) to 98,9% and 86,3% for the US and the EC respectively.

Venezuela and Brazil against the US⁹;

(b) The dispute on quantitative restrictions on Costa Rican underwear brought by Costa Rica against the US¹⁰;

(c) A similar dispute on measures affecting imports of woven wool and shirts and blouses brought by India against the US¹¹;

(d) The complaint by India, Malaysia, Pakistan and Thailand on import prohibition of certain shrimp and shrimp products against the US for unilaterally wanting to impose its own measures of turtle protection on the exporting countries¹². This case amounted to the extra-territorial applicability of US national environmental law irrespective of its suitability to the exporting countries or to the environment protection per se.

The significance of these cases cannot be overemphasized, as they were among the first ones developing countries ventured to raise against the unilateral and abusive measures taken by the US. Upon the dispute settlement body rulings in all these cases, the US was obliged to withdraw its measures and amend its laws to bring them in line with its WTO commitments. Today, these cases formulate part of what is being gradually established as customary law in the WTO.

(e) Another very indicative and important case is the complaint raised by India against the European Communities in respect to nullifying and impairing the benefits accruing to India as a result of the tariff preferences accorded to a number of developing countries by the EC within the scheme of the generalized tariff preferences (GSP)¹³. Without further ado, the panel found that the EC had acted inconsistent with article I:1 of GATT 1994 regarding the general most-favored-nation treatment. The EC had also failed to demonstrate that the tariff preferences were ‘non-discriminatory’ as stipulated by the decision of 1979 entitled “Differential and more favourable treatment reciprocity and fuller participation of developing countries”¹⁴. The panel findings were upheld by the AB, which elaborated on the term non-discriminatory to ensure that ‘identical treatment is available to all similarly-situated GSP beneficiaries, that is, to all GSP beneficiaries that have the same development, financial and trade needs’. The EC had to change its regulation as a result of the dispute settlement.

As noted above, developing countries lost many of the cases and had to bring their laws and regulations in line with their international obligations in the WTO. Most of the rulings against the developing countries stipulated respect of national treatment principle so as not to favor domestic companies over foreign ones or developing countries had to go back on their subsidy policies. A case in point was the dispute brought by the US against Indonesia for subsidizing its automobile industry¹⁵. Twice was India ruled against in favor of the US and the EC in the area of patent protection for pharmaceuticals

⁹US - Standards for Reformulated and Conventional Gasoline, complaints by Venezuela (WT/DS 2) and Brazil (WT/DS 4). The full texts of the reports are available from the WTO home page on the Internet (<http://www.wto.org>).

¹⁰DS 24 Costa Rica against the US, 15 January 1996

¹¹DS 33 India versus the US, 1 April 1996

¹²US - Import Prohibition of Certain Shrimp and Shrimp Products, complaint by India, Malaysia, Pakistan, and Thailand (WT/DS 58).

¹³Dispute DS 246: European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries.

¹⁴Paragraph 2 (a); Footnote 3

¹⁵DS 59 Indonesia – “Certain measures affecting the automobile industry”, brought by the US (15 October 1996).

and had to change its national laws to commensurate its commitments under the TRIPS agreement¹⁶. Had India failed to ensure the conformity of its laws with WTO obligations, the consequences of retaliation -- as perceived in the DSU -- would have been more severe. Retaliatory actions, as we shall see are more onerous on developing rather than on developed countries. Needless to say that on the whole developing countries are more prone to bring their domestic laws in line with the recommendations of the panel/Appellate Body reports than developed countries for fear of retaliation, whereas the reverse is not necessarily true. Any retaliatory action could strike developing countries' system more and be most harmful. If India would have resisted implementation of the panel rulings in the two afore-mentioned disputes of patent protection; that could have lead eventually to increased barriers to trade against its goods, which could have hit India's economy hard.

Developing countries have, in fact, been much more frequently targeted as defendants. Developing country is up to five times more likely to be subject to a complaint under the WTO. The reason for that, as seen by Shaffer, is that they assumed more legal obligations under the WTO than under the GATT, where they were subject to few binding tariff commitments¹⁷. In addition, developing countries were late in establishing the institutional framework and right mechanisms to make use of the system. Hence, national interests from the private sector and civil society but even from the government itself remained lagging much behind. Most of the cases filed were solved in the shadow of the WTO legal system; i.e. developing countries hardly follow the case until the final panel ruling, thus not making effective use of the DSS. Brazil and India count as exceptions, as they are actively using the system both to resolve disputes and leverage influence over negotiating positions in the Doha multilateral trade negotiations¹⁸.

2. Special and Differential Treatment for Developing Countries

Though the DSU contains a number of provisions, which set out certain special and differential treatment for developing countries¹⁹, adequate application of many of these provisions remains lacking, perhaps in part because their language is rather blurred and not defined. It may be noted, however, that this can be considered part of a wider problem in the sense that a number of special and differential treatment provisions in various WTO Agreements are rather of a declaratory nature and, in the absence of implementation modalities, have not been of any practical use to developing countries²⁰.

A very important article, which ought to be considered more in the future by any developing country party to a dispute is article 12.11, which stipulates that the panel's report shall explicitly indicate

¹⁶DS50 India – Patent protection for pharmaceutical and agricultural chemical products, brought by the US – 9 July 1996. DS79 India – Patent protection for pharmaceutical and agricultural chemical products, brought by the EC – 6 May 1997.

¹⁷Ibid. G. Shaffer taken from Marc Busch & Eric Reinhardt, “Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes”. 24 Fordham International (2000).

¹⁸Victor Mosoti: “Africa in the first decade of WTO DS”, October 2005

¹⁹Articles: 3.12: expediting dispute settlement procedure for developing countries as an alternative to the normal process; 4.10 Consultations should give special attention to the particular problems and interests of developing country Members; 8.10 a dispute involving developing country Member may include a developing country panelist upon request; 21.2 Particular attention should be paid to the surveillance of implementation of matters affecting the interests of developing countries. Source: “Developing countries and the DSM under the WTO”, The South Center, <http://www.southcentre.org/publications/trade/trade-04.htm>

²⁰South Center, *Ibid.*

the form in which account has been taken of relevant provisions on differential and more favorable treatment for developing country Members. To date, though developing countries have been party to disputes with developed country Members (as complainants or respondents) in over 150 cases, article 12.11 of the DSU has been only cited in three cases though was not taken account of in any of the Panel recommendations²¹.

Another key article that was given little attention by developing country Members in their disputes is article 21.8, which specifically requires that in cases brought by a developing country, the DSB shall take in the appropriate action it considers, its impact on the economy of the developing country concerned and not only the trade coverage of the measure. These are important articles in the DSU, which developing countries involved in disputes have rarely had recourse to. It is important to identify the reasons behind, whether they are 'systemic' as most of the special and differential treatment provisions are not binding, or simply lack of awareness on the part of developing countries, or negligence on the part of the secretariat to draw the attention of developing country disputant to such provisions. It is incumbent upon the secretariat to provide developing countries with appropriate technical and legal assistance and expertise in this regard to enable developing countries to make effective use of these provisions.

On the margin of the Doha Development Agenda, negotiations have taken place to improve the Dispute Settlement Understanding. Though nothing concrete has transpired yet, except for a tentative draft by the chairman of the negotiating committee, many proposals were put on the table to encourage and facilitate developing countries' access to the DSB. A proposal, among others, was tabled by a group of developing countries, including Egypt and India to make it mandatory to give special attention to developing country Members' particular problems and interests during consultations (article 4.10). India also proposed to amend article 12.10 to provide developing country Members sufficient time to prepare and present their arguments before panels. On its part, China proposed that in the exercise of due restraint developed country Members shall not bring more than two cases to the DSB against a particular developing country Member within a calendar year. Furthermore, in case a developed country Member brings a case against a developing country Member, if the panel or Appellate Body rules in favor of the latter, the former should bear the legal costs of the latter incurred in defending the proceedings.

3. Problems of Participation:

Challenges and problems facing developing countries in regard to their adequate participation in the WTO DSS are quite complex and interconnected. They consist of a wide set of deficiencies that for successful handling, developing countries need to address them in a holistic approach. Hence, it is not only the lack of adequate financial resources²² that are in play, but such problems are compounded by the lack of faith of many developing countries, which doubt their capacity to force the respondent compliance, even if they win the case, for lack of their ability to retaliate.

²¹ First: In the case of the complaint by the US against India on "Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products" (Dispute DS 90), where India referred to article XVIII:B on the Balance-of-Payments as a relevant provision on special and differential treatment. Second: In the case of the US against Mexico on "Measures Affecting Telecommunications Services" (Dispute DS 204), where Mexico referred to GATS provisions on differential and more favorable treatment for developing country Members. Third: In the case against the US on "Continued Dumping Subsidy Offset Act of 2000" (Dispute DS 217), where India and Indonesia referred to Article 15 on special and differential treatment in the Antidumping Agreement, as being undermined by US action.

²² A WTO case is estimated to cost roughly US\$500,000 if taken through to the Appellate Body. Source: "Proposal by the African Group", WTO doc. TN/DS/W/15 (25 September 2002).

Regarding financial costs, Jan Bohanes (2002) believes that it constitutes a serious concern that would put the entire integrity and purpose of the DSM at jeopardy and undermine the rules-based DSS itself, as it handicaps the poor countries and hinder them from bringing or argue cases for financial reasons²³. Furthermore, affluent countries may abuse of the weaknesses inherent in the system in what Bohanes refers to as the discouragement-cum-abuse-of-power argument, which motivates a strong country with a questionable claim to head straight for extracting a negotiated settlement knowing that poor countries would strive to avoid engaging in litigation²⁴.

As for retaliatory actions, Busch and Reinhardt, stipulate that insufficient credibility of developing countries' retaliatory threat or action impair their chances for securing a change in policy by the defendants. Thus, according to them, it may be better and less onerous for a developing country complainant not to pursue the dispute to its final stage²⁵. If this were true, it would mean rather that the DSS is futile. It may be true that developing countries' retaliatory actions are not as forceful and compelling, but Member countries need to respect the system, which they have all negotiated in good faith. And, as Mavroidis (2000) put it, the DSU is about compliance with obligations not retaliation²⁶. The WTO DSS should derive its strength from the real desire of the Member states – big or small – to implement its rulings and commit themselves to enforce its recommendations. Bown and Hoekman also felt that the associated vulnerability to extra WTO-retaliation might decrease the willingness of developing countries to invoke the DSU²⁷. As a matter of fact for those who have perceived the strength of the WTO DSS in its permissible retaliatory actions, retaliation has proven to be the least preferred solution for most of the developing countries²⁸. And that for a number of reasons:

- (i) The negative effect retaliation may have on the retaliating country's economy,
- (ii) The insignificant impact it will have on the economy of the offending state, especially if it is a developed country Member, and
- (iii) Because retaliation as a preferred option simply brings back the specter of trade wars²⁹. Such

²³Jan Bohanes Professor Erasmus, MG, "Cost-sharing in International Dispute Settlement"; published 9/7/2002, <http://www.tralac.org>

²⁴*Ibid.*

²⁵Marc Busch and Eric Reinhardt: "Developing Countries and GATT/WTO Dispute Settlement" in *Journal of World Trade* 37 (4); 2003 Kluwer Law International.

²⁶Petros Mavroidis: "Remedies in the WTO Legal System: Between a Rock and a Hard Place", 11 *European Journal of International Law* 4, pp. 763-813.

²⁷Chad P. Bown and Bernard M. Hoekman: "WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector", May 2005.

²⁸Whereas retaliation is viewed with suspicions on part of developing countries, especially if it has to be taken against a developed one, retaliatory actions or even the threat thereof have proven successful among developed countries, notably between the US and the EU. Trying to resist implementation of the rulings in view of pressure by either the Congress or NGOs, is offset by the fear of severe retaliation on the part of the complainant. Such fear has also succeeded in confining any escalation between the two trading powers within the framework of the system. A case in point was the dispute brought by the EU against the USA concerning "Tax Treatment for Foreign Sales Corporations"/Dispute DS 108, which many viewed as reprisal to the Bananas and Hormones disputes against the EU. What was perceived as an apparent beggar-thy-neighbor-policy between the two superpowers was after all contained in the system.

²⁹"World Trade and Development Report 2006: Building a Development Friendly World Trading System"; Research and Information System for Developing countries (RIS), India Habitat Center. Website: www.ris.org.in

a war to take place in the WTO would mean that it is conducted under license.

To offset the many caveats for the effective implementation of retaliatory actions on the part of developing countries and LDCs, a number of developing countries made two proposals within reforming the DSU negotiations. Though these two proposals seemed – in my view – somewhat far-fetched, they are worth considering. First, the liberty for developing countries to suspend concessions in any sector or agreement without necessarily having to prove prior to their action that it was not practicable to suspend concessions in the same sector or agreement. Second: the idea of collective retaliation.

Political pressure applied by developed countries or a threat thereof is also a major deterrent for developing countries³⁰. For instance, threats to withdraw preferential tariff benefits or foreign aid – even food aid – were a developing country to challenge a trade measure by the US or EU, undermine developing country faith in the efficacy of the legal system. The possibility of retaliation through the reduction in preferential access under the Generalized System of Preferences (GSP) or another preferential trade agreement³¹ is an added cause of concern for developing countries.

The lengthy period of the dispute settlement process, up to four years³², within which disputant developing countries lose their market niches and exporting opportunities, urge them to weigh carefully the costs and benefits of litigation.

Some developing countries were even forced into accepting measures, such as voluntary export restraints and other gray area measures only to avoid the hurdle and hassle of a lengthy process. Such measures were actually among the targeted ones for a strong dispute settlement to do away with. The fact of the matter is that the revival of such measures came as a result of the many weaknesses working against developing countries in the system. Indeed, there is no retrospective relief from the time the incorrect measure is being applied by the respondent Member country. In contrast, countries tend to use this relatively protracted time-period to manipulate the system and stretch out the application of the violating measure to the maximum extent possible. The lengthy period between the start of a dispute and its final determination can be improved by making suitable amendments in the time-frame of the relevant provisions of the articles 4, 5, 6 and 12 of the DSU, especially in all the complaints brought by a developing country against a developed one.

³⁰ It is comforting, however, to observe that a developing country like Brazil has reached a stage of sophistication allowing her to use the WTO DSS as a tit-for-tat maneuver. Brazil did not hesitate to bring an anti-dumping case against the US (against the Byrd amendment's provision for distributing anti-dumping duties to the petitioning US industry) directly implicating Brazil's steel industry in response to challenge to the compulsory licensing provisions in Brazil's pharmaceutical patent law. Both complaints were dropped as part of a settlement. Source: . "Brazil's Response to the Judicialized WTO Regime: Strengthening the State through Diffusing Expertise", by Gregory Shaffer, Michel Rattou Sanchez and Barbara Rosenberg (September 12, 2006).

³¹ Bown & Hoekman, *Ibid.*

³² See Mexico's submission to the WTO, TN/DS/W/23, 4 November 2002. The paper pointed out that average period of time between the establishment of a panel and the expiry of the reasonable period of time (to comply) was 775 days, or over two years, which grew to 1507 days or over 4 years once the consultation period was included.

(Not to speak of the enforcement period, where significant delay can occur, particularly when a Member revises its law, and then the new law does not conform - Bananas).

Furthermore, there is hardly any provision for compensation for the substantial export loss developing countries incur during the dispute settlement period, even when the measure in question is found to be in contravention of the WTO rules. This can be particularly damaging for smaller developing countries, which are highly dependent on a limited number of export products/markets³³.

The aggregate trading stakes of a Member country is also a useful indicator for the extent of the use of the dispute settlement system by a developing country. If the stakes are relatively high, this should prompt the Member to mobilize the necessary resources that would help sustain its rights through WTO litigation. This urge is non-existent to many small countries as well as LDCs, which consider the dispute settlement system - at best - as irrelevant to them. There are certainly some exceptions, but these are mostly isolated cases, such as the Costa-Rican case versus the US.

III- African Countries and the DSM

African countries are even less exposed to the DSS than developing countries in general and shy away from going to litigation. African countries are very susceptible to any political implications and fear mostly any cutting of their development assistance or preferential market access as a result of litigation. It is worth referring, at this juncture, to the cotton initiative of the four Western African countries, where in spite of having had a strong case, they preferred to stop short of going to dispute against the US.

The four Western African countries, Burkina Faso, Benin, Mali and Chad brought up their cotton initiative in Geneva in June 2003 prior to the fifth Ministerial WTO Conference in Cancun (September 2003). Affected by the same problem of US cotton subsidies, Brazil had challenged in September 2002, sometime before the tabling of the African countries of their initiative, the subsidies by the US to upland cotton as prohibited and actionable subsidies. Brazil had requested consultations on ground of its being seriously injured due to the reduction in export prices for its cotton and a loss of its world market share on the basis of two main factors:

- A. The US had provided subsidies that were not protected by the 'Peace Clause'³⁴ (the level of subsidies it provided in 2001 was double that provided in 1992).
- B. The use of export subsidies and import substitution requirements caused substantial price suppression for cotton on world markets.

The consultations having ended unsatisfactorily, Brazil had requested the establishment of a panel. The panel and the Appellate Body then examined the matter subsequently, where both found the US cotton subsidies to be in violation of the WTO rules and were causing serious prejudice to the interests of Brazil as a result of continued depressed cotton prices. The panel ruled that the subsidies did not qualify for exemption from WTO challenges under the exemption of the 'Peace Clause', which terminated in

³³“World Trade and Development Report 2006”; opcit.

³⁴ The Peace Clause, under article 13 'Due Restraint' was included in the Uruguay Round mainly at the insistence of the EU and the US. This clause protected countries using agricultural subsidies from being challenged under other WTO Agreements, as long as the level of domestic support for a commodity remained at or below 1992 levels. It was terminated according to the Agreement on January 1, 2004.

January 2004. The panel also wronged the US in its Export Credit Guarantee Programs, as they also give US exporters a clear advantage over competitors³⁵.

It would be interesting to look into the implications of the WTO cotton ruling for the trade talks on cotton with the four African countries, especially following Brazil's victory in April 28, 2004 against the US. First, of all the cotton producing African countries only Benin and Chad involved themselves in the dispute as third parties. And, how big was their disappointment when they felt that their participation, efforts and money spent were all of little use, if any. A hard lesson was to be drawn from the case for African cotton producing Members, in particular, and participation as third parties in general. Upon assertion of the US that it was only the interests of Brazil as a complaining party, which were at issue, disregarding the vested interests of Chad and Benin, as third parties, both the panel and Appellate Body siding with the US, did not see the plight of the cotton producers of Benin and Chad as an issue in question here³⁶.

Though the WTO as a negotiating and rule making body hails negotiations over litigation and, in spite of the fact that the four Western African countries have proven the rightfulness of their case from the very beginning, one cannot but speculate, where would the African countries have been today had Brazil not gone to litigation and won its case timely and prior to the 6th Ministerial in Hong Kong (December 2005)? It is certainly doubtful that the African countries could have reached a satisfactory solution in Hong Kong. Brazil winning its dispute against the US on subsidized cotton has added sustainability and strength to the case and made clear that nothing should obstruct a fair solution to the problem in line with WTO rules and principles, to which developed and developing countries alike have pledged their faithfulness.

The question, however, remains widely open what if Brazil would not have opted for litigation? What would have been the fate of the four African countries, which count among the poorest? The US had shown neither interest nor willingness to address the cotton initiative in a substantive and serious manner when it was first brought up in Geneva in June 2003 prior to the fifth Ministerial in Cancun (September 2003). The cotton case is clearly indicative of power politics and double standard. It is true that African countries have opted for negotiations for well-known reasons, many of them stated above³⁷. But it is also true that African countries wanted to prove their systemic interest in the WTO as a negotiating forum and one that should safeguard the rights of the weak. Though supported by the majority of WTO membership, this has not helped them reach a successful settlement nor restore their dues at the beginning. Instead, negotiations proved the continued prevalence of power politics in favor of the stronger. The US has simply refused to give in to what has proven to be the legitimate right of the African countries and did not shy away from manipulating the situation and protracting the negotiations to no avail. In contrast, Brazil had opted to challenge the US on cotton (and the EU in its sugar regime) to help negotiations proceed in a fairer manner without power politics, and force the two giants to change their policies. By exposing the

³⁵ Oxfam Briefing Papers: "The Brazilian Challenge at the WTO".

³⁶ Elija Munyuki, a senior analyst and research fellow with SEATINI; Source: <http://www.seatini.org/bulletins/8.4.php>

³⁷ For recollection some of the factors: lack of financial and technical capabilities; extreme vulnerability to retaliatory action by their powerful trading partners in all possible areas of aid, debt relief, trade preferences or even multilateral financial assistance, because of the latter dominant role in the MFIs.

wrong doing of the US, it had to find a way to comply with the DSB rulings³⁸.

No one can contest that it is the inalienable right of each and every Member in the WTO to have recourse to the WTO Dispute Settlement Understanding (DSU) to settling disputes. For the African countries the WTO final ruling against the US cotton subsidies in early March 2005, came as a blessing. This decision means that the US will have fifteen months to change their cotton subsidy policy so they fall within WTO obligations or face retaliatory trade measures. Such a ruling has undoubtedly strengthened the African position in negotiating, as said a settlement in Hong Kong.

The fear of having constant recourse to the DSB as a 'judicial lawmaking mechanism' that could undermine its usefulness in the long run and render the WTO as a negotiating forum obsolete is open to debate, especially in the light of the cotton initiative. In this context, it is of paramount importance for powerful countries to refrain from power usage and respect the WTO as a negotiating and rule making body. At any rate, a strong DSB that disfavors power politics and is fair and legal should remain the refuge of last resort. Busch and Reinhardt argue that more negotiations in the shadow of the law, rather than litigation per se, will help level the playing field for developing countries at the WTO, as bargaining in the shadow of stronger law is more effective³⁹. It is true that it should be avoided to use litigation as substitutive or analogous to negotiations, on one hand. On the other hand, negotiations should be conducted in good faith without attempts of exploitation of the weaker partners.

Furthermore, though compensation is due to the African countries for their loss in export earnings because of trade distorting subsidies, it is highly debatable how they can negotiate just and fair compensation. As it is well known that compensation is not an easy option in the WTO, it must be reached through litigation. Financial compensations fall outside of WTO mandate. In principle, compensation in the WTO is through two instruments. First of all, supplementary concessions are offered for other products. This mechanism cannot apply to cotton-producing LDCs because they only have a few other export products and, in most cases, these already receive preferential access. Second, customs tariffs are increased on imports⁴⁰. This is also of little use to the cotton-producing African countries, as it will backfire on their consumers. Also, the African countries may not be importing sufficiently from the US to offset their loss in cotton exports. Needless to emphasize, the US would not lose in the process of reducing its cotton subsidies because the losses suffered by special powerful lobby groups would be more than offset by taxpayers' savings⁴¹. In fact the American consumer is forced to pay twice, in terms of taxes for the coverage of subsidies, and in terms of higher domestic prices for cotton, as well as for value-added textiles and garments.

At the 11th hour of the ministerial conference in Hong Kong an agreement on cotton – though modest compared to the original African request – was reached. For cotton export subsidies the elimination is accelerated to the end of 2006. In addition, cotton exports from least-developed countries

³⁸ It is unfortunate that after 15 months of the March 2005 DSB decision against the US, the WTO will have to open a formal investigation into whether the US has complied with the ruling to eliminate its illegal subsidies paid to American cotton growers. After blocking Brazil's request in September for the WTO to investigate US compliance, Washington has to abide by a second request a month after, which gives the US an extra 3 months for the issuance of the results of the investigations. If it fails then, Brazil could ask for permission to set retaliatory sanctions against US goods.

³⁹ "Developing Countries and GATT/WTO Dispute Settlement", By Marc Busch and Eric Reinhardt in *Journal of World Trade* 37 (4); 2003 Kluwer Law International.

⁴⁰ WT/MIN03/W/2, 15 August 2003.

⁴¹ "Cotton After Cancun" by Louis Goreux, March 2004

will be allowed into developed countries without duty or quotas from the start of the period for implementing the new agriculture agreement. Ministers have also agreed to aim to cut trade-distorting domestic subsidies on cotton by more than would normally apply under the new agreement, and to do so more quickly⁴². Needless, to reiterate that none of the elements agreed upon regarding the cotton initiative will be put into effect, as long as the Doha Development Agenda remains in a state of flux.

IV- Egypt and the WTO DSM

As regards countries from Africa and the Middle East, none has ever been a complainant before the WTO. Though a few participated actively as third party, no country in the region has been a respondent, besides Egypt (four times)⁴³ and South Africa (twice). In all cases, except for one the anti-dumping measures on steel rebar from Turkey, Egypt had not pursued the matter to the final stages. All complaints were resolved at the consultations phase, mostly even outside the framework of the WTO. This is what Busch and Reinhardt have addressed as ‘negotiating in the shadow of the WTO law’⁴⁴. In addition, Egypt was involved twice as a third party, where it followed the case both at the panel stage and the Appellate Body stage⁴⁵. The cases in which Egypt acted as a respondent involved disputes with: Thailand, Turkey, the United States of America, and Pakistan. While acting as third party, Egypt was involved in the India versus EU bed linen dispute, and the EU versus US safeguard measures on the import of certain steel products. An examination of each of these individual cases is dealt with in the Annex.

Apart from being one of the two countries that had been involved in dispute settlement as a respondent, Egypt had played a significant role in voicing the concerns and arguments of developing countries. For instance, Egypt acting as a third party in the ‘European Communities Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India’ presented, rather convincingly, the argument of the developing countries. The EC, Egypt argued, had hastily resorted to applying anti-dumping measures before exhausting all other possible channels. Egypt made reference to Article 15 of the anti-dumping agreement that obligated EC to explore constructive remedies before the application of any anti-dumping measures. Article 15, Egypt disputed, sets legal commitments on developed countries to propose price undertakings with developing countries before considering the imposition of anti-dumping measures⁴⁶.

Although a good portion of the weak use of the DSS by Egypt, like other middle-income developing countries, is attributed to its modest level of trading capacity, this should drastically change with Egypt’s more aggressive liberalization process aiming at an outward-looking economy. Egypt’s hesitancy to use more effectively the DSS stems also from a misconception regarding the impact of raising

⁴² Paragraphs 11 and 12 of the Ministerial Declaration adopted on 18 December 2005, WT/MIN(05)/DEC

⁴³ Anti-dumping Duties on Matches from Pakistan (WT/DS327) Respondent
Measures Affecting Imports of Textile and Apparel Products from the US (WT/DS305) Respondent
Import Prohibition on Canned tuna with Soybean Oil from Thailand (WT/DS205) Respondent
Definitive Anti-dumping Measures on Steel Rebar from Turkey of 2000 (WT/DS211/1);
2001 (WT/DS211/2)

⁴⁴ Marc Busch and Eric Reinhardt, “Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes” *Fordham International Law Journal* (2000), pp. 158-172.

⁴⁵ European Communities-Antidumping Duties on Imports of Bed Linen from India (WT/DS135R) (Panel and Appellate Body) (DS 141). European Communities – Provisional Safeguard Measures on Imports of Certain Steel Products (DS 260).

⁴⁶ Mosoti, Victor, “Africa in the First Decade of WTO Dispute Settlement,” P.19, October 2005.

a dispute on bilateral relations. Blessed with close and friendly relations with the major trading partners, Egypt adopted as many other African countries a stance that could be described basically as unprofessional. Thus, the government of Egypt had shied away – at many instances – from raising relatively assured complaints in the DSM. A case in point was the EC anti-dumping duties imposed on imports of cotton type-bed linen, where it contented itself to be a third party in the dispute raised by India. Another case in which Egypt refrained from bringing the EU to dispute was with regard to the ban on Egypt's exports of potatoes in an importing season following the sixth confirmation of an interception of brown rot (*Pseudomonas solanacearum*). According to the Sanitary and Phyto-sanitary Agreement (SPS), which the EU directives are allegedly based upon, scientific evidence for health impairing products to stop imports of potatoes are to be invoked prior to the ban. It was proven, however, that brown rot is not health impairing. Also contamination can only be traced through the import of seed potatoes, which Egypt does not export. In addition, EU members also have the organism and still grow and trade among themselves potatoes with brown rots. Instead of bringing its case to the DSM, Egypt continues to accept the imposition of the ban on its exports after the sixth lot of potatoes infected with brown rot⁴⁷.

In this context one cannot but reaffirm that closer co-operation is needed between the public and private sector. The weak linkages and lack of genuine public-private partnerships are a cause of despair. Sufficient knowledge and expertise on part of both are essential to understand the DSS benefits and make adequate use of it.

V- The Way Forward

In November 2001, at the Doha Ministerial Conference, Member governments agreed to negotiate to improve and clarify the DSU. These negotiations take place in special sessions of the Dispute Settlement Body (DSB). The Doha Declaration mandates negotiations and states (in Para 47) that these will not be part of the Single Undertaking, i.e. that they will not be tied to the overall success or failure of the other negotiations mandated by the declaration. Originally set to conclude by May 2003, the negotiations are continuing without a deadline, although Ministers at the Ministerial Conference in Hong Kong (December 2005) agreed to conclude DSU negotiations rapidly. A large number of issues, including sequencing of retaliation⁴⁸ and compliance procedures, compensation for litigation costs, third party rights, as well as special and differential treatment for developing countries are addressed in the chairman draft issued in May 2003. If the text proves something, it proves that there are so many untapped opportunities that need to be studied and introduced for the system to evolve more positively in response of developing

⁴⁷ It is worth noting that the EU and its member states were asked to bring their regulatory systems and procedures governing biotech-enhanced commodities into compliance with WTO's decision. The WTO decision stated that the EU failed to provide scientific or regulatory justification for its de facto moratorium, which the WTO panel found had been in place from June 1999.

⁴⁸ Article 21.5 states that where the two parties disagree whether the rulings have been implemented or not, a panel examines the dispute and reports within 90 days. Article 22.6 states that, within 30 days from the end of the reasonable period of time for implementation, the DSB authorizes the complaining country to retaliate. So, there are two key steps with their own time periods: 90 days for a panel to examine whether a ruling has been implemented; and 30 days for DSB to authorize retaliation. The wording of the DSU does not specify whether these steps have to follow one after the other. Hence, according to the current wording of the agreement, it seems that the 30-day period for the DSB to authorize retaliation runs out before the panel has examined whether the defending country has implemented or not. This could be specifically hard on developing countries, as the complainant can resort to retaliation in 30 days without awaiting any panel decision.

countries' concerns. We do not deny that substantial reform can be undertaken in the DSB to enable developing countries to use the system effectively. In this section, however, we will confine ourselves to the way forward as pertaining to Egypt. What can Egypt do to benefit from the WTO DSS?

The lack of legal awareness, expertise and knowledge of WTO trade rules has been an obstacle to the effective participation of developing countries in dispute settlement. The same applies for Egypt. The fact that WTO law has not been introduced into the academic programs of law schools in Egypt connotes the shortcomings of her ability to disseminate knowledge on WTO trade agreements and trade law and help bring up a new generation of educated and well-informed lawyers, which already many developing countries have started to do. As a consequence, this also hinders the ability of Egypt in bringing forth its disputes before the DSB. Consequently, Egypt can make the choice between two options. The first is continuing to acquire assistance from global law firms at exorbitant costs, the second is upgrading and introducing WTO law into the university curriculum, the fruits reaped from the latter, however, will be on the long run. Furthermore, Egypt should benefit from the internship programs for young attorneys from private law firms organized by the WTO Appellate Body and the Advisory Center on WTO Law (ACWL) in Geneva. These programs could also station young attorneys at Egypt's mission in Geneva, which will consequently give the young attorneys first hand experience in WTO litigation⁴⁹. Thus as a result, greater exposure to training and involvement in disputes would strengthen Egyptian law firm's performance and competence. Another positive effect resulting from increased participation of Egyptian law firms in WTO cases would open up new client markets in neighboring Arab countries that also need assistance and consultation in different legal areas of WTO laws.

The obstacle embodied in the financial restraints posed by the high costs of litigation coupled with low trade stakes allows for less competent participation on the part of Egypt. It is thus important here to stress on the necessity of mobilizing all domestic players directly involved and impacted by WTO trade disputes. Perhaps the most efficient way to reduce the costs of litigation would be through partnership between the public and private sectors or (PPPs). As in the previous example, where internship programmes were provided to young lawyers through cooperation between law firms, private sector and the government, businesses in Egypt should also contemplate applying the same measures, as any success and/or progress for Egypt in the WTO will be a success for businesses in Egypt.

As already stated, political pressure applied by developed countries is a major deterrent for developing countries, compelling them at times to hesitate to push for bringing claims against stronger players such as the US and the EC. Egypt as a developing country faces the same dilemma, and for this reason perhaps more than any other mentioned above had acted accordingly in the shadow of the system, preferring to settle its dispute bilaterally rather than taking its cases against developed countries in the WTO.

Egypt is also entitled to draw on the assistance of the ACWL, which was established in the first place to enforce the rights of the developing and LDCs in accordance to the multilateral trade rules and principles. Egypt is a Member of the Centre and should make use of its Membership, especially that the ACWL provides its Members with legal support in all Dispute Settlement procedures and only charges

⁴⁹ Brazil is a pioneering country in this respect. "Brazil's Response to the Judicialized WTO Regime: Strengthening the State through Diffusing Expertise", by Gregory Shaffer, Michel Ratton Sanchez and Barbara Rosenberg.

reduced cost compared to private law firms, i.e. it provides subsidized legal service⁵⁰. This option of using ACWL services would help resolve the problem of high financial cost and make it bearable⁵¹. In addition, Egypt could get 'free legal advice' from the Centre about the strength of a potential case that it considers joining so that Egypt make sure that it is not wasting its money away in frivolous cases with weak legal basis.

If Egypt is reluctant to intensify its use as complainant of the WTO DSM, because of lack of expertise and lack of legal capacity to mobilize resources; it certainly could make use of the legal system by participating more as third party⁵². Besides gaining insight into the workings of the WTO and acquiring additional expertise through its exposure to panel and Appellate Body procedures, participating as third party will help build its legal capacity. It will also help establish a useful base of highly specialized and well-informed lawyers that could tailor legal arguments and litigation strategies in future cases to Egypt's benefits. Further, Egypt needs to get more systemically involved. Its participation as third party will nurture these needs. However, if the stakes are high and consultations fail, the best option would be to decide for litigation, as we have seen a third party option does not redeem legally the rights of a country.

Distance-learning programs with international organizations and legal think tanks in Europe and the US in the fields of international trade law is also an option for Egypt to consider seriously, especially for its Academics and law firms.

Lastly, Egypt could initiate at the African level an inter-African legal consultancy team that could work on closely examining the rules and procedures of the DSU. The outcome of an initiative of this sort would be: first, cutting down on financial burdens, as the load will be distributed amongst all members of the group. Second; given the mostly similar economic and developmental state of the African countries, a forum of this sort would allow for greater concentration on the collective requirements of the group in the dispute settlement system within the WTO. And finally, such a project would allow the sharing of experience of Member states such as Egypt and South Africa with other Members, and hence assisting in the creation of more experienced capacities.

⁵⁰ It is also to note that many firms have committed to provide services at ACWL rates in the event of the Centre's inability to provide services.

⁵¹ See ACWL website and its services at www.acwl.ch

⁵² For systemic interest, the US managed to be a third party in most of the cases where it was neither a respondent nor a complainant. China also does it all the time to develop its expertise in the system. And, participating as 'third party' is not expensive.

Annex

1. *Import prohibition on canned Tuna with soybean oil*

On the 22nd of September 2000, Thailand put forth a request for consultation with Egypt regarding prohibitions that the latter imposed on the import of canned tuna with soybean oil from Thailand. In this case Thailand claimed that Egypt had failed to carry out its obligations under articles I, XI of the Marrakech Agreement, and XII of the GATT, and Articles 2, and 3 and 5, and annex B, Paragraph 2 and paragraph 5, of the SPS Agreement. Egypt's argument was based on the claim that Thailand's export of Tuna contained genetically modified (GM) soybeans and thus could represent a potential risk to Egyptian consumers⁵³. In the framework of the consultations, Egypt had to withdraw its violating measures.

2. *Egypt: Definitive Anti-Dumping Measures on Steel Rebar From Turkey*

On the 6th of November 2000, Turkey called for consultations with Egypt regarding an anti dumping investigation that was initiated by the Egyptian Ministry of Trade and Supply pertaining to the imports of rebar from Turkey. Egypt's Decision on the investigation came on 21 October 1999, and consequently anti-dumping duties were levied at a 22.63-61.00% ad valorem. Turkey responded with the argument that Egypt had made the dumping investigation without the proper establishment of facts, and that the evaluation was biased and not objective. Accordingly, Turkey disputed that Egypt through its investigation of material injury had violated and acted inconsistently with the following Articles: 3.1, 3.2, 3.4, 3.5, 6.1 and 6.2 of the anti-dumping agreement. Additionally, Turkey has also concluded that Egypt has like wise violated a number of Articles during its investigation of sales at less than market value. Accordingly, following a request that was made twice by Turkey for the establishment of a panel, the request was granted when the DSB established a panel on the 18th of July 2001. The final result of the panel recommended the following: " In accordance with article 19.1 of the DSU, we recommend that Egypt brings its definitive anti-dumping measures on imports of steel rebar from Turkey into conformity with the relevant provisions of the AD Agreement⁵⁴."

On 14 November 2002, Egypt and Turkey informed the chairman of the DSB that they had mutually agreed that the reasonable period of time to implement the recommendations and rulings of DSB should not be more than nine months, that is from 1 November 2002 until 31 July 2003, which Egypt acted accordingly.

3. *Egypt: Measures Affecting Imports of Textile and Apparel Products*

On the 23rd of December 2003, the US requested that consultations be held with Egypt regarding measures that the latter took when it applied tariffs on certain textile and apparel products, along with the presidential decree 469 of the year 2001, and other related regulations and implementing measures. The US made the claim that Egypt, through its imposed measures, exceeded the bound rates of duty in

⁵³ Egypt — "Import Prohibition on Canned Tuna with Soy Bean Oil,"
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds205_e.htm

⁵⁴ Egypt — "Definitive Anti-Dumping Measures on Steel Rebar from Turkey,"
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds211_e.htm

accordance with its Uruguay Round commitments as the ad valorem equivalent of the specific duties, it applied, ranged from 141% to 51,296%. Egypt's commitments in the framework of the Uruguay Round were at an ad valorem rate of 40% on average for the same HS Chapters. Consequently, the United States regarded that the measures undertaken by Egyptian authorities were inconsistent with its obligations under Article II of the GATT 1994 and Article 7 of the Agreement on Textiles and Clothing. On the 22nd of January 2004 Egypt accepted the request for consultation, and on May the 20th 2005 the United States and Egypt informed the DSB that an agreement had been reached under Article 3.6 of the DSU⁵⁵.

4. *Egypt: Anti-Dumping Duties on Matches from Pakistan*

On the 21st of February 2005, Pakistan requested consultations with Egypt in regards to definitive anti-dumping duties imposed by Egypt on matchboxes imported from Pakistan pursuant to Decree No. 667/2003 of 18 November 2003, as well as any amendments or extensions thereof. According to Pakistan, these measures as well as the investigation leading thereto were in violation of Egypt's obligations under the GATT 1994 and the Anti-Dumping Agreement. Accordingly, on the 9th of June 2005 Pakistan made the request of establishing a panel. The DSB then established a panel on its meeting on 20 July 2005. Egypt managed to settle its dispute with Pakistan by reaching a mutual agreement under 3.6 of the DSU in the form of price undertaking agreements between the concerned Pakistani exporters and the Egyptian Investigating Authority⁵⁶.

5. *Egypt as a third party in the anti-dumping duties on imports of cotton-type bed linen of the EC from India*

On 3 August 1998, India requested consultations with the EC regarding the imposition of anti-dumping definitive duties against the imports of cotton-type bed linen from India. The DSB established a panel in October 1999, where Egypt, Japan and the US reserved their third party rights. The panel circulated its report in October 2000. As a result of the panel and AB recommendations, the EC had to bring its measure into conformity with its obligations under the Anti-Dumping Agreement. The EC amended its regulation imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan⁵⁷.

6. *Egypt as a third party in the complaint by the US on EC steel restrictions*

In May 2002, the US requested consultations with the EC with regard to the provisional safeguard measures on imports of certain steel products. The US stated that the EC's safeguard measures were inconsistent with WTO rules notably because the EC had imposed measures without clear evidence that increased imports were causing or threatening to cause serious injury. The DSB established a panel in September 2002. Egypt, Japan and Korea reserved their third party rights. The EC had explained that its measures came as a result of the US protectionist action of 5 March 2002, as a safety net against the highly

⁵⁵ Egypt — "Measures Affecting Imports of Textile and Apparel Products,"
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds305_e.htm

⁵⁶ Egypt — "Anti-Dumping Duties on Matches from Pakistan,"
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds327_e.htm

⁵⁷ Egypt third party- EC-Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India. DS

probable diversion of the steel trade barred from the US market⁵⁸. The case was not pursued as the EC issued a regulation on 5 December 2003 terminating the definitive safeguard measures in relation to certain steel products imposed by Commission Regulation⁵⁹. The EC referred in its regulation that a change of circumstances had occurred and that the European steel market had stabilized in relation to the level of imports. Further, on 4 December 2003, the US announced the withdrawal of the US safeguard measures on steel.

7. *Egypt as a third party in measures taken by Turkey affecting the importation of rice from the US*

On 2 November 2005, the United States requested consultations with Turkey concerning the latter's import restrictions on rice from the United States. According to the request, Turkey requires an import license to import rice but fails to grant such licenses to import rice at Turkey's bound rate of duty. According to the request, Turkey also operates a tariff-rate quota for rice imports requiring that, in order to import specified quantities of rice at reduced tariff levels, importers must purchase specified quantities of domestic rice, including from the Turkish Grain Board (TMO), Turkish producers, or producer associations ("the domestic purchase requirement").

The DSB established the panel in March 2006. Australia, Argentina, China, Egypt, the European Communities, Korea and Thailand reserved their third-party rights. Subsequently, reserved their third-party rights⁶⁰.

⁵⁸ Commission Regulation (EC) No 1694/2002 (EC)

⁵⁹ Commission Regulation (EC) No 2142/2003

⁶⁰ Turkey-Measures Affecting the Importation of Rice – DS 334. Panels established by DSB/reports not yet circulated.