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Testimony

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WORLD TRADE
ORGANIZATION

U.S. Experience in
Dispute Settlement
System: The First Five
Years

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to provide some observations about the World Trade Organization's (WTO) dispute settlement system since its founding in 1995. Specifically, my testimony will address (1) how WTO members have used the new dispute settlement system, focusing primarily on cases involving the United States; and (2) the impact of these cases on foreign trade practices and U.S. laws and regulations, and their overall commercial effects. We issued an overview report on this subject on June 14¹ and plan to provide a more comprehensive report in August.

My observations are based on our past and ongoing work; our review of WTO and U.S. executive branch documents and related literature; discussions with U.S. government officials, members of nongovernmental organizations, trade attorneys, and industry experts; and analyses of WTO data.

SUMMARY

WTO member countries have actively used the dispute settlement system during its first 5 years, filing about 200 complaints. The United States and the European Union (EU) have been the most active participants, both as plaintiffs and defendants. In the 42 cases involving the United States that had either reached a final WTO decision or were resolved without a ruling, the United States served as a plaintiff in 25 cases and a defendant in 17 cases. As a plaintiff, the United States prevailed in a final WTO dispute settlement ruling in 13 cases, resolved the dispute without a ruling in 10 cases, and did not prevail in 2 cases. As a defendant in 17 cases, the United States prevailed in one case, resolved the dispute without a ruling in 10, and lost in 6 cases.

Overall, our analysis shows that the United States has gained more than it has lost in the WTO dispute settlement system to date. WTO cases have resulted in a substantial number of changes in foreign trade practices, while their effect on U.S. laws and regulations has been minimal. In about three-quarters of the 25 cases filed by the United States, other WTO members agreed to change their practices, in most instances providing commercial benefits to the United States. For example, in a dispute involving barriers to U.S. exports of pork and poultry in the Philippine market, the United States challenged how the Philippines administered its tariff rate quota system² for these products. Following consultations, the Philippines agreed to modify its system in 1998. U.S. poultry exports to the Philippines subsequently increased by about \$16 million in 1999 and pork exports increased by about \$1 million that year. As for the United States, in 5 of the 17 cases in which it was a defendant, two U.S. laws, two U.S. regulations, and one set of U.S. guidelines were changed or subject to change. These changes have been relatively minor to date, and the majority of them have had limited or no commercial consequences for the United States. For example, in one case challenging increased U.S. duties on Korean semiconductor imports, the United States took action to comply with the WTO ruling, while still maintaining the duties. However, the commercial effects of one recently completed case involving tax exemptions for U.S. foreign sales corporations are potentially high, but the United States has not fully determined how it will

¹See World Trade Organization: U.S. Experience to Date in Dispute Settlement System (GAO/NSIAD/OGC-00-196BR, June 14, 2000).

²A tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.

implement the WTO ruling. Moreover, there are several ongoing WTO cases whose outcomes could be problematic for the United States.

BACKGROUND

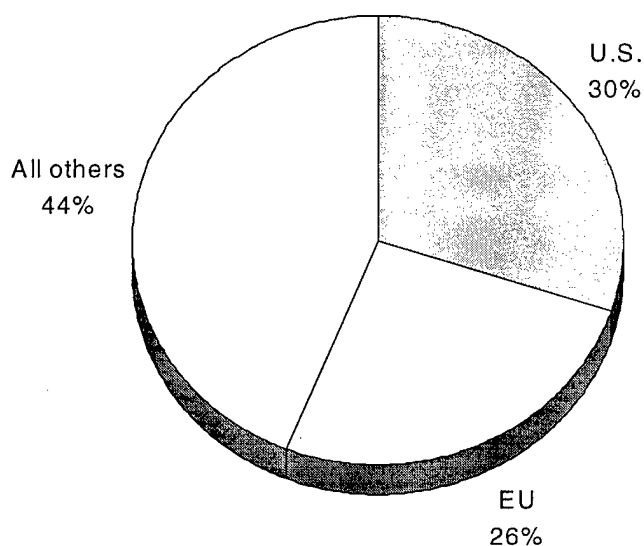
The World Trade Organization provides the institutional framework for the multilateral trading system. Established in January 1995 as a result of the Uruguay Round of international trade negotiations, the WTO administers rules for international trade and provides a forum for conducting trade negotiations. For the first time, the 1994 Uruguay Round agreements brought agriculture, services, intellectual property rights, textiles and apparel, and trade-related investment measures under the discipline of multilateral trade rules. In addition, the Uruguay Round agreements established a new dispute settlement system, replacing that under the General Agreement on Tariffs and Trade, the predecessor to the WTO.

The WTO dispute settlement system provides a multilateral forum for resolving trade disputes among WTO members in four major phases: consultation, panel review, appellate body review (when parties appeal the panel ruling), and implementation of the ruling. The new system has several important features. It discourages stalemate by not allowing losing parties to block decisions; sets firm timetables for completing litigation of cases; and establishes a standing appellate body, which helps make the dispute settlement process more stable and predictable. Finally, it allows losing parties to accept retaliation or provide compensation as alternatives to complying with WTO rulings. While the new dispute settlement system facilitates the resolution of specific trade disputes, it also serves as a vehicle for upholding trade rules, preserving the rights and obligations of members under the WTO agreements. Finally, the system clarifies the provisions of specific WTO agreements and provides a climate of greater legal certainty in which trade can occur.

WTO MEMBERS HAVE ACTIVELY USED DISPUTE SETTLEMENT SYSTEM

WTO members have used the WTO dispute settlement system frequently over the past 5 years, bringing before it 187 complaints.³ The United States and the European Union (EU) were the most active participants, both as plaintiffs and defendants. The United States filed 56 complaints, or almost a third of the total number of complaints brought as of April 2000. The EU was the next most frequent filer, with 49 complaints (see fig. 1). Over a third of the U.S. and EU cases were against each other.

Figure 1: WTO Members' Share of 187 Complaints Filed, 1995-2000



Legend: EU = European Union

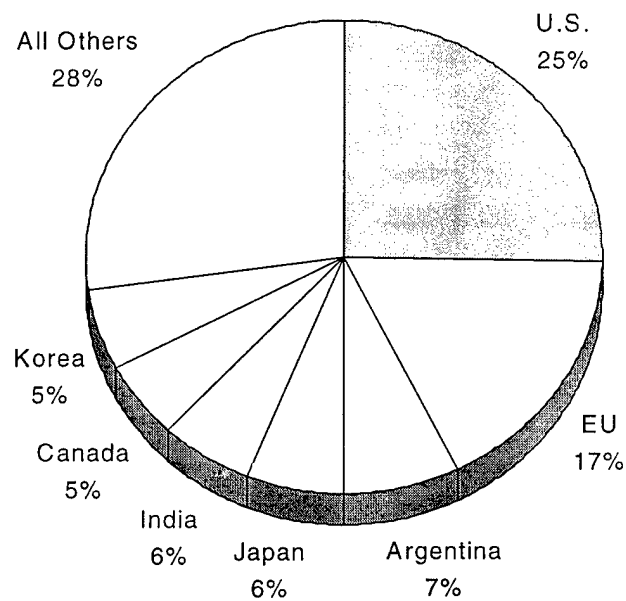
Note: This chart covers 187 complaints. It excludes five cases in which there were co-complainants (more than one country filing a complaint on the same case).

Source: WTO data.

³The 187 complaints filed as of April 18, 2000 excludes five cases in which there were co-complainants (more than one country filing a complaint on the same case). A number of the cases are still pending.

The United States was the most frequent defendant in WTO dispute settlement cases. The 187 complaints filed pertained to 150 distinct matters; in some cases, multiple complaints were filed against the same defendant. Of these 150 matters, 38 cases were filed against the United States, a number of which are still pending. The EU was the second most frequent defendant, with 26 cases filed against it (see fig. 2).

Figure 2: WTO Members as Defendants in 150 Distinct Matters, 1995-2000

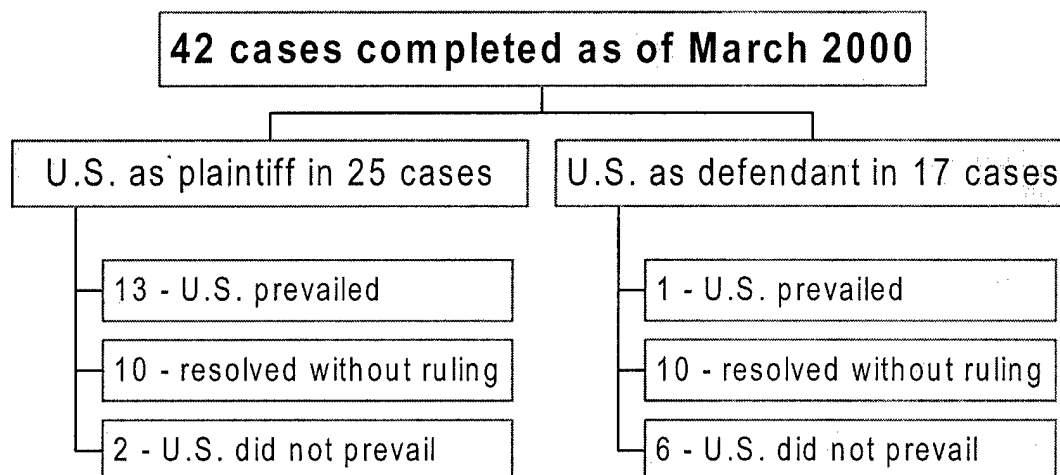


Note: Percents do not add up to 100 percent because of rounding.

Source: WTO data.

Of the 150 matters WTO members brought to the WTO, 42 cases involving the United States were completed as of March 2000. Completed cases include those that have gone through WTO litigation with a panel or appellate body ruling and cases that were resolved without a WTO ruling. The United States was a plaintiff in 25 of these cases and a defendant in 17 cases (see fig. 3).

Figure 3: Outcome of Completed U.S. Disputes in the WTO



Source: Office of the U.S. Trade Representative.

IMPACT OF COMPLETED DISPUTE SETTLEMENT CASES INVOLVING THE UNITED STATES

About three-fourths of the 25 cases that the United States filed resulted in some agreed change in foreign laws, regulations, or practices such as the removal of discriminatory taxes or other import barriers. Fourteen of these cases also resulted in commercial benefits for U.S. industry, either greater market access or increased intellectual property protection. As for the United States, in 5 of the 17 cases in which it was a defendant, two U.S. laws, two U.S. regulations, and one set of U.S. guidelines⁴ were changed or subject to change. These changes have been relatively minor to date, and the majority of them have had limited or no commercial consequences for the United States, although one recently completed case, where the WTO ruling has not yet been implemented, may have potentially large commercial effects.

Changes in Foreign Practices Resulting from WTO Cases

The 25 cases that the United States filed with the WTO resulted in several types of changes in foreign laws, regulations, or practices. For example, in one case involving a tax on imported liquor, Japan

⁴Although guidelines are often general statements that do not impose particular directions, sometimes they are specific and binding and essentially equivalent to regulations.

began lowering taxes and tariffs on distilled spirits in 1998 after a WTO ruling found that Japan had discriminated against imports. In another case, Japan lifted a varietal testing requirement for imports of apples, cherries, and other fruits at the end of 1999 after a WTO ruling found that the requirement was maintained without sufficient scientific evidence. As a result, U.S. exports of these fruits recently entered the Japanese market, with shipments in December 1999 and March 2000.

In a case the United States filed with the WTO challenging inadequate intellectual property protection for pharmaceuticals and agricultural chemicals, India passed legislation in March 1999 to establish a filing system for patent applications on these products and to grant exclusive marketing rights to the patent applicant. The WTO ruled that these changes were called for under the Uruguay Round agreement on intellectual property rights. Pakistan agreed to make similar changes to settle another WTO case filed by the United States. In a case involving investment measures that may limit or distort trade in the auto sector, Indonesia eliminated local content requirements and other trade-restricting measures in 1999 after a WTO ruling found Indonesia had discriminated against foreign investors.

Commercial Effects of Foreign Changes

Of the 25 cases that the United States filed, 14 resulted in commercial benefits to the United States, either through greater market access or stronger intellectual property protection. For example, in a case involving Korean standards for food imports, Korea made changes in its food code in 1995 and 1996 after a WTO case was filed. Korea's standard had previously kept out approximately \$87 million of U.S. chilled beef exports and \$79 million of U.S. pork exports, according to Department of Agriculture estimates. Also, in a case challenging Japan's inadequate time period for protecting copyrights on sound recordings, Japan changed its copyright law in 1996 after a WTO ruling. As a result of this change, U.S. sound recordings will be protected for a 50-year period, including retroactively. The U.S. recording industry estimated that these protections are worth about \$500 million annually, based on lost sales in 1995.

In the 11 other cases that the United States filed with the WTO dispute settlement body, 9 had limited commercial benefits, either because (1) other barriers existed; (2) implementation of the WTO ruling was incomplete or disputed; or (3) the case was brought mainly to uphold trade principles. For example, in a case involving Canadian fluid milk imports, Canada changed its tariff-rate quota system, which the U.S. dairy industry estimated could increase U.S. exports by \$45 million a year. However, the U.S. dairy industry cannot take advantage of these changes until the United States and Canada conclude separate, ongoing negotiations on fluid milk standards.

Regarding WTO rulings whose implementation is incomplete or disputed, in two high-profile cases the EU decided not to fully comply with WTO rulings involving imports of bananas and hormone-treated beef and instead face U.S. retaliation of almost \$310 million for non-compliance. In addition, as of mid June, Australia had not complied with a 1999 WTO ruling that maintained that Australia had provided an improper export subsidy grant to a leather manufacturer; the WTO had recommended that the grant be repaid. The United States and Australia have been negotiating a compliance plan.

In a case primarily involving trade principles rather than commercial interests, the United States filed a case against Hungary involving agricultural export subsidies, although U.S. products do not directly compete with the affected Hungarian exports. According to the Office of the U.S. Trade Representative,

the case was brought to protect the integrity of the Uruguay Round Agreement on Agriculture. The Office maintained that Hungary was in violation of the agreement's provisions limiting these subsidies.

The United States initiated two WTO cases with high commercial stakes that it lost. In the first case, involving alleged trade restrictions in Japan's film and photographic supplies market, the United States failed to gain greater access to this market as a result of the loss. In the other case, the United States challenged an EU change in customs classification of local area network equipment that resulted in higher tariffs for U.S. exports. Although the United States lost the case, the effects of the loss were mitigated by the WTO's 1997 Information Technology Agreement, which made U.S. exports of this equipment duty free.

Changes in U.S. Laws Resulting from WTO Cases

Out of the 17 WTO cases in which U.S. practices were challenged, only one resulted in a change in U.S. law and that change was relatively minor. In another case, the United States pledged to seek from Congress legislation providing the President authority to waive certain provisions of a law. However, Congress has yet to grant the President this authority.

Regarding the one change in U.S. law, the United States amended a 1996 law for determining the country of origin of U.S. textile and apparel imports. The United States made this change in May 2000 in response to a WTO case filed by the EU. The amendment changed the country of origin of certain fabrics including silk, and of certain goods such as scarves, from where the raw fabric was made, to where the product was both dyed and printed with two additional finishing operations.⁵ The EU maintained that the 1996 law's criteria for determining country of origin affected its quota-free access to the United States. This is because raw fabric is often produced in countries subject to U.S. quotas, such as China. According to Department of Commerce data, the affected EU exports to the United States are relatively small.

In the other case, the EU challenged certain aspects of a U.S. law involving trade sanctions against Cuba. The United States and the EU reached an agreement in 1997 before a WTO dispute settlement panel ever met. Among other things, the EU agreed to drop the dispute settlement case in return for a U.S. pledge to seek from Congress legislation providing the President authority to waive title IV of Helms-Burton Act,⁶ which authorizes denial of U.S. visas to persons involved in trafficking in confiscated Cuban property when certain conditions are met. Congress has yet to grant the President authority to waive title IV.

Changes in U.S. Regulations and Guidelines Resulting from WTO Cases

Two U.S. regulations and one set of guidelines have been changed as a result of WTO rulings. First, in a case brought by Venezuela and Brazil, the Environmental Protection Agency (EPA) changed a regulation implementing the 1990 Clean Air Act pertaining to the cleanliness of gasoline.⁷ EPA modified the regulation in 1997 to give foreign suppliers the option of using a baseline for gas

⁵22 U.S.C. section 3592(b)(2) was amended by a provision in the Trade and Development Act of 2000, Public Law 106-200, section 405.

⁶22 U.S.C., section 6091.

⁷40 C.F.R. part. 80.

cleanliness, based on their own performance rather than on an EPA-established baseline (this treatment was already afforded to domestic suppliers). EPA also put in place a mechanism to adjust the requirements if the overall cleanliness of gas imports declines. Brazil and Norway, which account for 0.18 percent of U.S. gas supplies, are currently the only countries exporting to the United States under this option.

Also, as a result of a case brought by Korea involving dynamic random access memory (DRAM) semiconductors, the Department of Commerce in 1999 changed its standard for lifting an antidumping order⁸ to conform to WTO antidumping provisions.⁹ The WTO found that the previous U.S. standard placed too high a burden of proof on the party contesting an antidumping order. After the U.S. regulation was changed, Commerce conducted another review of Korean DRAM imports and still found the likelihood of continued dumping and kept the antidumping order in place. At Korea's request, a panel is now examining U.S. compliance with the WTO ruling.

Finally, as a result of a WTO case challenging a U.S. ban on imports of shrimp harvested in a manner harmful to endangered sea turtles, in July 1999 the State Department revised a set of certification guidelines.¹⁰ The revision provided more transparency (openness) and due process in making decisions to grant countries' certification to export shrimp to the United States. This change was very minor and, throughout the case, U.S. restrictions on shrimp imports remained in effect. However, one of the plaintiffs --Malaysia -- has reserved its right to challenge U.S. compliance with the WTO ruling.

Commercial Effects of U.S. Changes

In the 17 cases in which the United States was a defendant, the United States lost 6 cases, 5 of which had limited commercial consequences. The sixth case, challenging provisions of U.S. tax law regarding foreign sales corporations, has potentially very high commercial stakes. The United States provides tax exemptions to a wide variety of companies on exported products used abroad. In this case, a February 2000 WTO ruling found that the U.S. tax provisions constituted prohibited export subsidies. The United States has not fully determined how it will implement the WTO ruling.

In the 11 other WTO cases filed against the United States that were resolved without a panel ruling or that the United States won, 5 had potentially high commercial stakes. However, the outcomes of all 11 cases had a limited or no commercial effect. For example, one of these high-stakes cases involved a challenge by Mexico to the initiation of a U.S. antidumping investigation on imports of certain fresh tomatoes. The U.S. International Trade Commission reported that imports of Mexican fresh tomatoes were \$452 million, or almost 36 percent, of the \$1.3 billion U.S. market in 1995. The Commerce Department and the U.S. International Trade Commission made preliminary determinations that the Mexican imports were being sold at less than their fair value and were causing material injury to the U.S. industry. If the final investigations upheld these findings, the Commerce Department could have placed duties on these imports to raise their price up to the fair market value. Mexico requested WTO

⁸"Dumping" is generally defined as the sale of an exported product at a price lower than that charged for a like product in the "home" market of the exporters or at a price below cost. An antidumping order imposes additional duties on imports when dumping is found.

⁹19 C.F.R. sections 351.222.

¹⁰64 Federal Register 36936 (July 8, 1999). According to the Department of State, these guidelines implemented section 609 of Public Law 101-162 relating to the protection of sea turtles in shrimp trawl fishing operations and are binding for countries that wish to export shrimp to the United States.

consultations about this issue. However, Commerce resolved the matter with a formal commitment by Mexican growers not to sell their exports below a certain price. This agreement was reached to eliminate the injurious effects of the dumped imports on the U.S. industry.

The remaining six cases resulted in some U.S. government action with minimal commercial effect. For example, in a case challenging U.S. duties on imports of urea (primarily used as a fertilizer) from the EU, the United States removed the duties after it found that U.S. industry was not interested in maintaining them.

CONCLUSIONS

Overall, the United States has gained more than it has lost in the WTO dispute settlement system to date, for several reasons. First, the United States has been able to effect changes in a substantial number of foreign laws, regulations, and/or practices that it considered to be restricting trade. Further, most of the cases that the United States filed provided commercial benefits to U.S. exporters or investors. In addition, WTO rulings have upheld trade principles that are important to the United States, such as the patent protection provisions of the Uruguay Round agreement on intellectual property rights and provisions in the Agreement on Agriculture to eliminate export subsidies.

The dispute settlement system's impact on the United States should not be evaluated solely on the basis of U.S. wins and losses. First, some winning cases do not result in the desired outcomes. For example, the EU decided not to fully comply with two WTO decisions involving bananas and hormone-treated beef and instead face U.S. retaliation. Conversely, some losses are only partial, as in the case regarding Korean DRAM semiconductors where the U.S. antidumping order being challenged was maintained despite an adverse WTO ruling. In addition, some losing cases actually may uphold WTO principles important to the United States, as in the case involving endangered sea turtles, which expressly upheld provisions that protect the conservation of natural resources, including sea turtles. Moreover, the United States derives systemic benefits from a well-functioning multilateral dispute settlement system, even if it does lose some cases.

It is important to note, however, that there have not yet been a sufficient number of WTO dispute settlement cases to fully evaluate the system. In addition, the outcomes of some important pending WTO cases could be problematic for the United States, including several cases that challenge various aspects of U.S. trade laws, such as U.S. antidumping laws.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared remarks. I will be happy to respond to any questions you may have.

CONTACTS AND ACKNOWLEDGMENTS

For future contacts regarding this testimony, please call Susan Westin or Beth Sirois at (202) 512-4128. Individuals making key contributions to this testimony included Nina Pfeiffer, Tim Wedding, and Richard Seldin.

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