They Fought for Trade But Did Trade Win?: An Analysis of the Trends Among Trade Disputes Brought By WTO Member States Before the WTO Dispute Resolution Body

Alexandra R. Harrington

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They Fought for Trade But Did Trade Win?: An Analysis of the Trends Among Trade Disputes Brought By WTO Member States Before the WTO Dispute Resolution Body.

Alexandra R. Harrington, Esq.*

PART I. INTRODUCTION.

In a well known American song, the character being memorialized confesses that he “fought the law and the law won.”1 This is more than the sad lament of a flamboyant would-be criminal; it contains the simple message that one cannot fight “the law” and win. In other words, this catchy tune reminds its listeners that bad conduct is not typically the way to success. Theoretically, this lesson is not limited to one area of the law or even one country or set of beliefs. International institutions such as the International Criminal Court, the United States Court of International Trade, the United Nations, and the World Trade Organization (“WTO”) – to name just a few – reinforce the idea that illegal or improper conduct in the international sphere cannot win. International outrage at the actions of such notorious persons as Slobodan Milosevic and Saddam Hussein demonstrates that there are mechanisms existing under international law to at least attempt to prove that crime does not pay. But what of alleged abuse and wrongdoing in the arena of international trade, the far less glamorous and publicized cousin of international crime and punishment? What does a study of the outcomes of complaints brought before the WTO’s dispute resolution body tell us about the uses of the WTO’s dispute resolution system for the promotion of free and non-discriminatory trade and the deterrence of improper conduct in the international trading arena? What do

* J.D., Albany Law School of Union University. B.A. Politics, B.A. History, New York University.
1 BOBBY FULLER, I Fought the Law, on I FOUGHT THE LAW: THE BEST OF BOBBY FULLER (Rhino Flashback 2004).
the records of individual WTO member states in terms of WTO initiated disputes tell us about who uses the WTO, when, with whom, and to what result?

This article explores these questions by examining WTO dispute resolution data in several ways. Part II of this article provides background on the WTO’s dispute resolution body, its jurisdiction, and its basic procedure. Part III of this article examines the outcomes of cases brought before the WTO for dispute resolution. This Part finds that, quite surprisingly, the majority of cases brought before the WTO never come to fruition. Of those cases that do go further, the majority are settled through a mutually agreed settlement either before or after judicial proceedings. Interestingly, the incidence of cases which are decided on the merits of the issues presented and end at that point are quite low. This Part concludes that the overall record of cases brought to the WTO for dispute resolution is such that this action is possibly more of a bargaining mechanism than a true hope for a positive outcome through the established judicial process.

Part IV examines the occurrence of disputes at the WTO by country. Each member country which has brought a complaint before the WTO is analyzed separately for total number of complaints, complaints by subject areas, times when the complainant country collaborates with other countries, and countries against which complaints are brought. Part IV also examines the number of times that member countries have been brought before the WTO dispute resolution body as respondents for an additional method of viewing each nation’s appearances before the WTO’s dispute resolution body and use of the dispute resolution process.

Finally, Part V of this article examines the trends and lessons from the previous parts and concludes that there are important lessons to be learned from the data presented
regarding not only the past and current use of the WTO’s dispute resolution mechanism, but also its future use by established and newly entering member states. The ultimate conclusion reached by this part is that when WTO member states fight for trade, trade does not always win, but at least there is a strong legal structure in which to fight for trade.

PART II. THE WTO DISPUTE RESOLUTION BODY.

By its nature, the WTO as a whole is the culmination of a self-selection process through which interested nations must commit to joining the WTO and to conforming their trade policies accordingly. As evidenced by the membership and prospective membership of the WTO, this organization appeals to nations across geographical and ideological boundaries and offers these members the semblance of uniformity in the trading marketplace. The principal method of consensus and agreement available to the WTO and its constituent members is the treaty, of which the WTO is responsible for the promulgation of several. In order to be bound by any of the rules and requirements promulgated by the WTO in these treaties, a member state must sign onto a treaty and ratify it at home in the manner prescribed by the member nation’s own laws.

Like any law, a WTO treaty is only as strong as its enforcement mechanisms. In order for member states to have a centralized place to bring their treaty and agreement-
based disputes with other member states, the WTO created its dispute resolution body.\textsuperscript{6} It is with this body that a member state lodges an official complaint and requests consultations; after this initial phase, a panel will be convened for the purpose of examining the complaining state’s complaint, the evidence, and the explanations and arguments offered by the respondent state.\textsuperscript{7} There are several layers to the WTO’s dispute resolution body. The first is the panel, which ultimately will issue a report unless the complaint is withdrawn or the time in which a panel must render a decision elapses.\textsuperscript{8} After this point, the Dispute Settlement Body must decide whether to adopt the panel’s report as its official finding.\textsuperscript{9} At that point, the parties may chose to accept the report or to appeal it to the appellate body established by the WTO’s dispute resolution mechanism.\textsuperscript{10} It is rare that the ultimate finding of a judicial body in this chain is implemented without further consultation between the immediate and interested parties, as the WTO prides itself on trying to assist the country found to be at fault in bringing the trade policy at issue into conformity with the treaty or agreement that it was found to violate before any sanctions or other negative actions are taken.\textsuperscript{11} It should be noted, however, that during this process the approval of the complaining state is still required before any trade policy changes can be deemed to have fulfilled the requirements of the respondent nation under the judicial branch’s rulings and it is possible for multiple

\begin{flushleft}
\textsuperscript{7} See id.
\textsuperscript{8} See id.
\textsuperscript{9} See id.
\textsuperscript{10} See id.
\textsuperscript{11} See id.
\end{flushleft}
rounds of arbitration and even further judicial proceedings to occur after the first round of judicial proceedings has occurred.\textsuperscript{12}

Thus, the WTO’s dispute resolution body and system functions in much the same way that a commercial term of a U.S. court would function, except that it is essentially far less punitive and much more concerned with stabilizing trade and ensuring the future harmony of trade between the member states under the applicable treaties and agreements.

\textbf{PART III. OUTCOMES AND INFERENCES.}

International trade is a multi-layered concept which is perhaps best understood by the wide range of treaties promulgated by the WTO and the many different policy areas under which disputes are brought by WTO member states. Some of these policy areas are specific to certain products, such as lumber and salmon, and some pertain to specific issues such as the imposition of anti-dumping measures, countervailing duties, and safeguards. Interestingly, throughout all of these many policy areas, certain outcome trends are apparent.

\textbf{A. OVERALL TRENDS.}

The general assumption is that when one files a complaint with any type of juridical body, one’s intent is to see it through at least until some type of settlement can be reached which results in some semblance of the beneficial outcome that one was seeking. However, counter-intuitively, of the approximately three hundred complaints

lodged with the WTO dispute resolution body between the Uruguay Round and the present, one hundred and one complaints have stalled after the complainant state requested initial consultations with the WTO dispute resolution body and the named respondent state. Further, sixty-nine complaints are currently listed by the WTO as being either inactive or settled without a settlement plan that was documented by the WTO. Together, one hundred and seventy complaints – over fifty percent – of complaints lodged with the WTO have been allowed to wither away by the party which initiated them.

Of the remaining complaints twenty-one were withdrawn by the complaining parties before the complaints reached any type of decided outcome; nineteen are currently pending before a WTO panel; eighteen cases were effectively settled when the respondent state either cancelled or allowed to lapse the measure which was at issue in the complaint; thirty cases resulted in findings against the complainant country, which ultimately ended the complaint without further involvement by the WTO’s dispute

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13 See DS109; DS65; DS81; DS195; DS297; DS256; DS306; DS288; DS78; DS112; DS200; DS157; DS229; DS191; DS182; DS140; DS318; DS304; DS101; DS203; DS216; DS272; DS215; DS168; DS185; DS208; DS325; DS225; DS239; DS49; DS63; DS262; DS201; DS133; DS144; DS167; DS280; DS30; DS154; DS223; DS145; DS330; DS218; DS97; DS150; DS197; DS53; DS226; DS333; DS303; DS117; DS45; DS172; DS173; DS205; DS42; DS111; DS118; DS120; DS107; DS116; DS183; DS289; DS334; DS279; DS149; DS147; DS314; DS153; DS224; DS233; DS66; DS100; DS104; DS278; DS230; DS228; DS328; DS326; DS159; DS274; DS249; DS186; DS319; DS61; DS324; DS180; DS127; DS131; DS129; DS130; DS128; DS80; DS29; DS47; DS148; DS143; DS263; DS137; DS51; DS280; DS9; DS38; DS88; DS95; DS17; DS25; DS77; DS19; DS237; DS306; DS72; DS313; DS101; DS257; DS302; DS115; DS82; DS160; DS38; DS298; DS198; DS103; DS113; DS43; DS88; DS95; DS305; DS309; DS327; DS329; DS196; DS171; DS199; DS36; DS37; DS69; DS90; DS91; DS92; DS93; DS94; DS96; DS120; DS17; DS25; DS134; DS190; DS235; DS166; DS21; DS231; DS73; DS12; DS14; DS323; DS5; DS28; DS42; DS193; DS83; DS124; DS125; DS86; DS40; DS204; DS56; DS77; DS85; DS151; DS20;

14 DS9; DS38; DS88; DS95; DS17; DS25; DS77; DS19; DS237; DS306; DS72; DS313; DS101; DS257; DS302; DS115; DS82; DS160; DS38; DS298; DS198; DS103; DS113; DS43; DS88; DS95; DS305; DS309; DS327; DS329; DS196; DS171; DS199; DS36; DS37; DS69; DS90; DS91; DS92; DS93; DS94; DS96; DS120; DS17; DS25; DS134; DS190; DS235; DS166; DS21; DS231; DS73; DS12; DS14; DS323; DS5; DS28; DS42; DS193; DS83; DS124; DS125; DS86; DS40; DS204; DS56; DS77; DS85; DS151; DS20;

15 DS101; DS89; DS23; DS227; DS13; DS39; DS232; DS1; DS181; DS32; DS33; DS101; DS123; DS106; DS39; DS232; DS31; DS74; DS181; DS32; DS308;

16 DS331; DS281; DS164; DS321; DS320; DS332; DS188; DS260; DS214; DS164; DS321; DS320; DS332; DS188; DS260; DS214; DS335; DS240; DS285.

17 DS156; DS13; DS11; DS75; DS89; DS23; DS227; DS202; DS259; DS252; DS248; DS249; DS251; DS258; DS254; DS243; DS33; DS24;
resolution body\textsuperscript{18}; thirty-nine cases resulted in findings against the respondent state but resulted in further arbitration or panel discussion\textsuperscript{19}; four cases were dismissed on jurisdictional and/or procedural grounds\textsuperscript{20}; and two cases were settled by the parties outside the WTO dispute resolution structure.\textsuperscript{21}

What is interesting to note is the trend towards abandoning or not pursuing cases brought by the complainant even through the preliminary steps of requesting a panel from the WTO dispute resolution body. Even in cases where there have been judicial decisions, there were many instances in which these cases were remanded for further arbitration and panel discussion, which usually led to a mutually agreed solution between the parties rather than the implementation of a judicial decision in its entirety. Also, it is important to note that several respondent states decided that the dispute resolution fight was not worth continuing and either cancelled or allowed to lapse the very provisions which had been challenged. Taken together, these figures demonstrate that perhaps the power of the WTO dispute resolution system lies with its status as a deterrent factor, which either causes complainant states to drop cases they view as unable to be pursued to their benefit or gives the respondent state an incentive to make closed-door or other concessions to the complainant state in exchange for the informal discontinuation of the complaint.

\textsuperscript{18} DS 11; DS75; DS139; DS146/175; DS54; DS126; DS165; DS152; DS169; DS189; DS241; DS211; DS282; DS244; DS322; DS22; DS62; DS138; DS98; DS4/2; DS163; DS114; DS50; DS79; DS238; DS192; DS58; DS234; DS244; DS221; DS315; DS194.

\textsuperscript{19} DS110/87; DS135; DS27; DS269; DS60; DS312; DS132; DS122; DS136; DS162; DS299; DS184; DS268; DS264; DS277; DS236; DS257; DS179; DS206; DS294; DS212; DS299; DS213; DS176; DS121; DS121; DS108; DS46; DS48; DS26; DS177; DS178; DS155; DS170; DS18; DS301; DS307; DS273; DS34.

\textsuperscript{20} DS244; DS221; DS315; DS194.

\textsuperscript{21} DS15; DS57.
B. SPECIFIC ISSUE TRENDS.

It is possible to condense the categories of complaints brought before the WTO into a small number or to expand them to the point where each industry is singled out for review. Due to the analytical import of each complaint, the author has elected to use the latter option to frame her analysis and, accordingly, below are the outcome summaries from the many different policy area classification in which complaints have been brought. For ease of understanding, like policy areas and industries are grouped together under overall subject headings.

Agriculture and beverages

There were nine complaints involving general agricultural issues; five were settled by mutual agreement22; four did not progress beyond the initial request for consultations phase23; two are still in front of WTO panels24; one is still pending overall25; and one was withdrawn.26

Four cases were brought in relation to general alcoholic beverages issues; two are still pending27 and two were settled through a mutually agreed solution after a finding

23 See id.
24 See id.
25 See id.
26 See id.
against the respondent state.\textsuperscript{28} One case involved wine practices and did not progress beyond the initial request for consultation.\textsuperscript{29}

Seven cases have been brought involving banana-related trade issues. Four are still pending after initial findings against the respondent state\textsuperscript{30}; one was settled by an appeal which found against the respondent state\textsuperscript{31}; one was settled by a finding against the complainant state\textsuperscript{32}; and one was mutually settled.\textsuperscript{33}

One case was brought involving trade in broom corn; this case resulted in a request for consultations but was taken no further.\textsuperscript{34}

One case was brought involving trade issues surrounding cereals, however this case is currently classified as inactive or settled through means other than the WTO’s system.\textsuperscript{35}

Cigarettes have spawned three cases; one was withdrawn and two were mutually settled.\textsuperscript{36} Two cases were brought challenging trade policies involving coffee; requests for consultation have been made in these cases, however no further action was taken.\textsuperscript{37}

Dairy products generally have been the subject of three complaints, one is still pending\textsuperscript{38} and two were mutually settled.\textsuperscript{39} Milk has been the subject of one complaint,
which was settled by the mutual agreement of the parties.\textsuperscript{40} Processed cheese was the subject of one complaint, which did not progress beyond the initial request for consultation.\textsuperscript{41} Butter was the subject of one complaint, which was settled by mutual agreement.\textsuperscript{42}

Gluten has been the subject of one complaint, in which a request for consultations was made but no further action has been taken.\textsuperscript{43} Lumber was the subject of one complaint, which resulted in a finding for the respondent state and against the complainant state.\textsuperscript{44} Matches were the subject of one complaint as well; this complaint was subsequently withdrawn.\textsuperscript{45} Wood generated one complaint, which did not advance beyond the initial request for consultation phase.\textsuperscript{46}

\textsuperscript{39} See \textit{id}.
Four complaints have been brought involving rice; three are listed as being inactive\textsuperscript{47} and one was settled by mutual agreement of the parties.\textsuperscript{48} Bottled water was the subject of one complaint, which was settled by mutual agreement.\textsuperscript{49}

Wheat products generated four complaints; three did not progress beyond the initial request for consultation phase\textsuperscript{50} and one was withdrawn by mutual agreement.\textsuperscript{51} Cotton generated one complaint, which is still pending before the WTO.\textsuperscript{52} Sugar syrups accounted for one complaint, which did not progress beyond the initial request for consultation phase.\textsuperscript{53}

Livestock

Hungary brought two complaints involving BSE, which is the common abbreviation for the disease which causes mad-cow disease; in both cases, consultations were requested but no further action was taken.\textsuperscript{54} Australia and the United States

\textsuperscript{48} See id.
\textsuperscript{51} See id.
combined to bring a complaint against Korea regarding beef, which was settled by mutual agreement after a finding against Korea had been made.\textsuperscript{55}

Meat hormones have been the subject of five complaints; four are still pending\textsuperscript{56} and one has been withdrawn.\textsuperscript{57}

Pork and poultry were the subject of a combined complaint which was settled through mutual agreement of the parties.\textsuperscript{58} Pork itself was the subject of one complaint, which did not progress beyond the initial request for consultations.\textsuperscript{59} Poultry was the subject of two complaints; one was mutually settled\textsuperscript{60} and one did not progress beyond the initial request for consultation.\textsuperscript{61}

**Seafood**

Canned tuna resulted in one complaint, which did not progress beyond the point of a request for consultation.\textsuperscript{62} Seaweed was the subject of one complaint, which was mutually settled.\textsuperscript{63} Shrimp has been the subject of three complaints; two did not progress

\textsuperscript{57} See id.
\textsuperscript{60} See id.
\textsuperscript{61} See id.
beyond the initial request for consultations phase and one is still pending. Salmon has been the subject of two complaints; one is still pending and one was settled by mutual agreement of the parties. Sardines accounted for one complaint, which was settled by mutual agreement. Scallops were the subject of three complaints, all of which were settled by a mutually agreed settlement. Swordfish was the subject of one complaint, which was ultimately suspended.

Transportation

Four cases have been brought involving aircraft construction and incentives; two are still pending after having proceeded to preliminary panel stages and two are currently before a panel. Flight management systems have been the subject of one complaint, which did not progress beyond the request for consultation phase.

Automobiles have been the subject of nine complaints to the WTO; four have reached the stalemate of having requested consultations but not having reached the stage

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65 See id.
67 See id.
72 See id.
of a panel or reported settlement; two were mutually settled; two were effectively settled when the parties agreed to the panel’s report and it was implemented; and one is still pending before the WTO. Gasoline accounted for one complaint, which resulted in the implementation of the panel report.

Harbor maintenance was the subject of one complaint, which has not progressed beyond the request for consultations. Ships have been the subject of three complaints; one is still pending and two of the contested provisions have lapsed.

**Clothing and Textiles**

Leather and leather goods have been the subject of four complaints; one was withdrawn by the complaining party; one has not seen the creation of a panel or a settlement; one was settled by mutual agreement of the parties; and one is still pending before the WTO.

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75 See id.
76 See id.
77 See id.
81 See id.
83 See id.
84 See id.
85 See id.
Hides account for two complaints, both of which were brought by the European Union; these complaints did not progress beyond the initial request for consultations phase. Textiles in general have generated nine complaints; two did not advance beyond the initial request for consultations; two were settled by mutual agreement; one was settled independently; one is still pending; one was effectively settled through a panel report recommending dismissal; and one was rendered moot when the provision at issue was not renewed by the respondent state.

Industry

Asbestos sales have been the target of one complaint, which resulted in a finding against the Canadian complainants. Polyethylene was the subject of one complaint, which was subsequently withdrawn. Gambling has been the focus of one complaint, which is currently pending before the panel.

Member State governmental acts

88 See id.
89 See id.
90 See id.
91 See id.
92 See id.
Two complaints have been brought involving the procurement contracting practices of member states; one is currently classified by the WTO as inactive\textsuperscript{96} and one was dismissed after the case was found to have been brought improperly.\textsuperscript{97} Three generalized tax complaints were brought; one was withdrawn\textsuperscript{98}; one was settled by mutual agreement\textsuperscript{99}; and one is still pending before the WTO.\textsuperscript{100} Three complaints have been brought involving tariff rate issues; all of these cases have failed to progress beyond the point of initial requests for consultation.\textsuperscript{101} One complaint was brought in regards to sweetener tax; this complaint was settled through a mutual agreement.\textsuperscript{102} Tax treatment of exports has been the subject of five complaints, none of which progressed beyond the initial request for consultations.\textsuperscript{103}

Five complaints were lodged regarding specific legislative actions taken by the United States; two are still pending before the WTO\textsuperscript{104}; one did not progress beyond the

\textsuperscript{96} See \textsc{Governmental Procurement, Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).

\textsuperscript{97} See \textit{id}.

\textsuperscript{98} See \textsc{Tax, Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).

\textsuperscript{99} See \textit{id}.

\textsuperscript{100} See \textit{id}.

\textsuperscript{101} See \textsc{Tariff Classification, Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).

\textsuperscript{102} See \textsc{Sweetener Tax, Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).

\textsuperscript{103} See \textsc{Tax Treatment for Exports, Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).

\textsuperscript{104} See generally \textsc{Index of Disputes, World Trade Organization}, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).
initial request for consultation phase\textsuperscript{105}; one was settled through mutual agreement\textsuperscript{106}; and one is classified by the WTO as inactive or settled.\textsuperscript{107}

**Generalized WTO Complaints**

General customs matters complaints accounted for six complaints lodged to the WTO, of which three have not gone beyond requesting a consultation\textsuperscript{108}; two were settled mutually\textsuperscript{109}; and one is still pending after an initial finding against the complainant.\textsuperscript{110}

Foreign exchange rates have been the subject of one complaint, which has not progressed beyond the point of requesting consultations.\textsuperscript{111} Generalized systems of preferences have resulted in two complaints; one did not progress beyond the request for consultation level\textsuperscript{112} and one resulted in the partial implementation of the panel’s report.\textsuperscript{113}

Import duties and licenses have resulted in thirteen complaints; eight did not progress beyond the initial request for consultations\textsuperscript{114}; two are currently pending in the

\textsuperscript{105} See id.
\textsuperscript{106} See id.
\textsuperscript{107} See id.
\textsuperscript{109} See id.
\textsuperscript{110} See id.
\textsuperscript{113} See id.
initial panel stages\textsuperscript{115}; one was settled through a mutual agreement\textsuperscript{116}; one was withdrawn\textsuperscript{117}; and one was dismissed.\textsuperscript{118}

Quantitative import restrictions accounted for six complaints to the WTO, all of which were settled by mutual agreement of the parties.\textsuperscript{119} Product shelf-life issues have generated one complaint, which was settled by mutual agreement.\textsuperscript{120}

Countervailing duties accounted for thirteen complaints to the WTO; eight did not progress beyond the initial request for consultation phase\textsuperscript{121}; two are still pending before the WTO\textsuperscript{122}; one was dismissed\textsuperscript{123}; one resulted in a finding for the respondent state\textsuperscript{124}; and one was effectively settled by the implementation of the panel report.\textsuperscript{125}

Safeguards and safeguard measures account for thirty complaints filed with the WTO; eight did not progress past the initial request for consultation phase\textsuperscript{126}; eight were effectively ended by the expiration or cancellation of the measure at issue\textsuperscript{127}; five were withdrawn\textsuperscript{128}; four were settled by mutual agreement\textsuperscript{129}; two are still before a panel\textsuperscript{130};

\textsuperscript{115} See id.
\textsuperscript{116} See id.
\textsuperscript{117} See id.
\textsuperscript{118} See id.
\textsuperscript{122} See id.
\textsuperscript{123} See id.
\textsuperscript{124} See id.
\textsuperscript{125} See id.
\textsuperscript{127} See id.
\textsuperscript{128} See id.
\textsuperscript{129} See id.
\textsuperscript{130} See id.
two are still pending before the WTO overall\textsuperscript{131}; and one was effectively settled through the implementation of the panel report.\textsuperscript{132}

Anti-dumping measures and protests thereof account for sixty-two of the complaints filed with the WTO; twenty-two did not progress beyond the initial request for consultation phase\textsuperscript{133}; seventeen were settled by mutual agreement\textsuperscript{134}; thirteen are still pending before the WTO\textsuperscript{135}; three are still before a panel\textsuperscript{136}; three were withdrawn\textsuperscript{137}; two ended in a finding of no violation on the part of the respondent state\textsuperscript{138}; two ended in a finding of a violation on the part of the respondent state\textsuperscript{139}; and one was dismissed.\textsuperscript{140}

Technology

Computers generally have been the subject of one complaint, in which the WTO’s judicial bodies found for the complaining state.\textsuperscript{141} Integrated circuits resulted in one

\textsuperscript{130} See id.
\textsuperscript{131} See id.
\textsuperscript{132} See id.
\textsuperscript{134} See id.
\textsuperscript{135} See id.
\textsuperscript{136} See id.
\textsuperscript{137} See id.
\textsuperscript{138} See id.
\textsuperscript{140} See id.
Biotechnology and Pharmaceuticals

Pharmaceuticals have been the subject of one complaint, which did not progress beyond the initial request for consultation.\textsuperscript{144} Biotechnology accounted for one complaint, which was effectively settled when the panel report was implemented.\textsuperscript{145}

Intellectual property

The TRIPS agreement has generated the most complaints to the WTO regarding questions of intellectual property. Of the nine complaints brought under TRIPS, five progressed only to the initial request for consultations phase\textsuperscript{146} and four were settled by mutual agreement.\textsuperscript{147}

However, several other cases have been brought independent from TRIPS. Two complaints were brought regarding copyrights, and were settled through mutual agreement.\textsuperscript{148} Patents account for ten complaints; four were mutually settled\textsuperscript{149}; three

\begin{footnotesize}
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\item See id.
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were effectively settled through the implementation of the panel report; two did not progress beyond the initial request for consultation; and one is still pending. One complaint has been lodged involving trademarks and is still pending before the WTO.

Entertainment and communications

Film distribution has accounted for three complaints; two have gone no further than the request for consultation and one was mutually settled. Periodicals represent one complaint, which was mutually settled. Sound recordings have been the subject of two complaints and both have been settled through mutual agreement.

Telecommunications equipment was the subject of one complaint, which was settled outside the WTO’s dispute resolution mechanisms. Telecommunications procurement contracting issues resulted in one complaint, which was settled through a mutually agreed settlement. Telecommunications services were the subject of one

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150 See id.
151 See id.
152 See id.
155 See id.
complaint, which was settled through mutual agreement.160 And, telecommunications
directory services were the subject of one complaint, which did not advance beyond the
initial request for consultations.161

IV. DISPUTE INFORMATION BY WTO MEMBER STATES.

In order to fully analyze the impact of WTO disputes on trade, it is necessary to
examine the actions of complaining member states as well as the overall outcomes of
disputes initiated at the WTO level.

A. OVERALL INFORMATION

Approximately forty-one WTO member states have served as complainants
before the WTO dispute resolution body; this number is actually slightly higher when one
remembers that the European Union has routinely pursued complaints on behalf of its
constituent member states. Interestingly, the top five complainants are the United
States,162 the European Communities (European Union),163 Canada,164 Brazil,165 and

160 See TELECOMS SERVICES, WORLD TRADE ORGANIZATION, available at
http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products (last
visited July 25, 2007).
161 See TELEPHONE DIRECTORY SERVICES, WORLD TRADE ORGANIZATION, available at
http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products (last
visited July 25, 2007).
162 See UNITED STATES, DISPUTES BY COUNTRY, WORLD TRADE ORGANIZATION, available at
163 See EUROPEAN COMMUNITIES, DISPUTES BY COUNTRY, WORLD TRADE ORGANIZATION, available at
164 See CANADA, DISPUTES BY COUNTRY, WORLD TRADE ORGANIZATION, available at
165 See BRAZIL, DISPUTES BY COUNTRY, WORLD TRADE ORGANIZATION, available at
India. The United States and the European Union combined for a little more than one third of the total complaints brought before the WTO. The vast majority of complaining member states have brought between one and three complaints before the WTO dispute resolution body. The member states at the lower end of the complaint ratio form an interesting cross-section of economic and political stability – ranging from Singapore, Norway and Sweden to Poland and Venezuela to Pakistan and Sri Lanka.

Interestingly, forty-one member states have been brought before the WTO’s dispute resolution body as respondents. The top five most frequent respondent states are the United States; the European Union; Argentina; Japan, Brazil, and Mexico; and India and Korea. As with complainant statistics, the vast majority of

respondent states have been respondents between one and three times. This group again contains a broad spectrum of member states, from the United Kingdom\textsuperscript{181} and France\textsuperscript{182} to China\textsuperscript{183} to Egypt.\textsuperscript{184}

\section*{B. COMPLAINANT MEMBER STATE INFORMATION}

\textit{United States}

The United States leads WTO member states in its propensity to be a complainant before the WTO, having been part of approximately seventy-two complaints.\textsuperscript{185} The United States most frequently complained about the actions of the European Union,\textsuperscript{186} followed by Korea,\textsuperscript{187} Japan,\textsuperscript{188} Mexico,\textsuperscript{189} Canada,\textsuperscript{190} Argentina,\textsuperscript{191} Brazil,\textsuperscript{192} India\textsuperscript{193} and Australia.\textsuperscript{194} The most frequent basis for complaints by the United States was patent violations,\textsuperscript{195} followed by general agricultural issues,\textsuperscript{196} tax treatment,\textsuperscript{197} automobiles,\textsuperscript{198}

\begin{itemize}
\item \textsuperscript{181} See \textsc{United Kingdom, Disputes by Country, World Trade Organization}, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm} (last visited July 25, 2007).
\item \textsuperscript{182} See \textsc{France, Disputes by Country, World Trade Organization}, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm} (last visited July 25, 2007).
\item \textsuperscript{183} See \textsc{China, Disputes by Country, World Trade Organization}, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm} (last visited July 25, 2007).
\item \textsuperscript{184} See \textsc{Egypt, Disputes by Country, World Trade Organization}, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm} (last visited July 25, 2007).
\item \textsuperscript{185} See \textsc{United States, Disputes by Country, World Trade Organization}, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm} (last visited July 25, 2007).
\item \textsuperscript{186} See id.
\item \textsuperscript{187} See id.
\item \textsuperscript{188} See id.
\item \textsuperscript{189} See id.
\item \textsuperscript{190} See id.
\item \textsuperscript{191} See id.
\item \textsuperscript{192} See id.
\item \textsuperscript{193} See id.
\item \textsuperscript{194} See id.
\item \textsuperscript{195} See Index of Dispute Issues, World Trade Organization, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).
\item \textsuperscript{196} See id.
\item \textsuperscript{197} See id.
\item \textsuperscript{198} See id.
\end{itemize}
anti-dumping measures, alcohol, customs issues, safeguards and import measures. Specific agricultural and livestock-based complaints accounted for many one-time complaints. Ironically, the United States most frequently collaborated with the European Union and Canada in complaints against other member states.

European Union

The European Union is the second most frequent complainant state before the WTO with approximately sixty-seven complaints made. More than one third of these complaints were directed at the United States. Other frequently complained of states were Argentina, Japan, India, Korea and Brazil. The European Union most frequently complained of violations involving anti-dumping measures; legislative actions of other member states; countervailing duties; automobiles; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; safeguards; 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import licenses\textsuperscript{218}; alcohol\textsuperscript{219}; and textiles.\textsuperscript{220} The European Union most frequently collaborated with Korea and Japan,\textsuperscript{221} followed by the United States and Australia.\textsuperscript{222}

\textbf{Canada}

Canada filed approximately twenty-one complaints with the WTO;\textsuperscript{223} the majority of these complaints were filed against the United States and the European Union.\textsuperscript{224} These complaints centered primarily on anti-dumping measures,\textsuperscript{225} countervailing duties,\textsuperscript{226} alcohol,\textsuperscript{227} and lumber.\textsuperscript{228} Canada most frequently collaborated with the United States, followed by the European Union,\textsuperscript{229} Australia,\textsuperscript{230} and New Zealand.\textsuperscript{231}

\textbf{Antigua and Barbuda}

Antigua and Barbuda have brought one complaint against the United States in regards to gambling law enforcement.\textsuperscript{232}

\textbf{Australia}

Australia has brought seven complaints before the WTO; two against the United States,\textsuperscript{233} two against the European Union,\textsuperscript{234} and one each against Korea, India, and

\textsuperscript{218} See id.
\textsuperscript{220} See id.
\textsuperscript{221} See id.
\textsuperscript{222} See id.
\textsuperscript{225} See id.
\textsuperscript{226} See id.
\textsuperscript{227} See id.
\textsuperscript{228} See id.
\textsuperscript{229} See id.
\textsuperscript{231} See id.
\textsuperscript{232} See id.
Hungary. General issues relating to agriculture were the most frequent basis for Australia’s complaints. Australia most frequently collaborated with the United States and New Zealand.

Argentina

Argentina has brought approximately eight complaints before the WTO; of these, the most frequent respondent states were Chile and the United States. The most frequent reasons for Argentina’s complaints centered on agricultural issues, anti-dumping measures, and safeguards. Argentina collaborated with several nations on one complaint.

Bangladesh

Bangladesh has brought one complaint before the WTO, involving anti-dumping measures imposed by India.

Brazil

Brazil has brought eighteen complaints before the WTO. These complaints have been most frequently made against the United States, the European Union, and Argentina. The most common basis for Brazil’s complaints was anti-dumping.

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235 See id.
236 See id.
237 See id.
239 See id.
240 See id.
241 See id.
243 See id.
244 See id.
measures and countervailing duties.\textsuperscript{245} Brazil collaborated with several member states on two occasions.\textsuperscript{246}

\textit{Chile}

Chile has brought approximately nine complaints; the majority against the European Union, Peru, and the United States.\textsuperscript{247} The bulk of these complaints involve safeguard measures.\textsuperscript{248} Chile collaborated with several member states on two occasions.\textsuperscript{249}

\textit{China}

Independent of Hong Kong, China has brought one complaint, which was part of a multi-state complaint against the United States involving safeguards.\textsuperscript{250}

\textit{Colombia}

Colombia has brought three complaints before the WTO; against the United States in regard to broom corn;\textsuperscript{251} against Nicaragua in regard to import measures;\textsuperscript{252} and against Chile in regard to safeguards.\textsuperscript{253}

\textit{Costa Rica}

Costa Rica has brought three complaints: against Trinidad and Tobago in relation to anti-dumping measures\textsuperscript{254}, against the Dominican Republic in regard to exchange rate issues\textsuperscript{255}; and against the United States in relation to textiles.\textsuperscript{256}

\textsuperscript{245} See id.
\textsuperscript{246} See id.
\textsuperscript{247} See id.
\textsuperscript{249} See id.
\textsuperscript{250} See id.
\textsuperscript{251} See id.
\textsuperscript{252} See id.
\textsuperscript{253} See id.
\textsuperscript{254} See id.
\textsuperscript{255} See id.
\textsuperscript{256} See id.
Czech Republic

The Czech Republic has brought one suit against Hungary involving safeguards.257

Ecuador

Ecuador has brought three complaints: two involving bananas – one against the European Union and one against Turkey258 – and one involving anti-dumping measures.259 It collaborated with several member states in its complaint against the European Union.260

Guatemala

Guatemala has brought four complaints; two against Mexico – one involving customs issues and one involving anti-dumping measures261 – one against the European Union regarding bananas,262 and one involving agriculture against Chile.263 The complaint against the European Union was brought in collaboration with several member states.264

Honduras

\footnotesize

\begin{itemize}
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
  \item See id.
\end{itemize}
Honduras has brought three complaints: against the European Union, in collaboration with several member states, involving bananas\textsuperscript{265}; against the Dominican Republic involving cigarettes\textsuperscript{266}; and against Nicaragua involving import measures.\textsuperscript{267}

\textit{Hong Kong}

Separate from China, Hong Kong brought one complaint in collaboration with Thailand against Turkey regarding textiles.\textsuperscript{268}

\textit{Hungary}

Hungary has brought five complaints against Croatia regarding BSE\textsuperscript{269}; against Turkey regarding BSE\textsuperscript{270}; against the Czech Republic involving wheat\textsuperscript{271}; against Romania involving wheat\textsuperscript{272}; and against the Slovak Republic involving wheat.\textsuperscript{273}

\textit{India}

India has brought sixteen complaints. The majority of these complaints were against the United States\textsuperscript{274} and the European Union.\textsuperscript{275} The primary focus of these complaints were anti-dumping measures,\textsuperscript{276} safeguards,\textsuperscript{277} and textiles.\textsuperscript{278} India collaborated most frequently with Thailand.\textsuperscript{279}

\textsuperscript{265} See id.
\textsuperscript{267} See id.
\textsuperscript{268} See id.
\textsuperscript{269} See id.
\textsuperscript{270} See id.
\textsuperscript{271} See id.
\textsuperscript{273} See id.
\textsuperscript{274} See id.
\textsuperscript{275} See id.
\textsuperscript{276} See id.
\textsuperscript{277} See id.
\textsuperscript{278} See id.
\textsuperscript{279} See id.
Indonesia

Indonesia has brought three complaints: regarding legislation enacted by the United States, in which Indonesia collaborated with multiple states\(^{280}\); regarding antidumping measures against Korea\(^ {281} \); and involving safeguards against Argentina.\(^ {282} \)

Japan

Japan has brought ten complaints; the majority of which were brought against the United States.\(^ {283} \) The most frequent policy areas at issue in Japanese complaints were automobiles and anti-dumping measures.\(^ {284} \) Japan collaborated frequently with the European Union and Korea.\(^ {285} \)

Korea

Korea brought thirteen complaints; the majority of which were brought against the United States and European Union.\(^ {286} \) These complaints most frequently related to anti-dumping measures, safeguards, and ships.\(^ {287} \) Korea collaborated frequently with the European Union, Japan, and Brazil.\(^ {288} \)

Malaysia

\(^{270} \) See id.
\(^{280} \) See id.
\(^{281} \) See id.
\(^{282} \) See id.
\(^{283} \) See id.
\(^{285} \) See id.
\(^{286} \) See id.
\(^{287} \) See id.
\(^{288} \) See id.
Malaysia collaborated with India, Pakistan, and Thailand to bring a complaint against the United States involving shrimp.\footnote{See id.}

\emph{Mexico}

Mexico has brought twelve complaints, the majority against the United States, followed by Ecuador and Guatemala.\footnote{See INDEX OF DISPUTE ISSUES, WORLD TRADE ORGANIZATION, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).} The majority of these complaints were brought in regards to anti-dumping measures.\footnote{See id.} Mexico collaborated with several member states against the European Union.\footnote{See id.}

\emph{New Zealand}

New Zealand has brought six complaints before the WTO, a third of which were brought against the United States.\footnote{See id.} One third of these complaints were made in regard to safeguards.\footnote{See id.} New Zealand collaborated with other member states for all except one of its complaints.\footnote{See id.}

\emph{Nicaragua}

Nicaragua has brought one complaint against Mexico in regard to general agricultural issues.\footnote{See INDEX OF DISPUTE ISSUES, WORLD TRADE ORGANIZATION, available at \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).}

\emph{Norway}
Norway has brought two complaints, one against the European Union in regards to safeguards\textsuperscript{297} and one against the United States in regards to safeguards\textsuperscript{298}. Both of these complaints were brought in collaboration with other member states\textsuperscript{299}.

\textit{Pakistan}

Pakistan has brought three complaints: against Egypt in regards to anti-dumping\textsuperscript{300}; against the United States in regards to safeguards\textsuperscript{301}; and in collaboration with several member states against the United States in regard to shrimp\textsuperscript{302}.

\textit{Peru}

Peru has brought two complaints against the European Union, one in regards to sardines\textsuperscript{303} and the other – in collaboration with Canada and Chile – in regards to scallops\textsuperscript{304}.

\textit{Philippines}

The Philippines have brought two complaints: against Brazil in regard to countervailing duties; and against Australia – in collaboration with the European Union – in regards to general agricultural issues.

\textit{Poland}

Poland has brought three complaints: against Thailand based on anti-dumping violations\textsuperscript{305}; against the Czech Republic in regards to pig meat\textsuperscript{306}; and against Slovakia regarding safeguards\textsuperscript{307}.

\textsuperscript{297} See id.
\textsuperscript{298} See id.
\textsuperscript{299} See id.
\textsuperscript{300} See id.
\textsuperscript{301} See id.
\textsuperscript{303} See id.
\textsuperscript{304} See id.
Singapore

Singapore has brought one complaint against Malaysia regarding polyethylene.308

Sri Lanka

Sri Lanka has brought one complaint against Brazil regarding countervailing duties.309

Sweden

Sweden has brought one suit against the United States regarding TRIPS.310

Switzerland

Switzerland has brought four complaints: against Australia regarding anti-dumping measures311; against the Slovak Republic regarding anti-dumping measures312; against India – in collaboration with member states – regarding quantitative restrictions313; and against the United States – in collaboration with member states – regarding safeguards.314

Taiwan (Chinese Taipei)

305 See id.
306 See id.
307 See id.
309 See id.
310 See id.
311 See id.
312 See id.
313 See id.
Taiwan has brought two complaints before the WTO: against the United States regarding safeguards and against India regarding anti-dumping measures.

*Thailand*

Thailand has brought eleven complaints, the majority of which were against the United States and the European Union. General agricultural issues were the most frequent reason for these complaints, followed by specific agricultural and seafood topics, textiles, and governmental actions.

*Turkey*

Turkey has brought two complaints: against South Africa regarding anti-dumping measures and against Egypt regarding anti-dumping measures.

*Uruguay*

Uruguay has brought one complaint against the European Union regarding rice.

*Venezuela*

Venezuela has brought one complaint with Brazil against the United States regarding gasoline.

**V. PUTTING IT ALL TOGETHER**

The data and facts presented above shed light on the uses of the WTO dispute resolution body by member states, the ultimate outcomes of complaints brought before

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315 See id.
316 See id.
317 See id.
318 See id.
319 See id.
321 See id.
322 See id.
323 See id.
the WTO’s dispute resolution body, and the usefulness of the WTO’s dispute resolution system to member states, which can be imputed to the WTO system and structure as a whole. Taken together, the information presented can provide several critical insights to the questions posed at the beginning of this article.

The information above paints an interesting picture of the uses of the WTO dispute resolution system by member states. The startlingly high incidence of complaints not progressing beyond the point of the initial request for consultations indicates that many of these complaints are started for reasons that do not merit follow-up or further pursuit at the WTO level. Whether these complaints do not progress further because the issue raised is settled or the dispute is otherwise settled amicably is largely irrelevant in the face of evidence that something happens to many of the complaints filed before negotiations can start before a properly convened panel. What is clear is that the legal mechanism created by the WTO to oversee and determine the issues raised by complaints is such that it acts as a deterrent in many cases.

Another important feature of the legal construct used by the WTO to settle disputes is the high number of mutually agreed settlements which occur not only before a judicial proceeding has been formally convened, but also after findings by panels and even the WTO appellate body. Unlike the typical civil justice system, in which the winning side is able to compel the losing side to comply with the court’s judgment forthwith, in the WTO construct a decision by the panel or appellate body is often just the starting point for a lengthy arbitration process which ultimately results in a settlement that the parties mutually agree to be bound by. Extraordinarily, this means that the parties
themselves may – and in many instances are required to at least try to – modify a judicial order to the extent necessary to make it acceptable to all parties.

The lack of correlation between complaints raised in regards to certain policy areas and their outcomes is also a surprise and speaks as a testament to the legal constructs of the WTO’s dispute resolution body and its enforcement mechanism.

Turning to individual member states, the stereotype of the United States and, to a lesser extent, the European Union as trade behemoths that eagerly use the WTO dispute resolution process to the disadvantage of lesser developed nations is undercut by the parity between the number of times that each entity has served as a complainant and respondent before the WTO. Indeed, it is important to note that, although the United States and the European Union frequently collaborate with each other, they also have an established track record of working with other nations against each other. Further, the European Union is the most frequently complained of member state by the United States and vice versa. What is important to note is that emerging powerhouse economies such as China do not use the WTO’s dispute resolution mechanism to the same extent that lesser developed economies and well established economies do.

There are several implications which can be extrapolated from this information. First, the United States and the European Union do not use the WTO as a method of corralling or browbeating smaller and less developed economies; indeed, they use it more as a dispute resolution body for their own grievances with each other. Second, smaller and less developed economies are able to effectively access and use the WTO’s dispute resolution body as a means of supporting their own trade growth and policies and have not shied away from pursuing claims against larger and more powerful economies. In this
sense the legal structure of the WTO’s dispute resolution mechanism can be seen as a truly democratic entity to the extent that it allows all member states access and has a proven track record of facilitating myriad types of claims involving economies across the development spectrum. Third, as well established and lesser developed economies have embraced the WTO’s dispute resolution system, newly emerging and powerful economies, such as China, have not embraced this system with the same enthusiasm. This can be seen as indicating a preference for bilateral trade agreements rather than entanglement in WTO agreements, or as indicating that even issues involving WTO agreements are preferably settled on a bilateral level between the member states. And fourth, the WTO dispute resolution mechanism is in a sense under-utilized. Currently, the WTO has one hundred and fifty fully fledged members\textsuperscript{324}; however, less than one third of those member states – including states which have been members for many years – have ever used the WTO’s dispute resolution body. Further, most of the states which became members from 2000 onward have yet to be involved in a complaint before the WTO\textsuperscript{325}; this returns to the previously raised issue of the continued importance of the WTO’s dispute resolution body with the introduction of additional members and the seeming reticence of some economies to use the dispute resolution system.

What is clear is that the WTO has created a truly democratic legal entity in the shape of its dispute resolution body and that this body has allowed member states across the development spectrum to use it to remedy their trade-based grievances. Within this construct, member states have fought hard for trade; whether trade won is much more

\textsuperscript{324} See Members and Observers, Understanding the WTO, World Trade Organization, \textit{available at} \url{http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm} (last visited July 25, 2007).

\textsuperscript{325} See id.; Index of Dispute Issues, World Trade Organization, \textit{available at} \url{http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#agricultural_products} (last visited July 25, 2007).
difficult to ascertain. What can be said to have won, however, is the concept of creating a legal apparatus through which trade fights can be waged civilly and without major incursions into the trading practices of the member states involved.