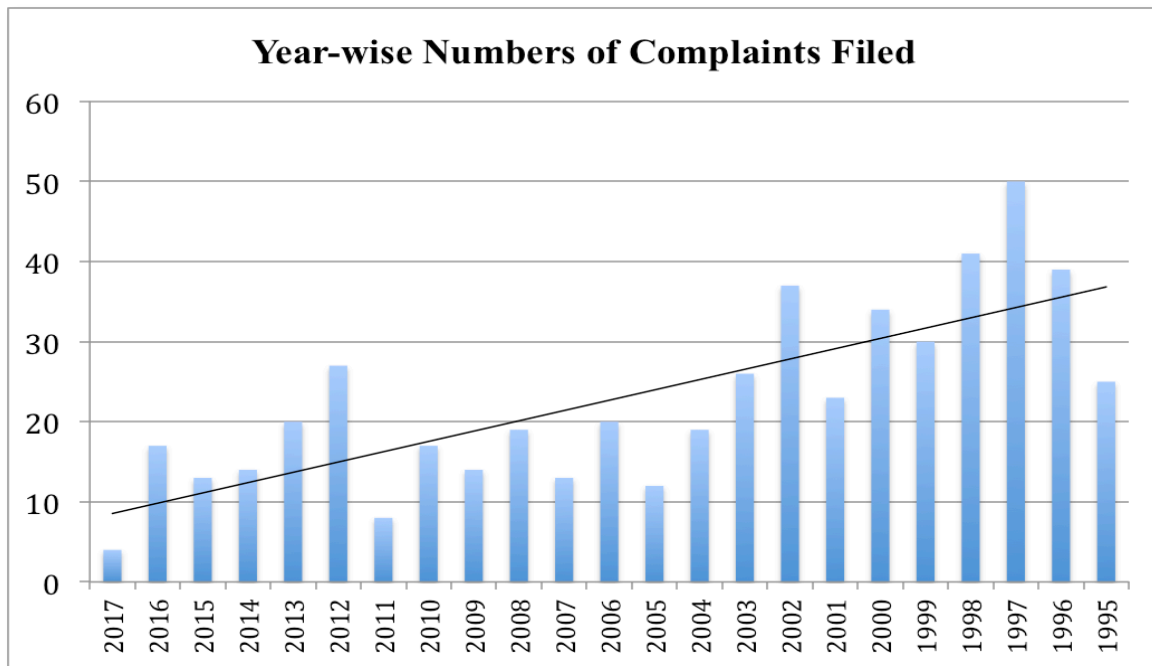


### **3. COMPLAINTS FILED BY MEMBERS UNDER DSM: AN ANALYSIS**

3.1 Complaints have been filed under the new DSM immediately after establishment of the WTO in 1995. Till January 2017, 521 complaints have been filed. These complaints are in various formats, i.e., they are filed by one member against one other; more than one member against a single member; covering provisions of a single agreement; or more than one agreement; and all in various permutations.

**Figure 1** Year-wise Numbers of Complaints



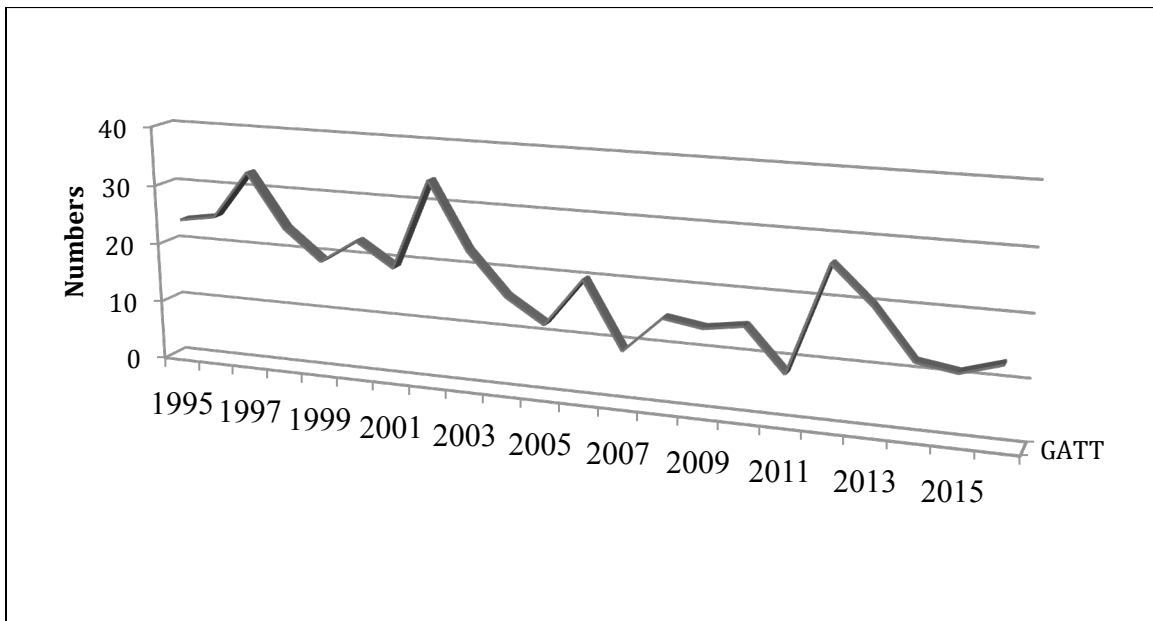
*Source: Based on information from WTO Website*

3.2 The year-wise filing of complaints by the membership is depicted in Figure 1. It may be observed that there is a downward trend in the filing of new complaints. This trend can be attributed to the reason that following establishment of the WTO all members were in the process of amending/ implementing new legislations for creating domestic trade regimes compatible with the new WTO regulations. In doing so there

were large numbers of interpretative issues that arose. These were resolved through the DSM.

3.3 The updated General Agreement on Tariff and Trade (GATT), which is the cornerstone of the global trade in goods, is the one that gave rise to most of the disputes. GATT provisions invariably get quoted in complaints primarily relating to other agreements, nonetheless the trend towards fewer complaints also can be seen in GATT related complaints, as is depicted in Figure 2. One reason for the reduction in GATT related complaints is the growing body of Panel/ AB decisions that have clarified/ interpreted the large portion of the legal text.

**Figure 2** GATT Complaints

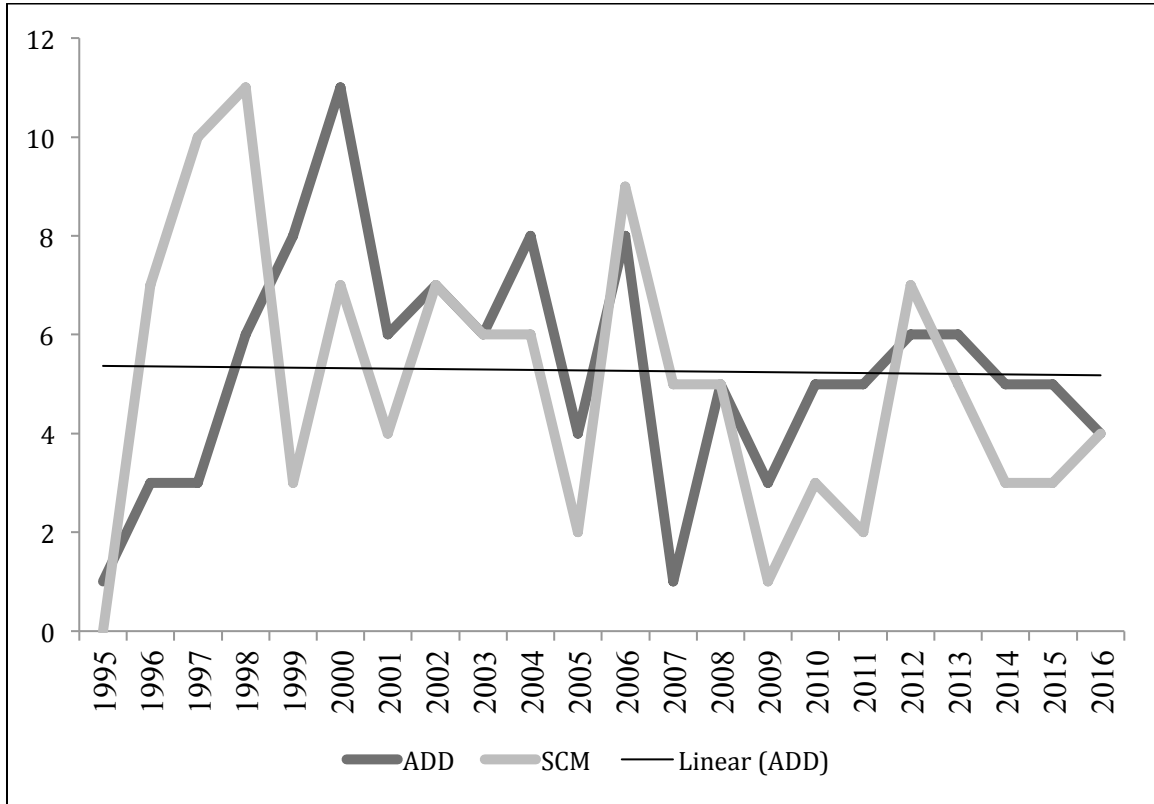


*Source: Based on information on WTO website*

3.4 Disputes relating to specific agreements that are related to specific trading situations and instances have been generally more stable. For example, if we look at the two trade defence agreements (on Anti-dumping (ADD) and Subsidies and

Countervailing (SCM) measures) the decline is much more gradual and certainly not to this extent. The linear trend-line (see Figure 3) shows a slight decline over the two-decade period these agreements have been in force.

**Figure 3** Trend of Trade Defence Disputes



*Source: Based on information on WTO website*

### **Analysis of Complaints on the Basis of Income Status**

3.5 To evaluate the participation and use by developing countries of the DSM to protect their trade interests, certain assumptions are needed as in the WTO there is no clear definition for ‘developing countries’<sup>19</sup>. LDCs are classified by the UNCTAD<sup>20</sup> and Developed Country label is through self-selection. Even the rest can’t broadly be

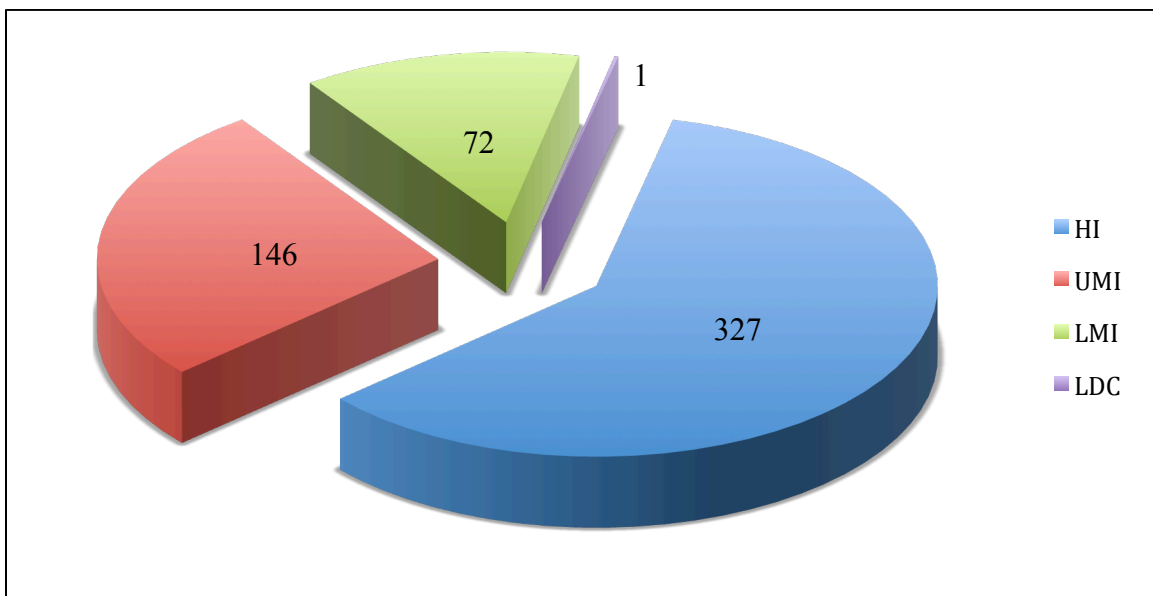
<sup>19</sup> [https://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm)

<sup>20</sup> <http://unctad.org/en/Pages/ALDC/Least%20Developed%20Countries/UN-recognition-of-LDCs.aspx>

included in the category of developing countries as in the WTO the former socialist republics have been categorised as ‘Economies-in-transition’. Thus, the traditional developed-developing-LDC classification is neither feasible nor useful for meaningful evaluation. Further, a large ‘developing country’ category will prove erroneous as within this category there is a wide income disparity, and thereby the financial wherewithal, which has a direct impact on a member’s ability to use the DSM.

3.6 A better classification is offered by the World Bank, which classifies the countries

**Figure 4** Complainants (Income-wise)



*Source: Based on information from WTO Website*

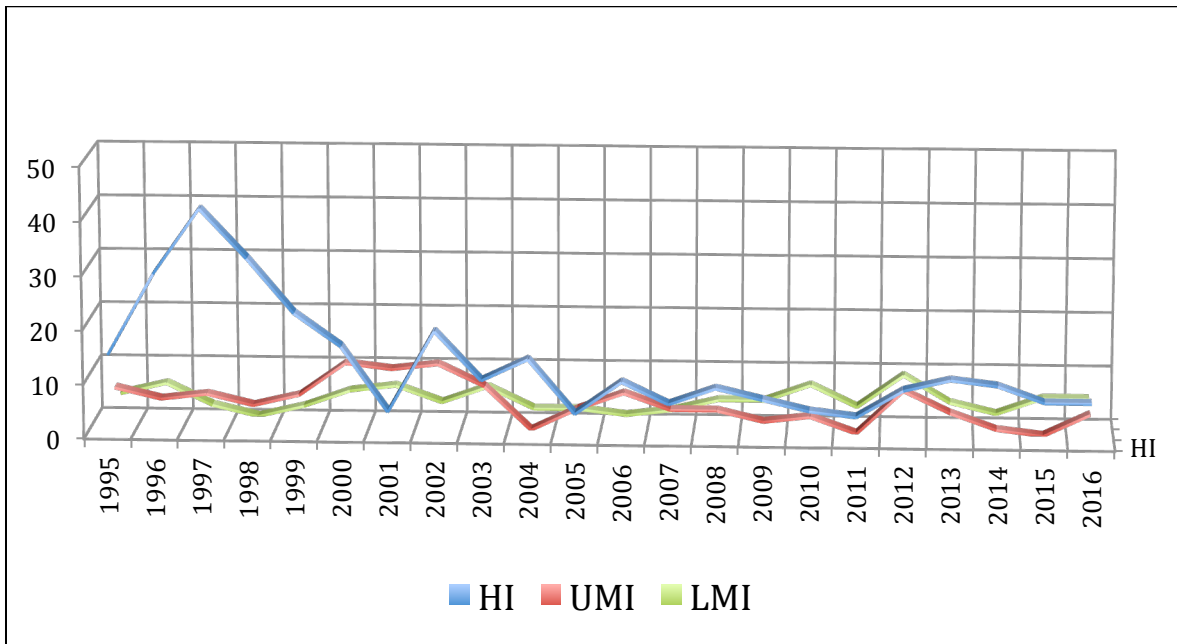
on the basis of their incomes into four categories - High Income (HI); Upper Middle Income (UMI); Lower Middle Income (LMI); and Low Income (LI) categories<sup>21</sup>. The current classification of countries on this basis is appended as Annex B. Using this income classification and categorising the complainants on that basis the utilisation of the

<sup>21</sup> <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

DSM is depicted in Figure 4. The HI members, largely the developed country members of WTO, have initiated 327 cases, i.e., 60% of the disputes. While the developing countries, whatever their economic structures, have filed the balance 40% of the complaints divided in a ratio of about 2:1 between the UMI members (146 cases) and LMI members (72 cases). The LI countries (so far only Bangladesh, a LDC member), have initiated only 1 complaint till January 2017 in the WTO.

3.7 Break up of complaints filed annually by the three categories of members demonstrates the very active use of the DSM by the HI members in the early years of WTO (see Figure 5). While they have consistently remained above the levels of UMI and LMI members, there has been a relative equalisation in the numbers of complaints filed in the later years.

**Figure 5 Annual Complaints Filed (Income-wise)**



*Source: Based on Information from WTO Website*

3.8 To see whether there is any clustering of members regarding the complaints filed, i.e., which member has complained against whom, classified on income basis, is presented in the matrix contained in Table 1. It is seen HI members have filed around 60% of their complaints against other HI members, representative of their *inter se* trade interest/ relationship. Around 27% of the HI complaints are directed at UMI members and the balance 13% towards LMI members; This largely reflects the trade interest of members. There are no real surprises here in this break-up of cases.

**Table 1** Matrix of Disputants

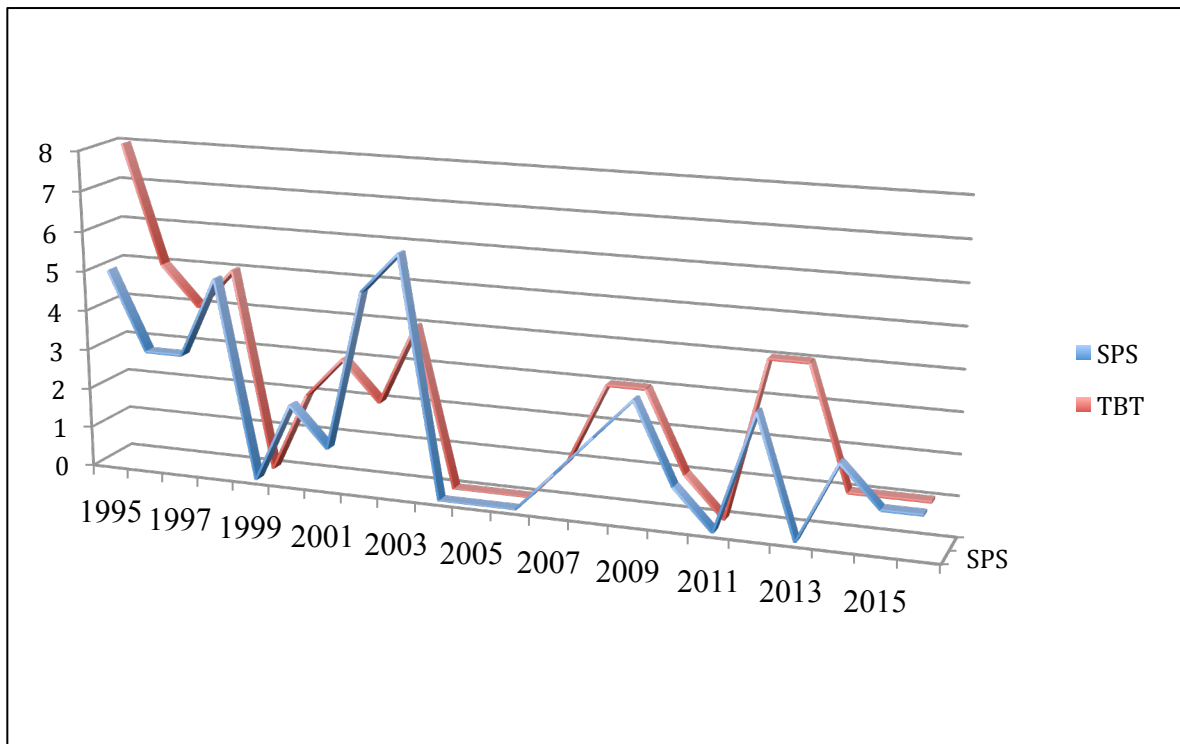
Respondent Complaint	High Income (HI)	Upper Middle Income (UMI)	Lower Middle Income (LMI)	Low Income (LDC)
High Income (HI)	194	89	44	0
Upper Middle Income (UMI)	90	43	12	0
Lower Middle Income (LMI)	43	21	08	0
Low Income (LDC)	0	0	01	0

*Source: Based on Information from WTO Website*

3.9 For the developing countries, both in the Upper Middle and Lower Middle Income categories there are again no surprises. Most of their complaints, about 60% for both are directed at the HI Members. This largely reflects their market interests as in both these categories the main markets are the developed countries in the HI group. Their complaints against UMI and other LMI members are roughly equal at 30% and 10%. In

analysing these results there are the obvious problems of a shifting categorization. As the World Bank periodically changes the classification of the countries depending on their income status. Further, there is also a divergence between the WTO process that seeks to differentiate countries as developed and developing (which may include certain members of the category of ‘Economies in Transition’ for the erstwhile socialist economies).

**Figure 6** Non-tariff Disputes



*Source: Based on information from WTO website*

3.10 In the case of developing countries non-tariff barriers in the form of technical regulations and standards is often quoted as a hindrance to their trade potential in the more developed markets. It is therefore useful to see if in the areas covered by the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements, the way the complaints have progressed. The Figure 6 above shows that the NTB

disputes have followed the general pattern of higher numbers in the early days followed by a tapering off. There hasn't been a spike in these cases. Further examination of the complaints filed by HI members and those by Middle-income members show that while the HI initiated 58 complaints; the MI initiated 39 complaints. This largely follows the pattern of trade volume of these two groups.

3.11 Finally, only 48 of the 164 members<sup>22</sup> have thus, far filed complaints in the WTO<sup>23</sup>. Of these a majority, 17 are HI members. Regarding the middle-income countries, 18 UMI members, 12 LMI members and only 1 amongst the 36 LDC members of WTO have resorted to a formal initiation of a complaint. This indicates that financial capacity plays an important role in a member's ability in being able to utilize the DSM to protect its trade interests.

### **Analysis of India's Disputes**

3.12 India has been a fairly active user of the DSM. Till 2016 India has filed 23 complaints and has faced 24 complaints as respondents<sup>24</sup>. Figure 7 shows the yearly cases filed or faced. After a flurry of complaints in the early years they have now tapered down to a normal of one or two complaints a year.

3.13 As can be expected India's complaints predominantly are against the developed countries. 18 of India's 23 complaints have been against the US or EC. Rest of the 7 complaints has all been against bigger developing countries. India has not hesitated bringing complaints against its BRICS partners as well. Brazil, Argentina and South Africa have all faced a complaint each. The list of India's WTO disputes is in Annex C.

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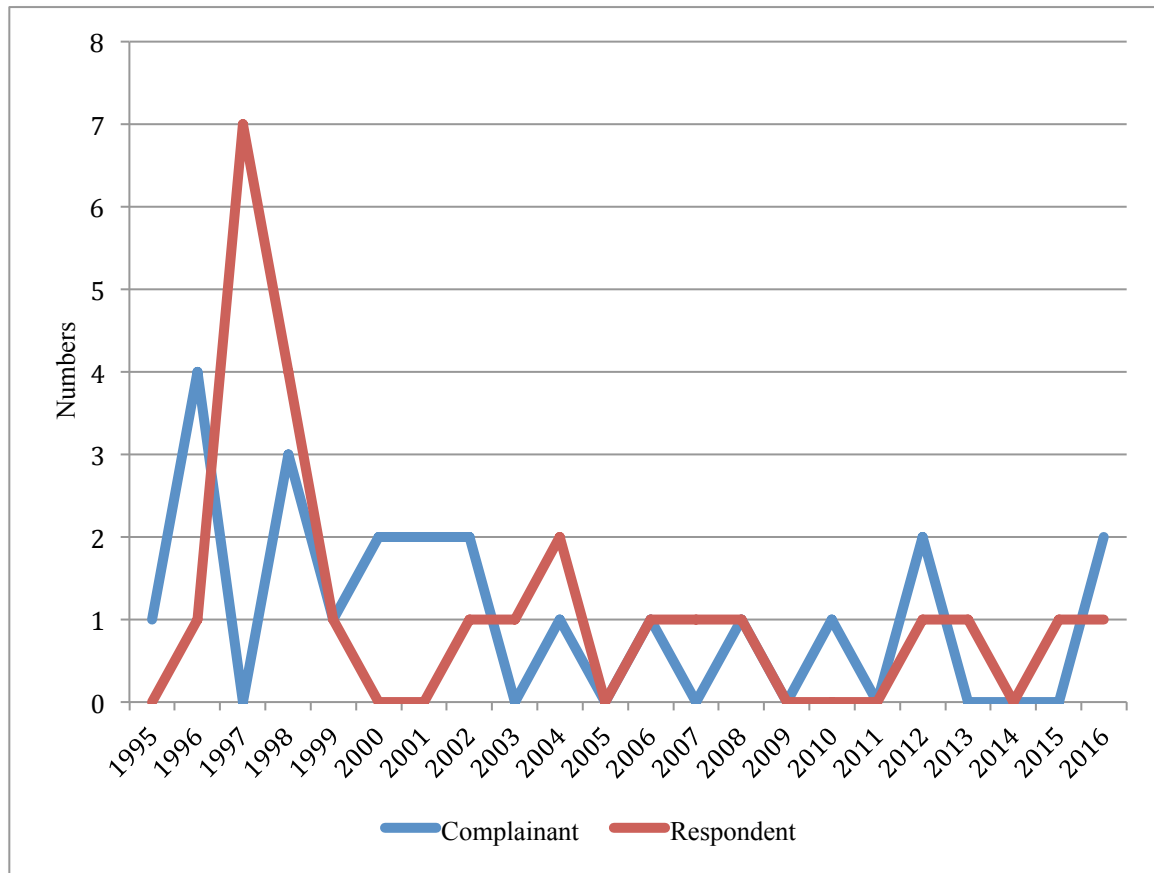
<sup>22</sup> Please see Annex B

<sup>23</sup> Assuming EC as a single member.

<sup>24</sup> Please see Annex C



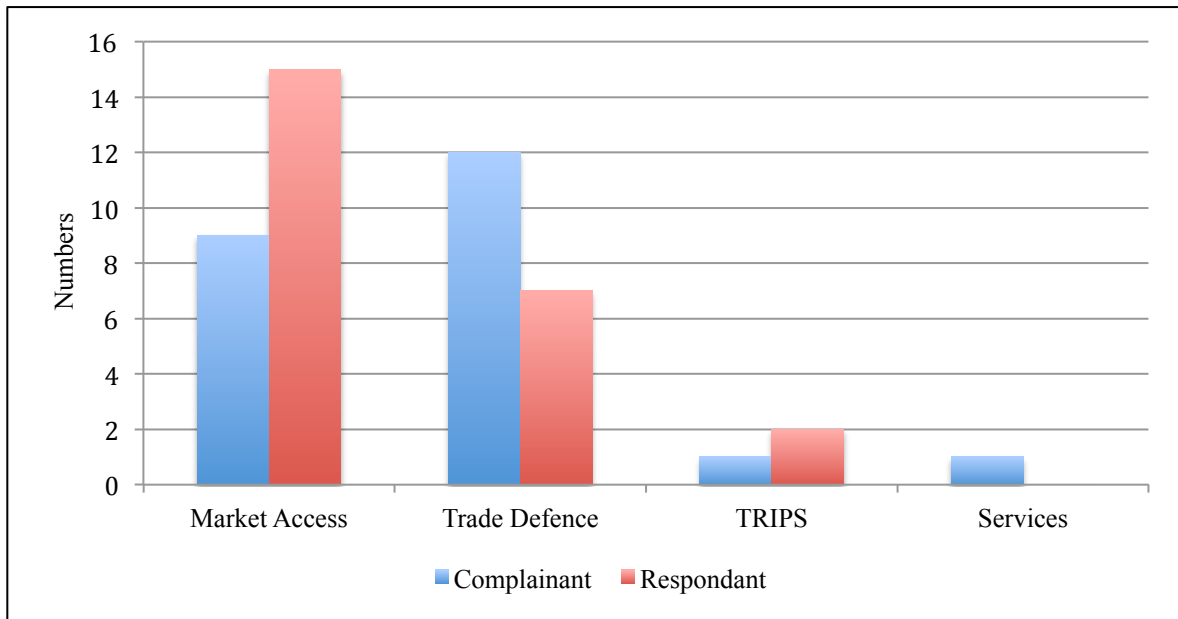
**Figure 7** India Yearly Dispute Cases



*Source: Based on Information from WTO Website*

3.14 Regarding the nature of complaints in which India has been a respondent, Figure 8 shows that the predominance is of market access issues. This is in some ways logical as India's joining WTO overlapped with its opening up, i.e., removal of import restrictions and related control measures, such as import licencing. The staggered process of removing restrictions naturally resulted in complaints against India.

**Figure 8 Nature of Disputes**



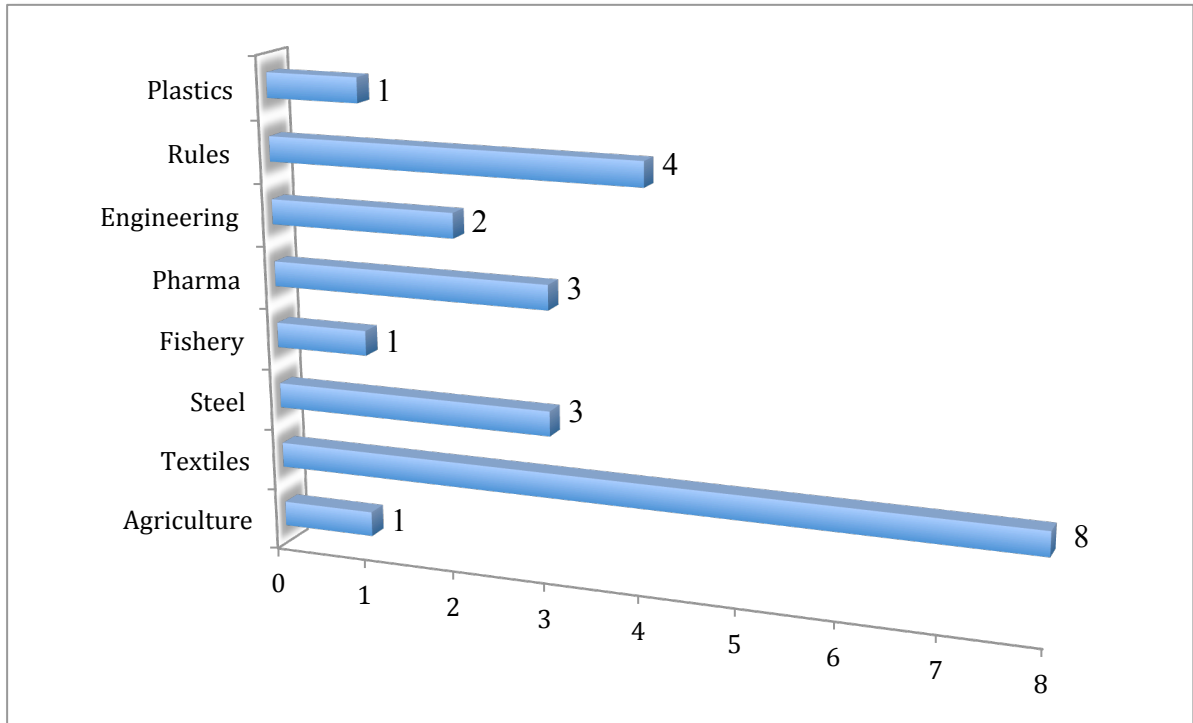
*Source: Based on Information from WTO Website*

3.15 Regarding the complaints filed by India, the trade defence measures, namely anti-dumping, safeguard action and countervailing action predominant. Again there is no surprise here as in India's main markets the import barriers are low and these countries usually resort to creative use of the trade defence instruments.

3.16 To examine the sectors in India, which have been able to move the government machinery in filing and conducting the disputes, Figure 9 shows that there are again no surprises. All of the complaints relate to the major and important sectors for India's export basket. Textiles dominate, as this is the sector in developed countries that got integrated into the global trading regime following establishment of the WTO. Textiles and cotton emerge as one of the most competitive sectors given that a large number of developing countries of all sizes remain critically dependant on it for their export earnings. Developed members historically managed this market through a system of

quotas, which has been replaced by the system of preferential tariffs, following the abolition of quotas under the WTO. This remains, of significant importance for India as well and therefore perhaps the number of complaints India has filed for this sector.

**Figure 9** Sectoral Break-up of Complaints



*Source: Based on Information from WTO Website*

3.17 The cautionary tale in this sectoral analysis is that for India to take up a matter and follow it through to the DSM in Geneva, the sector has to have the financial weft to initiate a dispute. Without the support of the companies or industry concerned contributing to the dispute, it is difficult to initiate the dispute.