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THE DISPUTE SETTLEMENT UNDER THE WTO: EXPERIENCE OF TURKEY

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Abstract:

After the World War II, the thought that the liberalization in the international financial markets and foreign trade will increase the wealth of the nations was widespread. Under this approach, several international organizations were established, leaded by the US with the aim of ruling the monetary and trade–related transactions and improving the economical development of nations. The agreements governing the free international trade relations gained an mutually agreed structure especially in the cases of applications and dispute settlement after the establishment of World Trade Organization in 1995.

Turkey accepted GATT in 1951 and formally included in 1953 and has been a member to WTO since its establishment in 1995.

One of the important consequences of the membership to WTO is to take part in the dispute settlement process in case of the discrepancies and differences in applications. In this Study, the cases in which Turkey was on the offensive side in the disputes, as detailed by the principles as defined by the GATT and the settlement of these disputes will be elaborated in order to take attention to the similar future disputes.

Keywords: Disputes in the International Trade, World Trade Organisation, GATT

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DÜNYA TİCARET ÖRGÜTÜ KAPSAMINDA ANLAŞMAZLIKLARIN ÇÖZÜMÜ: TÜRKİYE TECRÜBESİ

Öz:

İkinci Dünya Savaşı sonrası dönemde, uluslararası finansal piyasalar ve dış ticaret işlemlerinde liberalizasyonun milletlerin refah seviyesini artıracağı yönündeki yaklaşımlar yaygınlaşmıştır. Bu görüş kapsamında, ABD önderliğinde milletler üstü kuruluşlar kurulmak suretiyle ülkeler arasında parasal ve ticari ilişkilerin kurallara bağlanması ve ülkelerin ekonomik gelişmelerinin desteklenmesi amaçlanmıştır. Uluslar arası serbest ticaret prensiplerini belirleyen anlaşmalar bütünü 1995 yılında Dünya Ticaret Örgütü'nün (DTÖ) kurulması ile, özellikle uygulamada oluşabilecek anlaşmazlıkların çözümüne genel mutabakat sağlanan bir yapıya kavuşulmuştur.

Türkiye 1951 yılında onay verdiği GTTA sürecine 1953 yılında dahil olmuş ve DTÖ'nün kurulduğu tarih olan 1995'de de bu örgüte üye olmuştur.

DTÖ'ne üyeliğin önemli sonuçlarından biri dış ticaretle ilgili ülkeler arasındaki görüş ayrılıkları ve uygulama farklılıkları sebebiyle doğabilecek anlaşmazlıkların çözümünde taraf olmaktır. Bu çalışmada, Türkiye'nin savunma pozisyonunda kaldığı anlaşmazlık durumları, konu edilen GTTA maddeleri verilmek suretiyle özetlenmiş, anlaşmazlıkların çözümlenme şekilleri de açıklanarak gelecekte karşılaşılabilecek benzer durumlara dikkat çekilmiştir.

Anahtar Kelimeler: Dış Ticarette Anlaşmazlıklar , Dünya Ticaret Örgütü, Gümrük Tarifeleri ve Ticaret Genel Anlaşması

INTRODUCTION

After the World War II, a new system was designed by the establishment of three international organizations; International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD or World Bank) and ill-fated International Trade Organization. These institutions are constituted to collectively harmonize the world trade by the financial and economical tools. The first two were easily established and operated mainly under the supervision of the US but surprisingly the latter one failed to be established, surprisingly because of the contradiction of the US. The solution was the multilateral treaty of the General Agreement on Tariffs and Trade (GATT) 1947 with the main principles of the prohibition of the trade discrimination amongst the nations (the most-favored nation clause). Not only the nations, but also the domestic and imported goods have to be treated equally (national treatment clause).The only barrier to importation will be the custom tariffs and the trade regulation of the contracting states should be transparent.

After the enactment of the GATT multilateral treaty, eight multilateral negotiations, called rounds that covered virtually every outstanding trade policy issue were realized. The outcome of the Uruguay Round was the establishment of intergovernmental organization, World Trade Organization (WTO) that is responsible to the application of the GATT rules by the member states. The WTO officially came into force in January 1, 1995.

It is a fact that each state gave up some in order to gain more during the negotiation stages of the development of GATT and the outcome is a set of agreements , each concentrating different issues on foreign trade and many details in respect of different type of products, territories, categories etc. In fact many member countries, including the developing ones as Turkey, confronted with the international trade related requirements generally broader than they expect in the form of complaints by the other nations. Now, the system works on settling the individual complaints of the member states for inconsistent applications of other member states under the Dispute Settlement Body (DSB) of the WTO.

In this Study, firstly the membership of Turkey to GATT and WTO thereafter will be summarized and then the dispute settlement procedure under WTO will be elaborated in order to understand the mechanism operated to settle the disputes in the form of complaints about Turkey's specific international trade transactions by the other member states. Each complaint will be elaborated under the referred Articles of the GATT system, the outcome of the each dispute settlement process will be mentioned in order to give insight about the possible similar complaints in the future.

I) THE GATT, WTO AND TURKEY

Turkey acceded to the GATT after the meetings about Tariffs in Torquay (England) in 1950-1951 with the enactment of the relevant Agreement on December 21, 1953 by the Law No.6202. The MTN Agreements on Subsidies and Countervailing Measures and on Customs Valuation was accepted. Turkey had also gained observer status in other MTN Code Committees. The revisions in GATT were also approved with the laws No.7014 dated June 16, 1957 and No.7322 dated June 3, 1959. During those years, the ruling government was headed by Adnan Menderes, the economical policies of which are said to be proposed as liberal but unfortunately the applications were not much different from protectionalist policies applied in the preceding years. In order to gain a quick look to the results of the economical policies, it is seen that during the period between 1950-1960, the only positive development was the ability to secure foreign funding especially for the purpose of importation in the amount of 600 million $.(Karluk, 2001:32)

The political and economical developments experienced in Turkey after that time has been very mixed and out of concern to this Study. Coming to 1985, the Revisions to the VI, XVI and XXII of the GATT Agreement was approved with Law No.85/9155 dated February 27, 1985 and also the other revision was approved with Law No.88/3447 dated May 12, 1988. Finally, Turkey has been a member of WTO since 26 March 1995. She is also member of G-33 (Also called "Friends of Special Products" in agriculture. Coalition of developing countries pressing for flexibility for developing countries to undertake limited market opening in agriculture), Friends of A-

D Negotiations (FANs) (Coalition seeking more disciplines on the use of anti-dumping measures) and W52 sponsors (Sponsors of TN/C/W/52, a proposal for "modalities" in negotiations on geographical indications).

After her membership to WTO, Turkey, entered into the customs union between the European Union (EU) in January 1996, by extending the Association Agreement, signed in 1964 and which foreshadows full EU membership for Turkey. With this Decision, Turkey had already started the process of adoption of a wide range of EU trade and trade-related legislation, covering the external trade regime, competition policy, intellectual property and consumer protection. (Some 30 pieces of legislation, decree or communiqués are listed in WTO, 1998) The commitments undertaken in the agreement with the EU go well beyond the basic requirements of a custom union, as well as Turkey's obligations in the Uruguay Round.

II) WTO DISPUTE SETTLEMENT PROCESS

The WTO is a set of self-enforcing agreements. The WTO dispute settlement system acts as a public good if it improves property rights and thus each member state's ownership stake in the system. Improved security of these rights reduces uncertainty, increasing the likelihood that firms and individuals in countries on both the export and import sides of international transactions make mutually beneficial, relationship-specific investments. Active participation in dispute settlement activity by WTO member countries can also have positive externalities if one country's litigation efforts contribute to the removal of a trade barrier that adversely affected the market access rights of the other WTO members. The presence of these two potential market failures require monitoring, vigilance, and possibly intervention by market non-participants so as not to miss opportunities for fully exploiting the global benefits of a functioning dispute settlement system.

A dispute arises when one member state adopts a trade policy measure or takes some action that one or more other member states consider to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries also can declare that they have an interest in the case and enjoy some rights.

Settling disputes is the responsibility of the Dispute Settlement Body (DSB) consisting all WTO member states and having the sole authority to establish "panels" of experts to consider the specific case, and to accept or reject the panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.[1]

The procedure of the dispute settlement follows the following stages, with the maximum allowable time in parenthesis:

1) Consultation (up to 60 days). Before taking any other actions, the countries in dispute are encouraged to talk to understand if they can settle their different approaches by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.
2) The Panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude the report). If consultations fail, the complaining country can ask for a panel to be appointed. The country in defense can block the creation of a panel once, but when the DSB meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

The agreement describes in some detail how the panels are to work. The main stages are:

- Before the first hearing, each side in the dispute presents its case in writing to the panel.
- **First hearing:** the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

- **First draft:** the panel submits the descriptive (factual and argument) sections of its report to the both sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report:** The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review:** The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report:** A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.
- **The report becomes a ruling:** The report becomes the DSB's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).[2]

The panel's report can only be rejected by consensus in the DSB, its conclusions are difficult to overturn. The panel's findings have to be based on the agreements cited. The panel's final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

III) TURKEY, AS A PARTY OF DISPUTES TO BE SOLVED UNDER WTO

Until February 2012, Turkey was in the position of respondent to 8 complaint, that of complainant in 2 cases, and she was the third party in a total number of 38 disputes. In this Study, especially the cases in which Turkey was respondent will be analyzed beginning with the latest one:

A) Complaint by India (DS428)

On 13 February 2012, India requested consultations with Turkey regarding certain safeguard measures on imports of cotton yarn (other than sewing thread) from all origins. India challenges:

- the definitive safeguard measures on imports of cotton yarn (other than sewing thread) imposed by Turkey with effect from 15 July 2008 for a period of three years,
- the provisional safeguard measures imposed by Turkey retroactively,
- the extension of the period of application of the definitive safeguard measures retroactively, and
- the underlying investigation, any amendments, replacements, related or implementing acts or measures to the above.

Before commencing to clarify the compliance of India, it should be noted that the dispute settlement process has not commenced yet. India alleges violations of the following Articles:

- Articles 2 and 2.1 of the Agreement on Safeguards[†]; this article is related with safeguard measures (SM) enabling the member state to apply SM to a product only in the case that such product is being imported into its territory, irrespective its source (Article 2.1) in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
- Articles 3 and 3.1; this Article mainly related with the requirement of the investigation to apply the SM and informing all the related parties such as importers, exporters and other parties to enable them to express their approach as to whether or not the application of a safeguard measure would be in the public interest. Additionally, the competent authorities shall publish a report setting forth their findings
- Article 4; in general, defines; serious injury which is the significant overall impairment in the position of domestic industry, threat of serious injury which means the producers as a whole of the like or directly competitive products operating within the territory constitutes a major proportion of the total domestic production of those products. 4.2 (a) set the principle that the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a

bearing on the situation of the domestic industry. In (b), it is implied that when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

- Article 5, specifies the possible SMs which should be only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The quantitative restrictions is required not to reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Article 6 is applicable to some specific cases when the delay in the application of the SM can cause damage which is difficult to repair and application of provisional SM, the duration of which is maximum 200 days.
- In fact, the main reasoning of the complaint of India against Turkey is based on the timing of the SM applied. Referring to Article 7.1, a member state the application period of a SM shall not exceed four years, unless the SM continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting (Article 7.2),but in all cases the application period shall not exceed eight years (Article 7.3). However, Article 7.2 refers to Article 8 and 12 as the compliant of India, respectively related with "Fees and Formalities connected with Importation and Exportation" and "Restrictions to Safeguard the Balance of Payments" respectively.
- Article 8 sets the principle that "All fees and charges imposed by the member states on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes". On the other hand, Article 12 is a very comprehensive one enabling the member states to impose restrictions on the quantity or value of merchandise permitted to be imported in order to safeguard its external financial position and its balance of payments, under the conditions detailed in the wording of the Article.

B) Complaint by the United States (DS334)[5]

On 2 November 2005, the United States requested consultations with Turkey concerning her 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). The United States considers that the foregoing measures are inconsistent with the following provisions:

- Article 2.1 of the Agreement on Safeguards (enabling the member state to apply SM to a product only in the case that such product is being imported into its territory (irrespective its source) and paragraph 1(a) of Annex 1 of the Trade Related Investment Measures (TRIMs) Agreement (this article requires the TRIMs under domestics regulation of the member states to be consistent with the national treatment obligation)
- Articles 3 of the GATT 1994- National Treatment on Internal Taxation and Regulation - the referred sub articles of 4 which requires the importation from any other member state to be treated no less favorable than domestic ones, 5 which prohibits any internal quantitative regulation in member states that requires domestic products and the mixture, processing or use of products. The sub article 7 also prohibits any internal quantitative regulation to allocate any such amount or proportion among external sources of supply.
- Articles 11 of the GATT 1994- General Elimination of Quantitative Restrictions. This article requires no prohibitions or restrictions other than duties, taxes or other charges, on the importation of any product or on the exportation or sale for export of any product destined for the territory of any other member state. But these restrictions will not be extended to:

- Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
- Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
- Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

- Article 4.2 of the Agriculture Agreement[6] which states that member states shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties such as quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures.
- Article 1 of the Import Licensing Agreement[7], requires from members to ensure that the administrative procedures used to implement import licensing regimes are in conformity with the Agreement on Import Licensing Procedures which is composed as parallel to the the relevant provisions of GATT 1994 in order to

prevent trade distortions, taking into account the economic development purposes and financial and trade needs of developing country members. The rules, as well as changes in the rules or derogations for import licensing procedures are required to be neutral in application and administered in a fair and equitable manner. The members should inform Committee on Import Licensing about its procedures to let them to be acquainted by every counter party.

- The Article 1.5 requires the procedures, as well as the application and renewal forms to be as simple as possible. It is stated that the applicants shall have to approach only one administrative body in connection with an application.
- The Article 3 is related with the non-automatic licensing which is required not to have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures are required to be no more administratively burdensome than absolutely necessary to administer the measure. The Article 3.3 focus on the implementation of quantitative restrictions for which members are required to publish sufficient information about the basis for granting and/or allocating licenses. The Article 5, as a whole, specifies all relevant trade related information.

Panel and Appellate Body proceedings

Upon the application of the US, DSB established a panel. Australia, China, the European Communities, Korea, Thailand, Argentina, Egypt and Pakistan reserved their third-party rights in July 2006. In September 2007, the Panel report was circulated. The Panel found that Turkey's decision, from September 2003 and for different periods of time, to deny, or fail to grant, Certificates of Control to import rice outside of the tariff rate quota, constitutes a quantitative import restriction, as well as a practice of discretionary import licensing, within the meaning of footnote 1 to Article 4.2 of the Agreement on Agriculture. Accordingly, it is a measure of the kind which has been required to be converted into ordinary customs duties and is therefore inconsistent with Article 4.2 of the Agreement on Agriculture. The Panel also concluded that Turkey's requirement that

importers must purchase domestic rice, in order to be allowed to import rice at reduced-tariff levels under the tariff quotas, accorded less favorable treatment to imported rice than that according to like domestic rice, in a manner inconsistent with Article 3-4 of the GATT 1994. In October 2007, the DSB adopted the Panel report.

In November 2007, Turkey informed the DSB that it was in the process of implementing the DSB rulings and recommendations and that it had already engaged in consultations with the US to explore what additional steps might be taken to ensure a mutually satisfactory outcome. In April 2008, Turkey and the US informed the DSB that they had agreed that the reasonable period of time for Turkey to comply with the recommendations and rulings of the DSB shall be six months expiring in April 2008. In May 2008, Turkey and the United States notified the DSB of an Agreement regarding procedures under Articles 21 and 22 of the DSU. At the DSB meeting in October 2008, Turkey stated that it had complied with the DSB's recommendations.

C) Complaint by Hungary (DS256)[8]

In May 2002, Hungary requested consultations with Turkey about Turkey's import ban on pet food from Hungary. Hungary claimed that this import ban, which applies to any European country from the beginning of 2001, is imposed with the declared intention to be protected against the spread of BSE (Bovine Spongiform Encephalopathy) but since Hungary is a BSE-free country, the danger of alleged cross-infection does not seem to have any scientific basis. Additionally, Hungary submitted that there was neither official publication of the Turkish regulation imposing the ban, nor notification of it to the relevant WTO Committee.

Hungary considered that the import ban is inconsistent with Turkey's obligations under Article 11 of the GATT 1994- General Elimination of Quantitative Restrictions, which prohibits any quotas, import or export licenses or other measures other than duties, taxes or other charges on the importation of any product of the territory of any other member state or on the exportation or sale for export of any product destined for the territory of any other member state.

Hungary, also referred to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures[9], especially Article 2, which requires any sanitary or phytosanitary measure to apply only to the extent necessary to protect human, animal or plant life or health and the reasoning of such application should be based on scientific principles and not to arbitrarily or unjustifiably discriminate between members where identical or similar conditions. Also, Article 5 which requires the so called measures to be based on an assessment, by using risk assessment techniques developed by the relevant international organizations, as well as on scientific evidence. Article 6 of the same Agreement which requires the adaptation of the measures to the sanitary or phytosanitary characteristics of the area of import was also referred. Hungary also complaint that Turkey did not provide the transparency as required by the Article 7 of the Agreement.

Despite the request of Hungary DSB decide not to establish a panel, consequently no withdrawal and no mutually agreed solutions notified.

D) Complaint by Ecuador (DS237)[10]

On 31 August 2001, Ecuador requested consultations with Turkey concerning certain import procedures for fresh fruits and especially for bananas refering to the "Communiqué for Standardization in Foreign Trade" published by the Under-Secretariat of Foreign Trade in the Official Journal 24271 of 25 December 2000. Ecuador alleged that this procedure is a barrier to trade which is inconsistent with the obligations of Turkey under GATT 1994, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Import Licensing Procedures, the Agreement on Agriculture and the GATT. Ecuador considers that the foregoing measures are inconsistent with the following provisions:

- The Article 2 refers to the Schedules of Concessions[11] which record commitments regarding acceptable barriers, including commitments to progressively eliminate a barrier leading to 'duty-free' treatment of imported goods. Where barriers remain, WTO rules attempt to ensure that they are at least transparent and that governments have an opportunity to negotiate further reduction of these barriers. The Schedules serve these WTO objectives by setting an upper limit on the customs duties a member may charge on each imported product.

This helps to show importers and exporters where they stand. The Schedules record the starting point for multilateral negotiations to reduce barriers, and they list the members who may have 'paid' for a tariff cut or services concession that all members enjoy under the most-favoured nation (MFN) rule.

- A member may offer some reciprocal reduction in a bound tariff in return for the binding listed in the Schedule. Under the WTO agreements, the MFN obligation means members cannot normally discriminate between their trading partners. Grant one member state a special favour (such as a lower customs duty rate for one of their products), and it should be the same for the others.
- Ecuador referred to the Article 3 which establishes the national-treatment rule as well. This requires that the products of other countries be treated the same way as like products manufactured in the importing country. No domestic laws should be applied to imported products to protect domestic producers from the competing (like) products and imported products should receive treatment under national laws that "is no less favourable" than the treatment given to like domestic products.[12]
- Article 8 is related with Fees and Formalities connected with Importation and Exportation and requires that these charges be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.
- Article 10 is related with publication and administration of trade regulations, agreements affecting the international trade to be published promptly in such a manner as to enable governments and traders to become acquainted with them. Additionally, no measure of general application effecting an advance in a rate of duty or other charge on, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published. Article 11 is also referred which is about the General Elimination of Quantitative Restrictions stating that No prohibitions

> or restrictions other than duties, taxes or other charges shall be instituted or maintained by any member state on the importation or on the exportation or sale for export of any product destined for the territory of any other member state.

Ecuador also referred to the Agreement on the Application of Sanitary and Phytosanitary Measures, especially Article 2.3 requiring the sanitary and phytosanitary measures not to arbitrarily or unjustifiably discriminate between member states and not to constitute a disguised restriction on the international trade. Also by referring to the Annexes of B and C which is about Transparency of Sanitary and Phytosanitary Regulations and Control, Inspection and Approval Procedures respectively and Article 8, Ecuador requires the before mentioned standardization application of Turkey on import of fresh fruits, especially bananas.

Additionally, Ecuador referred to Article 1 of the Agreement on Import Licensing Procedures, the subarticle 2 and 3 requires that the administrative procedures should be in conformity with the relevant provisions of the GATT, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing, also they should be neutral in application and administered in a fair and equitable manner.

Another supportive regulation to Ecuador's complaint is 4 of the Agreement on Agriculture which is about the market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.

Panel and Appellate Body proceedings

In June 2002, Ecuador requested the establishment of a panel but the DSB deferred the establishment of a panel. Further to a second request by Ecuador, the DSB established a panel at its meeting in July 2002. During the meeting, Ecuador also requested the DSB to suspend the composition of the panel as the parties were engaged in consultations to find a mutually satisfactory solution to the dispute between them. In November 2002, the

parties to the dispute informed the DSB that they had found a mutually agreed solution to their dispute.

Turkey adjusted the amount and duration of the "Kontrol Belgesi" as required by the Comminique 2002/21 and she also commited not to aplly the measures which are the reason of the complaint of Ecuador.

E) Complaint by Brazil (DS208)[13]

In October 2000, Brazil requested consultations with Turkey concerning the anti-dumping duty on steel and iron pipe fittings from Brazil, imposed by Communication No. 2000/3 (published in the Turkish official gazette on 26 April 2000). Brazil considered that Turkey failed to ensure proper notifications in this case, that its establishment of the facts was not proper, and that its evaluation of these facts was not unbiased nor objective, particularly in relation to:

- the initiation of the investigation;
- the conduct of the investigation, including the evaluation, findings and determinations of dumping and injury;
- the evaluation, findings and determinations of the causal link between dumping and injury;
- the imposition of the anti-dumping duty.

Brazil considered that Turkey has acted inconsistently with Article 11 of the GATT 1994 which is directly related with anti-dumping and countervailing duties. In that Article, dumping is accepted to occur when the products of one country are introduced into the commerce of another country at less than the normal value of the products, like products, in the absence of those two, that of (i) the highest comparable price for the like product for export to any third country or (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit. Each member state is entitled to levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product.

The Article states one of the basic application of WTO about antidumping which rules that no countervailing duty shall be levied on any

product in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The anti-dumping or countervailing duty on specific products by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation and export subsidization is also restricted. But, in the case of such application is necessary to protect from material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry is permitted. But, a system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury.

Brazil, also referred to Articles 2, 3, 5, 6, 12 and 15 of the Anti-Dumping Agreement. Article 2 stipulates the technical and functional details of the determination of the dumping and Article 3 gives that of the determination of the injury. Article 12 specifies the Public Notice and Explanation of Determinations. Article 5 and 6 sets the principles of the Initiation and Subsequent Investigation and Evidence respectively.

Article 15 is a special Article in relation with the Developing Country Members when considering the application of anti-dumping measures. Possibilities of constructive remedies are decided to be explored before applying anti-dumping duties where they would affect the essential interests of developing country members.

Despite her representation as summarized above, Brazil did not ask for the establishment of a panel and there exist no publication about the mutual agreement between the parties. But, it is reported by as a representative of Turkish Import Agency, the representations of Brazil had been nullified during bilateral negotiations.

F) Complaint by Thailand (DS47)[14]

In June 1996, Thailand requested consultations with Turkey concerning Turkey's imposition of quantitative restrictions on imports of textile and clothing products from Thailand.

Violations of GATT Articles 1, 2, 11 and 13 are alleged:

- Article 1 is related with famous rulling of the WTO known as Most-Favoured-Nation Treatment (MFN) and states that with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all other matters, any advantage, favour, privilege or immunity granted by any member state to any product originating in or destined for any other member state shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other member states.
- Article 2 is about the Schedules of Concessions which is summarized in page 7 of this Study which record commitments regarding acceptable barriers, including commitments to progressively eliminate a barrier leading to 'duty-free' treatment of imported goods.
- Article 11 is related with the General Elimination of Quantitative Restrictions which is summarized in page 5 of this Study which requires no prohibitions or restrictions other than duties, taxes or other charges, on the importation of any product or on the exportation or sale for export of any product destined for the territory of any other member state.
- Article 13 is related with Non-discriminatory Administration of Quantitative Restrictions. No prohibition or restriction shall be applied on the importation or exportation of any product, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

In applying import restrictions to any product, member state shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions: (a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed (b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

Article 2 of the Textiles Agreement is also referred in the consultation request which is basically related with the notification requirement about the quantitative restrictions within bilateral agreements including the restraint levels, the growth rates and flexibility provisions, to the Textiles Monitoring Body (TMB).

Despite the request of Thailand, no panel is established and consequently no withdrawal and no mutually agreed solutions notified.

G) Complaint by Hong Kong (DS29)[15]

In February 1996, Hong Kong requested consultations with Turkey concerning Turkey's quantitative restrictions on imports of textile and clothing products. Hong Kong claimed that those measures are in violation of GATT Articles 11 and 13 which are related with General Elimination of Quantitative Restrictions and Non-discriminatory Administration of Quantitative Restrictions respectively and they are summarized in the similar consultation requested by Thailand in the preceding complaint explanation above.

As of the beginning of 1996, Turkey entered into custom union with EU which necesitates to apply the same quantity restrictions and surveillance measures on textiles under the Common trade policy of EU. This development nullified the consultation request of Hong Kong.

H) Complaint by the United States (DS43)[16]

This request for consultations, dated 12 June 1996, concerns Turkey's taxation of revenues generated from the showing of foreign films. Violation of GATT Article 3 which is about the National Treatment is alleged. This

Article prohibits any type of internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production. In this frame work, the Article requires that the imported products shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

In January 1997, the United States requested the establishment of a panel and the DSB established a panel. Despite the establishment of the panel, the parties notified the DSB of a mutually agreed solution in May 1997. This solution was based on the commitment of Turkey to equalize the taxation on the proceeding of the national and foreign cinema films.

İ) Complaint by India (DS34)[17]

On 21 March 1996, India requested consultations with Turkey concerning Turkey's imposition of quantitative restrictions on imports of a broad range of textile and clothing products. India claimed that those measures are inconsistent with Articles 11 and 13 of GATT 1994:

- Article 11 is related with the General Elimination of Quantitative Restrictions which is summarized in page 5 of this Study which requires no prohibitions or restrictions other than duties, taxes or other charges, on the importation of any product or on the exportation or sale for export of any product destined for the territory of any other member state.
- Article 13 is related with Non-discriminatory Administration of Quantitative Restrictions. No prohibition or restriction shall be applied on the importation or exportation of any product, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

India also referred to the Article 2 of the Agreement on Textile and Clothing which is basically related with the notification requirement about the quantitative restrictions within bilateral agreements including the restraint levels, the growth rates and flexibility provisions, to the Textiles Monitoring Body (TMB).

Panel and Appellate Body proceedings

In February 1998, India requested the establishment of a panel but the DSB deferred the establishment. Turkey denied to take part in the consultations unless the EU is represented as well.

Further to a second request to establish a panel by India, the DSB established a panel at its meeting in March 1998 and in June 1998, the Panel was composed. Turkey complaint about the lack of clearance in the panel establishment request of India in relation with the specification of the products but this complaint is rejected. Then,Turkey, again, declared her approach about the inclusion of EU into the dispute. But the DSB, mentioned that the Custom Union of Turkey with EU is not the member of WTO, but Turkey individually has been and DSB has no power to urge EU to enter into the dispute settlement process.[17]Nevertheless, the Panel requested information from EU.[18]

The report of the Panel was circulated to Members in May 1999. The Panel found that Turkey's measures are inconsistent with Articles 11 and 13 of GATT 1994, and consequently inconsistent also with Article 2.4 of the ATC.

In July 1999, Turkey notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated on 21 October 1999. The Appellate Body upheld the Panel's conclusion that Article 16 of GATT 1994 does not allow Turkey to adopt, upon the formation of a customs union with the EC, quantitative restrictions which were found to be inconsistent with Articles 11 and 13 of GATT 1994 and Article 2.4 of the ATC. However, the Appellate Body concluded that the Panel erred in its legal reasoning in interpreting Article 14 of GATT 1994.

At its meeting on 19 November 1999, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

At the DSB meeting of November 1999, Turkey stated its intention to comply with the recommendations and rulings of the DSB. On 7 January 2000, the parties informed the DSB that they had agreed that the reasonable period of time for Turkey to implement the DSB's recommendations and rulings would expire on 19 February 2001. Pursuant to the agreement reached, Turkey also was to refrain from making more restrictive restrictions affecting imports of specified textile and clothing products from India, to increase the size of the quotas of India on certain specified textile and clothing products and to treat India no less favorably than any other Member with respect to the elimination of or modification of quantitative restrictions affecting any product covered by the agreement.

On 6 July 2001, the parties to the dispute notified the DSB that they have reached a mutually acceptable solution regarding implementation by Turkey of the conclusions and recommendations adopted by the DSB on the matter. Pursuant to the Agreement, the compensation remained effective until Turkey removes all quantitative restrictions applied as of 1 January 1996 in respect of imports from India for the 19 categories of textile and clothing products. At the meeting of the DSB on 18 December 2001, India made a statement concerning the lack of notification by Turkey of tariff reductions carried out as part of the implementation process.

CONCLUSION

One of the main critics to the GATT 1947 dispute settlement system which was traditionally operated by consensus for the panel decisions which results with delay when parties (usually the losing party, but sometimes joined by others) block adoption of a panel report by the GATT Council. Thus, if the losing party prevents formation of a consensus, the report is not adopted and has no effect. (Davey, 1987; 10) This critics was solved when WTO was established by its well defined decision making process in the form of negative consensus. The panel report is considered for adoption by the DSB 20 days after it has been circulated to members. Within 60 days of the date of circulation it is adopted, unless the DSB decides by consensus not

to adopt the report (opposite or negative consensus), or if one of the parties notifies its decision to appeal. (Öztürk, 2000:19)

The dispute settlement mechanism of the WTO operated by the DSB consist of mainly four stages which are consultation, panel establishment and decision making finalized by panel report, appellate process and recommendation and follow up of the rulings. When a request of dispute settlement arrives to the DSB, firstly she motivates the counterparties to reach a mutually acceptable solution before going forward into the panel decision making step. However, in case such an acceptable solution has not been formulated between the parties, the DSB establishes the panel which in turn decides about the issue. The decision can be in the form of determination of the violence to the GATT rules and recommendation to the relevant party to finalize this inconsistency although application to the Appellate is always an open way to the losing party. The decision of the panel as approved by the appellate is binding on the parties after the approval of the WTO and follow up is done by the WTO. In the case of lack of application of the recommendation and rulings the suffering party may ask for the reparation or the suspension of the concessions for realizing retaliation.

This decision making process was not internalized by many of the WTO members when they approved the original agreement of GATT 1947 as it is the case for Turkey who accepted the GATT rulings on 1953. On that historical times, the economical, social and political environment of Turkey, and the world as well, was substantially different from the new era of WTO finalized in 1995. In fact operationally, Turkey became involved into EU beginning from 1996 under the custom union and as a consequence of this decision, Turkey will be in a position to accept and apply the principles of WTO if she had not be one of the founding members of WTO in 1995.

In fact, in a liberalized world, where even Russia has became the number 155th member of the WTO as of the end of 2011, the exclusion of Turkey from WTO geography will not only be impossible but also deleterious for his international positioning. As the President Putin said “The WTO membership gives the opportunity to defend our interests in a

civilized and legal way" during his speech about the evaluation of the decision Russia's membership.[19]

The economical impact of the membership of Turkey to WTO, is a very hard to calculate, if not impossible, but the trade policy impact is the application of the GATT rulings and recommendations which may sometimes contradict with that of EU. Since 1996, Turkey was on the door of the DSB to answer the complaints and/or to hear the panel reports for nine cases as summarized in Table: 1.

A member country can be in a position of complainant, respondent of a dispute or a third party to a dispute of the international trade issue in which the member has also something to say or something to gain if it is solved. The following Table: 2 shows the distribution of the disputes among the major member countries. The higher number of the disputes in which Unites States and European Union take part is not surprising taking into account the volume of international trade they participated. In the same framework China and India with their year by year increasing international trade volume are other two member states who are part of a dispute in some way more frequently.

TABLE 1 : SUMMARY TABLE OF THE COMPLAINT CASES OF TURKEY

Title	Date of Request of Consultation	Complainant	Third Parties	Agreements cited: (as cited in request for consultations)	Finalization	
Safeguard measures on imports of cotton yarn (other than sewing thread)	13 February 2012	India		Safeguards: Art. 3, 4, 5, 6, 7.1, 7.2, 7.3, 7.5, 2, 12.1(c) GATT 1994: Art. XX:1(a)	Ongoing	
Measures Affecting the Importation of Rice	2 November 2005	United States	Argentina; Australia; China; Egypt; European Union; Korea, Republic of; Pakistan; Thailand	Import Licensing: Art. 3.2, 3.3, 3.5(a), 3.5(b), 3.5(d), 3.5(e), 3.5(f), 3.5(g), 3.5(h), 3.5(k), 1.2, 5.1, 5.2, 5.3, 5.4, 1.3, 1.4, 1.5, 1.6 Agriculture: Art. 4.2 Trade-Related Investment Measures (TRIMs): Annex 1, Art. 2.1 GATT 1994: Art. X:3(a), III, III:4, X:1, X:2, XI:1	Panel Report 21 September 2007	On 20 November 2007, Turkey informed the DSB that it was in the process of implementing the DSB rulings and recommendations and that it had already engaged in consultations with the United States to explore what additional steps might be taken to ensure a mutually satisfactory outcome. On 9 April 2008, Turkey and the United States informed the DSB that they had agreed that the reasonable period of time for Turkey to comply with the recommendations and rulings of the DSB shall be six months expiring on 22 April 2008. On 7 May 2008, Turkey and the United States notified the DSB of an Agreement regarding At the DSB meeting on 21 October 2008, Turkey stated that it had complied with the DSB's recommendations.
Import Ban on Pet Food from Hungary	3 May 2002	Hungary		Sanitary and Phytosanitary Measures (SPS): Annex B, Art. 5, 6, 7, 2 Agriculture: Art. 14, GATT 1994: Art. XI	No dispute panel established and no withdrawal or mutually agreed solution notified.	
Certain Import Procedures for Fresh Fruit	31 August 2001	Ecuador	Colombia; European Union; United States	Import Licensing: Art. 1, 1.2, 1.3, 1.6 Sanitary and Phytosanitary Measures (SPS): Annex B, Annex C, Art. 7, 8, 2.3, Agriculture: Art. 4, 4.2, Services (GATS): Art. VI, XVII, GATT 1994: Art. II, III, III:4, VIII, X, XI, XI:1	On 22 November 2002, the parties to the dispute informed the DSB that they had found a mutually agreed solution to their dispute.	
Anti-Dumping Duty on Steel and Iron Pipe Fittings	9 October 2000	Brazil		Anti-dumping (Article VI of GATT 1994): Art. 1, 3, 5, 6, 2, 12, 15, GATT 1994: Art. VI		
Restrictions on Imports of Textile and Clothing Products	20 June 1996	Thailand		Textiles and Clothing: Art. 2 GATT 1994: Art. I, II, XI, XIII, XXIV		
Taxation of Foreign Film Revenues	12 June 1996	United States		GATT 1994: Art. III	Settled or terminated (withdrawn, mutually agreed solution) on 14 July 1997	
Restrictions on Imports of Textile and Clothing Products	12 February 1996	Hong Kong, China		Textiles and Clothing: Art. 2 GATT 1994: Art. XI, XIII, XXIV	No dispute panel established and no withdrawal or mutually agreed solution notified.	
Restrictions on Imports of Textile and Clothing Products	21 March 1996	India	EU; Hong Kong, China; Japan; Philippines; Thailand; United States	Textiles and Clothing: Art. 2 GATT 1994: Art. XI, XIII, XXIV	Panel Report 31 May 1999	Further to a second request to establish a panel by India, the DSB established a panel on 13 March 1998. On 11 June 1998, the Pane was composed. The Panel found that Turkey's measures are inconsistent with Articles XI and XIII of GATT 1994, and consequently inconsistent also with Article 2.4 of the ATC. The Panel also rejected Turkey's assertion that its measures are justified by Article XXIV of GATT 1994.
					Appellate Body Report 22 October 1999	On 26 July 1999, Turkey notified its intention to appeal. The Appellate Body upheld the Panel's conclusion that Article XXIV of GATT 1994 does not allow Turkey to adopt, upon the formation of a customs union with the EC, quantitative restrictions which were found to be inconsistent with Articles XI and XIII of GATT 1994 and Article 2.4 of the ATC. However, the Appellate Body concluded that the Panel erred in its legal reasoning in interpreting Article XXIV of GATT 1994.

Table: 2

THE DISTRIBUTION OF THE DISPUTES AMONG THE MEMBER COUNTRIES

	As complainant	As respondent	As 3rd party
United States	100	115	94
European Union	86	70	118
China	8	26	89
India	21	21	74
Argentina	15	17	39
Canada	33	17	76
Japan	15	15	123
Brazil	25	14	67
Mexico	21	14	66
Korea	15	14	63
Chile	10	13	33
Australia	7	12	67
Turkey	2	9	38

Out of those 9 disputes in which Turkey is the respondent, the dispute requested by India about the regarding certain safeguard measures on imports of cotton yarn (other than sewing thread) from all origins is dated February 13, 2012, is still pending.

Out of those 9, 3 are about the restrictions on imports of textile and clothing products which are requested by Thailand, Hong Kong and India and 2 of them finalized without any withdrawn or mutually agreed solutions. So the total number of disputes is functionally is 7.

Only in 2 of them, the panel decision making process is commenced and the panel reports of both of them were against Turkey. Turkey appealed the panel report in relation with the Restrictions on Imports of Textile and Clothing Products dated May 31, 1999, but the decision of the Appellate was again against Turkey

Considering all of the above, it seems that Turkey has generally been in compliance with the principles of the international trade system imposed by the WTO. The requirements of the custom union with EU in 1996 also contributed to the liberalization of Turkish foreign trade policies. But EU policies adapted by Turkey may also create some

discrepancies with the WTO principles as in the case of the request of consultation dated March 21, 1996 by India concerning Turkey's imposition of quantitative restrictions on imports of a broad range of textile and clothing products. In this case, although Turkey denied to take part in the consultations unless the EU is represented as well, the DSB expressed that Custom Union of Turkey with EU is not the member of WTO, but Turkey individually has been so.

From the perspective of developing countries, it is advised to allocate less resource to other trade related initiatives than the Dispute Settlement Mechanism (DSM) of the WTO.[1] However, the trade barriers imposed by the WTO system are very important for the economies of the developing countries, including Turkey, and they should employ effective strategies defending themselves and for their economies and for using the system for their interests. They have much to learn from developed countries' experiences and also from other developing countries that actively participate to the DSM. (Aydın, 2007:18)

In fact, WTO itself has the interests of the developing countries on its agenda as it was in the past. Referring to the request of the developing member states to take care the developing countries difficulties in terms of economics and procedures when forming a panel, the decision of 1966 set the framework of the "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" brought participation of third parties having substantial interest, panelist appointment from developing countries when a party to a dispute is a developing country and the other is a developed country, and the technical support of GATT Secretary on the request of less developed countries. (Kufuor, 1997: 41)

The developing countries also have the opportunity partially subsidized legal assistance through the Advisory Center on WTO Law in Geneva, an international legal services organization. The Center is largely funded by European governments, although developing country members also pays fee that is determined in relation with their per capita income and share of world trade.

On the other side, especially countries with strong private sector capacity like Turkey, should set routine procedures to improve relations

with the private sector and identify, prioritize and investigate trade barriers in coordination with them.

When dealing with the DSM and the developments in the relevant rulings, Turkey as the other developing countries can also establish regional centers to organize their issues on WTO issues like the Trade Law Center for Southern Africa (TRALAC) of Southern Africa.

END NOTES

[1] Referring to the request of the developing member states to take care their difficulties in terms of economics and procedures when forming a panel, the decision of 1966 set the framework of the "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" which was accepted as a result of Tokyo Rounds in 1979. This Understanding brought participation of third parties having substantial interest, panelist appointment from developing countries when a party to a dispute is a developing country and the other is a developed country, and the technical support of GATT Secretary on the request of less developed countries.

[2] http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

[3] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds428_e.htm

[4] Safeguard is used to restrain international trade in order to protect a certain home industry from foreign competition

[5] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds334_e.htm

[6] http://www.wto.org/english/res_e/booksp_e/analytic_index_e/agriculture_01_e.htm

[7] http://idatd.eclac.cl/controversias/Normativas/OMC/Ingles/Licensing.pdf

[8] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds256_e.htm

[9] http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

[10] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds237_e.htm

[11] http://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm12 Defining "like products" has important environmental implications. Although the term "like" has not been specifically defined, the WTO's dispute settlement system has several times had to wrestle with whether certain products were like, and has developed some criteria to help it do so. These include the end uses in a given market, consumer tastes and habits, and the products' properties, nature and qualities. Most recently, the dominant criterion that has emerged in applying the like-products test is commercial substitutability whether two goods compete against each other in the market as substitutes.

[13] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds208_e.htm

[14] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds47_e.htm[1]5

[15] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds43_e.htm

[16] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds34_e.htm

[17] *Turkey - Textile*, WT/DS334/R

[18] World Trade Organization, WTO Dispute Settlement: One Page Case Summaries (1995-December 2007), Cenevre: World Trade Organization, 2008, s. 12.

[19] Prime Minister Vladimir Putin during the report to the State Duma on government performance in 2011 (ITAR-TASS, April 11, 2012)

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http://idatd.eclac.cl/controversias/Normativas/OMC/Ingles/Licensing.pdf

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http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds237_e.htm

http://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm
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http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds29_e.htm
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds43_e.htm
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds34_e.htm