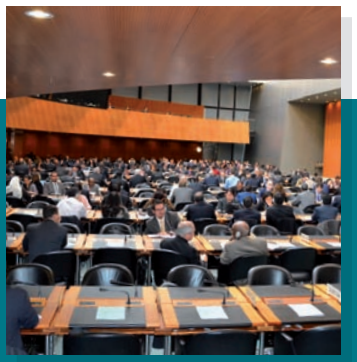
WORLD TRADE ORGANIZATION



ANNUAL REPORT FOR 2011

APPELLATE BODY

July 2012

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WORLD TRADE ORGANIZATION

ANNUAL REPORT FOR 2011

APPELLATE BODY

July 2012

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APPELLATE BODY MEMBERS: 1 JANUARY – 10 DECEMBER 2011

From left to right: Mr. Ricardo Ramírez-Hernández; Ms. Yuejiao Zhang; Mr. Peter Van den Bossche; Ms. Jennifer Hillman; Mr. David Unterhalter; Ms. Lilia R. Bautista; Mr. Shotaro Oshima.

APPELLATE BODY MEMBERS: 11 DECEMBER 2011 – 31 DECEMBER 2011

From left to right: Mr. Ricardo Ramírez-Hernández; Mr. David Unterhalter; Ms. Yuejiao Zhang; Mr. Ujal Singh Bhatia; Mr. Shotaro Oshima; Mr. Peter Van den Bossche; Mr. Thomas R. Graham.

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ABBREVIATIONS USED IN THIS ANNUAL REPORT

ABBREVIATION	DESCRIPTION
Anti-Dumping Agreement	*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
DSB	Dispute Settlement Body
DSU	*Understanding on Rules and Procedures Governing the Settlement of Disputes*
GATS	*General Agreement on Trade in Services*
GATT 1994	*General Agreement on Tariffs and Trade 1994*
Rules of Conduct	*Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*, adopted by the DSB on 3 December 1996, WT/DSB/RC/1
SCM Agreement	*Agreement on Subsidies and Countervailing Measures*
SPS	sanitary and phytosanitary
SPS Agreement	*Agreement on the Application of Sanitary and Phytosanitary Measures*
TBT Agreement	*Agreement on Technical Barriers to Trade*
TRIMs Agreement	*Agreement on Trade-Related Investment Measures*
TRIPS Agreement	*Agreement on Trade-Related Aspects of Intellectual Property Rights*
Vienna Convention	*Vienna Convention on the Law of Treaties*, done at Vienna, 23 May 1969, 1155 UNTS 331; 8 International Legal Materials 679
Working Procedures	*Working Procedures for Appellate Review*, WT/AB/WP/6, 16 August 2010
WTO	World Trade Organization
WTO Agreement	*Marrakesh Agreement Establishing the World Trade Organization*

WORLD TRADE ORGANIZATION
APPELLATE BODY
ANNUAL REPORT FOR 2011

I. INTRODUCTION

This Annual Report summarizes the activities of the Appellate Body and its Secretariat for the year 2011.

Dispute settlement in the World Trade Organization (WTO) is regulated by the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), which is contained in Annex 2 of the *Marrakesh Agreement Establishing the World Trade Organization* (*WTO Agreement*). Article 3.2 of the DSU states the overarching purposes of the dispute settlement system. According to Article 3.2, "[t]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system." Further, Article 3.2 provides that the dispute settlement system "serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law." The dispute settlement system is administered by the Dispute Settlement Body (DSB), which is composed of all WTO Members.

A WTO Member may have recourse to the rules and procedures established in the DSU if it "considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member".[1] The DSU procedures apply to disputes arising under any of the covered agreements listed in Appendix 1 to the DSU and include the *WTO Agreement* and all the multilateral agreements annexed to it relating to trade in goods[2], trade in services[3], and the protection of intellectual property rights[4], as well as the DSU itself. Pursuant to Article 1.2 and Appendix 2 of the DSU, where the covered agreements contain special or additional rules and procedures, these rules and procedures prevail over those contained in the DSU to the extent that there is an inconsistency. The application of the DSU to disputes under the plurilateral trade agreements annexed to the *WTO Agreement*[5] is subject to the adoption of decisions by the parties to these agreements setting out the terms for its application to the individual agreement.[6]

Proceedings under the DSU take place in stages. In the first stage, Members are required to hold consultations with a view to reaching a mutually agreed solution to the matter in dispute.[7] If these consultations fail to realize a mutually agreed solution, the dispute may advance to the adjudicative stage in which the complaining Member requests that the DSB establish a panel to examine the matter.[8] Panelists are chosen by agreement of the parties, based on nominations proposed by the Secretariat.[9] However, if the parties cannot agree, either party may request the WTO Director-General to determine the composition of the panel.[10] Panels shall be composed of well-qualified governmental and/or non-governmental individuals

1 Article 3.3 of the DSU.
2 Annex 1A to the *WTO Agreement.*
3 Annex 1B to the *WTO Agreement.*
4 Annex 1C to the *WTO Agreement*.
5 Annex 4 to the *WTO Agreement*.
6 Appendix 1 to the DSU.
7 Article 4 of the DSU.
8 Article 6 of the DSU.
9 Article 8.6 of the DSU.
10 Article 8.7 of the DSU.

with expertise in international trade law or policy.[11] In discharging its adjudicative , a panel is required to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements."[12] The panel process includes written submissions by the main parties and also by third parties that have notified their interest in the dispute to the DSB. Panels usually hold two meetings with the parties, one of which also includes a session with third parties. Panels set out their factual and legal findings in an interim report that is subject to comments by the parties. The final report is first issued to the parties, and is subsequently circulated to all WTO Members in the three official languages of the WTO (English, French, and Spanish), at which time it is also posted on the WTO website.

Article 17 of the DSU establishes a standing Appellate Body. The Appellate Body is composed of seven Members who are each appointed to a four-year term, with a possibility to be reappointed once. The expiration dates of terms are staggered in order to ensure that not all Members begin and complete their terms at the same time. Members of the Appellate Body must be persons of recognized authority; with demonstrated expertise in law, international trade, and the subject matter of the covered agreements generally; and not be affiliated with any government. Moreover, the Appellate Body membership shall be broadly representative of the membership of the WTO. Appellate Body Members elect a Chairperson to serve a one-year term, which can be extended for an additional one-year period. The Chairperson is responsible for the overall direction of Appellate Body business. Each appeal is heard by a Division of three Appellate Body Members. The process for the selection of Divisions is designed to ensure randomness, unpredictability, and opportunity for all Members to serve, regardless of their national origin. To ensure consistency and coherence in decision-making, Divisions exchange views with the other four Members of the Appellate Body before finalizing Appellate Body reports. The Appellate Body receives legal and administrative support from its Secretariat. The conduct of Members of the Appellate Body and its staff is regulated by the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* (*Rules of Conduct*).[13] These Rules emphasize that Appellate Body Members shall be independent, impartial, and avoid any direct or indirect conflict of interest.

Any party to a dispute, other than third parties, may appeal a panel report to the Appellate Body. WTO Members that were third parties at the panel stage may also participate and make written and oral submissions in the appellate proceedings, but they may not appeal the panel report. The appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings are conducted in accordance with the procedures established in the DSU and the *Working Procedures for Appellate Review*[14] (*Working Procedures*), drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General of the WTO, and communicated to WTO Members for their information. Proceedings involve the filing of written submissions by the participants and the third participants, as well as an oral hearing. The Appellate Body report is to be circulated to WTO Members in the three official languages within 90 days of the date when the appeal was initiated, and is posted on the WTO website immediately upon circulation to Members. In its report, the Appellate Body may uphold, modify, or reverse the legal findings and conclusions of the panel.

Panel and Appellate Body reports must be adopted by WTO Members acting collectively through the DSB. Under the reverse consensus rule, a report is adopted by the DSB unless all WTO Members present at the meeting formally object to its adoption.[15] Upon adoption, Appellate Body reports and panel reports (as modified by the Appellate Body) become binding upon the parties.

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[11] Article 8.1 of the DSU.

[12] Article 11 of the DSU.

[13] The *Rules of Conduct*, as adopted by the DSB on 3 December 1996 (WT/DSB/RC/1), are directly incorporated into the *Working Procedures for Appellate Review* (WT/AB/WP/6), as Annex II thereto. (See WT/DSB/RC/2, WT/AB/WP/W/2)

[14] *Working Procedures for Appellate Review*, WT/AB/WP/6.

[15] Articles 16.4 and 17.14 of the DSU.

Following the adoption by the DSB of a panel or Appellate Body report that includes a finding of inconsistency of a measure of the responding Member with its WTO obligations. Article 21.3 of the DSU provides that the responding Member should, in principle, comply immediately. However, where immediate compliance is "impracticable", the responding Member shall have a reasonable period of time to implement the DSB's recommendations and rulings. The "reasonable period of time" may be determined by the DSB, by agreement between the parties, or through arbitration pursuant to Article 21.3(c) of the DSU. In such arbitration, a guideline for the arbitrator is that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances. Arbitrators have indicated that the reasonable period of time shall be the shortest time possible in the implementing Member's legal system. To date, arbitrations pursuant to Article 21.3(c) of the DSU have been conducted by current or former Appellate Body Members acting in an individual capacity.

Where the parties disagree "as to existence or consistency with a covered agreement of measures taken to comply", the matter may be referred to the original panel in what is known as "Article 21.5 compliance proceedings". The report of the panel in the Article 21.5 compliance proceedings may be appealed. Upon their adoption by the DSB, panel and Appellate Body reports in Article 21.5 compliance proceedings become binding on the parties.

If the responding Member does not bring its WTO-inconsistent measure into compliance with its obligations under the covered agreements within the reasonable period of time, the complaining Member may request negotiations with the responding Member with a view to finding mutually acceptable compensation as a temporary and voluntary alternative to full compliance. Compensation is subject to acceptance by the complaining Member, and must be consistent with the WTO agreements. If no satisfactory compensation is agreed upon, the complaining Member may request authorization from the DSB, pursuant to Article 22 of the DSU, to suspend the application of concessions or other obligations under the WTO agreements to the responding Member. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment resulting from non-compliance with the DSB recommendations and rulings. The responding Member may request arbitration under Article 22.6 of the DSU if it objects to the level of suspension proposed or considers that the principles and procedures concerning the sector or covered agreement to which the suspension may apply have not been followed. In principle, the suspension of concessions or other obligations must relate to the same trade sector or agreement as the measure found to be inconsistent. However, if this is impracticable or ineffective for the complaining Member, and if circumstances are serious enough, the complaining party may seek authorization to suspend concessions with respect to other sectors or agreements. The arbitration under Article 22.6 shall be carried out by the original panel, if its members are available. Compensation and the suspension of concessions or other obligations are temporary measures; neither is to be preferred to full implementation.[16]

A party to a dispute may request good offices, conciliation, or mediation as alternative methods of dispute resolution at any stage of dispute settlement proceedings.[17] In addition, under Article 25 of the DSU, WTO Members may have recourse to arbitration as an alternative to the regular procedures set out in the DSU.[18] Recourse to arbitration, including the procedures to be followed in such arbitration proceedings, is subject to mutual agreement of the parties.[19]

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[16] Article 22.1 of the DSU.

[17] Article 5 of the DSU.

[18] There has been only one recourse to Article 25 of the DSU and it was not in lieu of panel or Appellate Body proceedings. Rather, the purpose of that arbitration was to set an amount of compensation pending full compliance by the responding Member. (See Award of the Arbitrators, *US – Section 110(5) Copyright Act (Article 25)*)

[19] Articles 21 and 22 of the DSU apply *mutatis mutandis* to decisions by arbitrators.

II. COMPOSITION OF THE APPELLATE BODY

The Appellate Body is a standing body composed of seven Members appointed by the DSB for a term of four years with the possibility of being reappointed once for another four-year term.

The terms of office of Ms. Jennifer Hillman and Ms. Lilia Bautista expired on 10 December 2011.[20] On 4 March 2011, Ms. Bautista wrote to the Chair of the DSB stating that she would not be seeking reappointment for a second term. On 21 April 2011, Ms. Hillman informed the Chair of the DSB that, while she was willing to serve a second term, it was her understanding that there would be an objection from a Member country to her reappointment. Ms. Hillman considered that, as long as that objection stood, she would not ask the DSB to consider her potential reappointment. The minutes of the DSB meeting of 21 April 2011 state that Ms. Hillman "was not requesting the DSB to consider her for reappointment".[21]

As a result of the vacancies arising from the expiration of the terms of Ms. Bautista and Ms. Hillman, the DSB, on 24 May 2011, initiated a selection process to fill these two positions. The deadline for receiving candidates' nominations was set for 31 August 2011. The DSB further agreed to follow the procedures set forth in document WT/DSB/1, and, in accordance with them, established a Selection Committee to be chaired by the 2011 DSB Chair, along with the WTO Director-General, and the 2011 Chairpersons of the General Council, the Goods Council, the Services Council, and the TRIPS Council. Four individuals were nominated. India and Pakistan each nominated one individual, while the United States nominated two individuals.

Based on the recommendations of the Selection Committee, on 18 November 2011, the DSB decided to appoint Mr. Ujal Singh Bhatia (India) and Mr. Thomas Graham (United States) to serve for four years as Appellate Body Members commencing on 11 December 2011. Mr. Bhatia and Mr. Graham were sworn in on 8 December 2011.

The composition of the Appellate Body in 2011 and the respective terms of office of its Members are set out in Tables 1A and 1B.

[20] The texts of the farewell speeches of Ms. Hillman and Ms. Bautista are provided in Annex 1B.
[21] WT/DSB/M/295, 30 June 2011.

TABLE 1A: COMPOSITION OF THE APPELLATE BODY 1 JANUARY TO 10 DECEMBER 2011

Name	Nationality	Term(s) of office
Lilia R. Bautista	Philippines	2007–2011
Jennifer Hillman	United States	2007–2011
Shotaro Oshima	Japan	2008–2012
Ricardo Ramírez-Hernández	Mexico	2009–2013
David Unterhalter	South Africa	2006–2009 2009–2013
Peter Van den Bossche	Belgium	2009–2013
Yuejiao Zhang	China	2008–2012

TABLE 1B: COMPOSITION OF THE APPELLATE BODY AS OF 11 DECEMBER 2011

Name	Nationality	Term(s) of office
Ujal Singh Bhatia	India	2011–2015
Thomas Graham	United States	2011–2015
Shotaro Oshima	Japan	2008–2012
Ricardo Ramírez-Hernández	Mexico	2009–2013
David Unterhalter	South Africa	2006–2009 2009–2013
Peter Van den Bossche	Belgium	2009–2013
Yuejiao Zhang	China	2008–2012

Pursuant to Rule 5(1) of the *Working Procedures*, Lilia Bautista was elected by Appellate Body Members to serve as Chair of the Appellate Body from 17 December 2010 to 10 December 2011.[22] Ms. Bautista, however, informed the DSB on 16 May 2011 that, for personal reasons, she had decided to resign as Chair of the Appellate Body, effective from 14 June 2011. Appellate Body Members elected Jennifer Hillman to serve as Chair of the Appellate Body from 15 June to 10 December.[23] Ms. Yuejiao Zhang was elected by Appellate Body Members to serve as Chair for the period 11 December 2011 to 31 May 2012.[24]

Biographical information about the Members of the Appellate Body is provided in Annex 1A. A list of former Appellate Body Members and Chairpersons is provided in Annex 2.

The Appellate Body receives legal and administrative support from the Appellate Body Secretariat, in accordance with Article 17.7 of the DSU. The Secretariat currently comprises a Director and a team of fifteen lawyers, one administrative assistant, and three support staff. Werner Zdouc has been the Director of the Appellate Body Secretariat since 2006.

[22] WT/DSB/52.
[23] WT/DSB/53.
[24] WT/DSB/55.

III. APPEALS

Under Rule 20(1) of the *Working Procedures*, and in accordance with Article 16(4) of the DSU, an appeal is commenced by giving notice in writing to the DSB and filing a Notice of Appeal with the Appellate Body Secretariat. Rule 23(1) of the *Working Procedures* allows a party to the dispute other than the initial appellant to join the appeal, or appeal on the basis of other alleged errors, by filing a Notice of Other Appeal within 5 days of the filing of the Notice of Appeal.

Nine appeals were filed in 2011. Six of the appeals included an "other appeal". All nine appeals related to original proceedings. Further information regarding the nine appeals filed in 2011 is provided in Table 2.

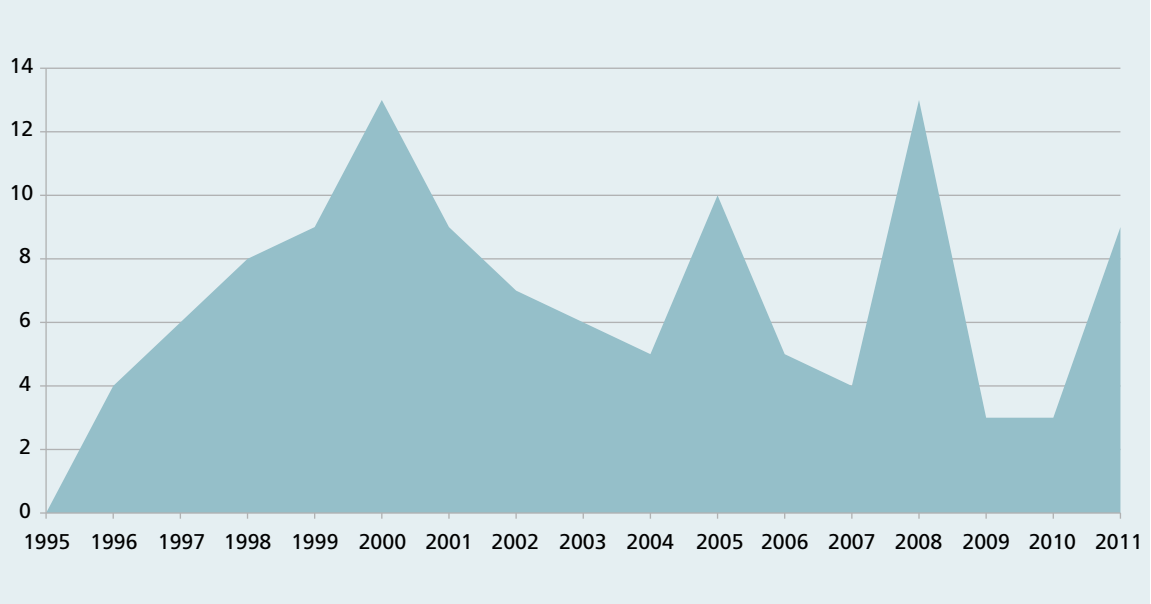
TABLE 2: APPEALS FILED IN 2011

Panel reports appealed	Date of appeal	Appellant[a]	Document number	Other appellant[b]	Document number
Thailand – Cigarettes (Philippines)	22 Feb 2011	Thailand	WT/DS371/8	- - -	- - -
EC – Fasteners (China)	25 Mar 2011	European Union	WT/DS397/7	China	WT/DS397/8
US – Large Civil Aircraft	1 Apr 2011	European Union	WT/DS353/8	United States	WT/DS353/10
US – Tyres (China)	24 May 2011	China	WT/DS399/6	- - -	- - -
China – Raw Materials (United States)	31 Aug 2011	China	WT/DS394/11	United States	WT/DS394/12
China – Raw Materials (European Union)	31 Aug 2011	China	WT/DS395/11	European Union	WT/DS395/12
China – Raw Materials (Mexico)	31 Aug 2011	China	WT/DS398/10	Mexico	WT/DS398/11
Philippines – Distilled Spirits (European Union)	23 Sept 2011	Philippines	WT/DS396/7	European Union	WT/DS396/8
Philippines – Distilled Spirits (United States)	23 Sept 2011	Philippines	WT/DS403/7	- - -	- - -

[a] Pursuant to Rule 20(1) of the *Working Procedures*.
[b] Pursuant to Rule 23(1) of the *Working Procedures*.

Information on the number of appeals filed each year since 1995 is provided in Annex 3. Figure 1 shows the number of appeals filed each year between 1995 and 2011.

FIGURE 1: TOTAL NUMBER OF APPEALS 1995–2011



Fourteen panel reports were circulated during 2011. For three of these reports, the 60-day deadline for adoption or appeal was extended until 2012.[25] The deadline to appeal two other panel reports circulated in 2011 did not expire until 2012.[26] Three of the panel reports circulated in 2011 were adopted by the DSB without being appealed.[27] Three panel reports were circulated in 2010 for which the deadline for appeal did not expire until 2011.[28] Thus, nine out of the twelve panel reports for which the 60-day deadline expired in 2011 were appealed, yielding an appeal rate of 75 per cent for the year 2011.

The overall average of panel reports that have been appealed from 1995 to 2011 is 67 per cent. A breakdown of the percentage of panel reports appealed each year is provided in Annex 4.

[25] The 60-day deadline for adoption or appeal was extended for the panel reports in *US – Clove Cigarettes* and *US – Tuna II (Mexico)* until 20 January 2012 and for the panel report in *EU – Footwear (China)* until 22 February 2012. See WT/DS406/5, WT/DS381/9, and WT/DS405/5.

[26] Although the panel reports in *US – COOL* were circulated in 2011, the 60-day deadline for adoption or appeal of these reports did not expire in 2011.

[27] The panel reports in *US – Zeroing (Korea)*, *US – Orange Juice (Brazil)*, and *US – Shrimp (Viet Nam)* were adopted by the DSB on 24 February, 17 June, and 2 September 2011, respectively.

[28] The panel reports in *Thailand – Cigarettes (Philippines)*, *EC – Fasteners (China)*, and *US – Tyres (China)* were circulated on 15 November, 3 December, and 13 December 2010, respectively.

IV. APPELLATE BODY REPORTS

Seven Appellate Body reports were circulated during 2011, the details of which are summarized in Table 3. As of the end of 2011, the Appellate Body has circulated a total of 108 reports.

TABLE 3: APPELLATE BODY REPORTS CIRCULATED IN 2011

Case Title	Document number	Date circulated	Date adopted by the DSB
US – Anti-Dumping and Countervailing Duties (China)	WT/DS379/AB/R	11 Mar 2011	25 Mar 2011
EC and certain member States – Large Civil Aircraft	WT/DS316/AB/R	18 May 2011	1 Jun 2011
Thailand – Cigarettes (Philippines)	WT/DS371/AB/R	17 Jun 2011	15 Jul 2011
EC – Fasteners (China)	WT/DS397/AB/R	15 Jul 2011	28 Jul 2011
US – Tyres (China)	WT/DS399/AB/R	5 Sep 2011	5 Oct 2011
*Philippines – Distilled Spirits (European Union)**	WT/DS396/AB/R	21 Dec 2011	20 Jan 2012
*Philippines – Distilled Spirits – (United States)**	WT/DS403/AB/R	21 Dec 2011	20 Jan 2012

* These two Appellate Body reports were circulated as a single document.

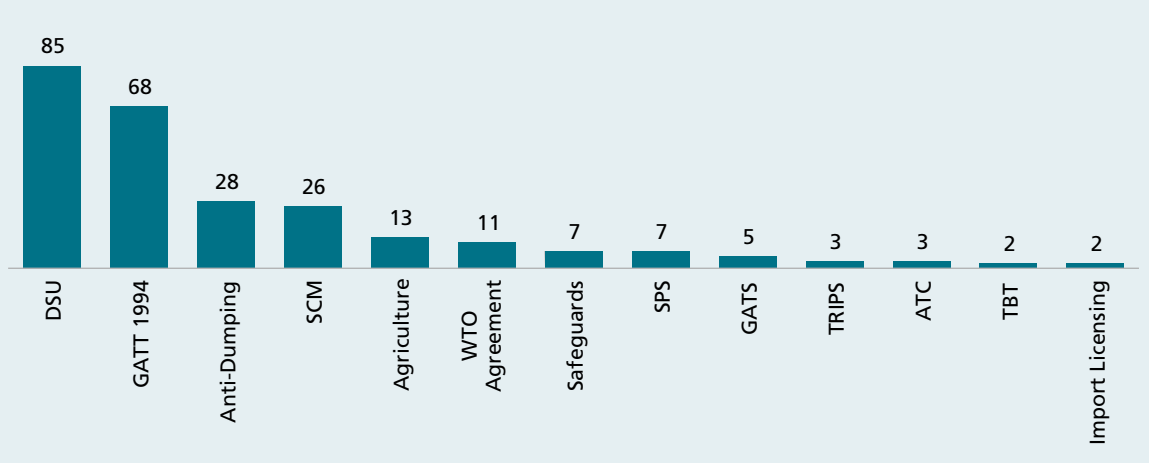
The following table shows which WTO agreements were addressed in the Appellate Body reports circulated in 2011.

TABLE 4: WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED IN 2011

Case	Document number	WTO agreements covered
US – Anti-Dumping and Countervailing Duties (China)	WT/DS379/AB/R	*SCM Agreement* GATT 1994 DSU
EC and certain member States – Large Civil Aircraft	WT/DS316/AB/R	*SCM Agreement* GATT 1994 DSU
Thailand – Cigarettes (Philippines)	WT/DS371/AB/R	GATT 1994 DSU
EC – Fasteners (China)	WT/DS397/AB/R	*Anti-Dumping Agreement* GATT 1994 *WTO Agreement* DSU
US – Tyres (China)	WT/DS399/AB/R	China's Accession Protocol DSU
Philippines – Distilled Spirits (European Union)	WT/DS396/AB/R	GATT 1994 DSU
Philippines – Distilled Spirits (United States)	WT/DS403/AB/R	GATT 1994 DSU

Figure 2 shows the number of times specific WTO agreements have been addressed in the 108 Appellate Body reports circulated from 1996 through 2011.

FIGURE 2: WTO AGREEMENTS ADDRESSED IN APPEALS 1996–2011



Annex 5 contains a breakdown by year of the frequency with which the specific WTO agreements have been addressed in appeals from 1996 through 2011.

The Appellate Body's findings and conclusions in the 7 Appellate Body reports circulated in 2011 are summarized below.

- **Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, WT/DS379/AB/R**

This appeal originated from a complaint brought by China concerning the simultaneous imposition of countervailing and anti-dumping duties by the United States on four products imported from China[29] following concurrent countervailing duty and anti-dumping investigations. The United States began applying its countervailing duty legislation to imports from China in 2007, after the United States Department of Commerce (the "USDOC") determined that China's economy, albeit still not a market economy, had undergone sufficient economic reform as to enable the USDOC to identify and countervail subsidies granted by the Chinese Government. In the four anti-dumping investigations at issue, the USDOC treated China as a non-market economy ("NME") and determined normal value using prices in a surrogate country rather than Chinese domestic prices.

Before the Panel, China raised multiple claims that the final USDOC determinations that led to the imposition of the duties, the orders imposing the duties themselves, and certain aspects of the conduct of the underlying countervailing duty investigations were inconsistent with the United States' obligations under the *SCM Agreement* and the GATT 1994. China appealed the Panel's findings relating to the USDOC's determinations, in the relevant countervailing duty investigations: that certain Chinese State-owned enterprises and State-owned commercial banks constituted "public bodies"; that certain subsidies were "specific" subsidies; and that, because there were no appropriate benchmarks within China, recourse should be had to external benchmarks to calculate the amount of the benefit associated with financial contributions in the form of the provision of goods, and in the form of the provision of loans. China also appealed the Panel's finding with respect to the issue of "double remedies", namely, that the United States

[29] Circular welded carbon quality steel pipe ("CWP"); light-walled rectangular pipe and tube ("LWR"); laminated woven sacks ("LWS"); and certain new pneumatic off-the-road tyres ("OTR").

was not required, when simultaneously applying anti-dumping and countervailing duties on the same products, to take account of whether the same subsidies were offset twice by virtue of the manner in which the anti-dumping duties were calculated under the USDOC's NME methodology.

1. "Public body" in Article 1.1(a)(1) of the *SCM Agreement*

The Appellate Body considered the meaning of the term "public body" in accordance with Article 31 of the *Vienna Convention*. In examining the context relevant to the interpretation of this term, the Appellate Body observed that Article 1.1(a)(1) joins the concept of "government" together with "any public body" under the collective term "government". At the same time, Article 1 juxtaposes the collective term "government" (including "public body") and "private body". The Appellate Body further considered that in order to be able to entrust or direct a private body to undertake the type of conduct contemplated by Article 1 of the *SCM Agreement*, a public body would itself have to be vested with the authority or responsibility to undertake such conduct. The Appellate Body reasoned that, therefore, the concept of "public body" shares certain attributes with the concept of "government".

China also argued that, in interpreting the term "public body", the Panel erred in failing to "take into account" the International Law Commission's Articles on *Responsibility of States for Internationally Wrongful Acts* ("ILC Articles"), in particular, Articles 4, 5, and 8, which deal with the attribution of conduct to States. In examining this aspect of China's appeal, the Appellate Body disagreed with the Panel's proposition that the ILC Articles are not "relevant rules of international law" in the sense of Article 31(3)(c) of the *Vienna Convention*. The Appellate Body noted that the ILC Articles have been taken into account by panels and the Appellate Body in previous cases. While they are not treaty provisions, insofar as they reflect customary international law or general principles of law, these Articles are applicable in the relations between the parties within the meaning of Article 31(3)(c). In this case, the Appellate Body considered that there are similarities in the core principles and functions of Article 5 of the ILC Articles and Article 1.1(a) (1) of the *SCM Agreement*, but added that its interpretation of the latter provision did not turn on these similarities.

The Appellate Body concluded that the concept of "public body" shares certain attributes with the concept of "government", and that a public body within the meaning of Article 1.1(a)(1) of the *SCM Agreement* is an entity that possesses, exercises or is vested with governmental authority. Based on its interpretation of the term "public body" in Article 1.1.(a)(1) of the *SCM Agreement*, the Appellate Body reversed the Panel's finding that the term "public body" means "any entity controlled by a government".

Having reversed the Panel's interpretation of the term "public body" in Article 1.1(a)(1) of the *SCM Agreement*, the Appellate Body proceeded to complete the analysis. With regard to the SOEs in the four investigations at issue, which were producers of steel, rubber, and petrochemical inputs sold to the investigated companies or to trading companies, the Appellate Body noted that the USDOC had based its public body determinations principally on evidence of majority government ownership. Further, the USDOC did not request information other than relating to government ownership from the relevant parties to the investigations. The Appellate Body considered that, by not requesting information relating to factors other than ownership from the relevant parties, the USDOC had failed to comply with its duty to seek out relevant information—including information relevant to the potential characterization of SOEs as public bodies—and to evaluate such evidence in an objective manner. The Appellate Body considered that evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot, without more, serve as a basis for establishing that the entity is vested with authority to perform a governmental function. Accordingly, such evidence, alone, cannot support a finding that an entity is a public body. The Appellate Body held, therefore, that the USDOC's public body determinations in respect of SOEs in the four investigations at issue were inconsistent with Article 1.1(a)(1), and consequently, with Articles 10 and 32.1 of the *SCM Agreement*. With regard to the SOCBs in the OTR investigation, the Appellate Body noted that the USDOC did not base its determination solely on evidence of government

ownership and had, in fact, considered other evidence relating *inter alia* to the Government of China's role in the banking sector. The Appellate Body thus held that China did not establish that the USDOC's public body determination in respect of SOCBs in the OTR investigation was inconsistent with Article 1.1(a)(1) of the *SCM Agreement*.

2. Specificity under Article 2 of the *SCM Agreement*

China appealed the Panel's interpretation and application of Article 2.1(a) of the *SCM Agreement* in respect of the USDOC's determination, in the OTR investigation, that lending by SOCBs to the tyre industry was *de jure* specific. China also appealed certain aspects of the Panel's interpretation of Article 2.2 of the *SCM Agreement* in the context of the USDOC's determination in the LWS investigation that the provision of land-use rights was regionally specific.

With regard to the interpretation of Article 2.1(a) of the *SCM Agreement*, the Appellate Body disagreed with China that the terms "subsidy" and "explicitly" in that provision require investigating authorities to establish that the actual words of the legislation pursuant to which the granting authority operates limit access to the particular financial contribution *and* to its resulting benefit. The Appellate Body reasoned that an explicit limitation on access to a financial contribution would necessarily entail a limitation on access to any resulting benefit, since only the enterprises or industries eligible for that financial contribution would be eligible to enjoy the resulting benefit. The Appellate Body stated that what must be made explicit under Article 2.1(a) is the limitation on access to the subsidy to certain enterprises, regardless of how this explicit limitation is established. The Appellate Body, therefore, agreed with the Panel that, for the purpose of a specificity determination under Article 2.1(a), the necessary limitation on access to a subsidy can be affected through an explicit limitation on access to the financial contribution, on access to the benefit, or on access to both.

With respect to the Panel's application of Article 2.1(a), the Appellate Body rejected China's alternative claim that the Panel erred in its application of Article 2.1(a) to the facts of the OTR investigation. The Appellate Body observed that the evidence reviewed by the Panel, upon which the USDOC had relied in making its specificity finding, provided a sufficient basis on which to find that access to the lending by SOCBs in the OTR investigation was explicitly limited. The Appellate Body also disagreed with China's contention that the Panel erred in its application of the term "certain enterprises" to the facts of the OTR investigation. More specifically, the Appellate Body expressed doubt as to whether the Panel had, in fact, made the finding that China attributed to the Panel, namely, that, because one central government level instrument identified 539 industries as targets for lending, that group of 539 industries collectively constituted "certain industries". The Appellate Body noted that, rather, the Panel found that the USDOC had, in the OTR investigation, established that several planning documents, at central, provincial and municipal levels of government, singled out the tyre industry as a target for development and instructed financial institutions to provide financing to that industry. The Appellate Body, therefore, upheld the Panel's finding that China did not establish that the USDOC's specificity determination in respect of SOCB lending in the OTR investigation was inconsistent with Article 2.1(a) of the *SCM Agreement*.

With regard to the USDOC's regional specificity determination in the LWS investigation, China argued that the Panel erred in its interpretation of the term "subsidy" in Article 2.2 of the *SCM Agreement*, and in suggesting that a subsidy would be regionally specific if it is provided as part of a "distinct regime", even if the identical subsidy is available elsewhere. The Appellate Body recalled its reasoning with respect to China's claim that the Panel erred in its interpretation of the term "subsidy" under Article 2.1(a) and, on the same basis, rejected China's contention that the Panel erred in its interpretation of the term "subsidy" in Article 2.2 of the *SCM Agreement*. With regard to the second part of China's appeal under Article 2.2 concerning a statement by the Panel about a "distinct regime", the Appellate Body considered that it was not clear that the Panel, in making the statement, considered that the mere existence of a "distinct regime" would enable a subsidy to be found to be specific to a designated geographical region, even if the identical

subsidy were also available to enterprises outside that designated geographical region. The Appellate Body considered that, in any event, the Panel's statement was *obiter* in nature and it was, thus, unnecessary to consider it further. Consequently, the Appellate Body rejected China's allegations of error in respect of the Panel's statement concerning a "distinct regime" in the context of the LWS investigation.

3. Benchmarks for input prices and for loans

With regard to benchmarks for input prices, China appealed the Panel's interpretation and application of Article 14(d) of the *SCM Agreement* relating to the USDOC's rejection of in-country private prices as benchmarks to calculate the amount of benefit associated with subsidies involving the provision of hot-rolled steel ("HRS") to investigated companies in the CWP and LWR investigations. China also challenged the Panel's interpretation and application of Article 14(b) of the *SCM Agreement* regarding the rejection of interest rates in China as benchmarks for loan subsidies, as well as the USDOC's use of a proxy benchmark, in the CWP, LWS, and OTR investigations.

China argued that the Panel erred in interpreting Article 14(d) of the *SCM Agreement* as permitting investigating authorities to reject in-country private prices for HRS as a benchmark based solely on evidence that the government is the predominant supplier of the good in question. Thus, China contended that the Panel erred in finding that the USDOC acted consistently with the obligations of the United States under Article 14(d) by rejecting private prices in China as benchmarks for HRS inputs. China also argued that the Panel acted inconsistently with Article 11 of the DSU, because it attributed to the USDOC a rationale for its finding that private prices were distorted other than the rationale articulated in its published determinations.

The Appellate Body expressed the view that under Article 14(d) of the *SCM Agreement*, an investigating authority may reject in-country private prices if it reaches the conclusion that these are too distorted due to the predominant participation of the government as a supplier in the market. The Appellate Body reasoned that it is price distortion that allows an investigating authority to reject in-country private prices, rather than the fact that the government is the predominant supplier *per se*. However, the Appellate Body noted that there may be cases where the government's role as a provider of goods is so predominant that price distortion is likely and other evidence carries only limited weight.

The Appellate Body disagreed with China's contentions that the Panel misunderstood the Appellate Body report in *US – Softwood Lumber IV* and wrongly interpreted Article 14(d) of the *SCM Agreement* as permitting the rejection of in-country private prices as benchmarks through the application of a *per se* rule based on the role of the government as the predominant supplier of the goods. The Appellate Body instead agreed with the Panel that, under Article 14(d) of the *SCM Agreement*, the issue of whether in-country private prices are distorted such that they cannot meaningfully be used as benchmarks is one that must be determined on a case-by-case basis, having considered evidence relating to other factors, even in situations where the government is the predominant supplier in the market.

Regarding the rejection by the USDOC of Chinese in-country private prices for HRS inputs in the CWP and LWR investigations, the Appellate Body observed that, with 96.1 per cent market share, it was likely that the government would have the market power to affect the pricing by private providers for the same goods and to induce them to align their prices with the prices of HRS supplied by the government. The Appellate Body also noted that, in such circumstances, evidence of factors other than government market share would have less weight in the determination of price distortion than in a situation where the government had only a "significant" presence in the market. The Appellate Body found that the Panel properly concluded that the USDOC could, consistently with Article 14(d) of the *SCM Agreement*, determine that private prices were distorted and could not be used as benchmarks for assessing the adequacy of remuneration. The Appellate Body, therefore, upheld the Panel's finding that the USDOC did not act inconsistently with the obligations of the United States under Article 14(d) of the *SCM Agreement* by rejecting Chinese in-country private prices as benchmarks for HRS input subsidies in the CWP and LWR investigations.

Finally, the Appellate Body rejected China's claim that the Panel acted inconsistently with Article 11 of the DSU in allegedly attributing to the USDOC a rationale that was not articulated in its published CWP and LWR determinations. The Appellate Body stated that a review of the reasons reflected in the USDOC determinations demonstrated that there was an express basis in those determinations that supported the Panel's statement that the USDOC "received and considered" evidence pertaining to factors other than government market share.

The Appellate Body turned to China's claim on appeal that the Panel erred in interpreting Article 14(b) of the *SCM Agreement*, and in finding that the USDOC acted inconsistently with the obligations of the United States under that provision by rejecting interest rates in China as benchmarks to calculate the benefit conferred by RMB-denominated loans. China argued that the Panel erred in finding that the benefit benchmark that the USDOC actually used was consistent with Article 14(b) of the *SCM Agreement*. Moreover, China contended that the Panel acted inconsistently with Article 11 of the DSU by failing properly to assess the conformity of the benchmark used by the USDOC with the requirements of Article 14(b).

The Appellate Body considered that reading Article 14(b) as always requiring a comparison with loans denominated in the same currency as the investigated loans, even in circumstances where all loans in the same currency are distorted by government intervention, would frustrate the comparison called for under Article 14(b) and prevent calculation of the appropriate benefit. The Appellate Body found that a certain degree of flexibility applies under Article 14(b) in the selection of benchmarks, in order to can ensure a meaningful comparison for the determination of benefit.

The Appellate Body agreed with the Panel that selecting a benchmark under Article 14(b) involves a progressive search for a comparable commercial loan, starting with the commercial loan that is closest to the investigated loan and moving to less similar commercial loans while adjusting them to ensure comparability with the investigated loan. The Appellate Body saw no inherent limitations in Article 14(b) that would prevent an investigating authority from using as benchmarks interest rates on loans denominated in currencies other than the currency of the investigated loan, or from using proxies instead of observed interest rates, in situations where the interest rates on loans in the currency of the investigated loan are distorted and, thus, cannot be used as benchmarks.

The Appellate Body emphasized that, the further away an investigating authority moves from the ideal benchmark of an identical or nearly identical loan, the more adjustments will be necessary to ensure that the benchmark loan approximates the "comparable commercial loan which the firm could actually obtain on the market" specified in Article 14(b). This is true even when an investigating authority resorts to a benchmark loan in another currency or to a proxy. Moreover, the methodology used to make such adjustments and effect such an approximation must be transparent and adequately explained.

The Appellate Body found that the Panel did not err in its interpretation of Article 14(b) of the *SCM Agreement*, in finding that "inherent in Article 14(b), as in Article 14(d), is sufficient flexibility to permit the use of a proxy in place of observed rates in the country in question where no 'commercial' benchmark can be found". The Appellate Body also found that the Panel did not err in its application of Article 14(b) in finding that, in the CWP, LWS, and OTR investigations, the USDOC's decision not to rely on interest rates in China as benchmarks was reasoned and adequate, and one that a reasonable and objective investigating authority could reach based on the record before it. The Appellate Body noted that the USDOC and the Panel considered evidence that highlighted various characteristics of the Chinese banking sector, including the government's predominant role as a lender, government regulation of interest rates, undifferentiated interest rates, as well as government influence over SOCB lending decisions, and considered that all of these factors taken together distorted the commercial lending market such that comparing the interest rates of the investigated loans with observed interest rates in the same market would not be meaningful for the purpose of Article 14(b). The Appellate Body, therefore, upheld the Panel's finding that the USDOC's

decision not to rely on interest rates in China as benchmarks for SOCB loans denominated in RMB in the CWP, LWS, and OTR investigations was consistent with the obligations of the United States under Article 14(b) of the *SCM Agreement*.

The Appellate Body then turned to the Panel's finding that the proxy benchmark actually used by the USDOC to calculate benefit was not inconsistent with Article 14(b). This proxy was constructed by the USDOC based on a regression analysis of interest rates in 33 countries with a gross national income similar to China's, adjusted for inflation and in relation to institutional qualities. The Appellate Body first addressed China's claim that the Panel failed to fulfil its obligations under Article 11 of the DSU. In this respect, China argued that the Panel simply accepted the USDOC's conclusions without demanding any meaningful explanation, rather than undertaking an in-depth examination of whether the USDOC's benchmark was supported by positive evidence demonstrating its consistency with Article 14(b) of the *SCM Agreement*.

The Appellate Body observed that the Panel conducted a cursory review of the USDOC's proxy benchmark and the adjustments made by the USDOC without engaging in a critical and searching analysis, or testing the adequacy and reasonableness of the USDOC's methodology in the light of other plausible alternative explanations. The Appellate Body considered that the Panel did not conduct a sufficiently rigorous review of the USDOC's construction of its proxy benchmark, but, rather, adopted a deferential standard of review that did not comport with the standard of review to be applied in countervailing duty cases. The Appellate Body, therefore, found that the Panel failed to make an objective assessment of the matter before it as required by Article 11 of the DSU and consequently reversed the Panel's finding that the benchmark actually used by the USDOC to calculate the benefit from RMB-denominated SOCB loans in the CWP, LWS, and OTR investigations was consistent with the obligations of the United States under Article 14(b) of the *SCM Agreement*. However, in the absence of sufficient factual findings by the Panel and undisputed facts on the Panel record, the Appellate Body was unable to complete the legal analysis of China's claim that the USDOC's proxy benchmark was inconsistent with Article 14(b) of the *SCM Agreement*.

4. "Double remedies"

China appealed the Panel's interpretation and application of Articles 10, 19.3, 19.4, and 32.1 of the *SCM Agreement*, as well as of Article VI:3 of the GATT 1994, as allowing the imposition of "double remedies", that is the offsetting of the same subsidization twice through the concurrent imposition of anti-dumping duties based on an NME methodology and of countervailing duties. China argued that the Panel erred in reasoning that, because these provisions do not expressly prohibit a Member from offsetting the same domestic subsidies through the imposition of two different duties, it was the intention of the drafters to authorize such actions.

The Appellate Body explained that "double remedies" may arise when both countervailing duties and anti-dumping duties are imposed on the same imported products. The term "double remedies" does not, however, refer simply to the fact that both an anti-dumping and a countervailing duty are imposed on the same product. Rather, "double remedies" refers to circumstances in which the simultaneous application of anti-dumping and countervailing duties on the same imported products results, at least to some extent, in the offsetting of the same subsidization twice. "Double remedies" are "likely" to occur in cases where an NME methodology is used to calculate the margin of dumping.[30]

The Appellate Body started its analysis with Article 19.3 of the *SCM Agreement*, which provides that countervailing duties shall be levied *in the appropriate amounts in each case*. The Appellate Body observed that what is "appropriate" is to be assessed in relation to something else, and as a function of particular circumstances. The Appellate Body agreed with the Panel that Article 19.4 provides context relevant to Article 19.3, but did not share the Panel's apparent view that this provision, alone, defines what are "appropriate amounts" of countervailing duties under Article 19.3. The Appellate Body also observed

[30] Under an NME methodology, prices or costs in a surrogate country, rather than domestic prices, are used to calculate normal value.

that several provisions in the *SCM Agreement* (Articles 19.1, 19.2, 19.3, and 21.1) link the actual amounts of countervailing duties to the injury to be removed and, thus, indicate that the appropriateness of the amount of countervailing duties is not unrelated to the injury that is being caused. The Appellate Body also considered the context provided by Articles 10 and 32.1 of the *SCM Agreement* and Article VI of the GATT 1994. The Appellate Body disagreed with the contextual significance attributed by the Panel to Article VI:5 of the GATT 1994, as well as with its consideration of the significance of the object and purpose of the *SCM Agreement* for the interpretation of Article 19.3.

Based on its interpretation, the Appellate Body disagreed with the Panel that Articles 19.3 and 19.4 of the *SCM Agreement* are "oblivious to any potential concurrent imposition of anti-dumping duties". The Appellate Body recalled its previous jurisprudence that the WTO covered agreements should be interpreted in a coherent and consistent manner, giving meaning to all applicable provisions harmoniously, and that Members should be mindful of their actions under one agreement when taking action under another. The Appellate Body considered that a proper understanding of the concept of "appropriate amounts" of countervailing duties under Article 19.3 of the *SCM Agreement* cannot be achieved without due regard to relevant provisions of the *Anti-Dumping Agreement*, and that the requirement that any amounts be "appropriate" means, at a minimum, that investigating authorities may not, in fixing the appropriate amount of countervailing duties, simply ignore that anti-dumping duties have been imposed to offset the same subsidization. The Appellate Body further noted that both the *Anti-Dumping Agreement* and the *SCM Agreement* contain provisions requiring that the amounts of anti-dumping and countervailing duties be "appropriate in each case", as reflected in Articles 9.2 and 19.3 respectively, and concluded that reading the two agreements together suggests that the imposition of double remedies would circumvent the standard of appropriateness that the two agreements separately establish for their respective remedies.

The Appellate Body concluded that the Panel erred in its interpretation of Article 19.3 of the *SCM Agreement* and failed to give meaning and effect to all the terms of that provision, because under Article 19.3 of the *SCM Agreement*, the appropriateness of the amount of countervailing duties cannot be determined without having regard to anti-dumping duties imposed on the same product to offset the same subsidization. The amount of a countervailing duty cannot be "appropriate" in situations where that duty represents the full amount of the subsidy and where anti-dumping duties, calculated at least to some extent on the basis of the same subsidization, are imposed concurrently to remove the same injury to the domestic industry. The Appellate Body, therefore, reversed the Panel's interpretation that Article 19.3 of the *SCM Agreement* does not address the issue of double remedies and found instead that the imposition of double remedies, that is, the offsetting of the same subsidization twice by the concurrent imposition of anti-dumping duties calculated on the basis of an NME methodology and of countervailing duties, is inconsistent with Article 19.3 of the *SCM Agreement*.

Having found that the imposition of double remedies is inconsistent with Article 19.3 of the *SCM Agreement*, the Appellate Body considered that it was unnecessary for the purposes of resolving this dispute to rule on the interpretation of Article 19.4 of the *SCM Agreement* and Article VI:3 of the GATT 1994. The Appellate Body considered the Panel's interpretation of these provisions to be moot and of no legal effect.

Having reversed the Panel's interpretation of Article 19.3 of the *SCM Agreement*, the Appellate Body considered China's request that it complete the legal analysis and find the USDOC's concurrent imposition of anti-dumping duties calculated on the basis of its NME methodology, and of countervailing duties on the same products in the four countervailing duty determinations at issue to be inconsistent with Article 19.3 of the *SCM Agreement*.

The Appellate Body agreed with the Panel that double remedies are "likely" to arise from the concurrent imposition of anti-dumping duties calculated based on an NME methodology, and of countervailing duties, but observed that double remedies do not necessarily result in every instance of such

concurrent application of these duties. This depends, rather, on whether and to what extent domestic subsidies have lowered the export price of a product, and on whether the investigating authority has taken the necessary corrective steps to adjust its methodology to take account of this factual situation.

Turning to the four sets of investigations at issue, the Appellate Body stated that an investigating authority is subject to an affirmative obligation to ascertain the precise amount of the subsidy, as well as the appropriate amount of the duty. The Appellate Body noted that in the four investigations at issue, the USDOC had made no attempt to establish whether or to what degree it would offset the same subsidies twice by imposing anti-dumping duties calculated under its NME methodology, concurrently with countervailing duties. Thus, the Appellate Body concluded that by declining to address China's claims concerning double remedies in the four countervailing duty investigations at issue, the USDOC had failed to fulfil its obligation to determine the "appropriate" amount of countervailing duties within the meaning of Article 19.3 of the *SCM Agreement*. The Appellate Body, therefore, found that, in the four sets of investigations at issue, the United States imposed anti-dumping duties calculated on the basis of an NME methodology, concurrently with the imposition of countervailing duties on the same products, without having assessed whether double remedies arose from such concurrent duties. The Appellate Body concluded that, in doing so, the United States acted inconsistently with its obligations under Article 19.3 of the *SCM Agreement*, and, consequently, with its obligations under Articles 10 and 32.1 of the *SCM Agreement*.

For these reasons, the Appellate Body recommended that the DSB request the United States to bring its measures, found in the Appellate Body Report, and in the modified Panel Report, to be inconsistent with the *SCM Agreement* into conformity with its obligations under that Agreement.

▪ Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, WT/DS316/AB/R

This appeal originated from a challenge brought by the United States against over 300 alleged instances of subsidization, over the course of four decades, by the European Communities and four of its member States—France, Germany, Spain, and the United Kingdom—with respect to large civil aircraft ("LCA") developed, produced, and sold by Airbus SAS and its predecessor entities. The specific measures at issue in this dispute included:

- "Launch Aid" or "Member State Financing" ("LA/MSF") for the development of various Airbus LCA, consisting of the A300, A310, A320, A330/A340 (including the A330-200 and A340-500/600 variants), A350, and A380;
- loans from the European Investment Bank to Airbus entities between 1988 and 2002;
- infrastructure and infrastructure-related grants by the four member State governments;
- corporate restructuring measures undertaken by the French and German Governments; and
- research and technological development funding granted to Airbus entities by the four member State governments.

The United States claimed that the European Communities and the four member States, through the use of these subsidies, caused adverse effects to the United States' interests within the meaning of Articles 5 and 6 of the *SCM Agreement*, and that certain of the LA/MSF measures are prohibited export subsidies within the meaning of Article 3 of the *SCM Agreement*.

On appeal, the European Union challenged the Panel's finding that Article 5 of the *SCM Agreement* covers subsidies granted prior to 1995; the Panel's alleged failure to take into account changes in ownership, the need for a pass-through analysis, and the extinction, extraction, removal, or withdrawal of the subsidies; several aspects of the Panel's analysis as regards LA/MSF, including its ultimate finding that some of the LA/MSF measures are export subsidies prohibited under Article 3 of the *SCM Agreement*; the Panel's findings that certain infrastructure measures, equity contributions, and research and technological development support constitute specific subsidies; the Panel's findings concerning displacement of imports from the European Union and displacement of exports from certain third-country markets; some of the Panel's findings regarding certain lost sales campaigns; and the Panel's causation analysis under Articles 5 and 6 of the *SCM Agreement*, that is, the examination of whether the European Communities and the four Member States, through the use of LA/MSF and non-LA/MSF subsidies, caused serious prejudice to the interests of the United States. Finally, regarding many of the above points, the European Union also claimed that the Panel failed to make an objective assessment of the matter (including of the facts) and failed to set out adequately the basic rationale for its findings, contrary to Articles 11 and 12.7 of the DSU.

The United States cross-appealed two aspects of the Panel Report: (i) the finding that certain of the LA/MSF measures did not constitute export subsidies; and (ii) the finding that the United States failed to demonstrate the existence of an allegedly unwritten LA/MSF Programme.[31]

1. Preliminary Issues

(a) Terms of Reference

The European Union argued that the Panel erred in its interpretation and application of Article 6.2 of the DSU in concluding that Spanish and French research and technological development ("R&TD") funding measures had been properly identified in the United States' panel request and were therefore within the Panel's terms of reference. The Appellate Body did not consider that the United States' panel request could be understood as having identified loans provided pursuant to the Spanish PROFIT programme. The Appellate Body explained that, although information concerning the PROFIT programme was readily available in the public domain at the time of the panel request, the United States made no mention of the programme in its request. The Appellate Body did not consider that subsequent reference by the United States to the PROFIT programme during the information-gathering process under Annex V to the *SCM Agreement*, or in its written submissions before the Panel, cured the lack of specification in the panel request. For the Appellate Body, it followed from this that, by reason of the lack of specification of the PROFIT programme by name, the European Communities and the third parties were consequently not on notice that the programme was part of the complainant's case. On this basis, the Appellate Body reversed the Panel's finding that the R&TD loans provided pursuant to the Spanish PROFIT programme were within the Panel's terms of reference.

With respect to the French R&TD funding measures, the Appellate Body observed that the United States' panel request identified R&TD funding from the French Government, including regional and local authorities, since 1986 for civil aeronautics-related R&TD projects in which Airbus participated. In other words, these funding measures were identified by references to the funding authority, time period, and area of support. Given the specific circumstances of these measures, the Appellate Body did not consider that the United States could have provided additional specifying information concerning the name of the funding programme. The Appellate Body therefore upheld the Panel's finding that the French R&TD grants were within the Panel's terms of reference.

[31] The United States did not appeal the Panel's ruling that it had failed to establish the existence, as of July 2005 (at the time the Panel was established), of a LA/MSF commitment measure for the A350 constituting a specific subsidy within the meaning of the *SCM Agreement*. Nor did the United States challenge the Panel's rejection of its claims of price undercutting, price suppression, and price depression under Article 6.3(c) of the *SCM Agreement*, or the Panel's rejection of its claim of injury under Article 5(a) of the *SCM Agreement*, or the Panel's rejection of its claim regarding loans by the European Investment Bank to Airbus.

(b) Temporal Scope of Article 5 of the *SCM Agreement*

The European Union claimed that the Panel erred in its interpretation and application of Article 5 of the *SCM Agreement* when concluding that all alleged actionable subsidies granted by the European Union prior to 1 January 1995 were included in the temporal scope of this dispute.[32]

The Appellate Body modified the Panel's interpretation of Article 5 of the *SCM Agreement*, but upheld the Panel's conclusion rejecting the European Communities' request to exclude all alleged subsidies granted prior to 1 January 1995 from the temporal scope of the dispute. Referring to the text of Article 5 of the *SCM Agreement* and the non-retroactivity of treaties principle reflected in Article 28 of the *Vienna Convention*, the Appellate Body disagreed with the European Union that, by virtue of Article 28, no obligation arising out of Article 5 is to be imposed on a WTO Member in respect of subsidies granted or brought into existence prior to the entry into force of the *SCM Agreement*. The Appellate Body recognized that this may mean that a subsidy granted prior to 1 January 1995 falls within the scope of Article 5 of the *SCM Agreement*, but explained that this is only because of its possible nexus to the continuing situation of causing, through the use of this subsidy, adverse effects to which Article 5 applies. In reaching this conclusion, the Appellate Body emphasized that it was *not* suggesting that the causing of adverse effects, through the use of pre-1995 subsidies, could necessarily be characterized as a "continuing" situation in this case. Rather, it simply found that a challenge to pre-1995 subsidies was not *precluded* under the terms of the *SCM Agreement*.

(c) Life of a Subsidy and Intervening Events

The European Union argued that the Panel erred in the interpretation and application of Articles 1, 5, and 6 of the *SCM Agreement*. According to the European Union, the Panel ignored the "legal principle" reflected in these provisions that, when a benefit to a recipient arising from prior subsidies diminishes over time or is removed or is taken away, there is a "significant change" that must be taken into account in the application of the *SCM Agreement* and, in particular, in the examination of the causal link between the granting of the subsidy and the alleged adverse effects. For its part, the United States requested the Appellate Body to uphold the Panel's finding that, on a proper interpretation of Articles 1, 5, and 6 of the *SCM Agreement*, there is no requirement to demonstrate a "continuing benefit" for purposes of an adverse effects analysis.

The Appellate Body said it understood the participants to agree with the basic proposition that a subsidy has a life, which may come to an end, either through the removal of the financial contribution and/or the expiration of the benefit. In the particular context of Part III of the *SCM Agreement*, a panel is called upon to determine whether the complainant has demonstrated that the responding party is causing, through the use of any subsidy, adverse effects. The Appellate Body considered that a subsidy does not remain unchanged over time. Rather, at the time of the grant of a subsidy, the subsidy will necessarily be projected to have a finite life and to be utilized over that finite period. In order properly to assess a complaint under Article 5 that a subsidy causes adverse effects, a panel must take into account that a subsidy accrues and diminishes over time, and will have a finite life. The Appellate Body added that the adverse effects analysis under Article 5 is distinct from the "benefit" analysis under Article 1.1(b) of the *SCM Agreement* and there is consequently no need to "re-evaluate" under Article 5 the amount of the benefit conferred pursuant to Article 1.1(b). Rather, an adverse effects analysis under Article 5 must consider the trajectory of the subsidy as it was projected to materialize over a certain period at the time of the grant. Separately, where it is so

[32] In particular, the European Communities argued that the following groups of measures fell outside the temporal scope of the *SCM Agreement*: (i) LA/MSF committed and paid prior to 1 January 1995; (ii) EIB loans to EADS and the Airbus companies that were provided in full prior to 1 January 1995; (iii) the extension of the runway at the Bremen Airport, which occurred in 1988 and 1989; and (iv) share transfers and equity infusions that took place before I January 1995. In addition, in relation to R&TD funding, the European Communities argued "that grants or disbursements made after 1 January 1995 pursuant to programmes established prior to 1 January 1995 are within the temporal scope of Article 5, while grants or disbursements made prior to 1 January 1995 are outside the temporal scope of Article 5 and should be excluded from these proceedings."

argued, a panel must assess whether there are "intervening events" that occurred after the grant of the subsidy that may affect the projected value of the subsidy as determined under the *ex ante* analysis. Such events, the Appellate Body found, may be relevant to an adverse effects analysis because they may affect the link that a complaining party is seeking to establish between the subsidy and its alleged effects.

Regarding the European Union's contention that a complaining party must demonstrate the existence of a "continuing benefit" during the reference period in order to show that a subsidy is capable of causing present adverse effects, Appellate Body explained that the text of Articles 5 and 6 of the *SCM Agreement* does not support the proposition that there must be "present benefit" during the reference period. The Appellate Body further considered that the requirement that the effects of subsidies be felt in the reference period, does not mean that the subsidies, and in particular the benefit conferred, must also be present during that period. Rather, in focusing on the causing of adverse effects through the use of any subsidy, Article 5 envisages that the use of the subsidy and the adverse effects may not be contemporaneous.

For these reasons, the Appellate Body agreed with the Panel that the United States was not required, under Article 5 of the *SCM Agreement*, to establish that all or part of the "benefit" found to have been conferred by the provision of a financial contribution continues to exist during the reference period. The Appellate Body emphasized, however, that, as with a subsidy that has a life and materializes over time, so too do the effects of a subsidy accrue and diminish over time, thus the effects of a subsidy will ordinarily dissipate over time and will end at some point after the subsidy has expired.

In sum, therefore, the Appellate Body modified the Panel's interpretation of "continuing benefit", but upheld the Panel's ultimate finding that Articles 5 and 6 of the *SCM Agreement* do not require that a complainant demonstrate that a benefit "continues" or is "present" during the reference period for purposes of an adverse effects analysis.

(d) Extinction, Extraction, and Pass-Through of Subsidies

Before the Panel and on appeal, the European Union referred to a number of "intervening events" that it claimed reduced, or brought to an end, all or part of the subsidies provided to Airbus companies and therefore should have been taken into account by the Panel as part of its adverse effects analysis. The European Union identified the following "intervening events": (a) shares in an enterprise that has previously received subsidies are subsequently bought by new private owners in sales transactions conducted at arm's length and for fair market value, resulting in the "extinction" of subsidies; (b) a parent company removes cash or cash equivalents from a wholly owned subsidiary that has previously received subsidies, resulting in the "extraction" of subsidies; and (c) a company that has previously received subsidies is restructured and legally reorganized to form a new company, resulting in a situation in which the subsides do not "pass through" to the new company.

- Extinction of subsidies

The European Union argued on appeal that certain transactions involving sales of shares in Aérospatiale-Matra, EADS, and Airbus SAS were conducted at "arm's length" and for "fair market value" and therefore "extinguished", in full or in part, alleged subsidies remaining in those companies.[33] Referring to the Appellate Body Reports in *US – Lead and Bismuth II* and *US – Countervailing Measures on Certain EC Products* (the "privatization cases"), the Appellate Body noted that the present case was not brought in a

[33] These transactions consisted of the following: (i) the French Government's sale of shares in Aérospatiale-Matra in 2000; (ii) the combination of the LCA-related assets and activities of the Airbus partners to form EADS and the public offering of EADS shares in 2000; (iii) sales of EADS shares by various shareholders between 2001 and 2006, including sales by the French Government and Lagardère in 2001 (0.93% and 2.07%, respectively), a sale by DaimlerChrysler in 2004 (2.75%), and sales by DaimlerChrysler and Lagardère in 2006 (totalling 15%); and (iv) the exercise of a "put option" and sale by BAE Systems of its 20% interest in Airbus SAS to EADS in 2006.

Part V context where the question arises as to the rate of subsidization present in the product that is being countervailed. The Appellate Body added that none of the sales transactions in this dispute amounted to a full privatization of a previously state-owned company.

Although the Members of this Division discussed at length the issue of extinction of subsidies in the context of partial privatizations and private-to-private sales, no common view emerged. Instead, each Member of the Division set out separate views on this issue:

One Member agreed with the Appellate Body rulings in previous privatization cases that a full privatization, conducted at arm's length and for fair market value involving a complete or substantial transfer of ownership and control, "extinguishes" prior subsidies, but expressed the view that that this rule does not apply to partial privatizations or to private-to-private sales. Another Member considered that the *rationale* underlying the Appellate Body's case law on full privatizations in countervailing measure cases under Part V equally applies in situations of partial privatization and private-to-private transactions and in the context of Part III of the *SCM Agreement*. The third Member questioned in principle whether an acquisition of shares, concluded at arm's length and for fair market value, could warrant the conclusion that an extinction of benefit had taken place.

The Appellate Body considered that consistent with the Appellate Body's guidance in those previous cases, a fact-intensive inquiry into the circumstances surrounding the changes in ownership would be required in order to determine the extent to which there are sales at fair market value and at arm's length, accompanied by transfers of ownership and control, and whether a prior subsidy could be deemed to have come to an end. Moreover, the Appellate Body noted that a panel assessing claims under Part III of the *SCM Agreement* would have to examine whether the transactions are of a nature, kind, and amount so as to affect an adverse effects analysis and attenuate the link sought to be established by the complaining party under Articles 5 and 6 of the *SCM Agreement* between the challenged subsidies and their alleged effects.

The Appellate Body reversed the Panel's finding that certain corporate share transactions involving the Airbus consortium did not "extinguish" a portion of past subsidies, because the Panel failed to assess whether the partial privatizations and private-to-private sales transactions were at arm's-length terms and for fair market value, and to what extent they involved a transfer in ownership and control to new owners; however, there were insufficient factual findings or undisputed facts on record for the Appellate Body to complete the analysis and determine whether the transactions at issue indeed "extinguished" a portion of past subsidies.

- Extraction

The second category of "intervening events" that the European Union argued should have been taken into account by the Panel under its adverse effects analysis concerned the removal of cash from two Airbus predecessor companies—DaimlerChrysler Aerospace AG ("Dasa") and Construcciones Aeronáuticas SA ("CASA")—prior to their contribution to European Aeronautic Defence and Space Company NV ("EADS"), in 2000. According to the European Union, these transactions—which it referred to as "cash extractions"—had the effect of "extracting" or taking away all or part of the "incremental value" created by prior subsidies provided to Dasa and CASA.

Unlike the Panel, the Appellate Body said it did not *a priori* exclude the possibility that all or part of a subsidy may be removed from a firm by the removal of cash or cash equivalents. The Appellate Body added that even the complaining party in this case did not preclude that there are circumstances in which a Member may remove cash from a subsidized company in a way that "withdraws" the subsidy.[34]

Turning to consider the European Union's arguments on appeal, the Appellate Body noted that the European Union had provided no persuasive evidence as to how the specific subsidies provided to Dasa and CASA increased the "incremental value" of those companies, and therefore how the cash "removed" could be deemed to remove that value. Thus, while it did not *a priori* exclude the possibility that all or part of a subsidy may be "extracted" by the removal of cash or cash equivalents, the Appellate Body upheld the Panel's ultimate finding that it had not been established that the "cash extractions" from Dasa and CASA removed a portion of past subsidies.

- **Withdrawal of subsidies within the meaning of Articles 4.7 and 7.8 of the *SCM Agreement***

The Appellate Body turned next to consider whether, as argued by the European Union, the "cash extractions" from Dasa and CASA, as well as the partial privatization and private-to-private sales transactions at issue, constitute "withdrawals" of subsidies within the meaning of Articles 4.7 and 7.8 of the *SCM Agreement*. The Appellate Body recalled that the drafters of Articles 4.7 and 7.8 contemplated that the remedy of "withdrawal" would be available only after a panel and the Appellate Body had determined, in original proceedings, that subsidies are prohibited and/or actionable and causing adverse effects. The Appellate Body considered that a recommendation to "withdraw" subsidies pursuant to Article 4.7 is directed at subsidies that have been found to be prohibited; under Article 7.8, a recommendation to "withdraw" subsidies or remove their adverse effects is directed at actionable subsidies that have been found to cause adverse effects. Such recommendations do not concern subsidies that have been "extracted" or "extinguished", nor are panels or the Appellate Body required to make recommendations with respect to detracted or extinguished subsidies. The Appellate Body recalled that, in this dispute, at the time the sales transactions and "cash extractions" took place, there had been no findings by a panel or the Appellate Body that alleged subsidies were either prohibited subsidies or actionable subsidies causing adverse effects. Therefore, the Appellate Body did not consider that the sales transactions and "cash extractions" resulted in the "withdrawal" of subsidies, within the meaning of Articles 4.7 and 7.8 of the *SCM Agreement*.

Accordingly, the Appellate Body upheld the Panel's ultimate finding that the "cash extractions" did not result in the "withdrawal" of subsides, within the meaning of Articles 4.7 and 7.8 of the *SCM Agreement*. With respect to the sales transactions at issue, the Appellate Body said it had no basis to make a finding that they resulted in "withdrawal" of subsidies as it had not been able to complete the analysis to determine whether they "extinguished" prior subsides.

- **Claims under Article 11 of the DSU**

The Appellate Body declined to make additional findings as to whether the Panel failed to make an objective assessment of the matter and thereby acted inconsistently with Article 11 of the DSU in its treatment of the European Communities' arguments concerning the "extinction", "extraction", and "withdrawal" of subsidies.

[34] The Appellate Body noted, however, that this does not amount to saying, as the European Communities acknowledged before the Panel, that every time cash leaves a company the benefit of prior financial contributions would be correspondingly diminished. Rather, a consideration of whether the cash removed from a company eliminates past subsidies is a fact-specific inquiry that must be assessed based on the circumstances of the case. That inquiry, the Appellate Body explained, would consider matters such as whether the cash "extracted" was in the form of dividends representing the profits of a company, which both participants accepted would not normally amount to an "extraction" of past subsidies.

- Pass-through of subsidies

The Appellate Body turned next to address the European Union's request for reversal of the Panel's finding that the United States was not required, in order to make a *prima facie* case under Articles 5 and 6 of the *SCM Agreement*, to demonstrate that the benefits of subsidies provided to Airbus predecessor companies "passed through" to Airbus SAS, the current producer of Airbus LCA. The Appellate Body noted that the United States' claims were not limited to adverse effects caused by subsidies provided to the current producer of LCA or to the current LCA models produced by Airbus SAS. Rather, the United States also challenged subsidies provided to "predecessor Airbus GIE companies" and "predecessor affiliated companies" of both Airbus GIE and Airbus SAS. Recalling that subsidies provided in the past can continue to have adverse effects at a later point in time, the Appellate Body did not consider that the facts of this case required the United States to demonstrate that past subsidies "passed through" from the Airbus Industries consortium to Airbus SAS, in addition to showing that the European Union was in breach of its obligation not to cause, through the use of any subsidy, adverse effects to the interests of the United States. Furthermore, the Appellate Body agreed with the Panel that despite the changes in "legal organization", the "economic realities" of production of Airbus LCA demonstrated the predecessor and successor companies were the same producers of LCA. Thus, the Appellate Body was not faced with a situation where predecessor and successor companies were unrelated and operated at arm's length and where a pass-through analysis might therefore be required.

For these reasons, the Appellate Body upheld the Panel's finding that the United States was not required to demonstrate, as part of its *prima facie* case under Article 5 of the *SCM Agreement*, that subsidies provided to the Airbus predecessor companies "passed through" to the current producer of Airbus LCA, Airbus SAS.

2. Launch Aid/Member State Financing

(a) The Alleged LA/MSF Programme

In its other appeal, the United States challenged the Panel's finding that the United States failed to demonstrate the existence of an allegedly unwritten LA/MSF Programme. The United States described the alleged LA/MSF Programme as "ongoing conduct" or "repeated provision of [LA/MSF] to each and every major Airbus model, under the same four core conditions and benefiting the same subsidized product".

The Appellate Body began by considering whether the United States' request for the establishment of a panel identified an LA/MSF Programme as a "specific measure at issue", as required by Article 6.2 of the DSU. The Appellate Body agreed with the participants that the United States' panel request explicitly identified the provisions of LA/MSF for individual LCA models. However, the Appellate Body was of the view that the United States' panel request failed to identify a challenge to a distinct measure, consisting of an unwritten LA/MSF Programme or "a concerted and coherent approach ... designed to contribute to the long-term competitiveness of Airbus". The Appellate Body recalled that it is well established that, where a panel request fails to identify a particular measure or fails to specify a particular claim, such a measure or claim will fall outside the panel's jurisdiction. Moreover, a complainant's submissions during the panel proceedings cannot cure a defect in a panel request. The Appellate Body found therefore that the alleged LA/MSF Programme was not within the Panel's terms of reference because it was not identified in the United States' request for the establishment of a panel, as required by Article 6.2 of the DSU. Having reached this conclusion, the Appellate Body had no jurisdiction to consider further the arguments raised by the participants, and the Panel's finding regarding the alleged LA/MSF Programme. Accordingly, the Appellate Body declared moot and of no legal effect the Panel's finding that the United States had failed to establish the existence of an unwritten LA/MSF Programme measure constituting a specific subsidy within the meaning of Articles 1 and 2 of the *SCM Agreement*.

(b) LA/MSF Benefit

With respect to the Panel's findings on the individual LA/MSF measures, the European Union argued, *inter alia*, that the Panel erred in failing to take account of Article 4 of the *Agreement between the United States and the European Economic Community concerning the application of the GATT Agreement on Trade in Civil Aircraft* (the "1992 Agreement")[35] in interpreting and applying the notion of "benefit" under Article 1.1(b) of the *SCM Agreement*. The European Union additionally challenged the Panel's application of Article 1.1(b) to the facts and its assessment of the evidence, pursuant to Article 11 of the DSU, concerning the appropriate market interest rate that the Panel used as a benchmark to compare against the interest rates of the LA/MSF measures, in order to determine whether the latter conferred a benefit on the Airbus companies. In particular, the European Union took issue with the project-specific risk premia that the Panel used in constructing a market interest rate benchmark. It also challenged the Panel's rejection of the European Union's proposed benchmark, which was based on the interest rates allegedly charged by Airbus risk-sharing suppliers. Furthermore, the European Union asserted that to the extent that the Panel made findings with respect to the relevance of the number of sales over which full repayment is expected to the appropriateness of the market rate of return, the Panel erred in its determination of benefit.

Regarding the issue of whether the challenged LA/MSF measures conferred a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*, the Appellate Body found that Article 4 of the 1992 Agreement is not a relevant rule of international law applicable in the relations between the parties, within the meaning of Article 31(3)(c) of the *Vienna Convention*, that informs the meaning of "benefit" under Article 1.1(b) of the *SCM Agreement* and does not form part of the facts to establish the relevant market benchmark at the time the LA/MSF was granted.

Next, the Appellate Body turned to the European Union's challenge to the Panel's assessment of benefit. The Panel determined whether the LA/MSF confer a benefit by examining whether the cost of the challenged LA/MSF contracts to Airbus is less than the cost that Airbus would be faced with if it sought financing on the same or similar terms and conditions as LA/MSF from the market.

In order to make the comparison required by Article 1.1(b), the Panel first determined the internal rate of return of each of the LA/MSF measures. Neither the European Union nor the United States questioned on appeal the Panel's determination of the maximum returns obtained by the member States on the LA/MSF. The European Union's appeal focused exclusively on the other element of the Panel's comparison, that is, the rates of return that a market lender would have required to provide financing to Airbus. Both the United States and the European Communities sought to develop a proxy that, in their view, most accurately reflected the rate of return that would have been demanded by a market lender. This proxy, and particularly one of its components (the project-specific risk premia), was at the heart of the European Union's appeal.

The Panel examined the project-specific risk premia put forward by both parties and had misgivings about both. As regards the project-specific risk premium put forward by the United States, the Panel considered that it had "a number of deficiencies" which, in its view, "imply that it probably overstates the appropriate level of project-specific risk that may be reasonably associated with LA/MSF provided for at least a number of the challenged Airbus LCA projects". The Panel also found that the benchmark proposed by the European Communities "under-estimate[d] the appropriate level of project-specific risk that may be reasonably associated with LA/MSF for all of the challenged measures".

[35] Article 4 of the 1992 Agreement stipulates that development support provided by governments shall not be afforded to a new aircraft programme unless a valid critical project appraisal, based on "conservative assumptions" has established that there is a reasonable expectation that all costs (including repayment of all support money) can be recovered within 17 years, on terms and conditions provided for under the Agreement; direct government support shall not exceed 33 per cent of the total development costs at interest rates no less than certain specified rates; and calculations shall be made on the basis of the forecast of aircraft deliveries in the critical project appraisal.

The European Union challenged on appeal the Panel's assessment of the appropriate project-specific risk premium as both an error of application of Article 1.1(b) of the *SCM Agreement* and as a failure to make an objective assessment of the facts under Article 11 of the DSU. However, the Appellate Body concluded that the European Union's appeals of the quantification of the level of risk, the choice of relevant factors for quantification, and the reasoning of the Panel were challenges to the objectivity of the Panel's assessment of factual determinations within the meaning of Article 11 of the DSU.

The Appellate Body then proceeded to review the Panel's assessment of the project-specific risk premium put forward by the United States and found the Panel's reasoning in relation to the United States' proposed project-specific risk premium was internally inconsistent. Consequently, the Appellate Body reversed the Panel's findings that the United States' proposed project-risk premium constituted the minimum project risk for the A300 and A310, the exterior upper boundary of the range of project risk for the A320, A330/A340, A330-200, and A340-500/600, and the internal upper boundary of the range of project risk for the A380.

The Appellate Body turned to the Panel's assessment of the project-specific risk premium proposed by the European Communities. In reviewing the Panel's assessment, the Appellate Body identified several flaws in the Panel's analysis. The Panel had summarized the European Communities' rebuttal arguments and evidence, but did not engage with them. Nor did had the Panel explained how it reconciled its conclusion with the rebuttal arguments and evidence. The Appellate Body considered that this type of reasoning is not consistent with the Panel's duty to make an objective assessment of the facts under Article 11 of the DSU.

The Appellate Body clarified, however, that the errors it had identified did not invalidate the Panel's overall conclusion about the reliability of the project-specific risk premium proposed by the European Communities. It was reasonable for the Panel to have concluded that LA/MSF reduces the level of risk of an LCA project perceived by the risk-sharing suppliers. As a result, risk-sharing suppliers would be expected to demand a lower rate of return on their participation in an LCA project than they would have demanded in the absence of LA/MSF. Therefore, the Appellate Body was of the view that deriving the project risk premium from the rate of return of the risk-sharing suppliers underestimated the project risk premium that would be demanded by a market lender in the absence of LA/MSF.

Accordingly, the Appellate Body rejected this aspect of the European Union's appeal and did not consider that its concerns with certain aspects of the Panel's reasoning warranted disturbing the Panel's ultimate finding that the project-specific risk premium proposed by the European Union underestimates the appropriate level of project-specific risk associated with the challenged LA/MSF measures. In the light of its conclusions, the Appellate Body had to consider how its intermediate findings affected the Panel's ultimate conclusion that the LA/MSF measures confer a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*. The Appellate Body ultimately upheld the Panel's conclusion that the European Communities' proposed project-specific risk premium underestimated the risk premium that a market operator would have reasonably demanded Airbus pay for financing on the same or similar terms as the challenged LA/MSF. The Appellate Body observed that the uncontested evidence indicated that, even leaving aside the project-specific risk premium, the rates of return obtained by the member States on all but two of the challenged LA/MSF measures are below a market benchmark that does not include a project-specific risk premium. The rate of return obtained by the member States under the other two LA/MSF measures is below a market benchmark that includes the project-specific risk premium proposed by the European Communities, which in fact understated the risk premium. Accordingly, the Appellate Body upheld the Panel's conclusions that the challenged LA/MSF measures conferred a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*.

The European Union also challenged the Panel's statement that "the number of sales over which full repayment is expected says little, if anything, about the appropriateness of the rate of return that will be achieved by the lender". The Appellate Body explained that the Panel's statement could be misunderstood

to suggest that the number of sales is irrelevant to the calculation of the rate of return of the member State governments, which would be incorrect. Given the potential that the Panel's statement could be misused in the future, the Appellate Body reversed the Panel's statement.

3. Non-Launch Aid/Member State Financing Measures

(a) The EC Framework Programmes

The European Union argued that the Panel erred in finding that certain R&TD grants provided to Airbus pursuant to the Second (1987-1991), Third (1990-1994), Fourth (1994-1998), Fifth (1998-2002), and Sixth (2002-2006) EC Framework Programmes were "specific" subsidies within the meaning of Article 2.1(a) of the *SCM Agreement*.

Referring to findings made by the Panel, the Appellate Body observed that each of the EC Framework Programmes appeared to divide up funding into those research areas that are sector-specific—such as the allocations to "aeronautics" and "aeronautics and space"—and those that are "of a general horizontal nature, potentially cutting across a variety of business segments". Thus, each EC Framework Programme targeted funding to economic activities "at both horizontal and sector-specific levels". In the light of these findings, the Appellate Body did not consider that the EC Framework Programmes ensured "equal access" to funding.

Moreover, the Appellate Body did not consider that explicit limitations on access to a subsidy to entities active in one sector of the economy will lead to a different conclusion under Article 2.1(a) by virtue of the fact that separate groupings of entities have access to other pools of funding under that programme. For the Appellate Body, if access to the same subsidy is limited to some grouping of enterprises or industries, an investigating authority or panel would be required to assess whether the eligible recipients can be collectively defined as "certain enterprises". Where access to certain funding under a subsidy programme is explicitly limited to a grouping of enterprises or industries that qualify as "certain enterprises", this leads to a provisional indication of specificity within the meaning of Article 2.1(a), irrespective of how other funding under that programme is distributed. The Appellate Body further considered that, on the basis of the evidence before it, the Panel could properly have concluded that those eligible to receive funding allocated to research in the aeronautics sector qualified as "certain enterprises". For these reasons, the Appellate Body saw no grounds to disturb the Panel's conclusion that the evidence before it "indicate[d] that amounts of subsidization were explicitly set aside under each of the relevant Framework Programmes for the research efforts of 'certain enterprises'".

For these reasons, the Appellate Body did not consider that the Panel erred in applying the principle under Article 2.1(a) to determine that the allocation of R&TD subsidies to the aeronautics sector was specific. Accordingly, the Appellate Body upheld the Panel's finding that the R&TD subsidies granted to Airbus under each of the EC Framework Programmes were "specific" subsidies within the meaning of Article 2.1(a) of the *SCM Agreement*.

(b) Infrastructure Measures

The European Union argued that the Panel erred in its interpretation and application of Article 1.1(a)(1)(iii) of the *SCM Agreement* in finding that certain measures relating to the Mühlenberger Loch near Hamburg, the Bremen airport runway extension, and the ZAC Aéroconstellation industrial park near Toulouse are not general infrastructure and constitute financial contributions.

The Panel stated that the disagreement between the parties focused on the "central question" of whether the challenged infrastructure constitutes the provision of "other than general infrastructure" within the meaning of Article 1.1(a)(1)(iii) of the *SCM Agreement*. On appeal, however, the European Union directed

its challenge to a different issue. Stating that the Panel posed the "wrong question" by asking whether the challenged infrastructure measures constituted the provision of "other than general infrastructure", the European Union maintained that the Panel ignored its argument "that a distinction must be made between, on the one hand, the creation of infrastructure and, on the other hand, the provision of infrastructure to the recipient". The European Union thus submitted that the Panel erred in its interpretation and application of Article 1.1(a)(1)(iii) by failing to recognize that the relevant transaction for purposes of its analysis under Article 1.1(a)(1)(iii) was the provision of goods or services in the form of infrastructure to Airbus Deutschland and Airbus France, not the creation of that infrastructure.

After examining the measures at issue, the Appellate Body modified the Panel's characterization of the infrastructure measures constituting a financial contribution under Article 1.1(a)(1)(iii) of the *SCM Agreement*. On the basis of its review of the Panel record, the Appellate Body considered that a proper characterization of the financial contributions provided to Airbus consists of the following: (i) the lease of land and special purpose facilities at the Mühlenberger Loch industrial site; (ii) the right to exclusive use of the extended runway at the Bremen airport; and (iii) the sale of land and the lease of facilities at the Aéroconstellation industrial site.

The European Union also argued on appeal that the Panel erred in its interpretation and application of the term "benefit", within the meaning of Article 1.1(b) of the *SCM Agreement*, in finding that the three infrastructure measures at issue confer a benefit on Airbus Deutschland and Airbus France.

The Appellate Body noted that there is no disagreement between the participants that the market was the appropriate benchmark in determining benefit within the meaning of Article 1.1(b), and that Article 14(d) confirms the importance of examining the value of the financial contribution in relation to "prevailing market conditions". The principal question was instead whether the Panel nevertheless erred in failing to determine benefit in conformity with that standard.

The Appellate Body recalled that the Panel had found that the cost to government in providing the infrastructure exceeded the amounts the government received in return for that investment. The Appellate Body noted that, in arriving at its findings, the Panel denied that it was resorting to a "cost-to-government" standard.

The Appellate Body considered that the Panel's assertions that it was not relying on the costs to the government to determine benefit were belied by its analysis. The Appellate Body acknowledged that, in certain circumstances, a seller's costs may be a relevant factor to consider in assessing whether goods or services were provided for less than adequate remuneration. However, the Appellate Body saw no indication that the Panel relied on any considerations other than investment costs in arriving at its determination of a market benchmark. The Appellate Body therefore considered that the Panel erroneously equated the government's investment costs with market value. The Appellate Body considered that the Panel's conclusion that the relevant authorities did not recoup their investment was equivalent to stating that those investments conferred a benefit because they resulted in a net cost to the government.

The Appellate Body rejected this reasoning by the Panel because it did not adhere to this market logic. The Appellate Body explained that the fact that a market actor would seek a return on its investment does not mean that it could necessarily obtain that return on the market. Indeed, the rent a market actor can charge will be constrained by market conditions even if the rent does not cover its costs. Accordingly, the Appellate Body did not consider that it is consistent with Articles 1.1(b) and 14(d) to establish a market benchmark for a good or service by referring to the demands or expectations only of a seller or lessor, or, alternatively, only of a buyer or lessee. The price of a good or service must reflect the interaction between the supply-side and demand-side considerations under prevailing market conditions. For these reasons, the Appellate Body considered that the investment costs borne by the relevant authorities in these circumstances were an insufficient basis upon which to establish the market value of the sale or lease of

the infrastructure at issue, and found that the Panel committed error in relying exclusively on those costs to establish the existence and amount of benefit. Accordingly, the Appellate Body reversed the Panel's findings that the infrastructure measures at issue conferred a benefit on Airbus within the meaning of Article 1.1(b) of the *SCM Agreement*.

Having reversed the Panel's findings in respect of benefit, the Appellate Body turned to consider whether it could complete the analysis and find that the infrastructure measures at issue conferred a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*.

The Appellate Body found that the provision of the lease of the land at the Mühlenberger Loch industrial site near Hamburg and the provision of the right to exclusive use of the extended runway at the Bremen airport conferred a benefit on Airbus within the meaning of Article 1.1(b) of the *SCM Agreement*. With respect to the provision of the lease of the land at the Mühlenberger Loch industrial site in Hamburg, the Appellate Body concluded, on the basis of the Panel's findings regarding the value of generally available industrial land in Hamburg and the location and customized features of the Mühlenberger Loch industrial site, that there was a certain premium that was not included in the rent that Airbus actually paid to lease industrial land at that site. Likewise, with respect to the extended runway at the Bremen airport, the Appellate Body concluded, on the basis of the Panel's finding that Airbus did not pay additional fees for its use of the extended runway, that Airbus was provided the right to exclusive use of the extended runway for which it paid no additional remuneration.

The Appellate Body also found, however, that there were insufficient factual findings by the Panel or undisputed facts on the Panel record to complete the legal analysis and determine whether a benefit was conferred with respect to the Aéroconstellation industrial site in Toulouse.

4. Equity Infusions

(a) Capital Investments

The European Union argued that the Panel erred in its interpretation and application of Article 1.1(b) of the *SCM Agreement* in finding that certain equity infusions in Aérospatiale by the French Government—consisting of four capital investments in Aérospatiale between 1987 and 1994, and a 1998 transfer by the French Government of its stake in Dassault Aviation to Aérospatiale—conferred a "benefit" to Aérospatiale. The European Union further argued that the Panel acted inconsistently with Article 11 of the DSU in making findings without a sufficient evidentiary basis concerning reasonable market-based rates of return, and in the absence of coherent reasoning in its assessment of evidence concerning the performance of Aérospatiale's peer companies.

The Appellate Body recalled that the standard for assessing "benefit" under Article 1.1(b) of the *SCM Agreement* requires that the assessment of whether a benefit has been conferred is to be made by reference to whether the terms of the financial investment by a government are more favourable than those available on the market.

The Appellate Body did not consider that the Panel viewed a "reasonable rate of return" as connoting a different test than the "usual investment practice" standard. Accordingly, the Appellate Body dismissed the European Union's claim that the Panel erred in its interpretation of Article 1.1(b) of the *SCM Agreement*, or failed to provide an objective assessment under Article 11 of the DSU, by not properly applying a "reasonable rate of return" standard.

The Appellate Body also examined the European Union's contention that the Panel failed to apply as a market benchmark certain evidence submitted by the European Communities relating to investors in Boeing. The Appellate Body considered that the Panel, in deciding to accord relatively more weight to

evidence of the financial performance of a group of peer French companies in the defence and aerospace industries than to evidence of Boeing's prospects for future LCA production, did not exceed its margin of discretion under Article 11. The Appellate Body therefore dismissed the European Union's claim that the Panel's treatment of the evidence relating to Boeing violated Article 11 of the DSU.

For these reasons, the Appellate Body upheld the Panel's finding that the capital investments at issue conferred a benefit on Aérospatiale within the meaning of Article 1.1(b) of the *SCM Agreement*.

(b) Share Transfers

The European Union claimed that the Panel erred in finding that the 1998 transfer by the French Government of its 45.76% interest in Dassault Aviation to Aérospatiale conferred a benefit within the meaning of Article 1.1(b) of the *SCM Agreement*.

The Appellate Body recalled that the focus of Article 14(a) of the *SCM Agreement* on the "investment decision" is a critical step in the analysis because it identifies what is to be compared to the market benchmark, and when that comparison is to be situated. The Appellate Body said it would next seek to identify the "investment decision" that the Panel was to compare against the market benchmark consisting of the usual investment practice. It considered that the Panel's analysis revealed a failure to identify the correct "investment decision" to be assessed in relation to the usual investment practice, and therefore an error in the Panel's application of the legal standard under Articles 1.1(b) and 14(a) to the facts of this case.

For these reasons, the Appellate Body reversed the Panel's finding that the French Government's transfer of shares of Dassault Aviation to Aérospatiale conferred a benefit on Aérospatiale within the meaning of Article 1.1(b) of the *SCM Agreement*. The Appellate Body also said it was unable to complete the analysis on this issue.

5. Export Subsidies

The European Union argued that the Panel erred in its interpretation and application of Article 3.1(a) and footnote 4 of the *SCM Agreement*[36] in finding that the subsidies granted under the German, Spanish, and UK LA/MSF contracts for the A380 were "in fact tied to … anticipated exportation" within the meaning of footnote 4, and were thus contingent in fact upon export performance. In its other appeal, the United States claimed that the Panel also misapplied the standard for *de facto* export contingency under Article 3.1(a) and footnote 4 of the *SCM Agreement* in finding that the United States had failed to show that the subsidies granted under the French LA/MSF contracts for the A380, A340-500/600, and A330-200, and the Spanish LA/MSF contract for the A340-500/600 were contingent in fact upon export performance.

Referring to the text of Article 3.1(a) and footnote 4 of the *SCM Agreement*, and to previous jurisprudence, the Appellate Body noted that, in contrast to the term "actual exportation", the term "anticipated exportation" inherently contains an element of uncertainty, in that an exportation expected to occur in the future may, or may not, actually occur. The Appellate Body added that by referring to the "granting of a subsidy" that is tied to "anticipated" exportation, footnote 4 describes the situation that exists at the time a subsidy is granted, but does not require that the anticipated exportation be realized after the subsidy is granted. Nor does the term "anticipated exportation", read in isolation, indicate by whom the exportation is anticipated. However, the Appellate Body considered that, by using the phrase

[36] Article 3.1(a) of the *SCM Agreement* prohibits "subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I". Footnote 4 of that provision, which elaborates on the standard for export contingency "in fact", states: "This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision."

"the granting of a subsidy", the inquiry under footnote 4 must focus on "whether the granting authority imposed a condition based on export performance in providing the subsidy" and concluded that it is the granting authority that "anticipates" that exportation will occur after the granting of the subsidy, and that grants a subsidy *on the condition* of such anticipated exportation.

The Appellate Body reasoned that because anticipated exportation alone is not proof that the granting of the subsidy is tied to the anticipation of exportation, the legal standard for *de facto* export contingency under Article 3.1(a) and footnote 4 of the *SCM Agreement* also requires that there exists a relationship of conditionality between the granting of the subsidy and anticipated exportation. For the Appellate Body, where a subsidy is alleged to be "in fact tied to … anticipated exportation", the relationship of conditionality is, unlike in the case of *de jure* export contingency, not expressly or by necessary implication provided in the terms of the relevant legal instrument granting the subsidy. The Appellate Body considered therefore that the factual equivalent of such conditionality can be established by recourse to the following test: is the granting of the subsidy geared to induce the promotion of future export performance by the recipient?

The Appellate Body added that, where relevant evidence exists, the assessment could be based on a comparison between, on the one hand, the ratio of anticipated export and domestic sales of the subsidized product that would come about in consequence of the granting of the subsidy, and, on the other hand, the situation in the absence of the subsidy. Moreover, where the evidence shows, all other things being equal, that the granting of the subsidy provides an incentive to skew anticipated sales towards exports, in comparison with the historical performance of the recipient or the hypothetical performance of a profit-maximizing firm in the absence of the subsidy, this would be an indication that the granting of the subsidy is in fact tied to anticipated exportation within the meaning of Article 3.1(a) and footnote 4 of the *SCM Agreement*.

The Appellate Body further explained that the standard for determining whether the granting of a subsidy is "in fact tied to … anticipated exportation" is an objective standard, to be established on the basis of the total configuration of facts constituting and surrounding the granting of the subsidy, including the design, structure, and modalities of operation of the measure granting the subsidy. Indeed, the conditional relationship between the granting of the subsidy and export performance must be objectively observable on the basis of such evidence in order for the subsidy to be geared to induce the promotion of future export performance by the recipient. The Appellate Body concluded that the standard for *de facto* export contingency is therefore not satisfied by the subjective motivation of the granting government to promote the future export performance of the recipient.

In sum, the Appellate Body concluded that a subsidy that is neutral on its face, or by necessary implication, and does not differentiate between a recipient's exports and domestic sales cannot be found to be contingent, *in law*, on export performance within the meaning of Article 3.1(a) of the *SCM Agreement*. Such a subsidy may nonetheless constitute a subsidy contingent *in fact* upon export performance within the meaning of the same provision if it is "in fact tied to actual or anticipated exportation or export earnings" under footnote 4 of the *SCM Agreement*. For the Appellate Body, the granting of the subsidy may be tied to anticipated exportation, and thus contingent in fact upon export performance under Article 3.1 and footnote 4 of the *SCM Agreement* if it is geared to induce the promotion of future export performance by the recipient. The Appellate Body explained that the issue of whether this standard is met must be assessed on the basis of an examination of the measure granting the subsidy and the facts surrounding the granting of the subsidy, including the design, structure, and modalities of operation of the measure. The Appellate Body added that the fact alone that the recipient of a subsidy exports is insufficient for a finding of *de facto* export contingency.

The Appellate Body endorsed the Panel's interpretation of "anticipated exportation" under footnote 4 of the *SCM Agreement*. The Appellate Body found, however, that the Panel equated the standard for *de facto*

export contingency with a standard based on the reasons for granting a subsidy and that, in so doing, the Panel erroneously interpreted Article 3.1(a) and footnote 4 of the *SCM Agreement*. The Appellate Body explained that, contrary to what the Panel assumed, the standard for finding that the granting of a subsidy is in fact tied to anticipated exportation is not met simply by showing that anticipated exportation is the reason for granting the subsidy. Instead, the test is whether the granting of the subsidy is geared to induce the promotion of future export performance by the recipient. The authority's reasons for the granting of the subsidy may provide some evidence to meet the correct standard, but it is not to be equated with that standard. The Appellate Body therefore reversed the Panel's interpretation that, in order to find that the granting of a subsidy is in fact tied to anticipated exportation, a subsidy must be granted *because* of anticipated export performance.

Because the Panel applied this erroneous standard in reaching its final conclusions, the Appellate Body reversed the Panel's conclusion that the United States has demonstrated that the German, Spanish and UK A380 contracts amount to prohibited export subsidies within the meaning of Article 3.1(a) and footnote 4 of the *SCM Agreement*, and that the United States has not shown that the granting of the LA/MSF subsidies by France for the A380, A340-500/600, and A330-200, and by Spain for the A340-500/600 was contingent in fact upon anticipated export performance, within the meaning of Article 3.1(a) and footnote 4 of the *SCM Agreement*. The Appellate Body noted, however, the Panel's factual findings and undisputed facts on the record did not provide a sufficient basis for it to determine whether the LA/MSF subsidies under the contracts at issue are granted so as to provide an incentive to Airbus to export in a way that is not simply reflective of the conditions of supply and demand in the domestic and export markets undistorted by the granting of these subsidies. The Appellate Body said that it was thus not able to complete the analysis and determine whether the LA/MSF subsidies under the contracts at issue are geared to induce the promotion of future export performance by Airbus. Therefore, the Appellate Body found that it was unable to make a finding as to whether the granting of the LA/MSF subsidies under these contracts is in fact tied to anticipated exportation within the meaning of Article 3.1(a) and footnote 4 of the *SCM Agreement*. The Appellate Body added that the Panel's recommendation under Article 4.7 of the *SCM Agreement*, that "the subsidizing Member granting each subsidy found to be prohibited withdraw it ... within 90 days", must therefore also be reversed.

6. Serious Prejudice

The European Union challenged various aspects of the Panel's finding that the effect of the subsidies provided to Airbus constitutes serious prejudice to the interests of the United States, including the findings of displacement of imports from the European Union, displacement of exports from certain third-country markets, or threat thereof, significant lost sales, and the analysis of causation.

(a) General Approach to the Assessment of Serious Prejudice

The Appellate Body recalled that the Panel in this dispute chose to examine the United States' claims, that the effect of the challenged subsidies was displacement and lost sales, on the basis of a two-step approach. This approach consisted of first considering whether the particular phenomena identified in Article 6.3(a), (b), and (c) of the *SCM Agreement* (such as displacement or lost sales) can be observed. In undertaking this first step of the analysis, the Panel did not address the question whether any particular phenomenon that can be observed is actually caused by subsidies provided to Airbus. Rather, the Panel examined the question of causation in the subsequent section of its serious prejudice analysis, where it reviewed the parties' theories of causation and related arguments and evidence.

The Appellate Body noted that it had found that panels may undertake an analysis of whether serious prejudice was the effect of challenged subsidies under either a unitary or two-step approach. Under a unitary approach, the analysis of the particular market phenomena identified in the subparagraphs of Article 6.3 of the *SCM Agreement* is not conducted separately from the analysis of whether there is a causal

relationship between the challenged subsidies and those market phenomena. By contrast, under a two-step approach like the one adopted by the Panel, the analysis first seeks to identify the market phenomena and then, as a second step, examines whether there is a causal relationship. The Appellate Body indicated a preference for the unitary approach, observing that such approach has a sound conceptual foundation and explaining that it may be difficult to ascertain the existence of some of the market phenomena in Article 6.3 without considering the effect of the subsidy at issue.

(b) Subsidized Product and Product Market

The Appellate Body turned next to address the European Union's appeal as it related to the Panel's analysis of the United States' claims of displacement under Articles 6.3(a) and 6.3(b) of the *SCM Agreement*. In particular, the Appellate Body examined whether the Panel erred in its interpretation and application of the term "market" in Articles 6.3(a) and 6.3(b), and whether the Panel acted inconsistently with Article 11 of the DSU when assessing "displacement" on the basis of a single subsidized product and a single product market for all LCA as determined by the complaining party.

The Appellate Body explained that "displacement" is a situation where imports or exports of a like product are replaced by the sales of the subsidized product and construed the concept of displacement as relating to, and arising out of, competitive engagement between products in a market. This, however, can only be the case if those products are in actual or potential competition in the same market. Thus, an assessment of the competitive relationship in the relevant product and geographic market is required in order to determine whether and to what extent one product may displace another. The Appellate Body noted that ordinarily, the subsidized product and the like product will form part of a larger product market. In other cases, however, a complainant may have chosen to define the subsidized and like products so broadly that it is necessary to analyse the real competitive interactions that are taking place, and thereby determine whether displacement is occurring.

In sum, the Appellate Body concluded that the scope of the "market" to be examined for the purposes of Articles 6.3(a) and 6.3(b) of the *SCM Agreement* is likely to vary from case to case depending upon the particular factual circumstances, including the nature of the products at issue, as well as demand-side and supply-side factors.

Turning to the specifics of this dispute, the Appellate Body considered that the Panel committed legal error by failing to assess and review the United States' subsidized product claims and refusing to make its own independent assessment of whether all Airbus LCA compete in the same market or not. In its analysis, the Panel deferred to the United States' subsidized product allegations rather than making its own independent assessment of whether all Airbus LCA should be treated as a single subsidized product. The Appellate Body found that, in so doing, the Panel failed to make an objective assessment of the matter, including the "applicability of and conformity with the relevant covered agreements", as required under Article 11 of the DSU. The Appellate Body emphasized that the Panel's failure to comply with its duties under Article 11 appeared to flow directly from its erroneous interpretation of the requirements of Articles 6.3(a) and 6.3(b) of the *SCM Agreement*, which led it to believe that it lacked the power and was under no obligation to assess independently the "subsidized product" and the relevant product market. In the absence of such a determination, however, the Panel did not have a proper basis for assessing whether the alleged subsidized and like products compete in the same market or multiple markets, which, the Appellate Body said, is a prerequisite for assessing whether displacement within the meaning of Articles 6.3(a) and 6.3(b) could be found to exist as alleged by the United States.

The Appellate Body added that there is no inhibition on how a complainant may choose to formulate its claim as to the scope of the "subsidized product"; it can do so as it thinks best comports with the adverse effects it seeks to challenge. This does not mean, however, that a panel has no duty to review the complainant's formulation of the scope of the "subsidized product". Rather, the panel has a duty to

ascertain the relevant product market or markets in which the complainant's and respondent's products compete. The notion of "subsidized product" and "like product" is, in each case, to be analysed as an integral part of a panel's duty objectively to assess a particular claim of serious prejudice and its obligation to assess the relevant market under Articles 6.3(a) and 6.3(b).

In the light of the above, the Appellate Body found that the Panel erred in its interpretation of the term "market" in Articles 6.3(a) and 6.3(b) of the *SCM Agreement* and acted inconsistently with Article 11 of the DSU. The Appellate Body explained that the Panel did so by failing to make an objective assessment of the "applicability of and conformity with the relevant covered agreements", in particular by concluding that it was not required "to make an independent determination of the 'subsidized product', as opposed to relying on the complainant's identification of the product". Consequently, the Appellate Body reversed the Panel's findings of displacement on the basis of a single subsidized product and a single like product. Noting, *inter alia*, that the Panel did not engage with the relevant evidence in a thorough and meaningful manner, the Appellate Body found that it was unable to complete the legal analysis to find that there are one or more LCA product markets.

(c) Displacement and Lost Sales

- **Displacement**

The Appellate Body explained that, where a complainant puts forward a case based on the existence of displacement as a directly observable phenomenon and the panel opts to examine it under a two-step approach, as was done in this dispute, displacement arises under Article 6.3(a) of the *SCM Agreement* where imports of a like product of the complaining Member are declining in the market of the subsidizing Member, and are being substituted by the subsidized product. Similarly, under Article 6.3(b), displacement arises where exports from the like product of the complaining Member are declining in the third-country market concerned, and are being substituted by exports of the subsidized product. Displacement must be discernible. The identification of displacement under this approach should focus on trends in the markets, looking at both volumes and market shares. The trend has to be clearly identifiable and an assessment based on a static comparison of the situation of the subsidized product and the like product at the beginning and at the end of the reference period would be inadequate. Where a two-step approach is used under Article 6.3(a) and (b), and displacement has been shown on a preliminary basis, the complaining Member will have to establish, in addition, that such displacement is the effect of the challenged subsidies.[37]

The Appellate Body undertook its own analysis based on the uncontested evidence and found displacement in some product and geographic markets. The Appellate Body noted that the European Union's appeal of the Panel's finding of displacement was limited and that the European Union expressly stated that it did not request the Appellate Body to reverse the Panel's displacement findings in their entirety. More specifically, the European Union did not seek reversal of the findings of displacement (under the first step of the Panel's two-step approach to analysing serious prejudice) in the single-aisle, 200-300 seat and 300-400 seat LCA (or twin-aisle) markets of China, Korea, and the European Union, and the single-aisle LCA market of Australia. For the Appellate Body this meant that, in its appeal, and in framing its request for reversal, the European Union acknowledged that there is some displacement in these markets under the first step of the

[37] As regards threat of displacement, the Appellate Body stated that neither subparagraph (a) nor (b) of Article 6.3 of the *SCM Agreement* expressly refers to "threat of displacement". Nevertheless, the introductory paragraph of Article 6.3 states that "[s]erious prejudice in the sense of paragraph (c) of Article 5 may arise" where there is one of the market phenomena described in the subparagraphs listed under that provision, including (a) and (b). Footnote 13 to Article 5(c), in turn, clarifies that "[t]he term 'serious prejudice to the interests of another Member' is used in this Agreement in the same sense as it is used in paragraph 1 of Article XVI of [the] GATT 1994, and includes threat of serious prejudice". Although Article 15.7 of the *SCM Agreement* concerns threat of *material injury*, the Appellate Body said that it believed that it also provides relevant guidance for understanding the concept of threat of *serious prejudice* under Article 5(c). Thus, as with a determination of threat of material injury, the Appellate Body considered that it is reasonable to require that the determination of threat of serious prejudice "be based on facts and not merely on allegation, conjecture or remote possibility" and that "[t]he change in circumstances" that would create a situation in which the subsidy would cause displacement "must be clearly foreseen and imminent".

Panel's two-step approach. The Appellate Body also noted that the United States and the European Union agreed that there is competition between similar models of LCA; that their disagreement is limited to the degree of competition across models and also as between the extremes of Boeing's and Airbus' product ranges; and that the European Union noted that the displacement could be assessed on the basis of either three or five product markets. Moreover, the Appellate Body considered that it had before it uncontested evidence of Airbus' and Boeing's volume of sales and market shares for each of the geographic markets at issue. In these circumstances, the Appellate Body considered it possible and appropriate to complete the analysis and examine the claims of displacement on the basis of undisputed evidence regarding three product markets: the single-aisle LCA product market; the twin-aisle LCA product market; and the Very Large Aircraft product market. By proceeding in this manner, the Appellate Body said it was examining the data from a perspective proposed by the responding party and not rejected by the complaining party.

The Appellate Body found on the basis of uncontested evidence, that there was displacement under Articles 6.3(a) and 6.3(b) of the *SCM Agreement* during the reference period 2001-2006 in the single-aisle and twin-aisle LCA product markets in the European Communities; and that there was displacement in the single-aisle LCA product market in Australia; in the single-aisle and twin-aisle LCA product markets in China; and in the single-aisle and twin-aisle LCA product markets in Korea. The Appellate Body also found that the uncontested evidence did not establish displacement over the reference period in Brazil, Mexico, Singapore, and Chinese Taipei, or threat of displacement in India in any product market.

One Member of the Division expressed the divergent view that the Appellate Body could not complete the analysis of displacement given its lack of fact-finding powers and the absence of a determination of the relevant product market(s). This Member of the Division recalled that, after a review of the relevant factual findings of the Panel and the undisputed evidence on the Panel record, the Appellate Body had concluded that it was unable to complete the analysis of whether that there are one or more LCA product markets and that the Appellate Body's mandate under Article 17.6 of the DSU did not allow it to conduct the type of factual assessment that would be required properly to define the product market(s) in this case. Leaving aside the issue of completion, this Member agreed with the Division's interpretation of the concept of displacement and endorsed the causation findings that displacement and lost sales were the effect of the LA/MSF and non-LA/MSF subsidies.

- Lost Sales

The Appellate Body began its analysis by interpreting the term "lost sales". The Appellate Body explained that, under Article 6.3(c) of the *SCM Agreement*, "lost sales" are sales that suppliers of the complaining Member "failed to obtain" and that instead were won by suppliers of the respondent Member. The Appellate Body described "lost sales" as a relational concept and found that its assessment requires consideration of the behaviour of both the subsidized firm(s), which must have won the sales, and the competing firm(s), which allegedly lost the sales. The Appellate Body added that such assessment can focus on a specific sales campaign when such an approach is appropriate given the particular characteristics of the market or it may look more broadly at aggregate sales in the market.[38]

[38] The Appellate Body noted that where lost sales are assessed under a two-step approach such as the one adopted by the Panel in this case, the finding of lost sales in the first step is necessarily preliminary and of limited significance in coming to a conclusion under Article 6.3(c) and a definitive determination under Article 6.3(c) must await consideration of whether such lost sales are the effect of the challenged subsidy. For the Appellate Body, while a two-step approach to the assessment of lost sales is permissible, the most appropriate approach to assess whether lost sales are the *effect* of the challenged subsidy is through a unitary counterfactual analysis. According to the Appellate Body, this would involve a comparison of the sales actually made by the competing firm(s) of the complaining Member with a counterfactual scenario in which the firm(s) of the respondent Member would not have received the challenged subsidies. The Appellate Body considered that there would be lost sales where the counterfactual analysis shows that, in the absence of the challenged subsidy, sales won by the subsidized firm(s) of the respondent Member would have been made instead by the competing firm(s) of the complaining Member.

In this part of its appeal, the European Union challenged only the Panel's finding that the sale of A380 aircraft to Emirates Airlines constituted a "lost sale" for Boeing.[39] The Appellate Body determined that the Panel's findings that there was competition between the Airbus A380 and the Boeing 747 and that Airbus and Boeing competed for sales even when formal offers may not have been requested or made, provided a sufficient basis for the Panel's finding of lost sales. Therefore, the Appellate Body upheld the Panel's finding, under the first step of its two-step approach, that Boeing lost the Emirates Airlines sale to Airbus and that the lost sale was significant.

(d) Causation

The European Union argued that the Panel erred in relation to the second step of the Panel's two-step analysis, namely whether the subsidies provided to Airbus caused serious prejudice to the United States' interests within the meaning of Articles 5(c) and 6.3 of the *SCM Agreement*, in the form of displacement of Boeing LCA and lost sales.

- **Establishing a "causal link" between the subsidy and the market situations described in Article 6.3 of the *SCM Agreement***

The Appellate Body recalled that to satisfy the causation requirement under Articles 5(c) and 6.3(c), it must be shown that there is a "genuine and substantial relationship of cause and effect" between the subsidies and the alleged market phenomenon. In addition, panels assessing claims under Articles 5(c) and 6.3(c) must ensure that the effects of other factors are not improperly attributed to the challenged subsidies. One possible approach to the assessment of causation, the Appellate Body said, is an inquiry that seeks to identify what would have occurred "but for" the subsidies.

The Appellate Body noted that the Panel had described the task at hand as a determination of whether the particular market phenomena observed over the period 2001-2006 were caused by the specific subsidies it had found were provided to Airbus. For the Appellate Body, the Panel appeared to have proceeded in its analysis on the basis of a "but for" test as evidenced by its frequent reference to this test in the Panel Report. The Appellate Body considered that this may have been, in part, a reflection of the United States' argument that market distortion and adverse effects flow directly from Airbus' entry at a particular time with a particular aircraft, which in the United States' view would not have been possible but for the subsidies.

- **The age of a subsidy**

Before turning to review the Panel's assessment of whether displacement and lost sales were the effects of the challenged subsidies, the Appellate Body discussed the issue of the age of a subsidy. The Appellate Body disagreed with the Panel that it is only the effect of a single subsidy that would dissipate over time, while multiple subsidies may have the opposite effect. To the contrary, the Appellate Body observed that, in general, the effects of any subsidy can be expected to diminish and eventually come to an end with the passage of time. Regarding the effects of particular subsidies, the Appellate Body noted that the A300 and A310 were launched more than 30 years ago, and that the first delivery of an A300 to a customer took place in 1974, while the A310 was first delivered to a customer and put in service in 1985. The Appellate Body considered therefore that LA/MSF for the A300 and A310 are likely to cause minimal, if any, adverse effects during the reference period 2001-2006.

[39] The European Union did not appeal the first step of the Panel's two-step analysis in relation to the easyJet, Air Berlin, Czech Airlines, Air Asia, Iberia, South African Airways, Thai Airways International, Singapore Airlines, and Qantas sales campaigns.

- The Panel's assessment of causation

The Appellate Body recalled that the United States advanced two theories of causation, referred to by the Panel as the "product" and "pricing" theories of causation. The Appellate Body added that it was concerned in this appeal only with the "product" theory of causation.[40] Under this theory, the United States argued that the subsidies had an impact on Airbus' ability to launch and bring to the market models of LCA that the United States submits would not otherwise have been possible at the time and in the way that it did without the support of those subsidies.

The Panel contemplated four distinct scenarios as to what the LCA industry would have looked like in the absence of the challenged subsidies. In scenarios 1 and 2, Airbus would not have entered the market without subsidies, and Boeing would have been a monopolist (scenario 1) or would have competed with another US LCA manufacturer (scenario 2). However, the Panel did not rule out entry into the market by a non-subsidized Airbus, either in competition only with Boeing (scenario 3) or with Boeing and another US LCA manufacturer (scenario 4).

The European Union argued on appeal that the Panel's focus was on the third and fourth counterfactual scenarios in which a non-subsidized Airbus would have entered the market, albeit later and with different LCA. In support, the European Union referred to the Panel's statement that whether it might have been competing at all for those sales, for instance with a different LCA developed without subsidies, is questionable, as the lost sales all involved aircraft the Panel had concluded would not have been developed by Airbus at the relevant times had earlier models not benefited from subsidies. According to the European Union, the Panel did not resolve the issue it considered "questionable", and thus left open whether, in the four single-aisle sales campaigns at issue, a non-subsidized Airbus could have offered "different LCA developed without subsidies". For the European Union, the result of this was that the Panel was required to complete the counterfactual by conducting a comparison of (i) Airbus' actual sales at issue in the 2001-2006 reference period with (ii) a non-subsidized Airbus' ability to secure these sales in a counterfactual scenario. The European Union appealed the Panel's failure to conduct this assessment and, more particularly, its failure to respond to the following five questions: (i) what particular aircraft a non-subsidized Airbus would have launched; (ii) what would have been their level of technology; (iii) what would have been the prices at which Airbus could have offered those aircraft; (iv) whether there would have been any commonality advantage or disadvantage; and (v) whether there were any non-attribution factors that would have prevented Boeing from securing some of the sales.

The Appellate Body considered that the European Union's appeal of the alleged non-completion of the counterfactual was premised exclusively on scenarios 3 and 4, on which the European Union claimed the Panel had focused. The Appellate Body did not agree that this was a proper characterization of the Panel's findings. In fact, the Panel found that scenarios 3 and 4, in which Airbus would have entered the market without subsidies, were "unlikely". The Appellate Body said instead that if one were to describe the Panel as having focused on particular scenarios, it would have to be scenarios 1 and 2—scenarios the Panel considered "plausible"—in which Airbus would not have entered the market without subsidies.

The Appellate Body observed that, under scenarios 1 and 2, there was no need for the Panel to proceed further in its counterfactual analysis. Without the subsidies, Airbus would not have existed under these scenarios and there would be no Airbus aircraft on the market. None of the sales that the subsidized Airbus made would have occurred as Boeing (or the other US manufacturer envisaged by the Panel) would be the only supplier(s) of LCA, it (or they) would have made the sales instead. Thus, the Appellate Body found that the conclusion under scenarios 1 and 2 satisfies, without more, the "genuine and substantial relationship" standard articulated by the Appellate Body in *US – Upland Cotton*. The Appellate Body considered that this chain of reasoning would establish that the subsidies are a sufficient cause of the lost

[40] The Panel rejected the United States' "pricing" theory of causation and the United States did not appeal this aspect of the Panel's analysis.

sales and the displacement and that the additional questions that the European Union asserted the Panel should have considered would have been moot. The Appellate Body explained that it would be pointless to attempt delineating the features of something that would not have existed without the subsidies.

The Appellate Body agreed with the Panel that in the particular circumstances of this case the need to fully examine the particular non-attribution factors raised by the European Communities depended on whether a non-subsidized Airbus would have had any aircraft available to sell at the time the relevant sales were made. If Airbus had not existed without the subsidies, the airlines involved in the relevant sales campaigns would have had a limited choice: purchase aircraft from Boeing or possibly from the other US manufacturer envisaged in the Panel's counterfactual scenario 2. The Appellate Body said it had difficulty understanding how the non-attribution factors raised by the European Communities could have led an airline in those circumstances not to purchase the desired aircraft from Boeing or the other US manufacturer. The Appellate Body recalled that the Panel had found that Airbus could not conceivably present in the LCA market with the same aircraft and at the same times as it actually was given its earlier conclusions concerning the cumulative effect of LA/MSF and the other subsidies in dispute on Airbus' ability to launch successive models of LCA as and when it did. Moreover, the Appellate Body suggested that the Panel could have provided a fuller analysis under scenarios 3 and 4. In particular, the Panel could have more fully explored how a non-subsidized Airbus would have developed during the more than 35 years that elapsed between 1969, when Airbus launched the A300, and the end of the reference period. Nonetheless, looking at the Panel's analysis as a whole, the Appellate Body said it understood the Panel to have concluded that, under scenarios 3 and 4, a non-subsidized Airbus would have been significantly retarded in its efforts to develop LCA that were capable of competing in the market and that it would not have been able to overcome this competitive disadvantage by the end of the reference period. For the Appellate Body, the Panel's conclusion that a non-subsidized Airbus would not have achieved the market presence it did over the period 2001 to 2006, which followed from its views that a non-subsidized Airbus would be a much weaker LCA manufacturer with at best a more limited offering of LCA models, provided enough of a basis to establish a "genuine and substantial relationship of cause and effect" in this case.

The Appellate Body went on to examine whether a fuller consideration of the counterfactual scenarios 3 and 4 along the lines of the five questions that the European Union asserted the Panel was required to examine to complete the counterfactual would lead to a different conclusion based on the evidence on the record and in the light of the Panel's overall reasoning. Based on its own analysis, the Appellate Body concluded that it did not believe that the Panel would have reached a different conclusion had it pursued its counterfactual analysis further along the lines of the five questions raised by the European Union. Therefore, the Appellate Body rejected the European Union's claims that the Panel presumed causation and failed to establish the required chain of causation in its assessment of whether the displacement and lost sales were the effect of the LA/MSF subsidies within the meaning of Article 6.3(a), (b), and (c) of the *SCM Agreement*. For similar reasons, the Appellate Body rejected the European Union's allegations that the Panel failed to make an objective assessment of the facts under Article 11 of the DSU. Instead, the Appellate Body found that the Panel's analysis sufficiently established a "genuine and substantial" causal link between the LA/MSF subsidies and the displacement and lost sales.

The European Union also argued that the Panel erred by failing to consider the 1992 Agreement in evaluating the United States' claims of adverse effects. The Appellate Body noted that the 1992 Agreement does not address the remedies that each party could pursue at the multilateral level. The Appellate Body added that while the 1992 Agreement provides in Article 10.1 that the parties "shall seek to avoid any trade conflict on matters covered" by it, it does not say that either party could not challenge support provided by the other party to its LCA industry if such support caused adverse effects. Instead, the Appellate Body noted that the fifth recital of the 1992 Agreement states that it was the parties' "intention to act without prejudice to their rights and obligations under the GATT and under other multilateral agreements negotiated under the auspices of the GATT". The Appellate Body further noted that, at the other oral hearing, the European Union suggested that the 1992 Agreement delineated the interests of the United States

in the area of government measures relating to the LCA industry and thereby limited the ability of the United States to assert claims of adverse effects to its interests under the *SCM Agreement*. The Appellate Body found, however, that the European Union did not provide a basis for concluding that any interests reflected in the 1992 Agreement exhausted the "interests" of the United States under Article 5 of the *SCM Agreement*. Nor did the Appellate Body see a basis for the argument that a bilateral agreement serves to limit the interests of the parties under a subsequent multilateral agreement. In these circumstances, the Appellate Body did not consider that there was a basis for the European Union's allegation that the Panel's failure to consider the 1992 Agreement in the context of the assessment of adverse effects constitutes an error in the interpretation and application of Article 5(c) of the *SCM Agreement* or a violation of the Panel's duties under Articles 12.7 and 11 of the DSU.

- Causation – A380 Lost Sales

The Appellate Body turned next to examine the European Union's appeal of the Panel's finding that a non-subsidized Airbus would not have been able to launch the A380 in 2000. The Appellate Body noted that, in making this appeal, the European Union sought to invalidate the Panel's consequential finding that the challenged subsidies caused Boeing to lose significant sales in the Emirates Airlines, Qantas, and Singapore Airlines sales campaigns. These sales campaigns were won by Airbus selling A380 aircraft.

The European Union claimed that the Panel erred in its evaluation of various elements which supported its finding that "either directly or indirectly, LA/MSF was a necessary precondition for Airbus' launch in 2000 of the A380". In particular, the European Union argued that the Panel erred: (i) in its assessment of the A380 business case; (ii) in its evaluation of Airbus' ability to fund the A380 without access to LA/MSF; and (iii) in its analysis of Airbus' technological capabilities in the absence of LA/MSF.

The Appellate Body said it did not find that the Panel acted inconsistently with Article 11 of the DSU in finding that either directly or indirectly, LA/MSF was a necessary precondition for Airbus' launch in 2000 of the A380. The Appellate Body considered the Panel to have erred in speculating about an alleged economic incentive to overstate sales and in referring to *ex post* events in its assessment of the Airbus A380 business case, because an *ex ante* analysis is required. However, it did not believe that these deficiencies invalidated the Panel's conclusions in relation to Airbus' ability to launch the A380 in 2000 in the absence of LA/MSF. The Panel's ultimate conclusion that LA/MSF was a necessary precondition for Airbus' launch of the A380 in 2000 was based on multiple considerations, such as the A380 business case itself, evidence on Airbus' ability to fund the A380 in the absence of LA/MSF, and the financial and technological impact of LA/MSF provided in relation to previous models of Airbus LCA. The Appellate Body found that, in assessing the credibility and determining the probative value of the evidence concerning each of these elements, the Panel acted within the bounds of its discretion as trier of facts under Article 11 of the DSU, and did not act inconsistently with its duty to conduct an objective assessment of the facts simply by according to that evidence a lesser weight than that posited by the European Communities. Thus, based on these multiple considerations, the Panel had a sufficiently objective basis for its ultimate finding that LA/MSF was a "necessary precondition" for the launch of the A380 in 2000. Accordingly, the Appellate Body upheld the Panel's finding that "either directly or indirectly, LA/MSF was a necessary precondition for the launch of the A380 in 2000".

- Causation for non-LA/MSF subsidies

The European Union appealed the Panel's finding that the effect of non-LA/MSF subsidies was to cause displacement of Boeing LCA from the EC and certain third-country markets within the meaning of subparagraphs (a) and (b), and significant lost sales within the meaning of subparagraph (c), of Article 6.3 of

the *SCM Agreement*. These non-LA/MSF subsidies include: (i) certain equity infusions and share transfers from the French and German Governments[41]; (ii) certain infrastructure measures provided by French, German, and Spanish authorities[42]; and (iii) certain RT&D subsidies.[43]

In discerning the effect of the subsidies challenged by the United States in this dispute, the Panel first sought to determine separately the effect of LA/MSF, which, according to the United States, was the primary subsidy benefiting Airbus LCA. The Panel came to the conclusion that LA/MSF was necessary to the launch of each successive model of Airbus LCA, and that the individual and cumulative effect of those measures was fundamental to Airbus' ability to launch the particular LCA models it launched at the time that it did. The Panel then turned to the United States' argument that the non-LA/MSF measures, namely equity infusions, infrastructure measures, and R&TD subsidies, had effects similar to LA/MSF because they shifted costs of LCA development from Airbus to the governments, giving Airbus an edge, and allowing it to enter the LCA market with new LCA models at a pace that would otherwise not have been possible. The Panel came to the conclusion that non-LA/MSF subsidies complemented and supplemented the "product effect" of LA/MSF and, therefore, had the same effect on Airbus' ability to launch the LCA it launched at the time that it did. After coming to its conclusion, the Panel stated that it was appropriate to undertake its analysis of the effects of the subsidies on an aggregated basis in this dispute.

After reviewing the Panel's analysis, the Appellate Body stated that, despite its statement that it is appropriate to undertake our analysis of the effects of the subsidies on an aggregated basis in this dispute, the Panel did not actually conduct an aggregated assessment of the effects of LA/MSF and non-LA/MSF subsidies.

Next, the Appellate Body considered whether it was appropriate for the Panel to have done what it actually did, namely to focus its causation analysis on whether the non-LA/MSF subsidies at issue—equity infusions, infrastructure measures, and R&TD subsidies—complemented and supplemented the effects of LA/MSF. The Appellate Body found that the approach used by the Panel is permissible under Article 6.3 of the *SCM Agreement*, provided that a genuine causal link between the non-LA/MSF subsidies and the market phenomena alleged under Article 6.3 is established. The Appellate Body explained that, having determined that each of the LA/MSF measures enabled launches of particular Airbus LCA models and therefore was a substantial cause of the displacement and significant lost sales of Boeing LCA, the Panel sought to determine whether non-LA/MSF subsidies complemented and supplemented the effects of LA/MSF measures, even if each of the non-LA/MSF subsidies, taken individually, would not have enabled launches of particular Airbus LCA models, and therefore would not have been a substantial cause of the displacement and significant lost sales. Once the Panel determined that LA/MSF subsidies were a substantial cause of the observed displacement and lost sales, it was not necessary to establish that non-LA/MSF subsidies were also substantial causes of the same phenomena. Moreover, the fact that LA/MSF subsidies were the substantial cause of adverse effects does not exclude that non-LA/MSF subsidies had similar effects. Rather, it was conceivable that non-LA/MSF subsidies complemented or supplemented the effects of LA/MSF subsidies. For these reasons, the Appellate Body disagreed with the European Union that Articles 5(c) and 6.3 of the *SCM Agreement* preclude an affirmative finding that non-LA/MSF subsidies cause adverse effects where they complement and supplement the effects of LA/MSF subsidies that have been found to be a substantial and genuine cause of adverse effects. However, the Panel's approach did not absolve it from establishing a genuine causal link between the different categories of non-LA/MSF subsidies and Airbus' ability to launch and bring to the market its LCA models.

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[41] These include 1987, 1988, and 1994 capital contributions by the French government to Aérospatiale; 1992 capital contribution by Crédit Lyonnais to Aérospatiale; 1989 acquisition by the German *Kreditanstalt für Wiederaufbau* of a 20% equity interest in Deutsche Airbus; and 1992 transfer of that 20% equity interest to the German *Messerschmitt-Bölkow-Blohm GmbH*.

[42] These include the lease of the land at Mühlenberger Loch industrial site in Hamburg; Right to exclusive use of extended Bremen runway; Regional grants by the German authorities in Nordenham; Spanish government grants and regional grants by the authorities in Andalucia and Castilla-La Mancha in Sevilla, La Rinconada, Toledo, Puerto Santa Maria, and Puerto Real.

[43] These include grants under Second, Third, Fourth, Fifth, and Sixth EC Framework Programmes; 1986-1993 R&TD grants by the French Government; Luftfahrtforschungsprogramm I, II, and III German grants; Grants by Bavarian, Bremen, and Hamburg authorities; Civil Aircraft Research and Development and Aeronautics Research programmes by the UK Government.

The Appellate Body then examined whether the Panel had a sufficient basis for concluding that each set of the non-LA/MSF subsidies at issue, namely equity infusions, infrastructure subsidies, and R&TD subsidies, complemented and supplemented the "product effect" of LA/MSF, in that they similarly contributed to Airbus' ability to bring to the market its models of LCA, thereby causing displacement of Boeing LCA from the European Union and third-country markets, and significant lost sales, under Article 6.3(a), (b), and (c) of the *SCM Agreement*.

The Appellate Body upheld the Panel's finding that the equity infusions at issue complemented and supplemented the effects of LA/MSF on Airbus' ability to launch and bring to the market its models of LCA. The Appellate Body further concluded that the Panel had a sufficient evidentiary basis and provided a sufficiently reasoned and adequate explanation for this finding, and therefore acted consistently with its duty to conduct an objective assessment of the matter under Article 11 of the DSU. The Appellate Body reached similar findings with respect to the infrastructure measures at issue in this dispute and upheld the Panel's findings under Article 6.3(a), (b), and (c), and found that the Panel had not failed to comply with its duties under Article 11 of the DSU.

However, the Appellate Body reversed the Panel's finding that R&D subsidies had the same effect. The Appellate Body considered that such subsidies will not have any impact on Airbus' (and consequently on Boeing's) sales unless they provide Airbus LCA with a competitive advantage in relation to Boeing LCA. Such a competitive advantage, in the Appellate Body's view, must be reflected either in technologies incorporated in models of LCA actually launched by Airbus, or in technologies that make the production process of those LCA more efficient. Without specific findings that technology or production processes funded by R&TD subsidies contributed to Airbus' ability to launch and bring to the market particular models of LCA, the Panel did not, have a sufficient basis to conclude that those subsidies "complemented and supplemented" the "product effect" of LA/MSF.

7. Recommendations

Having reversed the Panel's finding that certain A380 LA/MSF contracts amounted to prohibited export subsidies, the Appellate Body consequently reversed the Panel's recommendation pursuant to Article 4.7 of the *SCM Agreement* that these subsidies be withdrawn within 90 days. However, the Appellate Body observed that, to the extent the Appellate Body upheld the Panel's findings with respect to actionable subsidies that caused adverse effects, or such findings had not been appealed, the Panel's recommendation pursuant to Article 7.8 of the *SCM Agreement* that "the Member granting each subsidy found to have resulted in such adverse effects, 'take appropriate steps to remove the adverse effects or … withdraw the subsidy'", stands.

■ Appellate Body Report, *Thailand – Cigarettes (Philippines)*, WT/DS371/AB/R

This appeal originated from a complaint brought by the Philippines concerning certain customs valuation and fiscal matters affecting cigarettes imported into Thailand from the Philippines. The measures at issue principally concerned Thailand's customs valuation regime and certain aspects of its value added tax ("VAT") laws. Thailand's appeal was limited to certain of the Panel's findings under Article III:2, Article III:4, and Article X:3(b) of the GATT 1994.

1. Article III:2, First Sentence, of the GATT 1994

The Appellate Body first identified the specific measure that the Panel found to be inconsistent with Article III:2 of the GATT 1994. This consisted of an exemption from VAT liability for resellers of domestic cigarettes, together with the imposition of VAT on resellers of imported cigarettes when they do not satisfy prescribed conditions for obtaining input tax credits necessary to achieve zero VAT liability. The Appellate

Body agreed with the Panel that the Thai measure at issue affects the respective tax liability imposed on imported and like domestic cigarettes. This is because Thailand's measure subjects resellers of imported cigarettes to VAT when they do not satisfy prescribed conditions for obtaining input tax credits necessary to achieve zero VAT liability, whereas resellers of like domestic cigarettes can never be subject to any VAT liability by reason of a complete exemption from VAT. Thus, the Appellate Body considered that the measure at issue falls within the scope of Article III:2, first sentence, of the GATT 1994. The Appellate Body considered that the fact that resellers of imported cigarettes may take action to achieve zero VAT liability under Thailand's measure does not preclude a finding of inconsistency with Article III:2, first sentence. The Appellate Body echoed its statement in *Korea – Various Measures on Beef* that "the intervention of some element of private choice" does not relieve a Member of responsibility under the GATT 1994. The Appellate Body also disagreed with Thailand that allowing the Panel's finding to stand would thwart the ability of WTO Members to ensure proper administration of their tax regimes, and observed that Members remain free to administer their tax regimes as they see fit so long as they do so in conformity with Article III:2.

Accordingly, the Appellate Body upheld the Panel's finding that Thailand acts inconsistently with Article III:2, first sentence, by subjecting imported cigarettes to internal taxes in excess of those applied to like domestic cigarettes.

2. Article III:4 of the GATT 1994

Thailand advanced three independent claims for reversal of the Panel's finding under Article III:4, namely, that: (i) the Panel's analysis of "treatment no less favourable" was insufficient as a matter of law to support a finding that Thailand acted inconsistently with Article III:4; (ii) the Panel acted inconsistently with due process and Article 11 of the DSU by accepting and relying upon Panel Exhibit PHL-289[44], submitted by the Philippines at the last stage of the proceeding, without affording Thailand an opportunity to comment on that evidence; and (iii) the Panel failed to conduct a correct legal analysis in respect of Thailand's defence under Article XX(d) of the GATT 1994 and, thereby, deprived Thailand of the opportunity to assert its defence.

(a) "[T]reatment No Less Favourable"

With respect to the Panel's interpretation of Article III:4 of the GATT 1994, the Appellate Body observed that the phrase "treatment no less favourable" has been interpreted on prior occasions as calling for an analysis of whether the measure at issue modifies the conditions of competition to the detriment of imported products, and that formal differences in treatment are neither necessary nor sufficient to establish an inconsistency with Article III:4. Moreover, the Appellate Body recalled that the analysis of whether imported products are treated less favourably requires a careful examination, grounded in close scrutiny of the "fundamental thrust and effect of the measure itself", including of the implications of the measure for the conditions of competition between imported and like domestic products. The Appellate Body reiterated that the analysis of the implications of the measure in the marketplace need not be based on empirical evidence as to the actual effects and that such implications may be discerned from the design, structure, and expected operation of the measure. The Appellate Body further stated that when imported and like domestic products are subject to a single regulatory regime with the only difference being that imported products must comply with additional requirements, this would provide a significant indication that imported products are treated less favourably. Nonetheless, the Appellate Body reiterated, an analysis of less favourable treatment under Article III:4 normally requires further identification or elaboration of the implications of the measure in the marketplace.

[44] Panel Exhibit PHL-289 consisted of an expert tax option on the issue of whether, as a matter of Thai law, VAT registrants reselling domestic cigarettes were required to report their sales of domestic cigarettes.

Turning to the Panel's analysis of less favourable treatment in this dispute, the Appellate Body noted that the differences in treatment of imported and like domestic cigarettes under Thai law stem from the fact that resellers of imported cigarettes are subject to additional administrative requirements, whereas resellers of like domestic cigarettes are exempted therefrom. This in itself provided a significant indication that imported cigarettes are accorded less favourable treatment. Moreover, the Appellate Body disagreed with Thailand that the Panel based its finding only on a "theoretical possibility" that differences in treatment *could potentially* affect the conditions of competition to the disadvantage of imported cigarettes. Rather, the Panel properly recognized that it was not required to inquire into the *actual* effects of the measure. The Panel also elaborated on certain implications of the additional administrative requirements in the marketplace. In particular, the Panel referred to an econometric study on switching patterns between imported and domestic cigarettes as confirming that the additional administrative requirements may have a negative impact on the conditions of competition of imported cigarettes. The Panel further explained that the additional administrative requirements can be linked to the operating costs of businesses, thereby affecting the business decisions of cigarette suppliers. For these reasons, the Appellate Body concluded that the Panel's analysis of less favourable treatment took proper account of the implications of the measure at issue in the marketplace.

Accordingly, the Appellate Body upheld the Panel's finding that Thailand acts inconsistently with Article III:4 of the GATT 1994 because it accords less favourable treatment to imported cigarettes by imposing additional administrative requirements only on resellers of imported cigarettes.

(b) Article 11 of the DSU: The Panel's Treatment of Late-Submitted Evidence

With regard to the Panel's acceptance of and reliance upon an exhibit submitted late in the proceedings by the Philippines, the Appellate Body recalled that due process is a fundamental principle in WTO dispute settlement and that its protection is a crucial means of ensuring the legitimacy and efficacy of a rules-based system of adjudication. The Appellate Body explained that a panel's working procedures should embody and reinforce due process and that the use by panels of detailed, standardized working procedures promotes fairness and the protection of due process. The Appellate Body also reiterated that due process will be best served by working procedures that provide for "appropriate factual discovery at an early stage in panel proceedings", and that, as a general rule, due process requires that each party be afforded a meaningful opportunity to comment on arguments and evidence submitted by the other party. At the same time, due process may also require a panel to take proper account of other interests, including the need for proceedings to be conducted in a timely manner and the need for proceedings to be brought to a close. Ensuring due process requires a balancing of various interests, including systemic interests as well as those of the parties, and both general and case-specific considerations. In the view of the Appellate Body, panels are best situated to determine how this balance should be struck in any given proceeding, provided that they are vigilant in the protection of due process and remain within the bounds of their duties under Article 11 of the DSU.

The Appellate Body disagreed with Thailand's allegation that the Panel failed to comply with paragraph 15 of its Working Procedures by accepting Exhibit PHL-289 at an advanced stage of the proceedings without affording Thailand an opportunity to comment thereon. The Appellate Body considered Exhibit PHL-289 to be factual evidence necessary for purposes of rebuttal or comments on Thailand's responses to questions. Accordingly, the Appellate Body agreed with the Panel that this was not the type of evidence that, pursuant to paragraph 15, can be accepted only if the submitting party has shown good cause and the other party has been accorded an opportunity to comment.

However, the Appellate Body was of the view that compliance with the Panel's Working Procedures was not dispositive of the issue of whether the Panel had ensured due process and acted consistently with Article 11 of the DSU.[45] The Appellate Body recognized that Exhibit PHL-289 was submitted very late in the proceedings, and that the Panel could have chosen to refuse to accept it or to afford Thailand an opportunity to respond to it. Taking into account all of the circumstances, however, the Appellate Body considered that the Panel did not fail to protect due process in this case, and, therefore, did not fail to comply with its duty under Article 11 of the DSU to conduct an objective assessment of the matter.

(c) Thailand's Defence under Article XX(d) of the GATT 1994

Thailand contended that the Panel's statement that "[a]s addressed in Section VII.F.6(b)(ii) above … we found that the Thai VAT laws that Thailand purports to secure compliance with through the administrative requirement[s] at issue, were *not* WTO consistent" reveals that the Panel made a fundamental error in rejecting Thailand's defence under Article XX(d). Because Section VII.F.6(b)(ii) of the Panel Report contains the Panel's finding that the additional administrative requirements are inconsistent with Article III:4, Thailand argued that this cross-reference shows that the Panel's reasoning on Article XX(d) was circular. The Philippines contended that the Panel's reference to Section VII.F.6(b)(ii) was a mere clerical error and that the Panel intended to refer to Section VII.E.5(b)(ii) of its Report, which dealt with discriminatory taxation.

The Appellate Body agreed with the participants that the Panel's reference to Section VII.F.6(b)(ii) was erroneous. Read literally, the cross reference would mean that the additional administrative requirements were not justified as necessary to secure compliance with those same administrative requirements. The Appellate Body further observed that the Panel's analysis was extremely brief and insufficient to allow the Appellate Body to conclude with confidence that, as the Philippines suggested, the Panel really intended to refer to Section VII.E.5(b)(ii), or to any other section of its Report. Accordingly, the Appellate Body reversed the Panel's finding that Thailand did not discharge its burden of demonstrating that the additional administrative requirements are necessary to secure compliance with laws or regulations that are GATT-consistent, within the meaning of Article XX(d) of the GATT 1994.

Thailand further argued that because this "fundamental" error "effectively deprived Thailand of its right to assert its Article XX(d) defence" to the finding of inconsistency with Article III:4, the Panel's finding under Article III:4 should also be reversed. The Appellate Body rejected Thailand's request, noting that the analysis of a substantive obligation in the GATT 1994 necessarily precedes, and is distinct from, the further and separate assessment of whether a measure is justified under an exception. Instead, the Appellate Body went on to complete the legal analysis in respect of Thailand's defence under Article XX(d). The Appellate Body observed that, in all its submissions before the Panel, Thailand devoted only six paragraphs to its Article XX(d) defence, and provided very limited elaboration of the necessary elements of its asserted defence. The Appellate Body considered that the arguments and evidence put forward by Thailand failed, on their face, to establish the requisite elements of an Article XX(d) defence.

Accordingly, the Appellate Body found that Thailand had failed to make out a *prima facie* defence and, therefore, failed to establish that the additional administrative requirements are justified under Article XX(d) of the GATT 1994.

[45] The Appellate Body identified a number of other relevant considerations, including that: (i) the Philippines submitted Exhibit PHL-289 at the earliest possible opportunity following Thailand's submission of evidence with its responses to the second set of Panel questions; (ii) Thailand did not object to this evidence until its comments on the Panel's Interim Report, nearly seven months after Exhibit PHL-289 was submitted, and did not request an opportunity to comment on this evidence; (iii) the issue of whether VAT registrants are required to report their sales of VAT-exempt domestic cigarettes was contested between the parties throughout the proceedings and each adduced several pieces of evidence in support of its position; and (iv) Exhibit PHL-289 was not the only evidence supporting the Panel's finding that resales of domestic cigarettes need not be reported on the monthly tax forms.

3. Article X:3(b) of the GATT 1994

The Appellate Body reviewed the Panel's interpretation of the terms "administrative action relating to customs matters" and "prompt review and correction" as set out in Article X:3(b). The Appellate Body found no error in the Panel's conclusion that "administrative action relating to customs matters" encompasses "a wide range of acts applying legal instruments having a rational relationship with customs matters". Next, the Appellate Body found that "prompt review and correction" is to be understood as review and correction that is performed in a quick and effective manner and without delay. The Appellate Body found that what is quick or performed without delay depends on the particular circumstances of each case, and therefore, agreed with the Panel that the nature of the specific administrative action at issue informs the meaning of the word "prompt" in the particular circumstances of a Member's domestic system. The Appellate Body added that Article X:3(b) does not prescribe one particular type of review or correction and that the reference to "judicial, arbitral or administrative tribunals or procedures" suggests that there are a variety of ways in which a Member may comply with the obligation of maintaining tribunals or procedures for prompt review and correction of administrative action.

With respect to the application of Article X:3(b) to the specific facts of this dispute, the Appellate Body found that the customs guarantee decisions at issue are acts of the executive branch of government and thus constitute administrative action in the sense of Article X:3(b). Furthermore, because they serve to secure the payment of ultimate customs duties, these guarantee decisions are connected to "customs matters" and thus fall within the scope of Article X:3(b). The Appellate Body rejected Thailand's argument that guarantee decisions do not constitute "administrative action" within the meaning of Article X:3(b) because they are only administrative steps of a provisional nature. Instead, the Appellate Body found that, in terms of the purpose of securing payment of customs duties, the guarantee is the final measure, not merely an intermediate step.

The Appellate Body then considered whether the Panel erred in finding that Thailand's provision of a right of appeal against the imposition of a guarantee only when the notice of assessment of final duty liability has been issued does not satisfy the obligation prescribed in Article X:3(b). In the particular circumstances of a guarantee, which is effective as a security from the time it is given until the time when the ultimate customs duties are paid, the Appellate Body considered that, for review to be timely and effective, it must be possible to challenge the guarantee during the time it serves as a security. In the present case, because guarantee decisions can only be challenged once a notice of assessment of final duty liability has been issued, Thai law invariably delays review of guarantee decisions and thereby shields these decisions from challenge throughout the period in which they serve as a security and in which traders are most affected by them. The Appellate Body concluded that this system does not ensure prompt review of the relevant administrative action and thus found no error in the Panel's conclusion that Thailand's system for the review of guarantee decisions is not compatible with the obligation under Article X:3(b) to provide for the prompt review of administrative action relating to customs matters.

Therefore, the Appellate Body upheld the Panel's finding that Thailand acts inconsistently with Article X:3(b) of the GATT 1994 by failing to maintain or institute independent review tribunals or procedures for the prompt review of guarantee decisions.

■ Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R

This appeal originated from a complaint brought by China concerning the treatment provided by the European Union under its anti-dumping regulations to exporters and producers from China in the determination of dumping margins and the imposition of anti-dumping duties, as well as, the anti-dumping duties imposed on certain iron or steel fasteners from China and other aspects of that investigation. The specific measures of the European Union challenged by China were Article 9(5) of Council Regulation (EC)

No. 1225/2009 (the "Basic AD Regulation") on protection against dumped imports from countries not members of the European Community, and Council Regulation (EC) No. 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China.[46]

Under Article 9(5) of the Basic AD Regulation, an exporter or producer from a WTO Member designated as a non-market economy country ("NME") under EU law, like China, will receive a country-wide dumping margin and a country-wide anti-dumping duty unless it can demonstrate that its export activities are sufficiently independent from the State to warrant individual treatment.

The European Union appealed certain of the Panel's findings under Articles 6.2, 6.4, 6.5, 6.5.1, 6.10, 9.2, and 18.4 of the *Anti-Dumping Agreement*, Article I:1 of the GATT 1994, and Article XVI:4 of the *WTO Agreement*. China cross-appealed certain other findings of the Panel under Articles 2.4, 3.1, 4.1, 6.1.1, 6.2, 6.4, 6.5, and 6.5.1 of the *Anti-Dumping Agreement*.

1. Article 9(5) of the Basic AD Regulation

The Appellate Body first considered that the Panel's assessment of the meaning and scope of Article 9(5) of the Basic AD Regulation was not a "factual matter" excluded from appellate review but a matter of legal characterization subject to appellate review according to Article 17.6 of the DSU. The Appellate Body observed that the Panel examined Article 9(5) for the purpose of determining its consistency with a number of provisions of the *Anti-Dumping Agreement* and the GATT 1994 and recalled that when a panel examines the municipal law of a WTO Member in order to determine whether that Member has complied with its WTO obligations, that examination is a legal characterization by a panel and is, therefore, subject to appellate review under Article 17.6 of the DSU.[47]

The Appellate Body interpreted Article 6.10 of the *Anti-Dumping Agreement* as expressing an obligation to determine individual margins of dumping, and not merely a preference, as advocated by the European Union. The Appellate Body, unlike the Panel, considered that sampling is not the only exception to the rule requiring the determination of individual dumping margins. The Appellate Body, however, affirmed that any other exception must be specifically provided for in the covered agreements and that it would be incompatible with the existence of a requirement to determine individual margins if Members were free to depart from it by unilaterally determining what qualifies as an applicable exception.

With regard to Article 9.2 of the *Anti-dumping Agreement*, the Appellate Body interpreted that provision as requiring investigating authorities to specify an individual duty for each supplier, except where this is impracticable, when several suppliers are involved. Further, the Appellate Body considered that the exception in the third sentence of Article 9.2, which allows investigating authorities to name the supplying country concerned if it is "impracticable" to name all the suppliers, does not allow the imposition of a single country-wide anti-dumping duty in investigations involving NMEs where the imposition of individual duties is alleged to be "ineffective", but is not "impracticable".

Turning to the facts of the dispute, the Appellate Body observed that the function of the Individual Treatment Test ("IT test") in Article 9(5) of the Basic AD Regulation is to determine whether exporters or producers are sufficiently distinct from the State to overcome the presumption of singularity, such that they should be entitled to individual treatment pursuant to Article 9(5). The Appellate Body further noted that, by focusing on State interference with exporters and State intervention in the economy in general, the IT test captures broader market distortions in the economy and different kinds of interferences by the State than that of the control or material influence by the State over the exporters in respect of pricing and output of a particular like product. As a consequence, the cumulative criteria of the IT test are likely to result in the

[46] China's claims with regard to Article 9(5) of the Basic AD Regulation challenged that measure "as such" and "as applied", while its claims with regard to Council Regulation (EC) No. 91/2009 challenged the specifics of the Basic AD Regulation "as applied" in the fasteners investigation.

[47] Appellate Body Report, *US – Section 211 Appropriations Act*, para. 105.

denial of individual treatment where the relationship between individual exporters and the State is not such as to justify treating the State and one or several exporters as a single entity for the purposes of Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*.

Finally, the Appellate Body found that the IT test is not consistent with Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, because it presumes that in NMEs all the exporters and the State constitute a single entity which should receive a single dumping margin and a single anti-dumping duty. The Appellate Body considered that such a presumption lacks a legal basis in the covered agreements and, in particular, that it cannot be derived from the provisions of Section 15[48] of China's Accession Protocol. The Appellate Body reasoned that, even accepting in principle that there may be circumstances where particular exporters and producers from NMEs may be considered as a single entity for purposes of Articles 6.10 and 9.2, such singularity cannot be presumed, but must be determined by the investigating authorities on the basis of facts and evidence submitted or gathered in the investigation.

In the light of the above, the Appellate Body upheld the Panel's findings that Article 9(5) of the Basic AD Regulation was inconsistent "as such", and "as applied" in the fasteners investigation, with Articles 6.10 and 9.2 of the *Anti-Dumping Agreement* because it conditions the determination of individual dumping margins, and the imposition of individual anti-dumping duties, on the fulfilment of an "Individual Treatment Test".

2. Article I:1 of the GATT 1994

The European Union argued on appeal that the Panel erred in finding that Article 9(5) of the Basic AD Regulation is inconsistent with the MFN obligation of Article I:1 of the GATT 1994.

The Appellate Body observed that Article VI of the GATT 1994 permits the imposition of anti-dumping duties, which may otherwise be inconsistent with other provisions of the GATT 1994, such as Article I:1. Therefore, the Appellate Body reasoned, a preliminary question to be addressed before determining whether an anti-dumping duty has been imposed inconsistently with Article I:1 of the GATT 1994 is whether the anti-dumping duty has been imposed consistently with Article VI of the GATT 1994. However, China did not claim before the Panel that Article 9(5) of the Basic AD Regulation was inconsistent with Article VI of the GATT 1994, and the Panel did not engage with the implications of the absence of a claim under Article VI for a claim under Article I:1 of the GATT 1994. Thus the Panel's reasoning lacked an essential step in the sequence of the legal analysis. In these circumstances, the Appellate Body did not consider it appropriate to explore further the implications of the absence of a claim under Article VI of the GATT 1994 for a claim under Article I:1 of the GATT 1994 and declined to rule on the Panel's finding that Article 9(5) of the Basic AD Regulation is inconsistent with Article I:1 of the GATT 1994. The Appellate Body declared this finding moot and of no legal effect. The Appellate Body further noted that, having found Article 9(5) of the Basic AD Regulation is inconsistent "as such" with Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, a ruling under Article I:1 of the GATT 1994 was unnecessary for purposes of resolving this dispute.

3. Article XVI:4 of the *WTO Agreement* and Article 18.4 of the *Anti-Dumping Agreement*

As a consequence of its findings under Articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, the Appellate Body also upheld the Panel's finding that the European Union acted inconsistently with Article XVI:4 of the *WTO Agreement* and Article 18.4 of the *Anti-Dumping Agreement* by failing to ensure the conformity of its laws, regulations, and administrative procedures with its obligations under the relevant Agreements.

[48] The Appellate Body found that Section 15 of China's Accession Protocol establishes special rules regarding the domestic price aspect of price comparability, which relate to the determination of normal value, but that it does not contain an open-ended exception that allows WTO Members to treat China differently for other purposes under the *Anti-Dumping Agreement* and the GATT 1994, such as the determination of export prices or individual versus countrywide margins and duties.

4. Articles 4.1 and 3.1 of the *Anti-Dumping Agreement*

China appealed the Panel's conclusion that the European Union did not act inconsistently with Articles 4.1 and 3.1 of the *Anti-Dumping Agreement* with respect to the definition of the domestic industry in the fasteners investigation.

The Appellate Body began its analysis with the interpretation of Article 4.1 of the *Anti-Dumping Agreement*, which allows an investigating authority to define the domestic industry in an anti-dumping investigation either as the domestic producers as a whole, or as those producers "whose collective output of the products constitutes a major proportion of the total domestic production". The Appellate Body found that the context in which the term "a major proportion" is situated indicates that the term should be properly understood as a relatively high proportion of the total domestic production. Given the purpose of defining the domestic industry, which is to provide the basis on which an authority makes an injury determination, and of the requirement under Article 3.1 of the *Anti-Dumping Agreement* that an injury determination involves an objective examination of the impact of the dumped imports, the Appellate Body found that an investigating authority must not act so as to give rise to a material risk of distortion in defining the domestic industry.

Turning to the fasteners investigation, the Appellate Body found that, contrary to the European Union's view, 25 per cent of total domestic production, which was the minimum benchmark provided under Article 5.4 of the *Anti-Dumping Agreement* for assessing whether an anti-dumping investigation has sufficient support among domestic producers, could not be presumed to meet the requirement of "a major proportion" of the collective output of domestic production under Article 4.1 of the *Anti-Dumping Agreement*. The Appellate Body further found that the domestic industry, as defined in this case, did not include those producers who provided the relevant information requested by the Commission but were unwilling to be part of the sample that the Commission subsequently investigated with regard to some (but not all) injury factors. In the Appellate Body's view, the Commission's approach shrank the universe of producers whose data could have been used for the injury determination, and such an approach was not justified by the fragmented nature of the fastener industry or practical constraints on obtaining information from domestic producers. The Appellate Body found, therefore, that the Panel erred in finding that the European Union did not act inconsistently with Article 4.1 of the *Anti-Dumping Agreement* in defining a domestic industry comprising producers accounting for 27 per cent of total estimated EU production of fasteners.

The Appellate Body, however, found that the Panel did not err in rejecting China's contention that the European Union acted inconsistently with Article 3.1 of the *Anti-Dumping Agreement* by making an injury determination on the basis of a sample that was allegedly not representative of the domestic industry defined in the investigation. The Appellate Body agreed with the Panel that a statistically valid sample was not the only way of ensuring that the sample was representative, and that China failed to demonstrate that the Commission could have included more producers in the sample. Furthermore, the Appellate Body found that the Panel did not fail to conduct an objective assessment of the facts, as required by Article 11 of the DSU, in finding that the European Union did not exclude domestic producers who did not support the anti-dumping investigation from the definition of the domestic industry. The Appellate Body also found that the Panel did not misinterpret Article 4.1 of the *Anti-Dumping Agreement* or act inconsistently with Article 11 of the DSU when finding that the European Union did not violate Article 4.1 by excluding from the domestic industry definition those producers who did not make themselves known within 15 days following the initiation of the investigation. Finally, the Appellate Body found that the Panel did not err in rejecting China's consequential claim that by excluding the above producers the European Union acted inconsistently with the obligation in Article 3.1 of the *Anti-Dumping Agreement* to carry out an objective examination.

5. Dumping Determination – Articles 6.4, 6.2, and 2.4 of the *Anti-Dumping Agreement*

The European Union and China each appealed the Panel's findings regarding certain aspects of the Commission's dumping determination in the fasteners investigation. Specifically, the European Union appealed the Panel's finding that the Commission acted inconsistently with Articles 6.4 and 6.2 of the *Anti-Dumping Agreement* by not providing a timely opportunity for the Chinese interested parties to see the product types used by the Commission for purposes of comparing export prices and normal value in the dumping determination. China appealed the Panel's finding that the European Union did not act inconsistently with Article 2.4 of the *Anti-Dumping Agreement* by failing to conduct a "fair comparison" between the export price and the normal value in the dumping determination.

The Appellate Body found that Article 6.4 of the *Anti-Dumping Agreement*, which requires an investigating authority to provide timely opportunities for all interested parties to see all non-confidential information that is relevant to the presentation of their cases and used by the authority, applies to a broad range of information used by the authority for purposes of carrying out a required step in an anti-dumping investigation. The Appellate Body disagreed with the European Union's view that the term "information" in Article 6.4 was limited to facts and raw data submitted by other interested parties. Rather, the Appellate Body found that such information may take various forms, including data submitted by the interested parties and information that has been processed, organized, or summarized by the authority. Moreover, pursuant to the last sentence of Article 2.4 of the *Anti-Dumping Agreement*, an investigating authority must indicate to the parties what information is necessary to ensure a fair comparison. The Appellate Body found that, at a minimum, the authority must inform the parties of the products with regard to which it makes the comparison between the export price and the normal value within the meaning of Article 2.4. Without such information, the parties would not be able to request adjustments for differences affecting price comparability so as to ensure that their interest in a fair comparison is protected.

The Appellate Body noted the Panel's factual finding that, in the questionnaires sent to the Chinese producers in the fasteners investigation, as well as to the Indian producer whose prices were used to establish the normal value, the Commission requested that the information on the product under investigation be reported on the basis of categories defined by Product Control Numbers ("PCNs"). The PCNs consisted of six physical characteristics of fasteners, which were further divided into 38 narrowly defined specifications. Because the Indian producer did not provide information on the basis of the PCNs, the Commission resorted to the use of "product types" defined by two factors (strength class and the distinction between standard and special fasteners) for purposes of the comparison between the export price and the normal value. The Appellate Body further noted the Panel's factual finding that the Chinese producers twice requested clarification in this regard, and were not informed of the basis for the price comparison until one day before the deadline for comments on the Commission's final determination.

Turning to the European Union's appeal, the Appellate Body rejected the contention that the grouping of products into product types was a factual determination made by the Commission and was not "information" within the meaning of Article 6.4 of the *Anti-Dumping Agreement*. The Appellate Body agreed with the Panel that it was necessary for the Chinese interested parties to be informed of the product types, on the basis of which the Commission made the price comparison, so as to enable them to request adjustments for differences affecting price comparability and to ensure that their interest in a fair comparison was protected. The Appellate Body further found that the Panel's finding that the Commission did not provide a timely opportunity for the Chinese interested parties to see the information regarding the product types was supported by the evidence on the record and that, consequently, the Panel did not act inconsistently with Article 11 of the DSU in reaching this finding. The Appellate Body upheld the Panel's finding that the European Union acted inconsistently with Article 6.4 of the *Anti-Dumping Agreement*. The Appellate Body also upheld the Panel's finding that the European Union acted inconsistently with Article 6.2

of the *Anti-Dumping Agreement* because the Chinese interested parties could not defend their interests as a result of the Commission's failure to provide a timely opportunity for them to see the information regarding the product types.

With regard to China's other appeal, the Appellate Body found that the Panel erred in its application of Article 2.4 by not taking into account the last sentence of Article 2.4, which requires an investigating authority to indicate to the parties what information is necessary to ensure a fair comparison. Specifically, the Appellate Body found that the Panel conducted its analysis under Article 2.4 in isolation from its findings under Article 6.4, in particular the finding that it was necessary for the Chinese interested parties to be informed of the basis on which the Commission made the price comparison in order to ensure that their interest in a fair comparison was protected. The Appellate Body therefore found that, by not indicating the product types used for purposes of the price comparison until very late in the investigation, the European Union acted inconsistently with Article 2.4 by depriving the Chinese producers of the ability to request any adjustments for differences that could have affected price comparability. However, the Appellate Body declined to uphold the other grounds for China's other appeal. Specifically, the Appellate Body found that the Panel did not fail to distinguish between an authority's obligations, under Article 2.4 of the *Anti-Dumping Agreement*, to first evaluate identified differences that may potentially affect price comparability and to then make adjustments for any differences actually affecting price comparability. The Appellate Body also found that the Panel did not act inconsistently with Article 11 of the DSU by finding that the Commission was not required to make adjustments for every physical characteristic identified in the PCNs. Finally, the Appellate Body found that the Panel did not misinterpret or misapply Article 2.4 of the *Anti-Dumping Agreement* by dismissing China's unsubstantiated contention that the Commission was required to make adjustments for alleged quality differences between the Indian and Chinese fasteners under investigation.

6. Confidential Treatment of Information

The European Union appealed the Panel's finding that the Commission violated Article 6.5.1 of the *Anti-Dumping Agreement* by failing to ensure that statements submitted by two Italian producers explaining why confidential information was not susceptible of summary were "appropriate". The European Union argued that Article 6.5.1 imposes only a "best endeavours" obligation on authorities with regard to a party's submission of a "statement of the reasons why summarization is not possible" and that the Commission complied with this obligation.

The Appellate Body found that Article 6.5.1 is mandatory and requires investigating authorities to ensure that, in the exceptional circumstances in which confidential information is not susceptible of summary, a statement of reasons is provided explaining why summarization is not possible. The Appellate Body found that neither of the statements submitted by the two EU producers indicated an "exceptional circumstance" or explained why summarization of particular information was not possible. Therefore, the Appellate Body upheld the Panel's finding that the European Union acted inconsistently with its obligations under Article 6.5.1 of the *Anti-Dumping Agreement*.

The European Union appealed the Panel's finding that the European Union acted inconsistently with its obligations under Article 6.5 of the *Anti-Dumping Agreement* by treating "product type" information submitted by the analogue country producer, the Indian company Pooja Forge, as confidential without "good cause" being shown. On a procedural basis, the European Union argued that this claim was not within the Panel's terms of reference. In the alternative, the European Union claimed that the Panel violated its obligations under Article 11 of the DSU, and deprived the European Union of its due process rights, when it "made the case" for China through its questioning during the panel proceedings. On the substance of the claim, the European Union argued it was not obliged to require Pooja Forge to show "good cause", because this requirement applies to "interested parties" as defined in Article 6.11 of the *Anti-Dumping Agreement*, and analogue country producers do not fall within those explicitly listed in that definition.

The Appellate Body found that China's claim that the European Union violated Article 6.5 by treating "product type" information submitted by Pooja Forge as confidential without a showing of "good cause", fell within the scope of China's panel request because it contained the phrase "the [European Union] wrongly treated information as confidential". The Appellate Body then analyzed China's submissions before the Panel, and the Panel's treatment of this claim. In the Appellate Body's view, China's arguments focused on the lack of "product type" information contained in Pooja Forge's non-confidential questionnaire response, rather than the lack of a "good cause" showing having been made for its confidential treatment. The Appellate Body found that the first and only time China articulated an argument under Article 6.5 regarding the lack of a "good cause" showing for confidential treatment was in response to the Panel's questioning after the first meeting of the parties. The Appellate Body concluded that China had failed to substantiate its claim before the Panel under Article 6.5, and therefore reversed the Panel's finding that the European Union had acted inconsistently with its obligations under Article 6.5 of the *Anti-Dumping Agreement*.

7. Non-Disclosure of the Identity of the Complainants

China appealed the Panel's finding that the European Union did not act inconsistently with its obligations under Article 6.5 of the *Anti-Dumping Agreement* by treating the identity of the complainants and the supporters of the complaint as confidential because of the risk of commercial retaliation by customers who also purchased fasteners from Chinese suppliers. China argued that the Panel erred in its interpretation and application of Article 6.5 when it found that a "purely hypothetical" retaliation could constitute "good cause", and when it found that "good cause" had been shown without any evidence presented to support a "mere assertion". China further argued that the Panel erred in finding that the disclosure of the sampled producers' identities did not undermine the "good cause" alleged for the confidential treatment of the complainants' and supporters' identity, and that the Panel impermissibly shifted the burden of proof to China, in violation of Article 6.5 of the *Anti-Dumping Agreement* and Article 11 of the DSU. As a preliminary matter, the Appellate Body found that China's claim under Article 11 of the DSU was not included in its Notice of Other Appeal, and therefore was not properly before it.

The Appellate Body found that, in determining whether "good cause" has been shown, an investigating authority is required to strike a balance between the proprietary interests of those seeking protection of information and the transparency and due process that should be accorded to parties that require access to information to defend their interests. In reviewing China's arguments, the Appellate Body considered that they did not raise issues of legal interpretation and application; instead, these arguments challenged the Panel's assessment and weighing of the evidence. As China had not properly raised a claim under Article 11 of the DSU challenging the Panel's assessment of whether good cause had been shown for the confidential treatment of the complainants' identity, the Appellate Body declined to disturb the Panel's conclusions. The Appellate Body therefore upheld the Panel's finding that the European Union had not acted inconsistently with Article 6.5 of the *Anti-Dumping Agreement* in not disclosing the identity of the complainants and supporters of the complaint.

The European Union argued on appeal that the Panel acted inconsistently with Article 6.2 of the DSU when it found that China's claim concerning the non-disclosure of the identity of the complainants and supporters under Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* was within its terms of reference. According to the European Union, Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* contain multiple obligations that apply throughout an anti-dumping investigation, and the Panel therefore erred in finding that "the nature" of these articles is such that the mere listing of them in the panel request was sufficient to cover any claims that China subsequently brought.

The Appellate Body found that China's claim with respect to the confidential treatment of the identity of the complainants and supporters was not mentioned in China's panel request. The Appellate Body further found that the obligations contained in Articles 6.2 and 6.4 are broad in scope, and that the mere listing of these provisions was not sufficient to "present the problem clearly" as required under Article 6.2

of the DSU. On these grounds, the Appellate Body reversed the Panel's finding that China's claims under Articles 6.2 and 6.4 were within its terms of reference, and declared moot the Panel's finding that the European Union did not act inconsistently with its obligations under Articles 6.2 and 6.4.

8. Time-Limit for Submission of the Market Economy Treatment/Individual Treatment ("MET/IT") Claim Form

China appealed the Panel's finding that the European Union did not act inconsistently with its obligations under Article 6.1.1 of the *Anti-Dumping Agreement* when it allowed Chinese exporters less than 30 days to reply to the MET/IT Claim Form. China argued that the proper interpretation of the term "questionnaires" in Article 6.1.1covers all substantial information requests that warrant verification visits, and which would not prevent the authorities from completing the investigation within the required time period.

Based on the context provided by Articles 6.1, 6.2, 5.10, and 6.14 of the *Anti-Dumping Agreement*, the Appellate Body found that the "questionnaires" referred to in Article 6.1.1 are a particular type of document distributed early in an investigation, and through which the investigating authority solicits a substantial amount of information relating to the key aspects of the investigation, that is, dumping, injury, and causation. The Appellate Body also noted that Article 6.1 requires that parties be given "ample opportunity" to present in writing all the evidence they consider relevant to the investigation. However, the Appellate Body found that the purpose of the MET/IT Claim Form was to determine whether individual exporters could satisfy the market economy treatment or individual treatment tests, and it did not solicit substantial amounts of information regarding the key aspects of an investigation, that is dumping, injury and causation. On this basis, the Appellate Body found that the MET/IT Claim Form was not a "questionnaire" within the meaning of Article 6.1.1 of the *Anti-Dumping Agreement*. It also upheld the Panel's finding that the European Union did not act inconsistently with its obligations under Article 6.1.1 when it gave Chinese exporters and producers less than 30 days to submit the MET/IT Claim Form.

Accordingly, the Appellate Body recommended that the DSB request the European Union to bring its measures, found in the Appellate Body Report and in the Panel Report as modified, to be inconsistent with the *Anti-Dumping Agreement* and the *WTO Agreement*, into conformity with its obligations under those Agreements.

▪ Appellate Body Report, *US – Tyres (China)*, WT/DS399/AB/R

This appeal originated from a complaint brought by China with respect to the WTO-consistency of a safeguard measure imposed by the United States on imports of certain passenger vehicle and light truck tyres from China. The measure at issue was imposed under Section 16 of China's Accession Protocol, which provides other WTO Members with the right to impose safeguard measures on imports from China alone when such imports are "increasing rapidly" so as to be a "significant cause" of material injury to the domestic industry.[49] The Appellate Body explained that an analysis of the particular obligations set out under Section 16 of the Protocol must begin with, and focus upon, the actual language used in the Protocol, including the phrases "increasing rapidly" and "a significant cause".

1. Increase in Imports

The Appellate Body began by addressing China's claim that the Panel erred in finding that the United States International Trade Commission (the "USITC") properly determined that imports from China were "increasing rapidly" within the meaning of Paragraph 16.4 of China's Accession Protocol. Based on its

[49] Section 16 of China's Accession Protocol sets out the conditions for the imposition of a product-specific safeguard measure on imports from China and provides that application of this transitional safeguard mechanism shall be terminated 12 years after the date of China's accession to the WTO, that is, in December 2013.

interpretative analysis of the term "increasing rapidly", the Appellate Body found that imports from China will be "increasing rapidly" within the meaning of Paragraph 16.4 when they are increasing at great speed or swiftly, either in relative or absolute terms. The Appellate Body added that such increases in imports must be occurring over a short and recent period of time, and must be of a sufficient absolute or relative magnitude to be a significant cause of material injury to the domestic industry.

The Appellate Body rejected China's argument that the use of the present continuous "increasing" in Paragraph 16.4 required the USITC to focus on import increases during the most recent past, in this case the year 2008. The Appellate Body agreed with China that the present continuous "are increasing" connotes an upward trend in imports that continues at the present time. However, the Appellate Body reasoned that investigating authorities do not have access to real-time import data, and therefore have to examine import trends during a sufficiently recent period, which is used as proxy for current imports. For the Appellate Body, once the period of investigation is sufficiently recent to provide a reasonable indication of current import trends, the use of the present continuous "are increasing" does not imply that the investigating authority's analysis should be limited to import data at the very end of the period of investigation. Moreover, the Appellate Body noted that both the Panel and the USITC separately examined absolute and relative import data for the last two years of the period of investigation, including 2008.

The Appellate Body also dismissed China's argument that the term "rapidly" in Paragraph 16.4 required investigating authorities to focus their analysis on the *rates* of increase in subject imports. For the Appellate Body, the text of Paragraph 16.4 requires that imports—and not the rates of increase imports—be "increasing rapidly". The Appellate Body added that a decline in the annual rate of increase in subject imports does not preclude a finding that they are "increasing rapidly", particularly because Paragraph 16.4 admits of import increases in both absolute and relative terms. In any event, the Appellate Body considered that both the Panel and the USITC gave sufficient consideration for the rates of increase in imports during the period of investigation.

Finally, the Appellate Body also disagreed with China that the term "increasing rapidly" required investigating authorities to assess the most recent rates of increases in imports relative to the rates of increase earlier in the five-year 2004-2008 period of investigation. Having found earlier that Paragraph 16.4 did not require a focus on the rates of increase in subject imports, and that a decline in the rate of increase in subject imports in 2008 did not preclude a finding that they were "increasing rapidly", the Appellate Body considered that the Panel was not required to compare the rates of import increases in 2008 with the rates of increase in earlier periods. The Appellate Body added that both the Panel and the USITC gave appropriate consideration to absolute and relative rates of increase in the two last years of the period of investigation.

On this basis, the Appellate Body upheld the Panel's finding that the USITC did not fail to properly evaluate whether imports from China met the specific threshold under Paragraph 16.4 of the Protocol of "increasing rapidly".

2. The Meaning of "A Significant Cause"

China argued that the Panel erred in its interpretation of Paragraph 16.4 in failing to give meaning to the term "significant". China contended that the inclusion of the term "significant" to qualify the term "cause" indicated that Paragraph 16.4 of the Protocol imposed a more rigorous causation standard than other WTO agreements, which simply refer to "cause". According to China, Paragraph 16.4 requires a "particularly strong, substantial and important causal connection" between rapidly increasing imports and material injury to the domestic industry.

The Appellate Body noted that the ordinary meaning of "significant" is "important, notable". The term "cause", in turn, has been interpreted by the Appellate Body in other contexts as denoting a relationship

between at least two elements, whereby the first element has "brought about, produced or induced" the existence of the second element. Thus, the Appellate Body opined that Paragraph 16.4 suggested that rapidly increasing imports must be an "important" or "notable" factor in "bringing about, producing or inducing" material injury to the domestic industry. The Appellate Body added that Paragraph 16.4 stipulates that rapidly increasing imports from China must be "a" significant cause of material injury to the domestic industry. For the Appellate Body, this suggested that rapidly increasing imports may be one of several causes that contribute to producing or bringing about material injury to the domestic industry. However, the inclusion of the term "significant" to qualify "a cause" indicated to the Appellate Body that rapidly increasing imports must be more than a mere contributing cause to the material injury of the domestic industry. Rather, the contribution made by rapidly increasing imports to the material injury of the domestic industry must be important or notable.

The Appellate Body rejected China's argument that Paragraph 16.4 required a higher degree of causality between rapidly increasing imports and material injury to the domestic industry than other WTO agreements. The Appellate Body reasoned that China's argument in this respect was premised on other WTO agreements requiring that imports be no more than "a cause" of the requisite level of injury. However, the Appellate Body has made clear that the causation standard contained in other WTO agreements required a "genuine and substantial relationship of cause and effect" between subject imports and the requisite level of injury. For the Appellate Body, such "genuine and substantial" causal link implies a higher degree of causality than subject imports being merely "a cause" of injury, as suggested by China.

Thus, the Appellate Body found that the term "significant" describes the causal relationship or nexus that must be found to exist between rapidly increasing imports and material injury to the domestic industry, which must be such that rapidly increasing imports make an "important" or "notable" contribution in bringing about material injury to the domestic industry. Such assessment must be carried out on the basis of the objective factors listed in the second sentence of Paragraph 16.4, such as the volume of imports, the effect of imports on prices, and the effect of imports on the domestic industry.

The Appellate Body disagreed with China that Paragraph 16.4 required investigating authorities to "refine" their causation analysis to meet the distinct "significant cause" standard reflected therein. In particular, the Appellate Body rejected China's argument that Paragraph 16.4 required a "higher degree of competitive overlap" and a strict correlation between the "degrees of change" in subject imports and injury factors. The Appellate Body considered that the analysis of the conditions of competition and of correlation between upward trends in imports and downward trends in injury factors were mere "analytical tools" that may assist investigating authorities in determining whether rapidly increasing imports are "a significant cause" of material injury to the domestic industry under Paragraph 16.4. As such, neither of these analytical tools is dispositive of the question of whether rapidly increasing imports are "a significant cause" of material injury. For the Appellate Body, China's arguments in this respect were predicated on Paragraph 16.4 requiring a "particularly strong, substantial and important" causal link between rapidly increasing imports and material injury to the domestic industry. However, properly read, Paragraph 16.4 requires investigating authorities to establish that rapidly increasing imports make an important contribution in bringing about material injury to the domestic industry. Thus, according to the Appellate Body, investigating authorities have the discretion to calibrate their analyses of the conditions of competition and of correlation to the particular circumstances of the case at hand, so long as the analysis provides a sufficiently reasoned and adequate explanation that rapidly increasing imports are a "significant cause" of material injury to the domestic industry.

The Appellate Body also found that an investigating authority can make a determination as to whether subject imports are a significant cause of material injury only if it properly ensures that effects of other known causes are not improperly attributed to subject imports and that those effects do not suggest that subject imports are in fact only a "remote" or "minimal" cause, rather than a "significant" cause of material injury to the domestic industry. The Appellate Body explained that the significance of the effects

of rapidly increasing imports must therefore be assessed in the context of other known causal factors. The Appellate Body added that the extent of the analysis that is required will depend on the impact of other causes that are alleged to be relevant and the facts and circumstances of the particular case.

3. Conditions of Competition

The Appellate Body addressed China's specific claims of error in relation to the Panel's review of the USITC's causation analysis, beginning with China's claim that the Panel (and the USITC) erroneously disregarded the existence of "attenuated competition" between subject imports and domestic tyres in the US market. China argued that 60% of domestic production went to the tier 1 of the replacement market and to the original equipment manufacturers ("OEM") market, where they faced "virtually no competition" from Chinese imports, which were concentrated on the lower-end tiers 2 and 3 of the replacement market.[50]

The Appellate Body initially noted that the Panel erroneously relied on views expressed by the *dissenting USITC commissioners* in finding that the USITC properly determined that were no clear dividing lines between tiers 1, 2 and 3 of the replacement market. The Appellate Body cautioned that under Article 11 of the DSU the Panel was required to assess whether the USITC provided a reasoned and adequate explanation for its *affirmative* finding of market disruption, and that the views of the dissenting commissioners were not a part of that determination. However, the Appellate Body considered that this error did not invalidate the Panel's ultimate conclusion that competition between Chinese and domestic tyres in the replacement market was "significant". For the Appellate Body, this conclusion was reasonably supported by the Panel's reasoning that the data before the USITC suggested that both US and Chinese tyres had a "significant presence" in tiers 2 and 3 of the replacement market.

Although the Appellate Body considered that the Panel could have provided a more thorough analysis as to why the "increasing degree of competition" in the OEM market did not require the USITC to dismiss competition in that market as "negligible", the Appellate Body considered that the "significant presence" of both Chinese and US tyres in tiers 2 and 3 of the larger replacement market, combined with a limited - but growing - presence of Chinese tyres in tier 1 of the replacement market and the smaller OEM market sufficiently supported the Panel's conclusion that the USITC did not err in finding that there was significant competition between subject imports and domestic tyres in the US market.

Accordingly, the Appellate Body upheld the Panel's finding that the USITC did not err in its assessment of the conditions of competition in the US market.

4. Correlation

The Appellate Body next assessed China's claim that the Panel erred in finding that the USITC was entitled to rely on an "overall coincidence" between upward movements in subject imports and downward movements in injury factors in finding that subject imports were a "significant cause" of material injury to the US industry.

The Appellate Body rejected China's argument that the Panel failed adequately to assess a "disconnect" in trends between 2007 and 2008, when the *rate* of increases in imports declined, while injury factors such as production, shipments and sales nonetheless continued to deteriorate. The Appellate Body recalled its earlier conclusion that Paragraph 16.4 did not require strict correlation between the *magnitude* of upward import trends and the *magnitude* of downward movements in the performance indicators of

[50] Both the Panel and the USITC accepted that the replacement market generally could be divided into three segments or "tiers", differentiated on the basis of brand and prices. Tier 1 consisted of major, flagship premium brands; tier 2 consisted of secondary, associate, or foreign producer brands; and tier 3 included private label, mass market, lesser-known brands, and non-branded tyres.

the domestic industry. The Appellate Body further reasoned that the 2007 and 2008 data compiled by the USITC supported its overall causation finding, because imports continued to increase in the period (albeit at a slower pace), and injury indicators continued to deteriorate.

Furthermore, the Appellate Body found that the Panel did not err in finding correlation between increases in subject imports and the prices and profitability of the domestic industry. The Appellate Body disagreed with China that improvements in the cost of goods sold ("COGS")/sales ratio and in the profitability of the US industry in 2007 undermined the Panel's finding of overall correlation.[51] The Appellate Body reasoned that the fact that discrete injury factors improved in one year of the reference period did not undermine the Panel's overall finding of correlation, particularly where such injury factors deteriorated in all other years of the period of investigation, and all other injury factors deteriorated in every year of the period of investigation.

On this basis, the Appellate Body upheld the Panel's finding that the USITC's reliance on an overall coincidence between an upward movement in subject imports and a downward movement in injury factors reasonably supported the USITC's finding that rapidly increasing subject imports were a significant cause of material injury to the domestic industry within the meaning of Paragraph 16.4 of the Protocol.

5. Other Causes of Injury

The Appellate Body found that some form of non-attribution analysis is *inherent* in the establishment of a causal link between rapidly increasing imports and material injury to the domestic industry. The Appellate Body recalled that Paragraph 16.4 requires that rapidly increasing imports from China make an important contribution to bringing about material injury to the domestic industry. According to the Appellate Body, this determination can only be made if an investigating authority properly ensures that effects of other known causes are not improperly attributed to subject imports and do not suggest that subject imports are in fact only a "remote" or "minimal" cause, rather than a "significant" cause of material injury to the domestic industry. The Appellate Body explained that the significance of the effects of rapidly increasing imports must therefore be assessed in the context of other known causal factors. The Appellate Body added that the extent of the analysis of other causal factors that is required will depend on the impact of the other factors that are alleged to be relevant and the facts and circumstances of the particular case. In some cases, the investigating authority may need to perform a detailed analysis of other causes of injury to support adequately a conclusion that subject imports are nonetheless a "significant cause" of injury. In other cases, a less extensive analysis of other factors may suffice to support adequately a conclusion that subject imports are a "significant cause" of injury.

China argued that the Panel's focus in this case was on identifying some "residual effect" from imports, rather than on assessing how different factors may be affecting the condition of the domestic industry, and whether any remaining effects attributable to imports from China could properly be deemed to be a "significant cause" of material injury. According to China, under the Panel's standard, any injurious effects—including "residual effects"—could constitute a "significant cause". Although the Appellate Body agreed with China that certain statements made by the Panel, when considered in isolation, might suggest that the Panel was in fact examining whether subject imports had "any" injurious effects, rather than "significant" effects, the Appellate Body noted that the Panel had, *inter alia*, rejected the proposition that even a "minimal cause" of injury might be a "significant cause" of injury. Moreover, in addressing China's claims regarding the USITC's assessment of other causes of injury, the Panel had explained that it had "reviewed record evidence indicating that subject imports from China had *significant* injurious effects, *independent* of any injurious effects of other causal factors". In the light of these statements, the Appellate

[51] The COGS/sales ratio expresses the portion of total sales value that is accounted for by costs directly associated with making a particular good. A higher COGS/sale ratio therefore indicates that such costs make up a higher portion of sales value, leaving a smaller margin for selling, general and administrative expenses, and profits. The COGS/sales ratio therefore provides an indication of whether the sales value is sufficient to cover the production costs to produce the goods that are sold.

Body considered that the Panel correctly articulated the standard of review appropriate for assessing the USITC's analysis of other possible causes of injury and ensuring that injury caused by those other factors is not improperly attributed to subject imports.

6. The Panel's Findings relating to the USITC's Consideration of Other Causes of Injury

China attributed the injury suffered by the US domestic industry, at least in part, to three causal factors other than subject imports from China, namely: (i) the domestic industry's business strategy of shifting focus to higher-value products for its US production; (ii) demand declines in the market; and (iii) non-subject imports. In China's view, the Panel erred in finding that the USITC properly considered and addressed the effects of these other factors that were allegedly causing injury to the industry.

The Appellate Body found that China failed to establish that the USITC improperly attributed injury caused by other factors to subject imports from China. In particular, the Appellate Body found that the Panel did not err in its review of the USITC's analysis of the US industry's business strategy and the reasons for US plant closures that occurred between 2006 and 2008; did not err in concluding that the USITC properly found that subject imports had injurious effects independent of changes in demand; and did not improperly attribute to subject imports the effects of imports from third countries other than China. The Appellate Body further found that the collective injurious effects of these other causes did not suggest that subject imports were not "a significant cause" of material injury to the US domestic industry. Finally, the Appellate Body found that the Panel did not act inconsistently with Article 11 of the DSU in its review of the USITC's causation analysis.

Because the United States was not found to have acted inconsistently with any of its WTO obligations, the Appellate Body made no recommendation to the DSB pursuant to Article 19.1 of the DSU.

■ Appellate Body Reports, *Philippines – Distilled Spirits*, WT/DS396/AB/R, WT/DS403/AB/R

This appeal originated from two complaints brought by the European Union and the United States with respect to the WTO-consistency of the Philippines excise tax on distilled spirits. Under the Philippines' excise tax system, distilled spirits made from certain designated raw materials are subject to a lower specific flat tax rate. Conversely, distilled spirits made from non-designated raw materials are subject to tax rates that are 10 to 40 times higher than those applied to distilled spirits made from designated raw materials. *De facto*, all domestic distilled spirits are made from one of the designated raw materials—sugar cane—and are therefore subject to the lower tax rate. The vast majority of imported distilled spirits are made from non-designated raw materials, and are therefore subject to the higher taxes.

Before the Panel, the European Union and the United States claimed that the Philippines' excise tax was inconsistent with Article III:2, first and second sentences, of the GATT 1994. The Panel found that, through its excise tax, the Philippines subjects imported distilled spirits made from non-designated raw materials to internal taxes in excess of those applied to "like" domestic distilled spirits made from the designated raw materials, thus acting in a manner inconsistent with Article III:2, first sentence, of the GATT 1994. The Panel also found that the European Union's claim under the second sentence of Article III:2 was made in the alternative to its claim under the first sentence thereof, and therefore only examined and made findings in relation to the United States' claims under Article III:2, second sentence, of the GATT 1994. In the complaint by the United States, the Panel found that the Philippines acted inconsistently with Article III:2, second sentence, by applying dissimilar taxes on imported distilled spirits and on "directly competitive or substitutable" domestic distilled spirits, so as to afford protection to Philippine production of distilled spirits.

On appeal, the Philippines challenged the following findings by the Panel. First, the Philippines appealed the Panel's interpretation of the term "like products" under Article III:2, first sentence, of the GATT 1994 and argued that the Panel failed to apply the appropriate standard when assessing the products' physical characteristics, consumer tastes and habits, and the products' tariff classification. Second, the Philippines appealed the Panel's interpretation and application of the terms "directly competitive or substitutable" and "so as to afford protection" in respect of Article III:2, second sentence, of the GATT 1994 and argued that the Panel failed to apply the correct standard when assessing the competition in the Philippines market. Lastly, the Philippines contended that the Panel acted inconsistently with Article 11 of the DSU, because it failed to conduct an objective assessment of the matter before it when examining the evidence relating to the physical characteristics of the products at issue, their tariff classification, the results of scientific studies, and the segmentation of the market.

1. Article III:2, First Sentence, of the GATT 1994 and Article 11 of the DSU

On appeal, the Appellate Body conducted a separate review of the Panel's findings that: (i) *each type* of imported distilled spirit made from non-designated raw materials (i.e. gin, brandy, vodka, whisky, and tequila) is "like" the corresponding type of domestic spirits made from designated raw materials; and (ii) *all* distilled spirits at issue in the present dispute are "like" products. In so doing, the Appellate Body reviewed the Panel's assessment of "likeness" by examining the factors considered by the Panel—in particular, the products' physical characteristics, Philippine consumers' tastes and habits, tariff classification, and relevant internal regulations. The similarity in end-uses was not contested.

Beginning with the products' physical characteristics, the Appellate Body disagreed with the Philippines that any physical difference between products, even if not perceptible to consumers, is sufficient to disqualify those products from being "like" within the meaning of Article III:2, first sentence, of the GATT 1994. The Appellate Body reasoned that none of the "likeness" criteria—physical characteristics, end-uses, consumers' tastes and habits, and tariff classification—plays an overarching role, and that even products that present certain physical differences may still be considered "like" if the nature and extent of their competitive relationship justifies such a determination. The Appellate Body further disagreed with the Philippines that the Panel applied the wrong standard when it relied on a "perceptible differences test" in assessing the products' physical characteristics. The Appellate Body considered that the "perceptibility" of differences was highly relevant to the overall analysis of "likeness" under Article III:2 of the GATT 1994. The Appellate Body observed that, while "perceptibility" reaches beyond the mere physical characteristics of the products, and concerns also consumers' tastes and habits, the "likeness" criteria are not mutually exclusive, and certain elements, such as the perceptibility of physical differences, may fall under more than one criterion. The Appellate Body observed that, in spite of differences in chemical composition and organoleptic properties between "sugar-based" and "non-sugar-based" distilled spirits, every effort is made—from the production process to bottling and labelling—to ensure that each type of domestic spirit made from designated raw materials replicates as closely as possible the corresponding type of imported distilled spirit made from non-designated raw materials. Finally, the Appellate Body reviewed the Panel's assessment of evidence submitted by the Philippines and found that, in weighing such evidence, the Panel acted within its discretion as the trier of facts, thus not acting inconsistently with its duties under Article 11 of the DSU.

Turning to the Panel's assessment of consumers' tastes and habits in the Philippines, the Appellate Body observed that, while "likeness" is a narrower category than "direct competitiveness or substitutability", that does not mean that only products that are perfectly substitutable can fall within the scope of Article III:2, first sentence, of the GATT 1994. According to the Appellate Body, the fact that each type of domestic distilled spirit made from designated raw materials is produced and presented in a manner so as closely to replicate the same type of imported distilled spirit made from non-designated raw materials supported the Panel's conclusion that, within types, there is a close competitive relationship between imported and domestic distilled spirits. The Appellate Body also found that the fact that imported and domestic distilled spirits do not share all channels of distribution does not exclude a sufficiently close competitive relationship between those products. Finally, the Appellate Body found that, in assessing the evidence submitted by the Philippines on this point, the Panel did not act inconsistently with its duties under Article 11 of the DSU.

In relation to tariff classification, the Appellate Body found that the HS four-digit heading, which groups together all distilled spirits, as well as other liquors and unflavoured neutral spirits for human consumption or for industrial purposes, does not constitute a tariff classification sufficiently detailed to provide an indication of "likeness". With respect to six-digit subheadings, the Appellate Body observed that, while the Panel improperly found that, at the six-digit level, the HS classification did not provide conclusive guidance as to the similarity of brandies and whiskies made from designated and non-designated raw materials, such finding did not undermine its overall conclusion that the products at issue are "like" within types. It therefore found that the Panel did not act inconsistently with Article 11 of the DSU in this respect.

In light of the above, the Appellate Body upheld the Panel's overall finding that, within types, imported distilled spirits made from non-designated raw materials are "like" domestic distilled spirits made from designated raw materials. Conversely, the Appellate Body found that a "likeness" analysis based on the criteria set forth above—in particular, the products' physical characteristics, consumers' tastes and habits, and tariff classification—did not support the Panel's conclusion that all distilled spirits of various types at issue in this dispute are "like" products within the meaning of Article III:2, first sentence, of the GATT 1994, and reversed the Panel's finding in this respect.

Accordingly, the Appellate Body upheld the Panel's finding that, by imposing on each type of imported distilled spirit at issue in this dispute—gin, brandy, rum, vodka, whisky, and tequila—internal taxes in excess of those applied to "like" domestic distilled spirits of the same type, the Philippines has acted inconsistently with Article III:2, first sentence, of the GATT 1994.

2. Article III:2, Second Sentence, of the GATT 1994 and Article 11 of the DSU

Before addressing the Philippines' claim that the Panel erred in its findings under Article III:2, second sentence, of the GATT 1994, the Appellate Body examined the European Union's claim that the Panel erred in characterizing its claim under the second sentence of Article III:2 as made in the alternative to its claim under the first sentence thereof. The Appellate Body found that the European Union made two separate and independent claims under the first and second sentences of Article III:2, and that, in failing to examine and in abstaining from making findings in relation to the European Union's claim under the second sentence of Article III:2, the Panel committed error under Article 11 of the DSU. The Appellate Body also found that the factual findings made by the Panel in the European Union's and United States' complaints, as well as findings that the Panel did make under the second sentence of Article III:2 in the United States' complaint, provided a sufficient basis for the Appellate Body to complete the legal analysis with respect to the European Union's claim under the second sentence of Article III:2.

Turning to the Philippines' claim that the Panel erred in finding that all imported and domestic distilled spirits at issue are "directly competitive or substitutable", the Appellate Body disagreed with the Philippines that the Panel insufficiently addressed the degree of competition between imported and domestic distilled spirits in the Philippines. The Appellate Body observed that both in articulating the standard, and in applying it to the facts of this dispute, the Panel correctly assessed the degree of competitive relationship between imported and domestic distilled spirits in the Philippines. For the Appellate Body, the Panel's statement that the question was "not so much" the "degree" but rather the "nature and quality" of competition referred exclusively to quantitative analyses of substitutability.

Next, the Appellate Body rejected the Philippines' claim that the Panel erred in finding that the Philippine distilled spirits market was not divided into two distinct segments: one for high-priced distilled spirits made from non-designated raw materials, and one for low-priced distilled spirits made from designated raw materials. The Appellate Body agreed with the Panel that overlaps in the prices of imported and domestic distilled spirits, both for high- and low-priced products, supported the Panel's conclusion that the market is not segmented, and that in some cases imported and domestic products compete with respect to price. The Appellate Body also agreed with the Panel that actual competition in a

narrow segment of the Philippine market supported the Panel's finding that imported and domestic distilled spirits are directly competitive or substitutable, particularly because extant and latent demand for imported distilled spirits may be understated due to the effects of the excise tax system.

Finally, the Appellate Body rejected the Philippines' claim that the Panel acted inconsistently with Article 11 of the DSU in its examination of the studies that aimed at evaluating the substitutability between imported and domestic distilled spirits in the Philippine market. The Appellate Body considered that the Philippines' challenge was ultimately directed at the Panel's weighing of the evidence contained in the studies at issue, and that the Panel did not exceed the bounds of its discretion under Article 11 of the DSU simply by according to the evidence contained in the two studies a weight that is different than that attributed by the Philippines.

On this basis, the Appellate Body upheld the Panel's finding that all the imported and domestic distilled spirits at issue are "directly competitive or substitutable" within the meaning of Article III:2, second sentence, of the GATT 1994.

Turning to the Philippines' claim that the Panel erred in finding that the excise tax system was applied "so as to afford protection" to Philippine production of distilled spirits, the Appellate Body rejected the Philippines' claim that, because approximately 50 per cent of the domestic production of distilled spirits is made from imported ethyl alcohol, which is taxed at the lower rate, the Panel erred in finding that the vast majority of imported distilled spirits are subject to higher taxes. The Appellate Body observed that ethyl alcohol is not, in itself, a distilled spirit, and that therefore the taxation applied thereto had no bearing on the Panel's analysis. The Appellate Body then reviewed the Panel's assessment of the design, architecture and structure of the measure at issue, and upheld the Panel's finding that dissimilar taxation imposed by the Philippine excise tax on imported distilled spirits and on directly competitive or substitutable domestic distilled spirits is applied "so as to afford protection" to Philippine production of distilled spirits.

In the light of the above, the Appellate Body upheld the Panel's finding that the Philippines has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying dissimilar internal taxes to all imported distilled spirits made from non-designated raw materials and to all directly competitive or substitutable domestic distilled spirits made from designated raw materials, so as to afford protection to Philippine production of distilled spirits.

Accordingly, the Appellate Body recommended that the DSB request the Philippines to bring its measures, found in the Appellate Body Report and in the modified US Panel Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.

V. PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS

Table 5 lists the WTO Members that participated in appeals for which an Appellate Body report was circulated in 2011. It distinguishes between a Member that filed a Notice of Appeal pursuant to Rule 20 of the *Working Procedures* and a Member that filed a Notice of Other Appeal pursuant to Rule 23(1) (known as the "other appellant"). Rule 23(1) provides that "a party to the dispute other than the original appellant may join in that appeal, or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Under the *Working Procedures*, parties wishing to appeal a panel report pursuant to Rule 23(1) are required to file a Notice of Other Appeal within 5 days of the filing of the Notice of Appeal.

Table 5 also identifies those Members that participated in appeals as third participants under paragraphs (1), (2), or (4) of Rule 24 of the *Working Procedures*. Under Rule 24(1), a WTO Member that was a third party to the panel proceedings may file a written submission as a third participant within 21 days of the filing of the Notice of Appeal. Pursuant to Rule 24(2), a Member that was a third party to the panel proceedings that has not filed a written submission may, within 21 days of the filing of the Notice of Appeal, notify its intention to appear at the oral hearing and whether it intends to make a statement at the hearing.

Rule 24(4) provides that a Member that was a third party to the panel proceedings and has neither filed a written submission in accordance with Rule 24(1), nor given notice in accordance with Rule 24(2), may notify its intention to appear at the oral hearing and request to make a statement.

TABLE 5: PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS FOR WHICH AN APPELLATE BODY REPORT WAS CIRCULATED IN 2011

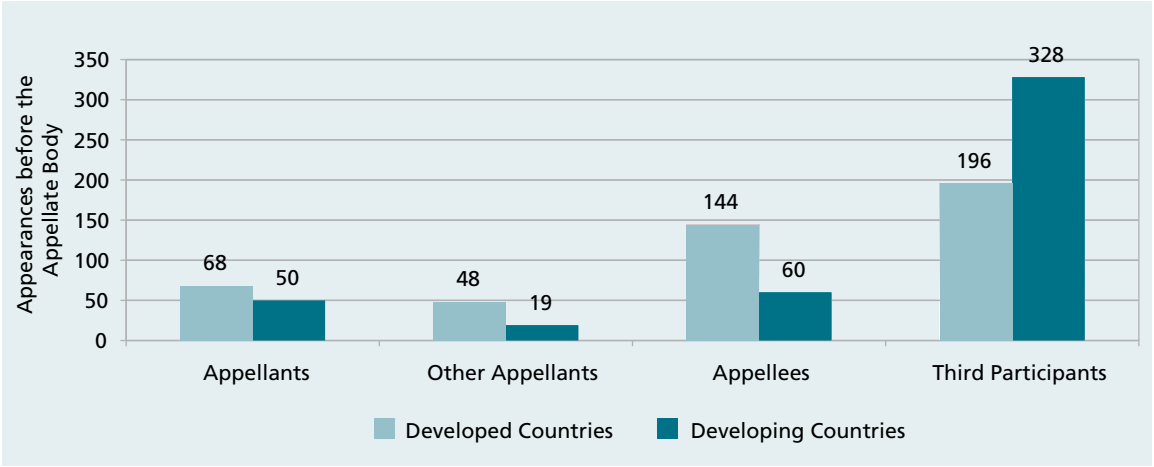
Case	Appellant[a]	Other appellant[b]	Appellee(s)[c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
US – Anti-dumping and Countervailing Duties (China)	China	- - -	United States	Argentina Australia Brazil Canada European Union Japan Norway Saudi Arabia Turkey	Bahrain India Kuwait Mexico Chinese Taipei	
EC and certain member States – Large Civil Aircraft	European Union	United States	United States European Union	Australia Brazil Canada China Japan Korea		
Thailand – Cigarettes (Philippines)	Thailand	- - -	Philippines	Australia European Union United States		China India Chinese Taipei
EC – Fasteners (China)	European Union	China	China European Union	Brazil Colombia Japan United States	Canada Chile India Norway Chinese Taipei Thailand	Turkey
US – Tyres (China)	China	- - -	United States	European Union Japan	Chinese Taipei Turkey Viet Nam	
Philippines – Distilled Spirits (European Union)	Philippines	European Union	European Union Philippines	Australia Mexico	China India Chinese Taipei	Colombia Thailand
Philippines – Distilled Spirits (United States)	Philippines	---	United States	Australia Mexico	China India Chinese Taipei	Colombia Thailand

[a] Pursuant to Rule 20 of the *Working Procedures*.
[b] Pursuant to Rule 23(1) of the *Working Procedures*.
[c] Pursuant to Rule 22 or 23(3) of the *Working Procedures*.

A total of 22 WTO Members appeared at least once as appellant, other appellant, appellee, or third participant in appeals for which an Appellate Body report was circulated in 2011. Of these 22 WTO Members, 6 were developed country Members, and 16 were developing country Members.

Figure 3 shows the ratio of developed country Members to developing country Members in terms of appearances made as appellant, other appellant, appellee, and third participant in appeals for which an Appellate Body report was circulated from 1996 through 2011.

FIGURE 3: WTO MEMBER PARTICIPATION IN APPEALS 1996–2011



Annex 6 provides a statistical summary and details on WTO Members' participation as appellant, other appellant, appellee, and third participant in appeals for which an Appellate Body report was circulated from 1996 through 2011.

VI. WORKING PROCEDURES FOR APPELLATE REVIEW

1. Amendments to the *Working Procedures*

The latest amendments to the *Working Procedures* came into effect on 15 September 2010 and are applicable to appeals initiated on or after that date. A consolidated version of the *Working Procedures* incorporating these amendments was circulated on 16 August 2010 as WTO document WT/AB/WP/6. No amendments were made to the *Working Procedures* during 2011.

2. Procedural Issues Arising from Appeals

(a) Treatment of sensitive information

In *EC and certain member States – Large Civil Aircraft*, the European Union and the United States jointly requested that the Appellate Body Division hearing this appeal adopt additional procedures to protect business confidential information ("BCI") and highly sensitive business information ("HSBI"). They argued that disclosure of this information could be "severely prejudicial" to the originators of the information, that is, to the manufacturers of large civil aircraft ("LCA") that were at the heart of this dispute, and possibly to the manufacturers' customers and suppliers. The European Union and the United States attached to their request proposed additional working procedures for the protection of BCI and HSBI. The Division invited the third participants to comment in writing on the participants' request to adopt additional procedures to protect BCI and HSBI. The third participants who submitted comments expressed their general support

for the request of the participants, and suggested certain modifications to the procedures proposed by the participants in order to ensure that the rights of third participants to participate meaningfully in the proceedings would be fully protected.

The Division declined the participants' request that it ask the panel to delay the transmittal to the Appellate Body of any information on the panel record classified as BCI or HSBI until after the Appellate Body had adopted additional measures regarding BCI and HSBI. The Division noted that Rule 25 of the *Working Procedures* requires that the panel record be transmitted to the Appellate Body upon the filing of a Notice of Appeal. Nevertheless, the Division, taking into consideration the participants' concern with regard to the protection of BCI and HSBI contained in the panel record, decided, on a provisional basis, to provide additional protection to all BCI and HSBI transmitted to the Appellate Body during the period leading up to the definitive ruling on the participants' request for additional procedures. Furthermore, noting that consideration of the participants' joint request required modification to the timelines for filing submissions provided in the *Working Procedures*, the Division decided to extend the deadlines for filing submissions in this appeal.

A special oral hearing was held by the Division to explore further the issues raised in the participants' joint request to adopt additional procedures to protect BCI and HSBI and in the third participants' comments concerning the request. Subsequent to this, the Division issued a Procedural Ruling in response to the joint request, and adopted Additional Procedures to Protect Sensitive Information.[52]

After the participants and third participants had submitted their lists of persons authorized to have access to BCI and/or HSBI, the European Union objected to one of the persons designated by a third participant. The Division was subsequently informed that the European Union and the third participant had reached a "bilateral resolution of the issue" and that the European Union would withdraw its objection.[53]

During the appellate proceedings, the participants and several of the third participants requested authorization to amend their lists of persons designated as BCI- and/or HSBI-approved. In each case, the Division provided the participants and the third participants with the opportunity to comment in writing on the requests. No objections were made by the participants or the third participants. The Division authorized all of the changes requested.[54]

The Division also adopted a Procedural Ruling and Additional Procedures concerning the conduct of the oral hearing, which included procedures on the protection of certain sensitive information during the hearing.[55]

In *Philippines – Distilled Spirits*, the Philippines provided the third participants with copies of its appellant's submission that did not contain certain information that was considered BCI in the panel proceedings (pursuant to the Additional Working Procedures Concerning Business Confidential Information, adopted by the panel). This information was, however, included in the copies of the Philippines' appellant's submission filed with the Appellate Body and served on the appellees. Following an enquiry from the Appellate Body Secretariat, the Philippines provided copies of its appellant's submission containing the BCI to the third participants. The Philippines requested the third participants to treat such information as confidential. In response to questioning at the oral hearing, the participants and the third participants confirmed to the Appellate Body that the information the Philippines had designated as BCI in its appellant's submission was governed by the confidentiality rules of Article 18.2 of the DSU.[56]

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[52] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 19 and Annex III.
[53] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 20.
[54] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 20.
[55] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 22.
[56] Appellate Body Report, *Philippines – Distilled Spirits*, footnote 12 to para. 5.

In *Thailand – Cigarettes (Philippines)*, the panel adopted additional working procedures for the protection of BCI[57], but the Division hearing this appeal did not do so in the appellate proceedings. Neither participant requested the Division to adopt additional procedures for the protection of BCI, although the Philippines made a conditional request for the Division to consult with the participants in the event that the Division considered it necessary to refer to information that was considered BCI in the panel proceedings. The Division did not refer to any such information in its final report.[58]

(b) Oral hearings

In *EC and certain member States – Large Civil Aircraft*, the Division held a special oral hearing on 3 August 2010 to explore further the issues raised in the participants' joint request to adopt additional procedures to protect sensitive information and in the third participants' comments concerning the request.[59]

The substantive oral hearing in this appeal took place in two sessions. The first session lasted seven days and the second session lasted six days.[60] The participants requested that certain parts of the substantive oral hearing—the opening and closing statements—be open to public observation to the extent that this would be possible given the existence of sensitive information. The Division asked the participants to clarify the extent to which they requested that the oral hearing be open to public observation, and to propose specific modalities in this respect. The Division invited the third participants to comment thereafter on the participants' request and proposed modalities. The participants submitted a joint letter to the Presiding Member of the Division with their clarifications and proposals concerning modalities for the oral hearings and suggested that the Division adopt a further Procedural Ruling pursuant to Rule 16(1) of the *Working Procedures* to regulate the conduct of the oral hearing in the light of the request for public observation and the existence of sensitive information. Comments were received from some of the third participants. The Division issued a Procedural Ruling authorizing the participants' joint request for opening the hearing to public observation, and adopted Additional Procedures on the Conduct of the Oral Hearings including the protection of certain sensitive information during the oral hearing.[61]

Pursuant to the Procedural Ruling, the participants did not refer to any BCI or HSBI in their opening and closing statements, and the third participants did not refer to any BCI in their opening and closing statements. The opening and closing statements of the participants and the third participants were videotaped, with the exception of those by the third participants who had indicated that they wished to maintain the confidentiality of their submissions and statements. After the participants reviewed the videotapes and confirmed that no BCI or HSBI had been inadvertently mentioned, the recording of the opening and closing statements was broadcast to the public.[62]

(c) Amendment of the Notice of Appeal

In *EC and certain member States – Large Civil Aircraft*, the European Union requested authorization to amend its Notice of Appeal pursuant to Rule 23*bis* of the *Working Procedures* in order to correct certain discrepancies in the references to paragraph numbers of the Panel Report. The Division provided the United States and the third participants with an opportunity to comment in writing on the request. No objections to the request were received. The Division authorized the European Union to amend its Notice of Appeal.[63]

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[57] See Panel Report, *Thailand – Cigarettes (Philippines)*, paras. 2.3 and 2.4, and Annex A-1, at pp. 399 and 400.

[58] Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 10.

[59] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 19.

[60] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 26.

[61] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 22. The Procedural Ruling is contained in Annex IV to the report.

[62] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 26.

[63] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 16. See WT/DS316/12/Rev.1 (attached as Annex I to the report).

(d) Additional memoranda

At the Division's invitation, the participants and third participants in *EC and certain member States – Large Civil Aircraft* filed additional memoranda pursuant to Rule 28 of the *Working Procedures* regarding issues discussed during the first session of the substantive oral hearing.[64]

(e) Timeliness and adequacy of notifications and submissions

In *US – Anti-Dumping and Countervailing Duties (China)*, Argentina submitted the executive summary of its third participant's submission one day after the deadline for filing a third participant's submission. The Division hearing this appeal informed Argentina that the executive summary would not be accepted because it had been submitted after this deadline.[65]

In the same dispute, Turkey's third participant's submission, while received on the day of the deadline for filing, was not received before 17:00 as required under Rule 18(1) of the *Working Procedures*. The Division hearing the appeal accepted Turkey's submission. The Division took into account that this was the first appeal following amendments to the *Working Procedures*, including to Rule 18(1). The Division nevertheless emphasized the importance of timely filing of documents in appeals.[66]

In *Philippines – Distilled Spirits* and in *Thailand – Cigarettes (Philippines)*, notifications pursuant to Rule 24(2) of the *Working Procedures* of third participants' intention to attend the oral hearing were received after the deadline. In the former case, three days after the 21-day time-limit set out in Rule 24(2) of the *Working Procedures* and, in the latter case, after the 17:00 deadline specified in Rule 18(1). The Divisions hearing these appeals decided to accept the notifications as notifications made pursuant to Rule 24(4) of the *Working Procedures*.[67]

In *Philippines – Distilled Spirits*, a third party, which had not filed a submission or notification, submitted its delegation list for the oral hearing to the Appellate Body Secretariat, as well as to the participants and other third participants. The Division interpreted this action as a notification expressing an intention to attend the oral hearing pursuant to Rule 24(4) of the *Working Procedures*. However, the Division mentioned that this decision was without prejudice to rulings that the Appellate Body may make in future appeals, and emphasized that strict compliance with this Rule requires a written notification to the Secretariat that expresses an intention to appear at the oral hearing. The Division also noted that it was satisfied that, in this case, the lack of strict compliance with Rule 24(4) did not raise any due process concerns.[68]

(f) Unsolicited *amicus curiae* briefs

An unsolicited *amicus curiae* brief was received in the *US – Anti-Dumping and Countervailing Duties (China)* appellate proceedings. After giving the participants and the third participants an opportunity to express their views, the Division did not find it necessary to rely on this brief in rendering its decision.[69]

(g) Extension of the 60-day appeal period

In a number of cases, the parties jointly requested the DSB to take a decision extending the 60-day deadline in Article 16.4 of the DSU for adoption or appeal of a panel report. These requests were made,

[64] Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 27.
[65] Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, footnote 33 to para. 17.
[66] Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, footnote 35 to para. 17.
[67] Appellate Body Report, *Philippines – Distilled Spirits*, footnote 18 to para. 6; Appellate Body Report, *Thailand – Cigarettes (Philippines)*, footnote 18 to para. 8.
[68] Appellate Body Report, *Philippines – Distilled Spirits*, footnote 18 to para. 6.
[69] Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 18.

inter alia, in the light of the "workload of the Appellate Body" and in order to "provide greater flexibility in scheduling any possible appeal". The DSB extended the deadline in relation to the following panel reports circulated in 2010: *Thailand – Cigarettes (Philippines)*[70]; *EC – Fasteners (China)*[71]; *and US – Tyres (China)*.[72] The deadline was similarly extended for the following panel reports circulated in 2011: *US – Clove Cigarettes*[73]; *US – Tuna II (Mexico)*[74]; *EU – Footwear (China)*[75]; *US – COOL (Canada)*[76]; *and US – COOL (Mexico)*.[77]

(h) Extension of time period for circulation of reports

The 90-day time period was exceeded in 5 out of the 7 appeals for which Appellate Body reports were circulated in 2011: *US – Anti-Dumping and Countervailing Duties (China)*[78]; *EC and certain member States – Large Civil Aircraft*[79]; *Thailand – Cigarettes (Philippines)*[80]; *EC – Fasteners (China)*[81]; *and US – Tyres (China)*.[82] The Appellate Body reports in *Philippines – Distilled Spirits* were circulated within the 90-day time period.

The Appellate Body communicated to the DSB Chair the reasons for its inability to circulate an Appellate Body report within the 90-day time period in each of the appeals for which the 90-day time period was not met in 2011. These reasons included: the numerous issues raised on appeal and their complexity; the considerable size of the panel record; the heavy workload of the Appellate Body; difficulties with scheduling parallel appeals; and the time required for the completion and translation of the report. In a letter to the Chair of the DSB, the Chair of the Appellate Body explained that the workload of the Appellate Body "reflects an overall trend of a greater number of increasingly complex appeals, with longer submissions by parties and more issues being appealed, all at a time when the resources available to the Appellate Body remain unchanged."[83] The Chair of the Appellate Body also stressed that, while the Appellate Body was under an obligation pursuant to Article 17.5 of the DSU to circulate Appellate Body reports within 90 days, it was also under an obligation to "address each of the issues" raised on appeal pursuant to Article 17.12 of the DSU.

(i) Correction of clerical errors

In *Thailand – Cigarettes (Philippines)*, the Philippines requested, pursuant to Rule 18(5) of the *Working Procedures*, authorization from the Appellate Body Division hearing this appeal to correct a clerical error in its appellee's submission. The Division invited the appellant, Thailand, and the third participants to comment on this request. No comments were received and the Division authorized the Philippines to correct the clerical error.[84]

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70 WT/DS371/7 and WT/DSB/M/290, p. 11.
71 WT/DS397/6 and WT/DSB/M/291, p. 15.
72 WT/DS399/5 and WT/DSB/M/292, p. 4.
73 WT/DS406/5 and WT/DSB/M/303, pp. 11-12.
74 WT/DS381/9 and WT/DSB/M/306, pp. 1-2.
75 WT/DS405/5 and WT/DSB/M/308, pp. 18-19. This panel report ultimately was not appealed.
76 WT/DS384/11 and WT/DSB/M/310, pp. 1-3.
77 WT/DS386/10 and WT/DSB/M/310, pp. 1-3.
78 In this appeal, the 90-day time period was exceeded by 10 days.
79 In this appeal, the 90-day time period was exceeded by 211 days.
80 In this appeal, the 90-day time period was exceeded by 30 days.
81 In this appeal, the 90-day time period was exceeded by 22 days.
82 In this appeal, the 90-day time period was exceeded by 14 days.
83 Communication from the Chair of the Appellate Body, 5 September 2011, WT/DS399/8.
84 Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 9.

VII. ARBITRATIONS UNDER ARTICLE 21.3(C) OF THE DSU

No Article 21.3(c) arbitration proceedings were carried out in 2011.

VIII. TECHNICAL ASSISTANCE

Appellate Body Secretariat staff participated in the WTO Biennial Technical Assistance and Training Plan: 2010-2011[85], particularly in activities relating to training in dispute settlement procedures. Overall, Appellate Body Secretariat staff participated in nine technical assistance activities during the course of 2011.

Annex 7 provides further information about the activities carried out by Appellate Body Secretariat staff in 2011 falling under the WTO Technical Assistance and Training Plan.

IX. OTHER ACTIVITIES

The Appellate Body Secretariat participates in the WTO internship programme, which allows post-graduate university students to gain practical experience and a deeper knowledge of the global multilateral trading system in general, and WTO dispute settlement procedures in particular. Interns in the Appellate Body Secretariat obtain first-hand experience of the procedural and substantive aspects of WTO dispute settlement and, in particular, appellate proceedings. The internship programme is open to nationals of WTO Members and to nationals of countries and customs territories engaged in accession negotiations. Each internship is generally for a three-month period. During 2011, the Appellate Body Secretariat welcomed interns from Australia, China, India, Ireland, Italy, Mexico, Nepal, Nigeria, Spain, and Sweden. A total of 100 post-graduate students, of 46 nationalities, have completed internships with the Appellate Body Secretariat since 1998. Further information about the WTO internship programme, including eligibility requirements and application instructions, may be obtained online at:

<https://erecruitment.wto.org/public/hrd-cl-vac-view.asp?jobinfo_uid_c=3475&vaclng=en>

Appellate Body Secretariat staff participates in briefings organized for groups visiting the WTO, including students. In these briefings, Appellate Body Secretariat staff speaks to visitors about the WTO dispute settlement system in general, and appellate proceedings in particular. Appellate Body Secretariat staff also participates as judges in moot court competitions. A summary of these activities carried out by Appellate Body Secretariat staff during the course of 2011 can be found in Annex 7.

[85] WT/COMTD/W/170/Rev.1.

ANNEX 1A

MEMBERS OF THE APPELLATE BODY (1 JANUARY TO 31 DECEMBER 2011) BIOGRAPHICAL NOTES

Lilia R. Bautista (Philippines) (2007–2011)

Born in the Philippines on 16 August 1935, Lilia Bautista was consultant to the Philippine Judicial Academy, which is the training school for Philippine justices, judges, and lawyers. She is also a member of several corporate boards.

Ms. Bautista was the Chairperson of the Securities and Exchange Commission of the Philippines from 2000 to 2004. Between 1999 and 2000, she served as Senior Undersecretary and Special Trade Negotiator at the Department of Trade and Industry in Manila. From 1992 to 1999, she was the Philippine Permanent Representative in Geneva to the United Nations, the WTO, the World Health Organization, the International Labour Organization, and other international organizations. During her assignment in Geneva, she chaired several bodies, including the WTO Council for Trade in Services. Her long career in the Philippine Government also included posts as Legal Officer in the Office of the President, Chief Legal Officer of the Board of Investments, and acting Trade Minister from February to June 1992. Ms. Bautista earned her Bachelor of Laws Degree and a Masters Degree in Business Administration from the University of the Philippines. She was conferred the degree of Master of Laws by the University of Michigan as a Dewitt Fellow.

Jennifer Hillman (United States) (2007–2011)

Born in the United States on 29 January 1957, Jennifer Hillman is a Senior Transatlantic Fellow at the German Marshall Fund for the United States. She served as a Distinguished Visiting Fellow and Adjunct Professor of Law at the Georgetown University Law Center's Institute of International Economic Law.

From 1998 to 2007, she served as a member of the United States International Trade Commission—an independent agency responsible for making injury determinations in anti-dumping and countervailing proceedings, and conducting safeguard investigations. From 1995 to 1997, she served as Chief Legal Counsel to the United States Trade Representative, overseeing the legal developments necessary to complete the implementation of the Uruguay Round Agreement. From 1993 to 1995, she was responsible for negotiating United States bilateral textile agreements prior to the adoption of the *Agreement on Textiles and Clothing*. Ms. Hillman has a Bachelor of Arts and Master of Education from Duke University, North Carolina, and a Juris Doctor degree from Harvard Law School in Cambridge, Massachusetts.

Shotaro Oshima (Japan) (2008–2012)

Born in Japan on 20 September 1943, Shotaro Oshima is a law graduate from the University of Tokyo. Since April 2008, he is Visiting Professor at the Graduate School of Public Policy, the University of Tokyo. He was a diplomat in the Japanese Foreign Service until March 2008, when he retired after 40 years of service, his last overseas posting being Ambassador to the Republic of Korea.

From 2002 to 2005, Mr. Oshima was Japan's Permanent Representative to the WTO, during which time he served as Chair of the General Council and of the Dispute Settlement Body. Prior to his time in Geneva, he served as Deputy Foreign Minister responsible for economic matters and was designated as Prime Minister Koizumi's Personal Representative to the G-8 Summit in Canada in June 2002. In the same year, he served as the Prime Minister's Personal Representative to the United Nations World Summit on

Sustainable Development in South Africa. From 1997 to 2000, he served as Director-General for Economic Affairs in the Ministry of Foreign Affairs, responsible for formulating and implementing major policy initiatives in Japan's external economic relations.

Ricardo Ramírez-Hernández (Mexico) (2009–2013)

Born in Mexico on 17 October 1968, Ricardo Ramírez-Hernández holds the Chair of International Trade Law at the Mexican National University (UNAM) in Mexico City. He was Head of the International Trade Practice for Latin America of an international law firm in Mexico City. His practice focused on issues related to NAFTA and trade across Latin America, including international trade dispute resolution.

Prior to practicing with a law firm, Mr. Ramírez-Hernández was Deputy General Counsel for Trade Negotiations of the Ministry of Economy in Mexico for more than a decade. In this capacity, he provided advice on trade and competition policy matters related to 11 free trade agreements signed by Mexico, as well as with respect to multilateral agreements, including those related to the WTO, the Free Trade Area of the Americas (FTAA), and the Latin American Integration Association (ALADI).

Mr. Ramírez-Hernández also represented Mexico in complex international trade litigation and investment arbitration proceedings. He acted as lead counsel to the Mexican government in several WTO disputes. He has also served on NAFTA panels.

Mr. Ramírez-Hernández holds an LL.M. degree in International Business Law from the Washington College of Law of the American University, and a law degree from the Universidad Autónoma Metropolitana.

David Unterhalter (South Africa) (2006–2013)

Born in South Africa on 18 November 1958, David Unterhalter holds degrees from Trinity College, Cambridge, the University of the Witwatersrand, and University College, Oxford. Mr. Unterhalter has been a Professor of Law at the University of the Witwatersrand in South Africa since 1998, and from 2000 to 2006, he was the Director of the Mandela Institute, University of the Witwatersrand, an institute focusing on global law. He was Visiting Professor of Law at Columbia Law School in 2008.

Mr. Unterhalter is a member of the Johannesburg Bar. As a practising advocate, he has appeared in a large number of cases in the fields of trade law, competition law, constitutional law, and commercial law. His experience includes representing different parties in anti-dumping and countervailing duty cases. He has acted as an advisor to the South African Department of Trade and Industry. In addition, he has served on a number of WTO dispute settlement panels. Mr. Unterhalter has published widely in the fields of public law and competition law.

Peter Van den Bossche (European Union; Belgium) (2009–2013)

Born in Belgium on 31 March 1959, Peter Van den Bossche is Professor of International Economic Law at Maastricht University, the Netherlands. He is a visiting professor at the College of Europe in Bruges, Belgium. Mr. Van den Bossche is a Member of the Board of Editors of the *Journal of International Economic Law*.

Mr. Van den Bossche holds a Doctorate in Law from the European University Institute in Florence, an LL.M. from the University of Michigan Law School, and a Licence en Droit *magna cum laude* from the University of Antwerp. From 1990 to 1992, he served as a Référendaire of Advocate General W. van Gerven at the European Court of Justice in Luxembourg. From 1997 to 2001, Mr. Van den Bossche was Counsellor and subsequently Acting Director of the WTO Appellate Body Secretariat. In 2001, he returned to academia and from 2002 to 2009 frequently acted as a consultant to international organisations and developing

countries on issues of international economic law. He also served on the faculty of the World Trade Institute in Berne, Switzerland; the China EU School of Law (CESL) in Beijing, China; the IELPO programme of the University of Barcelona, Spain; the Trade Policy Training Centre in Africa (trapca) in Arusha, Tanzania; and the IEEM Academy of International Trade and Investment Law in Macau, China.

Mr. Van den Bossche has published extensively in the field of international economic law. The second edition of his textbook *The Law and Policy of the World Trade Organization* was published by Cambridge University Press in 2008.

Yuejiao Zhang (China) (2008–2012)

Yuejiao Zhang is Professor of International Economic Law at Tsinghua University and at Shantou University in China. She is an arbitrator at the International Chamber of Commerce (ICC) and China's International Trade and Economic Arbitration Commission (CIETAC). She served as Vice-President of China's International Economic Law Society. She is also a member of the Advisory Board of the International Development Law Organization (IDLO).

Ms. Zhang served as a Board Director to the West African Development Bank from 2005 to 2007. Between 1998 and 2004, she held various senior positions at the Asian Development Bank (ADB), including as Assistant General Counsel, Co-Chair of the Appeal Committee, and Director-General. She was the head of the ADB experts group on international trade and the ADB contact point to the WTO. Prior to this, she held several positions in government and academia in China, including as Director-General of Law and Treaties at the Ministry of Foreign Trade and Economic Cooperation (1984–1997). From 1987 to 1996, she was one of China's chief negotiators on intellectual property and was involved in the preparation of China's patent law, trademark law, and copyright law. She also served as the chief legal counsel for China's GATT resumption. Between 1982 and 1985, Ms. Zhang worked as legal counsel at the World Bank. She was a Member of the Governing Council of UNIDROIT (International Institute for the Unification of Private Law) from 1987 to 1999 and a Board Member of IDLO from 1988 to 1999. Ms. Zhang was member to the drafting committees of UNIDROIT and UNCITRAL on several international trade and economic conventions, such as the General Principles of Commercial Contract and the International Financial Leasing Convention.

Ms. Zhang has authored several books and articles on international economic law and international dispute settlement. Ms. Zhang has a Bachelor of Arts from China High Education College, a BA from Rennes University, France, and a Master of Laws from Georgetown University.

Ujal Singh Bhatia (India) (2011–2015)

Ujal Singh Bhatia was born in India on 15 April 1950 and was, most recently, an independent consultant and academic engaged in developing a policy framework for Indian agricultural investments overseas, while at the same time working with the Commonwealth Secretariat on multilateral trade issues.

Mr. Bhatia was India's Permanent Representative to the WTO from 2004 to 2010. During his tenure as Permanent Representative, he was an active participant in the dispute settlement process, representing India in a number of dispute settlement cases both as a complainant and respondent in disputes relating to anti-dumping, as well as taxation and import duty issues. He also has adjudicatory experience having served as a WTO dispute settlement panelist.

Mr. Bhatia previously served as Joint Secretary in the Indian Ministry of Commerce, where he focused on the legal aspects of international trade. During this period, he was also a Member of the Appellate Committee under the Foreign Trade (Development and Regulation) Act. The Committee heard

appeals of exporters and importers against the orders of the Director General Foreign Trade. Mr. Bhatia was also Joint Secretary of the Ministry of Information and Broadcasting and held various positions in the government of the Indian state of Orissa.

Mr. Bhatia's legal and adjudicatory experience spans three decades. He has focused on addressing domestic and international legal/jurisprudence issues, negotiating trade agreements and policy issues at the bilateral, regional and multilateral levels, and formulating and implementing trade and development policies for a range of agriculture, industry and service sector activities.

Mr. Bhatia has lectured on international trade issues**,** and has published numerous papers and articles in Indian and foreign journals on a wide range of trade and economic issues. Mr. Bhatia holds an M.A. in Economics from the University of Manchester and from Delhi University, as well as a B.A. (Hons.) in Economics, also from Delhi University.

Thomas R. Graham (United States) (2011–2015)

Born in the United States on 23 November 1942, Tom Graham is the former head of the international trade practice at a large international law firm, and the founder of the international trade practice at another large international law firm. He was one of the first US lawyers to represent respondents in trade remedy cases in various countries around the world, and he innovated the incorporation of economists, accountants, and other non-lawyer professionals into the international trade practices of private law firms. Most recently, Mr. Graham also headed his international trade practice group's committee on long-term planning and development.

In private law practice, Mr. Graham often collaborated with local counsel and national authorities in various countries to develop legal interpretations of laws and regulations consistent with GATT/WTO agreements, and in negotiating the resolution of international trade disputes.

Mr. Graham served as Deputy General Counsel in the Office of the US Trade Representative, where he was instrumental in the negotiation of the Tokyo Round Agreement on Technical Barriers to Trade and where he represented the US Government in dispute settlement proceedings under the GATT. Earlier in his career, Mr. Graham served for three years in Geneva as a Legal Officer at the United Nations Conference on Trade and Development (UNCTAD).

Mr. Graham was the first chairman of the American Society of International Law's Committee on International Economic Law, and the chair of the American Bar Association's Subcommittee on Exports. He has been a visiting professor at the University of North Carolina Law School and an adjunct professor at the Georgetown Law Center and the American University Washington College of Law. He has edited books on international trade policy, and international trade and environment, and he has written many articles and monographs on international trade law and policy as a Guest Scholar at the Brookings Institution, and as a Senior Associate at the Carnegie Endowment for International Peace.

Mr. Graham holds a BA in International Relations and Economics from Indiana University and a J.D. from Harvard Law School.

* * *

Director of the Appellate Body Secretariat

Werner Zdouc

Director of the WTO Appellate Body Secretariat since 2006, Werner Zdouc obtained a law degree from the University of Graz in Austria. He then went on to earn an LL.M. from Michigan Law School and a Ph.D. from the University of St. Gallen in Switzerland. Dr. Zdouc joined the WTO Legal Affairs Division in 1995, advised many dispute settlement panels, and conducted technical cooperation missions in many developing countries. He became legal counsellor at the Appellate Body Secretariat in 2001. He has been a lecturer and Visiting Professor for international trade law at Vienna Economic University, the Universities of Zurich and Barcelona. From 1987 to 1989, he worked for governmental and non-governmental development aid organizations in Austria and Latin America. Dr. Zdouc has authored various publications on international economic law and is a member of the Trade Law Committee of the International Law Association.

ANNEX 1B

FAREWELL SPEECHES OF FORMER APPELLATE BODY MEMBERS

Farewell remarks of Jennifer Hillman to the Dispute Settlement Body of the WTO Geneva, 8 December 2011

The Director-General, Chairs of the WTO councils, Excellencies, Ladies and Gentlemen:

Serving on the Appellate Body has been a true pleasure and deep honour for me and I would like to thank all of those who made it possible for me to be part of this unique institution.

It has been an extraordinary privilege to work alongside the dedicated, talented and wise individuals that I have come to know both as colleagues and as friends as well as the extremely hard-working and truly gifted members of the Appellate Body's Secretariat, who are among the finest lawyers and staff that I have ever known.

It has become traditional for those Members leaving the Appellate Body to offer a few reflections on their way out the door and so I too join in that tradition.

I have been fortunate to have been a part of the dispute settlement system at an important time in its evolution from the old GATT dispute settlement mechanism into the much more purely legal or juridical WTO system that we have before us today. The transformation into this new system, with its two step approach of a panel system and a standing Appellate Body, with a broadened scope of rules to be applied and binding resolution of the disputes, has occurred quite quickly, and has at times suffered some growing pains from the pace of that change. While many of the essential elements of WTO member control—with the Dispute Settlement Body still controlling the establishment of panels, the adoption of panel and Appellate Body reports and the surveillance of implementation of recommendations and rulings—remain firmly in place, much of the rest of the process has become much more purely legal.

With that consolidation of the legal order has come the need for the dispute settlement system in general and the Appellate Body in particular to establish its own credibility, both within the membership of the WTO itself and among the wider public at large—both no small achievements in today's world of great scepticism about multilateralism in general and multilateral institutions in particular.

I leave at a time when I believe that the WTO's dispute settlement system and the Appellate Body have achieved that goal of widespread credibility and with it the belief in a rules-based system and fundamentally in the rule of law. But I thought I would offer comments tonight on a few challenges that I see for a rules-based trading system. These concerns stem from my concern that belief in and a willingness to be bound by the rule of law is a precious commodity that cannot be taken for granted. It takes work and it takes constant reaffirmation by those who wish to play by those rules.

For me, at the core of any rules-based system are well-reasoned and well-understood decisions.

The challenge for the dispute settlement system today is finding the right balance between swift yet sound decisions. For the Appellate Body, the struggle lies between the rule that decisions must be issued, in 3 languages, within 90 days of the date an appeal is filed and the mandate that the Appellate Body address every issue raised on appeal. In today's increasingly legal system, more issues are being raised in every dispute, the issues themselves are increasingly complex, and the parties' submissions are growing

longer and longer, while the manpower available to address the increased load has remained fundamentally unchanged. Certainly it is clear to me that writing shorter, crisper and easier to read opinions takes much more time than writing long and occasionally hard-to-follow opinions.

For you, the members, some thought might be given to the tradeoffs that would be involved in disciplining parties' submissions, at least in terms of their length; whether the current practice of having all decisions start with summaries of the arguments made by all the parties continues to provide a sufficient benefit to the members to justify their costs—both in terms of the time available to the Appellate Body for drafting the summaries and cost of translation—particularly in these days when many members post their submissions on the internet; and whether the 90-day time period for appeals should be extended on a regular basis rather than worked out in the current ad hoc fashion. In addition, while the level of understanding of the dispute settlement system at large and its individual decisions is fairly high within these walls, additional outreach efforts to explain both the system and the decisions in specific cases might help to increase the understanding for these rules-based decisions in the community at large and would be an important step in the direction of reaffirming support for a rule-of-law system.

My second comment would be that the willingness to accept the decisions of the system stems in large part from a belief that the decisions have been made by adjudicators who are truly impartial and independent.

That independence and impartiality stems from both the individual qualities of the people who are appointed and the process by which they reach their decisions. And it also stems from an institutional guarantee of independence. It is on this front that I see a possible cloud on the horizon and that cloud stems from the mere fact that Appellate Body Members are subject to a reappointment process if they are to serve a second four-year term. Most courts, both national and international, typically set much longer terms for their members and many, in order to protect the independence of their judges, do not permit reappointment.

The mere fact that Appellate Body Members must go through a reappointment process can invite scepticism on all sides—and raises the possibility that decisions an Appellate Body Member made during his or her first four years have somehow crept into the reappointment process—thereby casting a shadow on the principle of independence and on the support for the rule-of-law system.

Moreover, I believe that four years is simply too short a time to master the processes and intricacies of the dispute settlement system, with its growing body of past decisions and its increasingly complex cases.

Now might be a good time for members to reflect on whether one single term of longer duration might better achieve a more independent Appellate Body and a more efficient one. If members served one longer term and the appointments were appropriately staggered, there would be greater stability and expertise among the members, along with a more even distribution of experience.

Despite these concerns, I leave the Appellate Body with greater confidence than when I arrived that the system is sound, that it can handle large, sensitive and complex matters and that it is serving an increasingly diverse set of needs and a larger membership. I hope you can agree with me on that.

I thank you from the bottom of my heart for giving me the opportunity to serve as Member of the Appellate Body and for the time to share these reflections. I know I am leaving with the Appellate Body in very capable hands with those of my colleagues that remain and with the addition of two deeply knowledgeable and well-respected new Members. Thank you all and my best wishes to you.

Farewell remarks of Lilia Bautista to the Dispute Settlement Body of the WTO Geneva, 8 December 2011

The Director-General, Chairs of the WTO councils, Excellencies, Ladies and Gentlemen:

Truly, when God closes a door, He opens a window. After I retired as Chair of the Philippine Securities and Exchange Commission, I was supposed to assume an ambassadorship in Europe. Unfortunately, and to my disappointment, it did not push through. On hindsight, it was a blessing in disguise for, afterwards, I was nominated by my government both to a United Nations (UN) post and to the Appellate Body. Having been an Ambassador to the UN and the World Trade Organization for seven years, I chose to accept the nomination to the Appellate Body. And being elected as Member of the Appellate Body of the WTO, the crown jewel of the Uruguay Round, was a signal honour aspired to by many but given to a few. It was a rare opportunity to be part of a body responsible for interpreting and applying the various WTO agreements to real case situations. My decision not to seek another term and to resign as Appellate Body Chair is personal and has nothing to do with any government. The fact is, my government wants me to run for another term but early on, I had informed my colleagues that I didn't intend to seek another term. I appreciate that my colleague, Jennifer, has taken over the Appellate Body Chairmanship. I would not have the heart to equip the new Appellate Body offices with furniture and high-tech equipment when the Appellate Body moves to its new office when I am gone.

To me, personally, my election to the Appellate Body was a testing ground of how the Uruguay Round agreements work in the practical arena. When disputes arise, this is an opportunity to see how effective and how workable the covered agreements are. I was very interested to be involved in the process because I participated in the Uruguay Round negotiations and when called upon by the Philippine Senate to testify in the course of my country's ratification, I explained the various Uruguay Round agreements and declared my confidence in the WTO system. I was also asked to submit an *amicus curiae* brief before the Philippine Supreme Court when its ratification was questioned as unconstitutional.

And so with the excitement of being elected to this august body, there was a certain trepidation as to how well the WTO agreements work in the event of disputes. I know these agreements are not expected to be perfect for otherwise there would be no need for the Appellate Body. But will the flaws be too much to make the agreements untenable?

And now that I am here, I am glad to say that I was vindicated in my defence of the WTO agreements. These agreements prove workable and disputes arising therefrom are capable of being settled without trade wars. Of course, in hindsight, we could have been clearer on the wording of the various agreements and, in this regard, I have a wish list: (1), a longer term for Appellate Body Members without re-election; (2) no 90-day limit on Appellate Body decisions considering the fact that the complexity of a case may require a longer timeframe; (3) more explicit provisions on special and differential treatment for developing countries to allow the Appellate Body to consider the solutions for disadvantaged countries involved in a dispute; (4), a more effective sanction provision; and (5) an appropriate title for Members of the Appellate Body.

Let me, therefore, take this opportunity to thank the membership for their support—my colleagues for whom I have great respect, and the Appellate Body Secretariat for smoothing my way in the labyrinth of precedents and office necessities. They, together with my Geneva friends, have been my family for the last four years. I thank every one of you for making my four years here fulfilling and gratifying. You are the icing on my cake.

Let me also congratulate the new Members of the Appellate Body, Mr. Bhatia and Mr. Graham, and transmit to them some "profound" observations from the inner sanctum of the Appellate Body:

1. Saturdays and Sundays are not holidays in the Appellate Body world. Working hours do not end at 5 or 6 p.m.

2. In Appellate Body sessions and exchanges of views, everyone has a lot to contribute and often speaks at the same time; an umpire may be necessary to enable all views to be heard, or one must be fast on the draw.

3. Hot "munchies" are Philippine dried mangoes, American bagels, and Thai food. Next year, the bagels will remain American, but the mangoes will be Indian.

In closing, all my life I have been blessed with so many good things along the way—a good education, executive positions in government that I did not seek but which were nonetheless offered to me, good friends, and a supportive family. All these and more, more than the little crosses that are a part of life. I thank God for His munificence and thank all the people who believed in me and who helped me along the way. All of them share in whatever I have accomplished.

I thank all of you for making my stay in the Appellate Body a truly memorable ending to my career. I was given a second time around in Geneva but I don't expect a third time around. But who knows?

Thank you and good evening to all.

ANNEX 2

I. FORMER APPELLATE BODY MEMBERS

Name	Nationality	Term(s) of office
Said El-Naggar	Egypt	1995–2000*
Mitsuo Matsushita	Japan	1995–2000*
Christopher Beeby	New Zealand	1995–1999 1999–2000
Claus-Dieter Ehlermann	Germany	1995–1997 1997–2001
Florentino Feliciano	Philippines	1995–1997 1997–2001
Julio Lacarte-Muró	Uruguay	1995–1997 1997–2001
James Bacchus	United States	1995–1999 1999–2003
John Lockhart	Australia	2001–2005 2005–2006
Yasuhei Taniguchi	Japan	2000–2003 2003–2007
Merit E. Janow	United States	2003–2007**
Arumugamangalam Venkatatchalam Ganesan	India	2000–2004 2004–2008
Georges Michel Abi-Saab	Egypt	2000–2004 2004–2008
Luiz Olavo Baptista	Brazil	2001–2005 2005–2009
Giorgio Sacerdoti	Italy	2001–2005 2005–2009
Jennifer Hillman	United States	2007–2011
Lilia Bautista	Philippines	2007–2011

* Messrs El-Naggar and Matsushita decided not to seek a second term of office. However, the DSB extended their terms until the end of March 2000 in order to allow the Selection Committee and the DSB the time necessary to complete the selection process of replacing the outgoing Appellate Body Members. (See WT/DSB/M70, pp. 32-35)

** Ms. Janow decided not to seek a second term of office. Her term ended on 11 December 2007.

Mr. Christopher Beeby passed away on 19 March 2000.
Mr. Said El-Naggar passed away on 11 April 2004.
Mr. John Lockhart passed away on 13 January 2006.

II. FORMER CHAIRPERSONS OF THE APPELLATE BODY

Name	Nationality	Term(s) as Chairperson
Julio Lacarte-Muró	Uruguay	7 February 1996 – 6 February 1997 7 February 1997 – 6 February 1998
Christopher Beeby	New Zealand	7 February 1998 – 6 February 1999
Said El-Naggar	Egypt	7 February 1999 – 6 February 2000
Florentino Feliciano	Philippines	7 February 2000 – 6 February 2001
Claus-Dieter Ehlermann	Germany	7 February 2001 – 10 December 2001
James Bacchus	United States	15 December 2001 – 14 December 2002 15 December 2002 – 10 December 2003
Georges Abi-Saab	Egypt	13 December 2003 – 12 December 2004
Yasuhei Taniguchi	Japan	17 December 2004 – 16 December 2005
Arumugamangalam Venkatachalam Ganesan	India	17 December 2005 – 16 December 2006
Giorgio Sacerdoti	Italy	17 December 2006 – 16 December 2007
Luiz Olavo Baptista	Brazil	17 December 2007 – 16 December 2008
David Unterhalter	South Africa	18 December 2008 – 11 December 2009 12 December 2009 – 16 December 2010
Lilia Bautista	Philippines	17 December 2010 – 14 June 2011
Jennifer Hillman	United States	15 June 2011 – 10 December 2011

ANNEX 3

APPEALS FILED: 1995–2011

Year	Notices of Appeal filed	Appeals in original proceedings	Appeals in Article 21.5 proceedings
1995	0	0	0
1996	4	4	0
1997	6[a]	6	0
1998	8	8	0
1999	9[b]	9	0
2000	13[c]	11	2
2001	9[d]	5	4
2002	7[e]	6	1
2003	6[f]	5	1
2004	5	5	0
2005	10	8	2
2006	5	3	2
2007	4	2	2
2008	13	10	3
2009	3	1	2
2010	3	3	0
2011	9	9	0
Total	114	95	19

[a] This number includes two Notices of Appeal that were filed at the same time in related matters, counted separately: *EC – Hormones (Canada)* and *EC – Hormones (US)*. A single Appellate Body report was circulated in relation to those appeals.

[b] This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed another Notice of Appeal in relation to the same panel report: *US – FSC*.

[c] This number includes two Notices of Appeal that were filed at the same time in related matters, counted separately: *US – 1916 Act (EC)* and *US – 1916 Act (Japan)*. A single Appellate Body report was circulated in relation to those appeals.

[d] This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed another Notice of Appeal in relation to the same panel report: *US – Line Pipe*.

[e] This number includes one Notice of Appeal that was subsequently withdrawn: *India – Autos*; and excludes one Notice of Appeal that was withdrawn by the European Communities, which subsequently filed another Notice of Appeal in relation to the same panel report: *EC – Sardines*.

[f] This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed another Notice of Appeal in relation to the same panel report: *US – Softwood Lumber IV*.

ANNEX 4

PERCENTAGE OF PANEL REPORTS APPEALED BY YEAR OF ADOPTION: 1995–2011[a]

	All panel reports			Panel reports other than Article 21.5 reports[b]			Article 21.5 panel reports		
Year of adoption	Panel reports adopted[c]	Panel reports appealed[d]	Percentage appealed[e]	Panel reports adopted	Panel reports appealed	Percentage appealed	Panel reports adopted	Panel reports appealed	Percentage appealed
1996	2	2	100%	2	2	100%	0	0	–
1997	5	5	100%	5	5	100%	0	0	–
1998	12	9	75%	12	9	75%	0	0	–
1999	10	7	70%	9	7	78%	1	0	0%
2000	19	11	58%	15	9	60%	4	2	50%
2001	17	12	71%	13	9	69%	4	3	75%
2002	12	6	50%	11	5	45%	1	1	100%
2003	10	7	70%	8	5	63%	2	2	100%
2004	8	6	75%	8	6	75%	0	0	–
2005	20	12	60%	17	11	65%	3	1	33%
2006	7	6	86%	4	3	75%	3	3	100%
2007	10	5	50%	6	3	50%	4	2	50%
2008	11	9	82%	8	6	75%	3	3	100%
2009	8	6	75%	6	4	67%	2	2	100%
2010	5	2	40%	5	2	40%	0	0	–
2011	8	5	63%	8	5	63%	0	0	–
Total	164	110	67%	137	91	66%	27	19	70%

[a] No panel reports were adopted in 1995.

[b] Under Article 21.5 of the DSU, a panel may be established to hear a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB upon the adoption of a previous panel or Appellate Body report.

[c] The Panel Reports in *EC – Bananas III (Ecuador)*, *EC – Bananas III (Guatemala and Honduras)*, *EC – Bananas III (Mexico)*, and *EC – Bananas III (US)* are counted as a single panel report. The Panel Reports in *US – Steel Safeguards*, *in EC – Export Subsidies on Sugar*, and in *EC – Chicken Cuts*, are also counted as single panel reports in each of those disputes.

[d] Panel reports are counted as having been appealed where they are adopted as upheld, modified, or reversed by an Appellate Body report. The number of panel reports appealed may differ from the number of Appellate Body reports because some Appellate Body reports address more than one panel report.

[e] Percentages are rounded to the nearest whole number.

ANNEX 5

WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED THROUGH 2011[a]

Year of circulation	DSU	WTO Agmt	GATT 1994	Agriculture	SPS	ATC	TBT	TRIMs	Anti-Dumping	Import Licensing	SCM	Safeguards	GATS	TRIPS
1996	0	0	2	0	0	0	0	0	0	0	0	0	0	0
1997	4	1	5	1	0	2	0	0	0	1	1	0	1	1
1998	7	1	4	1	2	0	0	0	1	1	0	0	0	0
1999	7	1	6	1	1	0	0	0	0	0	2	1	0	0
2000	8	1	7	2	0	0	0	0	2	0	5	2	1	1
2001	7	1	3	1	0	1	1	0	4	0	1	2	0	0
2002	8	2	4	3	0	0	1	0	1	0	3	1	1	1
2003	4	2	3	0	1	0	0	0	4	0	1	1	0	0
2004	2	0	5	0	0	0	0	0	2	0	1	0	0	0
2005	9	0	5	2	0	0	0	0	2	0	4	0	1	0
2006	5	0	3	0	0	0	0	0	3	0	2	0	0	0
2007	5	0	2	1	0	0	0	0	2	0	1	0	0	0
2008	8	1	9	1	2	0	0	0	3	0	3	0	0	0
2009	3	0	4	0	0	0	0	0	3	0	0	0	1	0
2010	1	0	0	0	1	0	0	0	0	0	0	0	0	0
2011	7	1	6	0	0	0	0	0	1	0	2	0	0	0
Total	85	11	68	13	7	3	2	0	28	2	26	7	5	3

[a] No appeals were filed in 1995.

ANNEX 6

PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS: 1995–2011

As of the end of 2011, there were 153 WTO Members, of which 70 have participated in appeals in which Appellate Body reports were circulated between 1996 and 2011.[86]

The rules pursuant to which Members participate in appeals as appellant, other appellant, appellee, and third participant are described in section V of this Annual Report.

I. STATISTICAL SUMMARY

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Antigua & Barbuda	1	0	1	0	2
Argentina	2	3	5	13	23
Australia	3	1	6	28	38
Bahrain	0	0	0	1	1
Barbados	0	0	0	1	1
Belize	0	0	0	4	4
Benin	0	0	0	1	1
Bolivarian Republic of Venezuela	0	0	1	6	7
Bolivia, Plurinational State of	0	0	0	1	1
Brazil	8	4	12	26	50
Cameroon	0	0	0	3	3
Canada	10	7	16	18	51
Chad	0	0	0	2	2
Chile	3	0	2	9	14
China	6	2	3	30	41
Colombia	0	0	0	10	10
Costa Rica	1	0	0	3	4
Côte d'Ivoire	0	0	0	4	4
Cuba	0	0	0	4	4
Dominica	0	0	0	4	4
Dominican Republic	1	0	1	3	5
Ecuador	0	2	2	6	10

[86] No appeals were filed and no Appellate Body reports were circulated in 1995, the year the Appellate Body was established.

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Egypt	0	0	0	2	2
El Salvador	0	0	0	2	2
European Union	20	14	38	51	123
Fiji	0	0	0	1	1
Ghana	0	0	0	2	2
Grenada	0	0	0	1	1
Guatemala	1	1	1	4	7
Guyana	0	0	0	1	1
Honduras	1	1	2	1	5
Hong Kong, China	0	0	0	8	8
India	6	2	7	28	43
Indonesia	0	0	1	1	2
Israel	0	0	0	1	1
Jamaica	0	0	0	5	5
Japan	6	4	11	43	64
Kenya	0	0	0	1	1
Korea	4	3	6	17	30
Kuwait	0	0	0	1	1
Madagascar	0	0	0	1	1
Malaysia	1	0	1	0	2
Malawi	0	0	0	1	1
Mauritius	0	0	0	2	2
Mexico	5	1	4	30	40
New Zealand	0	3	6	11	20
Nicaragua	0	0	0	4	4
Nigeria	0	0	0	1	1
Norway	0	1	1	15	17
Pakistan	0	0	2	3	5
Panama	0	0	0	3	3
Paraguay	0	0	0	5	5
Peru	0	0	1	2	3
Philippines	3	0	3	1	7
Poland	0	0	1	0	1
Senegal	0	0	0	1	1
Saint Lucia	0	0	0	4	4

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Saudi Arabia	0	0	0	1	1
St Kitts & Nevis	0	0	0	1	1
St Vincent & the Grenadines	0	0	0	3	3
Suriname	0	0	0	3	3
Swaziland	0	0	0	1	1
Switzerland	0	1	1	0	2
Chinese Taipei	0	0	0	26	26
Tanzania	0	0	0	1	1
Thailand	5	0	5	19	29
Trinidad & Tobago	0	0	0	1	1
Turkey	1	0	0	4	5
United States	29	17	64	30	140
Viet Nam	0	0	0	3	3
Total	117	67	204	524	912

II. DETAILS BY YEAR OF CIRCULATION

1996

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Gasoline WT/DS2/AB/R	United States	- - -	Brazil Venezuela	European Communities Norway
Japan – Alcoholic Beverages II WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R	Japan	United States	Canada European Communities Japan United States	- - -

1997

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Underwear WT/DS24/AB/R	Costa Rica	- - -	United States	India
Brazil – Desiccated Coconut WT/DS22/AB/R	Philippines	Brazil	Brazil Philippines	European Communities United States
US – Wool Shirts and Blouses WT/DS33/AB/R and Corr.1	India	- - -	United States	- - -
Canada – Periodicals WT/DS31/AB/R	Canada	United States	Canada United States	- - -
EC – Bananas III WT/DS27/AB/R	European Communities	Ecuador Guatemala Honduras Mexico United States	Ecuador European Communities Guatemala Honduras Mexico United States	Belize Cameroon Colombia Costa Rica Côte d'Ivoire Dominica Dominican Republic Ghana Grenada Jamaica Japan Nicaragua St Lucia St Vincent & the Grenadines Senegal Suriname Venezuela
India – Patents (US) WT/DS50/AB/R	India	- - -	United States	European Communities

1998

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
EC – Hormones WT/DS26/AB/R, WT/DS48/AB/R	European Communities	Canada United States	Canada European Communities United States	Australia New Zealand Norway
Argentina – Textiles and Apparel WT/DS56/AB/R and Corr.1	Argentina	- - -	United States	European Communities
EC – Computer Equipment WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R	European Communities	- - -	United States	Japan
EC – Poultry WT/DS69/AB/R	Brazil	European Communities	Brazil European Communities	Thailand United States
US – Shrimp WT/DS58/AB/R	United States	- - -	India Malaysia Pakistan Thailand	Australia Ecuador European Communities Hong Kong, China Mexico Nigeria
Australia – Salmon WT/DS18/AB/R	Australia	Canada	Australia Canada	European Communities India Norway United States
Guatemala – Cement I WT/DS60/AB/R	Guatemala	- - -	Mexico	United States

1999

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
Korea – Alcoholic Beverages WT/DS75/AB/R, WT/DS84/AB/R	Korea	- - -	European Communities United States	Mexico
Japan – Agricultural Products II WT/DS76/AB/R	Japan	United States	Japan United States	Brazil European Communities
Brazil – Aircraft WT/DS46/AB/R	Brazil	Canada	Brazil Canada	European Communities United States
Canada – Aircraft WT/DS70/AB/R	Canada	Brazil	Brazil Canada	European Communities United States
India – Quantitative Restrictions WT/DS90/AB/R	India	- - -	United States	- - -
Canada – Dairy WT/DS103/AB/R, WT/DS113/AB/R and Corr.1	Canada	- - -	New Zealand United States	- - -
Turkey – Textiles WT/DS34/AB/R	Turkey	- - -	India	Hong Kong, China Japan Philippines
Chile – Alcoholic Beverages WT/DS87/AB/R, WT/DS110/AB/R	Chile	- - -	European Communities	Mexico United States
Argentina – Footwear (EC) WT/DS121/AB/R	Argentina	European Communities	Argentina European Communities	Indonesia United States
Korea – Dairy WT/DS98/AB/R	Korea	European Communities	Korea European Communities	United States

2000

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – FSC WT/DS108/AB/R	United States	European Communities	European Communities United States	Canada Japan
US – Lead and Bismuth II WT/DS138/AB/R	United States	- - -	European Communities	Brazil Mexico
Canada – Autos WT/DS139/AB/R	Canada	European Communities Japan	Canada European Communities Japan	Korea United States
Brazil – Aircraft (Article 21.5 – Canada) WT/DS46/AB/RW	Brazil	- - -	Canada	European Communities United States
Canada – Aircraft (Article 21.5 – Brazil) WT/DS70/AB/RW	Brazil	- - -	Canada	European Communities United States
US – 1916 Act WT/DS136/AB/R, WT/DS162/AB/R	United States	European Communities Japan	European Communities Japan United States	European Communities [a] India Japan [b] Mexico
Canada – Term of Patent Protection WT/DS170/AB/R	Canada	- - -	United States	- - -
Korea – Various Measures on Beef WT/DS161/AB/R, WT/DS169/AB/R	Korea	- - -	Australia United States	Canada New Zealand
US – Certain EC Products WT/DS165/AB/R	European Communities	United States	European Communities United States	Dominica Ecuador India Jamaica Japan St Lucia
US – Wheat Gluten WT/DS166/AB/R	United States	European Communities	European Communities United States	Australia Canada New Zealand

[a] In complaint brought by Japan.
[b] In complaint brought by the European Communities.

2001

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
EC – Bed Linen WT/DS141/AB/R	European Communities	India	European Communities India	Egypt Japan United States
EC – Asbestos WT/DS135/AB/R	Canada	European Communities	Canada European Communities	Brazil United States
Thailand – H-Beams WT/DS122/AB/R	Thailand	- - -	Poland	European Communities Japan United States
US – Lamb WT/DS177/AB/R, WT/DS178/AB/R	United States	Australia New Zealand	Australia New Zealand United States	European Communities
US – Hot-Rolled Steel WT/DS184/AB/R	United States	Japan	Japan United States	Brazil Canada Chile European Communities Korea
US – Cotton Yarn WT/DS192/AB/R	United States	- - -	Pakistan	European Communities India
US – Shrimp (Article 21.5 – Malaysia) WT/DS58/AB/RW	Malaysia	- - -	United States	Australia European Communities Hong Kong, China India Japan Mexico Thailand
Mexico – Corn Syrup (Article 21.5 – US) WT/DS132/AB/RW	Mexico	- - -	United States	European Communities
Canada – Dairy (Article 21.5 – New Zealand and US) WT/DS103/AB/RW, WT/DS113/AB/RW	Canada	- - -	New Zealand United States	European Communities

2002

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Section 211 Appropriations Act WT/DS176/AB/R	European Communities	United States	European Communities United States	- - -
US – FSC (Article 21.5 – EC) WT/DS108/AB/RW	United States	European Communities	European Communities United States	Australia Canada India Japan
US – Line Pipe WT/DS202/AB/R	United States	Korea	Korea United States	Australia Canada European Communities Japan Mexico
India – Autos[c] WT/DS146/AB/R, WT/DS175/AB/R	India	- - -	European Communities United States	Korea
Chile – Price Band System WT/DS207/AB/R and Corr.1	Chile	- - -	Argentina	Australia Brazil Colombia Ecuador European Communities Paraguay United States Venezuela
EC – Sardines WT/DS231/AB/R	European Communities	- - -	Peru	Canada Chile Ecuador United States Venezuela
US – Carbon Steel WT/DS213/AB/R and Corr.1	United States	European Communities	European Communities United States	Japan Norway
US – Countervailing Measures on Certain EC Products WT/DS212/AB/R	United States	- - -	European Communities	Brazil India Mexico
Canada – Dairy (Article 21.5 – New Zealand and US II) WT/DS103/AB/RW2, WT/DS113/AB/RW2	Canada	- - -	New Zealand United States	Argentina Australia European Communities

[c] India withdrew its appeal the day before the oral hearing was scheduled to proceed.

2003

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Offset Act (Byrd Amendment) WT/DS217/AB/R, WT/DS234/AB/R	United States	- - -	Australia Brazil Canada Chile European Communities India Indonesia Japan Korea Mexico Thailand	Argentina Costa Rica Hong Kong, China Israel Norway
EC – Bed Linen (Article 21.5 – India) WT/DS141/AB/RW	India	- - -	European Communities	Japan Korea United States
EC – Tube or Pipe Fittings WT/DS219/AB/R	Brazil	- - -	European Communities	Chile Japan Mexico United States
US – Steel Safeguards WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R	United States	Brazil China European Communities Japan Korea New Zealand Norway Switzerland	Brazil China European Communities Japan Korea New Zealand Norway Switzerland United States	Canada Cuba Mexico Chinese Taipei Thailand Turkey Venezuela
Japan – Apples WT/DS245/AB/R	Japan	United States	Japan United States	Australia Brazil European Communities New Zealand Chinese Taipei
US – Corrosion-Resistant Steel Sunset Review WT/DS244/AB/R	Japan	- - -	United States	Brazil Chile European Communities India Korea Norway

2004

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Softwood Lumber IV WT/DS257/AB/R	United States	Canada	Canada United States	European Communities India Japan
EC – Tariff Preferences WT/DS246/AB/R	European Communities	- - -	India	Bolivia Brazil Colombia Costa Rica Cuba Ecuador El Salvador Guatemala Honduras Mauritius Nicaragua Pakistan Panama Paraguay Peru United States Venezuela
US – Softwood Lumber V WT/DS264/AB/R	United States	Canada	Canada United States	European Communities India Japan
Canada – Wheat Exports and Grain Imports WT/DS276/AB/R	United States	Canada	Canada United States	Australia China European Communities Mexico Chinese Taipei
US – Oil Country Tubular Goods Sunset Reviews WT/DS268/AB/R	United States	Argentina	Argentina United States	European Communities Japan Korea Mexico Chinese Taipei

2005

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Upland Cotton WT/DS267/AB/R	United States	Brazil	Brazil United States	Argentina Australia Benin Canada Chad China European Communities India New Zealand Pakistan Paraguay Chinese Taipei Venezuela
US – Gambling WT/DS285/AB/R and Corr.1	United States	Antigua & Barbuda	Antigua & Barbuda United States	Canada European Communities Japan Mexico Chinese Taipei
EC – Export Subsidies on Sugar WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R	European Communities	Australia Brazil Thailand	Australia Brazil European Communities Thailand	Barbados Belize Canada China Colombia Côte d'Ivoire Cuba Fiji Guyana India Jamaica Kenya Madagascar Malawi Mauritius New Zealand Paraguay St Kitts & Nevis Swaziland Tanzania Trinidad & Tobago United States

2005 (Cont.)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
Dominican Republic – Import and Sale of Cigarettes WT/DS302/AB/R	Dominican Republic	Honduras	Dominican Republic Honduras	China El Salvador European Communities Guatemala United States
US – Countervailing Duty Investigation on DRAMS WT/DS296/AB/R	United States	Korea	Korea United States	China European Communities Japan Chinese Taipei
EC – Chicken Cuts WT/DS269/AB/R, WT/DS286/AB/R and Corr.1	European Communities	Brazil Thailand	Brazil European Communities Thailand	China United States
Mexico – Anti-Dumping Measures on Rice WT/DS295/AB/R	Mexico	- - -	United States	China European Communities
US – Anti-Dumping Measures on Oil Country Tubular Goods WT/DS282/AB/R	Mexico	United States	Mexico United States	Argentina Canada China European Communities Japan Chinese Taipei
US – Softwood Lumber IV (Article 21.5 – Canada) WT/DS257/AB/RW	United States	Canada	Canada United States	China European Communities

2006

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – FSC (Article 21.5 – EC II) WT/DS108/AB/RW2	United States	European Communities	European Communities United States	Australia Brazil China
Mexico – Taxes on Soft Drinks WT/DS308/AB/R	Mexico	- - -	United States	Canada China European Communities Guatemala Japan
US – Softwood Lumber VI (Article 21.5 – Canada) WT/DS277/AB/RW and Corr.1	Canada	- - -	United States	China European Communities
US – Zeroing (EC) WT/DS294/AB/R and Corr.1	European Communities	United States	United States European Communities	Argentina Brazil China Hong Kong, China India Japan Korea Mexico Norway Chinese Taipei
US – Softwood Lumber V (Article 21.5 – Canada) WT/DS264/AB/RW	Canada	- - -	United States	China European Communities India Japan New Zealand Thailand
EC – Selected Customs Matters WT/DS315/AB/R	United States	European Communities	European Communities United States	Argentina Australia Brazil China Hong Kong, China India Japan Korea Chinese Taipei

2007

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Zeroing (Japan) WT/DS322/AB/R	Japan	United States	United States Japan	Argentina China European Communities Hong Kong, China India Korea Mexico New Zealand Norway Thailand
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina) WT/DS268/AB/RW	United States	Argentina	Argentina United States	China European Communities Japan Korea Mexico
Chile – Price Band System (Article 21.5 – Argentina) WT/DS207/AB/RW	Chile	Argentina	Argentina Chile	Australia Brazil Canada China Colombia European Communities Peru Thailand United States
Japan – DRAMs (Korea) WT/DS336/AB/R and Corr.1	Japan	Korea	Korea Japan	European Communities United States
Brazil – Retreaded Tyres WT/DS332/AB/R	European Communities	- - -	Brazil	Argentina Australia China Cuba Guatemala Japan Korea Mexico Paraguay Chinese Taipei Thailand United States

2008

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Stainless Steel (Mexico) WT/DS344/AB/R	Mexico	- - -	United States	Chile China European Communities Japan Thailand
US – Upland Cotton (Article 21.5 – Brazil) WT/DS267/AB/RW	United States	Brazil	Brazil United States	Argentina Australia Canada Chad China European Communities India Japan New Zealand Thailand
US – Shrimp (Thailand) WT/DS343/AB/R	Thailand	United States	United States Thailand	Brazil Chile China European Communities India Japan Korea Mexico Viet Nam
US – Customs Bond Directive WT/DS345/AB/R	India	United States	United States India	Brazil China European Communities Japan Thailand
US – Continued Suspension WT/DS320/AB/R	European Communities	United States	United States European Communities	Australia Brazil China India Mexico New Zealand Norway Chinese Taipei

2008 (Cont.)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Continued Suspension WT/DS320/AB/R	European Communities	United States	United States European Communities	Australia Brazil China India Mexico New Zealand Norway Chinese Taipei
Canada – Continued Suspension WT/DS321/AB/R	European Communities	Canada	Canada European Communities	Australia Brazil China India Mexico New Zealand Norway Chinese Taipei
India – Additional Import Duties WT/DS360/AB/R	United States	India	India United States	Australia Chile European Communities Japan Viet Nam
EC – Bananas III (Article 21.5 – Ecuador II) WT/DS27/AB/RW2/ECU and Corr.1	European Communities	Ecuador	Ecuador European Communities	Belize Brazil Cameroon Colombia Côte d'Ivoire Dominica Dominican Republic Ghana Jamaica Japan Nicaragua Panama St Lucia St Vincent & the Grenadines Suriname United States

2008 (Cont.)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
EC – Bananas III (Article 21.5 – US) WT/DS27/AB/RW/USA and Corr.1	European Communities	- - -	United States	Belize Brazil Cameroon Colombia Côte d'Ivoire Dominica Dominican Republic Ecuador Jamaica Japan Mexico Nicaragua Panama St Lucia St Vincent & the Grenadines Suriname
China – Auto Parts (EC) WT/DS339/AB/R	China	- - -	European Communities	Argentina Australia Brazil Japan Mexico Chinese Taipei Thailand
China – Auto Parts (US) WT/DS340/AB/R	China	- - -	United States	Argentina Australia Brazil Japan Mexico Chinese Taipei Thailand
China – Auto Parts (Canada) WT/DS342/AB/R	China	- - -	Canada	Argentina Australia Brazil Japan Mexico Chinese Taipei Thailand

2009

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Continued Zeroing WT/DS350/AB/R	European Communities	United States	European Communities United States	Brazil China Egypt India Japan Korea Mexico Norway Chinese Taipei Thailand
US – Zeroing (EC) (Article 21.5 – EC) WT/DS294/AB/RW and Corr.1	European Communities	United States	European Communities United States	India Japan Korea Mexico Norway Chinese Taipei Thailand
US – Zeroing (Japan) (Article 21.5 – Japan) WT/DS322/AB/RW	United States	- - -	Japan	China European Communities Hong Kong, China Korea Mexico Norway Chinese Taipei Thailand
China – Publications and Audiovisual Products WT/DS363/AB/R	China	United States	China United States	Australia European Communities Japan Korea Chinese Taipei

2010

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
Australia – Apples WT/DS367/AB/R	Australia	New Zealand	New Zealand Australia	Chile European Union Japan Pakistan Chinese Taipei United States

2011

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Anti-Dumping and Countervailing Duties (China) WT/DS379/AB/R	China	- - -	United States	Argentina Australia Bahrain Brazil Canada European Union India Japan Kuwait Mexico Norway Saudi Arabia Chinese Taipei Turkey
EC and certain member States – Large Civil Aircraft WT/DS316/AB/R	European Union	United States	United States European Union	Australia Brazil Canada China Japan Korea
Thailand – Cigarettes (Philippines) WT/DS371/AB/R	Thailand	- - -	Philippines	Australia China European Union India Chinese Taipei United States
EC – Fasteners (China) WT/DS397/AB/R	European Union	China	China European Union	Brazil Canada Chile Colombia India Japan Norway Chinese Taipei Thailand Turkey United States

2011 (Cont.)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Tyres (China) WT/DS399/AB/R	China	- - -	United States	European Union Japan Chinese Taipei Turkey Viet Nam
Philippines – Distilled Spirits (European Union) WT/DS396/AB/R	Philippines	European Union	European Union Philippines	Australia China Colombia India Mexico Chinese Taipei Thailand
Philippines – Distilled Spirits (United States) WT/DS403/AB/R	Philippines	- - -	United States	Australia China Colombia India Mexico Chinese Taipei Thailand

ANNEX 7

APPELLATE BODY SECRETARIAT PARTICIPATION IN TECHNICAL ASSISTANCE, TRAINING, AND OTHER ACTIVITIES IN 2011

I. WTO BIENNIAL TECHNICAL ASSISTANCE AND TRAINING PLAN: 2010–2011 APPELLATE BODY SECRETARIAT — MISSIONS – 2011

Course / Seminar	Location	Dates
National Seminar on the Multilateral Trading System	Riyadh, Dammam, and Jeddah, Saudi Arabia	8 – 10 January 2011
National DSU Seminar	Manila, Philippines	22 – 24 March 2011
Regional Dispute Settlement Seminar for CEECAC	Vienna, Austria	18 – 22 April 2011
OAS Course for Senior Officials on Trade Negotiations and Dispute Settlement	Washington, USA	29 June – 3 July 2011
National Seminar on Dispute Settlement	Asuncion, Paraguay	23 – 26 August 2011
Seminar on WTO Dispute Settlement	Taipei, Chinese Taipei	13 – 15 September 2011
Regional Trade Policy Course - Basic Principles	New Delhi, India	15 – 16 September 2011
Regional Workshop on Dispute Settlement	Buenos Aires, Argentina	20 – 23 September 2011
Seminar on WTO Dispute Settlement	Pretoria, Johannesburg	21 – 24 November 2011

II. OTHER ACTIVITIES – 2011

Activity	Location	Dates
ELSA Moot Court Competition (Regional Round)	Mexico City, Mexico	22 – 25 March 2011
ELSA Moot Court Competition (Final Round)	Evian, France, and Geneva, Switzerland	23 – 30 May 2011
IELPO Moot Court Competition	Barcelona, Spain	21 – 22 June 2011
Joint IELPO – WTI Moot Court Competition	Barcelona, Spain	28 June 2011

ANNEX 8

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS: 1995–2011

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS

Short Title	Full Case Title and Citation
Argentina – Ceramic Tiles	Panel Report, *Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy*, WT/DS189/R, adopted 5 November 2001, DSR 2001:XII, 6241
Argentina – Footwear (EC)	Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
Argentina – Footwear (EC)	Panel Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS121/AB/R, DSR 2000:II, 575
Argentina – Hides and Leather	Panel Report, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather*, WT/DS155/R and Corr.1, adopted 16 February 2001, DSR 2001:V, 1779
Argentina – Hides and Leather (Article 21.3(c))	Award of the Arbitrator, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather – Arbitration under Article 21.3(c) of the DSU*, WT/DS155/10, 31 August 2001, DSR 2001:XII, 6013
Argentina – Poultry Anti-Dumping Duties	Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, adopted 19 May 2003, DSR 2003:V, 1727
Argentina – Preserved Peaches	Panel Report, *Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches*, WT/DS238/R, adopted 15 April 2003, DSR 2003:III, 1037
Argentina – Textiles and Apparel	Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, 1003
Argentina – Textiles and Apparel	Panel Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/R, adopted 22 April 1998, as modified by Appellate Body Report WT/DS56/AB/R, DSR 1998:III, 1033
Australia – Apples	Appellate Body Report, *Australia – Measures Affecting the Importation of Apples from New Zealand*, WT/DS367/AB/R, adopted 17 December 2010, DSR 2010:V, 2175
Australia – Apples	Panel Report, *Australia – Measures Affecting the Importation of Apples from New Zealand*, WT/DS367/R, adopted 17 December 2010, as modified by Appellate Body Report WT/DS367/AB/R, DSR 2010:VI, 2371
Australia – Automotive Leather II	Panel Report, *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather*, WT/DS126/R, adopted 16 June 1999, DSR 1999:III, 951
Australia – Automotive Leather II (Article 21.5 – US)	Panel Report, *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather – Recourse to Article 21.5 of the DSU by the United States*, WT/DS126/RW and Corr.1, adopted 11 February 2000, DSR 2000:III, 1189
Australia – Salmon	Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327
Australia – Salmon	Panel Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS18/AB/R, DSR 1998:VIII, 3407

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Australia – Salmon (Article 21.3(c))	Award of the Arbitrator, *Australia – Measures Affecting Importation of Salmon – Arbitration under Article 21.3(c) of the DSU*, WT/DS18/9, 23 February 1999, DSR 1999:I, 267
Australia – Salmon (Article 21.5 – Canada)	Panel Report, *Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 of the DSU by Canada*, WT/DS18/RW, adopted 20 March 2000, DSR 2000:IV, 2031
Brazil – Aircraft	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, 1161
Brazil – Aircraft	Panel Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/R, adopted 20 August 1999, as modified by Appellate Body Report WT/DS46/AB/R, DSR 1999:III, 1221
Brazil – Aircraft (Article 21.5 – Canada)	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/AB/RW, adopted 4 August 2000, DSR 2000:VIII, 4067
Brazil – Aircraft (Article 21.5 – Canada)	Panel Report, *Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/RW, adopted 4 August 2000, as modified by Appellate Body Report WT/DS46/AB/RW, DSR 2000:IX, 4093
Brazil – Aircraft (Article 21.5 – Canada II)	Panel Report, *Brazil – Export Financing Programme for Aircraft – Second Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/RW/2, adopted 23 August 2001, DSR 2001:X, 5481
Brazil – Aircraft (Article 22.6 – Brazil)	Decision by the Arbitrators, *Brazil – Export Financing Programme for Aircraft – Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS46/ARB, 28 August 2000, DSR 2002:I, 19
Brazil – Desiccated Coconut	Appellate Body Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, 167
Brazil – Desiccated Coconut	Panel Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/R, adopted 20 March 1997, upheld by Appellate Body Report WT/DS22/AB/R, DSR 1997:I, 189
Brazil – Retreaded Tyres	Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007, DSR 2007:IV, 1527
Brazil – Retreaded Tyres	Panel Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R, DSR 2007:V, 1649
Brazil – Retreaded Tyres (Article 21.3(c))	Award of the Arbitrator, *Brazil – Measures Affecting Imports of Retreaded Tyres – Arbitration under Article 21.3(c) of the DSU*, WT/DS332/16, 29 August 2008, DSR 2008:XX, 8581
Canada – Aircraft	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, 1377
Canada – Aircraft	Panel Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/R, adopted 20 August 1999, upheld by Appellate Body Report WT/DS70/AB/R, DSR 1999:IV, 1443
Canada – Aircraft (Article 21.5 – Brazil)	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU*, WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, 4299
Canada – Aircraft (Article 21.5 – Brazil)	Panel Report, *Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU*, WT/DS70/RW, adopted 4 August 2000, as modified by Appellate Body Report WT/DS70/AB/RW, DSR 2000:IX, 4315

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Canada – Aircraft Credits and Guarantees	Panel Report, *Canada – Export Credits and Loan Guarantees for Regional Aircraft*, WT/DS222/R and Corr.1, adopted 19 February 2002, DSR 2002:III, 849
Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)	Decision by the Arbitrator, *Canada – Export Credits and Loan Guarantees for Regional Aircraft – Recourse to Arbitration by Canada under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS222/ARB, 17 February 2003, DSR 2003:III, 1187
Canada – Autos	Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000, DSR 2000:VI, 2985
Canada – Autos	Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/R, WT/DS142/R, adopted 19 June 2000, as modified by Appellate Body Report WT/DS139/AB/R, WT/DS142/AB/R, DSR 2000:VII, 3043
Canada – Autos (Article 21.3(c))	Award of the Arbitrator, *Canada – Certain Measures Affecting the Automotive Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS139/12, WT/DS142/12, 4 October 2000, DSR 2000:X, 5079
Canada – Continued Suspension	Appellate Body Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS321/AB/R, adopted 14 November 2008, DSR 2008:XIV, 5373
Canada – Continued Suspension	Panel Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS321/R, adopted 14 November 2008, as modified by Appellate Body Report WT/DS321/AB/R, DSR 2008:XV, 5757-DSR 2008:XVII, 6717
Canada – Dairy	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*, WT/DS103/AB/R, WT/DS113/AB/R and Corr.1, adopted 27 October 1999, DSR 1999:V, 2057
Canada – Dairy	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*, WT/DS103/R, WT/DS113/R, adopted 27 October 1999, as modified by Appellate Body Report WT/DS103/AB/R, WT/DS113/AB/R, DSR 1999:VI, 2097
Canada – Dairy (Article 21.5 – New Zealand and US)	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001, DSR 2001:XIII, 6829
Canada – Dairy (Article 21.5 – New Zealand and US)	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/RW, WT/DS113/RW, adopted 18 December 2001, as reversed by Appellate Body Report WT/DS103/AB/RW, WT/DS113/AB/RW, DSR 2001:XIII, 6865
Canada – Dairy (Article 21.5 – New Zealand and US II)	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/AB/RW2, WT/DS113/AB/RW2, adopted 17 January 2003, DSR 2003:I, 213
Canada – Dairy (Article 21.5 – New Zealand and US II)	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/RW2, WT/DS113/RW2, adopted 17 January 2003, as modified by Appellate Body Report WT/DS103/AB/RW2, WT/DS113/AB/RW2, DSR 2003:I, 255
Canada – Patent Term	Appellate Body Report, *Canada – Term of Patent Protection*, WT/DS170/AB/R, adopted 12 October 2000, DSR 2000:X, 5093

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Canada – Patent Term	Panel Report, *Canada – Term of Patent Protection*, WT/DS170/R, adopted 12 October 2000, upheld by Appellate Body Report WT/DS170/AB/R, DSR 2000:XI, 5121
Canada – Patent Term (Article 21.3(c))	Award of the Arbitrator, *Canada – Term of Patent Protection – Arbitration under Article 21.3(c) of the DSU*, WT/DS170/10, 28 February 2001, DSR 2001:V, 2031
Canada – Periodicals	Appellate Body Report, *Canada – Certain Measures Concerning Periodicals*, WT/DS31/AB/R, adopted 30 July 1997, DSR 1997:I, 449
Canada – Periodicals	Panel Report, *Canada – Certain Measures Concerning Periodicals*, WT/DS31/R and Corr.1, adopted 30 July 1997, as modified by Appellate Body Report WT/DS31/AB/R, DSR 1997:I, 481
Canada – Pharmaceutical Patents	Panel Report, *Canada – Patent Protection of Pharmaceutical Products*, WT/DS114/R, adopted 7 April 2000, DSR 2000:V, 2289
Canada – Pharmaceutical Patents (Article 21.3(c))	Award of the Arbitrator, *Canada – Patent Protection of Pharmaceutical Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS114/13, 18 August 2000, DSR 2002:I, 3
Canada – Wheat Exports and Grain Imports	Appellate Body Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/AB/R, adopted 27 September 2004, DSR 2004:VI, 2739
Canada – Wheat Exports and Grain Imports	Panel Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted 27 September 2004, upheld by Appellate Body Report WT/DS276/AB/R, DSR 2004:VI, 2817
Chile – Alcoholic Beverages	Appellate Body Report, *Chile – Taxes on Alcoholic Beverages*, WT/DS87/AB/R, WT/DS110/AB/R, adopted 12 January 2000, DSR 2000:I, 281
Chile – Alcoholic Beverages	Panel Report, *Chile – Taxes on Alcoholic Beverages*, WT/DS87/R, WT/DS110/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS87/AB/R, WT/DS110/AB/R, DSR 2000:I, 303
Chile – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Chile – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS87/15, WT/DS110/14, 23 May 2000, DSR 2000:V, 2583
Chile – Price Band System	Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R, adopted 23 October 2002, DSR 2002:VIII, 3045 (Corr.1, DSR 2006:XII, 5473)
Chile – Price Band System	Panel Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/R, adopted 23 October 2002, as modified by Appellate Body Report WT/DS207AB/R, DSR 2002:VIII, 3127
Chile – Price Band System (Article 21.3(c))	Award of the Arbitrator, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS207/13, 17 March 2003, DSR 2003:III, 1237
Chile – Price Band System (Article 21.5 – Argentina)	Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS207/AB/RW, adopted 22 May 2007, DSR 2007:II, 513
Chile – Price Band System (Article 21.5 – Argentina)	Panel Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS207/RW and Corr.1, adopted 22 May 2007, upheld by Appellate Body Report WT/DS207/AB/RW, DSR 2007:II-III, 613
China – Auto Parts	Appellate Body Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, adopted 12 January 2009, DSR 2009:I, 3

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China – Auto Parts	Panel Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/R / WT/DS340/R / WT/DS342/R / and Add.1 and Add.2, adopted 12 January 2009, upheld (WT/DS339/R) and as modified (WT/DS340/R / WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, DSR 2009:I, 119- DSR 2009:II, 625
China – Intellectual Property Rights	Panel Report, *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, WT/DS362/R, adopted 20 March 2009, DSR 2009:V, 2097
China – Publications and Audiovisual Products	Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, adopted 19 January 2010, DSR 2010:I, 3
China – Publications and Audiovisual Products	Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R, DSR 2010:II, 261
China – Raw Materials	Appellate Body Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012
China – Raw Materials	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R / WT/DS395/R / WT/DS398/R / and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R
Colombia – Ports of Entry	Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1, adopted 20 May 2009, DSR 2009:VI, 2535
Colombia – Ports of Entry (Article 21.3(c))	Award of the Arbitrator, *Colombia – Indicative Prices and Restrictions on Ports of Entry – Arbitration under Article 21.3(c) of the DSU*, WT/DS366/13, 2 October 2009, DSR 2009:IX, 3819
Dominican Republic – Import and Sale of Cigarettes	Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R, adopted 19 May 2005, DSR 2005:XV, 7367
Dominican Republic – Import and Sale of Cigarettes	Panel Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R, DSR 2005:XV, 7425
Dominican Republic – Import and Sale of Cigarettes (Article 21.3(c))	Report of the Arbitrator, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes – Arbitration under Article 21.3(c) of the DSU*, WT/DS302/17, 29 August 2005, DSR 2005:XXIII, 11665
Dominican Republic – Safeguard Measures	Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, adopted 22 February 2012
EC – The ACP-EC Partnership Agreement	Award of the Arbitrator, *European Communities – The ACP-EC Partnership Agreement – Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/616, 1 August 2005, DSR 2005:XXIII, 11669
EC – The ACP-EC Partnership Agreement II	Award of the Arbitrator, *European Communities – The ACP-EC Partnership Agreement – Second Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/625, 27 October 2005, DSR 2005:XXIII, 11703
EC – Approval and Marketing of Biotech Products	Panel Report, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006, DSR 2006:III-VIII, 847
EC – Asbestos	Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243

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EC – Asbestos	Panel Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/R and Add.1, adopted 5 April 2001, as modified by Appellate Body Report WT/DS135/AB/R, DSR 2001:VIII, 3305
EC – Bananas III	Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591
EC – Bananas III (Ecuador)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Ecuador*, WT/DS27/R/ECU, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:III, 1085
EC – Bananas III (Guatemala and Honduras)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Guatemala and Honduras*, WT/DS27/R/GTM, WT/DS27/R/HND, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 695
EC – Bananas III (Mexico)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Mexico*, WT/DS27/R/MEX, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 803
EC – Bananas III (US)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States*, WT/DS27/R/USA, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 943
EC – Bananas III (Article 21.3(c))	Award of the Arbitrator, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Arbitration under Article 21.3(c) of the DSU*, WT/DS27/15, 7 January 1998, DSR 1998:I, 3
EC – Bananas III (Article 21.5 – EC)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS27/RW/EEC, 12 April 1999, and Corr.1, unadopted, DSR 1999:II, 783
EC – Bananas III (Article 21.5 – Ecuador)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/RW/ECU, adopted 6 May 1999, DSR 1999:II, 803
EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)	Appellate Body Reports, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/AB/RW2/ECU, adopted 11 December 2008, and Corr.1 / *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/AB/RW/USA and Corr.1, adopted 22 December 2008, DSR 2008:XVIII, 7165
EC – Bananas III (Article 21.5 – Ecuador II)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/RW2/ECU, adopted 11 December 2008, as modified by Appellate Body Report WT/DS27/AB/RW2/ECU, DSR 2008:XVIII, 7329
EC – Bananas III (Article 21.5 – US)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/RW/USA and Corr.1, adopted 22 December 2008, upheld by Appellate Body Report WT/DS27/AB/RW/USA, DSR 2008:XIX, 7761
EC – Bananas III (Ecuador) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB/ECU, 24 March 2000, DSR 2000:V, 2237

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EC – Bananas III (US) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB, 9 April 1999, DSR 1999:II, 725
EC – Bed Linen	Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R, adopted 12 March 2001, DSR 2001:V, 2049
EC – Bed Linen	Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R, adopted 12 March 2001, as modified by Appellate Body Report WT/DS141/AB/R, DSR 2001:VI, 2077
EC – Bed Linen (Article 21.5 – India)	Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*, WT/DS141/AB/RW, adopted 24 April 2003, DSR 2003:III, 965
EC – Bed Linen (Article 21.5 – India)	Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*, WT/DS141/RW, adopted 24 April 2003, as modified by Appellate Body Report WT/DS141/AB/RW, DSR 2003:IV, 1269
EC – Butter	Panel Report, *European Communities – Measures Affecting Butter Products*, WT/DS72/R, 24 November 1999, unadopted
EC – Chicken Cuts	Appellate Body Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, 9157
EC – Chicken Cuts (Brazil)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts, Complaint by Brazil*, WT/DS269/R, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XIX, 9295
EC – Chicken Cuts (Thailand)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts, Complaint by Thailand*, WT/DS286/R, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XX, 9721
EC – Chicken Cuts (Article 21.3(c))	Award of the Arbitrator, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts – Arbitration under Article 21.3(c) of the DSU*, WT/DS269/13, WT/DS286/15, 20 February 2006
EC – Commercial Vessels	Panel Report, *European Communities – Measures Affecting Trade in Commercial Vessels*, WT/DS301/R, adopted 20 June 2005, DSR 2005:XV, 7713
EC – Computer Equipment	Appellate Body Report, *European Communities – Customs Classification of Certain Computer Equipment*, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, 1851
EC – Computer Equipment	Panel Report, *European Communities – Customs Classification of Certain Computer Equipment*, WT/DS62/R, WT/DS67/R, WT/DS68/R, adopted 22 June 1998, as modified by Appellate Body Report WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, DSR 1998:V, 1891
EC – Countervailing Measures on DRAM Chips	Panel Report, *European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea*, WT/DS299/R, adopted 3 August 2005, DSR 2005:XVIII, 8671
EC – Export Subsidies on Sugar	Appellate Body Report, *European Communities – Export Subsidies on Sugar*, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, adopted 19 May 2005, DSR 2005:XIII, 6365

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EC – Export Subsidies on Sugar (Australia)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Australia*, WT/DS265/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIII, 6499
EC – Export Subsidies on Sugar (Brazil)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Brazil*, WT/DS266/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIV, 6793
EC – Export Subsidies on Sugar (Thailand)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Thailand*, WT/DS283/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIV, 7071
EC – Export Subsidies on Sugar (Article 21.3(c))	Award of the Arbitrator, *European Communities – Export Subsidies on Sugar – Arbitration under Article 21.3(c) of the DSU*, WT/DS265/33, WT/DS266/33, WT/DS283/14, 28 October 2005, DSR 2005:XXIII, 11581
EC – Fasteners (China)	Appellate Body Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/AB/R, adopted 28 July 2011
EC – Fasteners (China)	Panel Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/R and Corr.1, adopted 28 July 2011, as modified by Appellate Body Report WT/DS397/AB/R
EC – Hormones	Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135
EC – Hormones (Canada)	Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada*, WT/DS48/R/CAN, adopted 13 February 1998, as modified by Appellate Body Report WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:II, 235
EC – Hormones (US)	Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States*, WT/DS26/R/USA, adopted 13 February 1998, as modified by Appellate Body Report WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:III, 699
EC – Hormones (Article 21.3(c))	Award of the Arbitrator, *EC Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Article 21.3(c) of the DSU*, WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833
EC – Hormones (Canada) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by Canada – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS48/ARB, 12 July 1999, DSR 1999:III, 1135
EC – Hormones (US) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by the United States – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS26/ARB, 12 July 1999, DSR 1999:III, 1105
EC – IT Products	Panel Reports, *European Communities and its member States – Tariff Treatment of Certain Information Technology Products*, WT/DS375/R / WT/DS376/R / WT/DS377/R, adopted 21 September 2010, DSR 2010:III, 933-DSR 2010:IV, 1567
EC – Poultry	Appellate Body Report, *European Communities – Measures Affecting the Importation of Certain Poultry Products*, WT/DS69/AB/R, adopted 23 July 1998, DSR 1998:V, 2031
EC – Poultry	Panel Report, *European Communities – Measures Affecting the Importation of Certain Poultry Products*, WT/DS69/R, adopted 23 July 1998, as modified by Appellate Body Report WT/DS69/AB/R, DSR 1998:V, 2089

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EC – Salmon (Norway)	Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/R, adopted 15 January 2008, and Corr.1, DSR 2008:I, 3
EC – Sardines	Appellate Body Report, *European Communities – Trade Description of Sardines*, WT/DS231/AB/R, adopted 23 October 2002, DSR 2002:VIII, 3359
EC – Sardines	Panel Report, *European Communities – Trade Description of Sardines*, WT/DS231/R and Corr.1, adopted 23 October 2002, as modified by Appellate Body Report WT/DS231/AB/R, DSR 2002:VIII, 3451
EC – Scallops (Canada)	Panel Report, *European Communities – Trade Description of Scallops – Request by Canada*, WT/DS7/R, 5 August 1996, unadopted, DSR 1996:I, 89
EC – Scallops (Peru and Chile)	Panel Report, *European Communities – Trade Description of Scallops – Requests by Peru and Chile*, WT/DS12/R, WT/DS14/R, 5 August 1996, unadopted, DSR 1996:I, 93
EC – Selected Customs Matters	Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, 3791
EC – Selected Customs Matters	Panel Report, *European Communities – Selected Customs Matters*, WT/DS315/R, adopted 11 December 2006, as modified by Appellate Body Report WT/DS315/AB/R, DSR 2006:IX-X, 3915
EC – Tariff Preferences	Appellate Body Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R, adopted 20 April 2004, DSR 2004:III, 925
EC – Tariff Preferences	Panel Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/R, adopted 20 April 2004, as modified by Appellate Body Report WT/DS/246/AB/R, DSR 2004:III, 1009
EC – Tariff Preferences (Article 21.3(c))	Award of the Arbitrator, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries – Arbitration under Article 21.3(c) of the DSU*, WT/DS246/14, 20 September 2004, DSR 2004:IX, 4313
EC – Trademarks and Geographical Indications (Australia)	Panel Report, *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by Australia*, WT/DS290/R, adopted 20 April 2005, DSR 2005:X, 4603
EC – Trademarks and Geographical Indications (US)	Panel Report, *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by the United States*, WT/DS174/R, adopted 20 April 2005, DSR 2005:VIII, 3499
EC – Tube or Pipe Fittings	Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003, DSR 2003:VI, 2613
EC – Tube or Pipe Fittings	Panel Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/R, adopted 18 August 2003, as modified by Appellate Body Report WT/DS219/AB/R, DSR 2003:VII, 2701
EC and certain member States – Large Civil Aircraft	Appellate Body Report, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WT/DS316/AB/R, adopted 1 June 2011
EC and certain member States – Large Civil Aircraft	Panel Report, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WT/DS316/R, adopted 1 June 2011, as modified by Appellate Body Report, WT/DS316/AB/R
Egypt – Steel Rebar	Panel Report, *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, WT/DS211/R, adopted 1 October 2002, DSR 2002:VII, 2667

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EU – Footwear (China)	Panel Report, *European Union – Anti-Dumping Measures on Certain Footwear from China*, WT/DS405/R, adopted 22 February 2012
Guatemala – Cement I	Appellate Body Report, *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*, WT/DS60/AB/R, adopted 25 November 1998, DSR 1998:IX, 3767
Guatemala – Cement I	Panel Report, *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*, WT/DS60/R, adopted 25 November 1998, as reversed by Appellate Body Report WT/DS60/AB/R, DSR 1998:IX, 3797
Guatemala – Cement II	Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, adopted 17 November 2000, DSR 2000:XI, 5295
India – Additional Import Duties	Appellate Body Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/AB/R, adopted 17 November 2008, DSR 2008:XX, 8223
India – Additional Import Duties	Panel Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/R, adopted 17 November 2008, as reversed by Appellate Body Report WT/DS360/AB/R, DSR 2008:XX, 8317
India – Autos	Appellate Body Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/AB/R, WT/DS175/AB/R, adopted 5 April 2002, DSR 2002:V, 1821
India – Autos	Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002, DSR 2002:V, 1827
India – Patents (EC)	Panel Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Complaint by the European Communities and their member States*, WT/DS79/R, adopted 22 September 1998, DSR 1998:VI, 2661
India – Patents (US)	Appellate Body Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WT/DS50/AB/R, adopted 16 January 1998, DSR 1998:I, 9
India – Patents (US)	Panel Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Complaint by the United States*, WT/DS50/R, adopted 16 January 1998, as modified by Appellate Body Report WT/DS50/AB/R, DSR 1998:I, 41
India – Quantitative Restrictions	Appellate Body Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/AB/R, adopted 22 September 1999, DSR 1999:IV, 1763
India – Quantitative Restrictions	Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R, adopted 22 September 1999, upheld by Appellate Body Report WT/DS90/AB/R, DSR 1999:V, 1799
Indonesia – Autos	Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1 and 2, adopted 23 July 1998, and Corr. 3 and 4, DSR 1998:VI, 2201
Indonesia – Autos (Article 21.3(c))	Award of the Arbitrator, *Indonesia – Certain Measures Affecting the Automobile Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, 7 December 1998, DSR 1998:IX, 4029
Japan – Agricultural Products II	Appellate Body Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/AB/R, adopted 19 March 1999, DSR 1999:I, 277
Japan – Agricultural Products II	Panel Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/R, adopted 19 March 1999, as modified by Appellate Body Report WT/DS76/AB/R, DSR 1999:I, 315

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Japan – Alcoholic Beverages II	Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, 97
Japan – Alcoholic Beverages II	Panel Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by Appellate Body Report WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I, 125
Japan – Alcoholic Beverages II (Article 21.3(c))	Award of the Arbitrator, *Japan – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS8/15, WT/DS10/15, WT/DS11/13, 14 February 1997, DSR 1997:I, 3
Japan – Apples	Appellate Body Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/AB/R, adopted 10 December 2003, DSR 2003:IX, 4391
Japan – Apples	Panel Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/R, adopted 10 December 2003, upheld by Appellate Body Report WT/DS245/AB/R, DSR 2003:IX, 4481
Japan – Apples (Article 21.5 – US)	Panel Report, *Japan – Measures Affecting the Importation of Apples – Recourse to Article 21.5 of the DSU by the United States*, WT/DS245/RW, adopted 20 July 2005, DSR 2005:XVI, 7911
Japan – DRAMs (Korea)	Appellate Body Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/AB/R and Corr.1, adopted 17 December 2007, DSR 2007:VII, 2703
Japan – DRAMs (Korea)	Panel Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS336/AB/R, DSR 2007:VII, 2805
Japan – DRAMs (Korea) (Article 21.3(c))	Award of the Arbitrator, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea – Arbitration under Article 21.3(c) of the DSU*, WT/DS336/16, 5 May 2008, DSR 2008:XX, 8553
Japan – Film	Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, WT/DS44/R, adopted 22 April 1998, DSR 1998:IV, 1179
Japan – Quotas on Laver	Panel Report, *Japan – Import Quotas on Dried Laver and Seasoned Laver*, WT/DS323/R, 1 February 2006, unadopted
Korea – Alcoholic Beverages	Appellate Body Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, 3
Korea – Alcoholic Beverages	Panel Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/R, WT/DS84/R, adopted 17 February 1999, as modified by Appellate Body Report WT/DS75/AB/R, WT/DS84/AB/R, DSR 1999:I, 44
Korea – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Korea – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, 937
Korea – Certain Paper	Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*, WT/DS312/R, adopted 28 November 2005, DSR 2005:XXII, 10637
Korea – Certain Paper (Article 21.5 – Indonesia)	Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia*, WT/DS312/RW, adopted 22 October 2007, DSR 2007:VIII, 3369
Korea – Commercial Vessels	Panel Report, *Korea – Measures Affecting Trade in Commercial Vessels*, WT/DS273/R, adopted 11 April 2005, DSR 2005:VII, 2749
Korea – Dairy	Appellate Body Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3

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Korea – Dairy	Panel Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/R and Corr.1, adopted 12 January 2000, as modified by Appellate Body Report WT/DS98/AB/R, DSR 2000:I, 49
Korea – Procurement	Panel Report, *Korea – Measures Affecting Government Procurement*, WT/DS163/R, adopted 19 June 2000, DSR 2000:VIII, 3541
Korea – Various Measures on Beef	Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
Korea – Various Measures on Beef	Panel Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I, 59
Mexico – Anti-Dumping Measures on Rice	Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, 10853
Mexico – Anti-Dumping Measures on Rice	Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R, DSR 2005:XXIII, 11007
Mexico – Corn Syrup	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States*, WT/DS132/R, adopted 24 February 2000, and Corr.1, DSR 2000:III, 1345
Mexico – Corn Syrup (Article 21.5 – US)	Appellate Body Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States*, WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6675
Mexico – Corn Syrup (Article 21.5 – US)	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States*, WT/DS132/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS132/AB/RW, DSR 2001:XIII, 6717
Mexico – Olive Oil	Panel Report, *Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities*, WT/DS341/R, adopted 21 October 2008, DSR 2008:IX, 3179
Mexico – Steel Pipes and Tubes	Panel Report, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala*, WT/DS331/R, adopted 24 July 2007, DSR 2007:IV, 1207
Mexico – Taxes on Soft Drinks	Appellate Body Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, adopted 24 March 2006, DSR 2006:I, 3
Mexico – Taxes on Soft Drinks	Panel Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/R, adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, 43
Mexico – Telecoms	Panel Report, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, adopted 1 June 2004, DSR 2004:IV, 1537
Philippines – Distilled Spirits	Appellate Body Reports, *Philippines – Taxes on Distilled Spirits*, WT/DS396/AB/R / WT/DS403/AB/R, adopted 20 January 2012
Philippines – Distilled Spirits	Panel Reports, *Philippines – Taxes on Distilled Spirits*, WT/DS396/R / WT/DS403/R, adopted 20 January 2012, as modified by Appellate Body Reports WT/DS396/AB/R / WT/DS403/AB/R
Thailand – Cigarettes (Philippines)	Appellate Body Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/AB/R, adopted 15 July 2011

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Thailand – Cigarettes (Philippines)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/R, adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R
Thailand – H-Beams	Appellate Body Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, 2701
Thailand – H-Beams	Panel Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R, adopted 5 April 2001, as modified by Appellate Body Report WT/DS122/AB/R, DSR 2001:VII, 2741
Turkey – Rice	Panel Report, *Turkey – Measures Affecting the Importation of Rice*, WT/DS334/R, adopted 22 October 2007, DSR 2007:VI, 2151
Turkey – Textiles	Appellate Body Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, 2345
Turkey – Textiles	Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/R, adopted 19 November 1999, as modified by Appellate Body Report WT/DS34/AB/R, DSR 1999:VI, 2363
US – 1916 Act	Appellate Body Report, *United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000, DSR 2000:X, 4793
US – 1916 Act (EC)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by the European Communities*, WT/DS136/R and Corr.1, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4593
US – 1916 Act (Japan)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by Japan*, WT/DS162/R and Add.1, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4831
US – 1916 Act (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Act of 1916 – Arbitration under Article 21.3(c) of the DSU*, WT/DS136/11, WT/DS162/14, 28 February 2001, DSR 2001:V, 2017
US – 1916 Act (EC) (Article 22.6 – US)	Decision by the Arbitrators, *United States – Anti-Dumping Act of 1916, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS136/ARB, 24 February 2004, DSR 2004:IX, 4269
US – Anti-Dumping and Countervailing Duties (China)	Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011
US – Anti-Dumping and Countervailing Duties (China)	Panel Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R, adopted 25 March 2011, as modified by Appellate Body Report WT/DS379/AB/R
US – Anti-Dumping Measures on Oil Country Tubular Goods	Appellate Body Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/AB/R, adopted 28 November 2005, DSR 2005:XX, 10127
US – Anti-Dumping Measures on Oil Country Tubular Goods	Panel Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/R, adopted 28 November 2005, as modified by Appellate Body Report WT/DS282/AB/R, DSR 2005:XXI, 10225
US – Anti-Dumping Measures on PET Bags	Panel Report, *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*, WT/DS383/R, adopted 18 February 2010, DSR 2010:IV, 1841

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US – Carbon Steel	Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, 3779
US – Carbon Steel	Panel Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/R and Corr.1, adopted 19 December 2002, as modified by Appellate Body Report WT/DS213/AB/R, DSR 2002:IX, 3833
US – Certain EC Products	Appellate Body Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, 373
US – Certain EC Products	Panel Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/R and Add.1, adopted 10 January 2001, as modified by Appellate Body Report WT/DS165/AB/R, DSR 2001:II, 413
US – Clove Cigarettes	Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, adopted 24 April 2012
US – Clove Cigarettes	Panel Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/R, adopted 24 April 2012, as modified by Appellate Body Report WT/DS406/AB/R
US – Continued Suspension	Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted 14 November 2008, DSR 2008:X, 3507
US – Continued Suspension	Panel Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/R, adopted 14 November 2008, as modified by Appellate Body Report WT/DS320/AB/R, DSR 2008:XI, 3891-DSR 2008:XIII, 4913
US – Continued Zeroing	Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 February 2009, DSR 2009:III, 1291
US – Continued Zeroing	Panel Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/R, adopted 19 February 2009, as modified as Appellate Body Report WT/DS350/AB/R, DSR 2009:III, 1481- DSR 2009:IV, 1619
US – COOL	Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R / WT/DS386/R, circulated to WTO Members 18 November 2011 [appeal in progress]
US – Corrosion-Resistant Steel Sunset Review	Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, adopted 9 January 2004, DSR 2004:I, 3
US – Corrosion-Resistant Steel Sunset Review	Panel Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/R, adopted 9 January 2004, as modified by Appellate Body Report WTDS244/AB/R, DSR 2004:I, 85
US – Cotton Yarn	Appellate Body Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/AB/R, adopted 5 November 2001, DSR 2001:XII, 6027
US – Cotton Yarn	Panel Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/R, adopted 5 November 2001, as modified by Appellate Body Report WT/DS192/AB/R, DSR 2001:XII, 6067
US – Countervailing Duty Investigation on DRAMS	Appellate Body Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, 8131

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US – Countervailing Duty Investigation on DRAMS	Panel Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/R, adopted 20 July 2005, as modified by Appellate Body Report WT/DS296/AB/R, DSR 2005:XVII, 8243
US – Countervailing Measures on Certain EC Products	Appellate Body Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R, adopted 8 January 2003, DSR 2003:I, 5
US – Countervailing Measures on Certain EC Products	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/R, adopted 8 January 2003, as modified by Appellate Body Report WT/DS212/AB/R, DSR 2003:I, 73
US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS212/RW, adopted 27 September 2005, DSR 2005:XVIII, 8950
US – Customs Bond Directive	Panel Report, *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS345/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R / WT/DS345/AB/R, DSR 2008:VIII, 2925
US – DRAMS	Panel Report, *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea*, WT/DS99/R, adopted 19 March 1999, DSR 1999:II, 521
US – DRAMS (Article 21.5 – Korea)	Panel Report, *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea – Recourse to Article 21.5 of the DSU by Korea*, WT/DS99/RW, 7 November 2000, unadopted
US – Export Restraints	Panel Report, *United States – Measures Treating Exports Restraints as Subsidies*, WT/DS194/R and Corr.2, adopted 23 August 2001, DSR 2001:XI, 5767
US – FSC	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations"*, WT/DS108/AB/R, adopted 20 March 2000, DSR 2000:III, 1619
US – FSC	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations"*, WT/DS108/R, adopted 20 March 2000, as modified by Appellate Body Report WT/DS108/AB/R, DSR 2000:IV, 1675
US – FSC (Article 21.5 – EC)	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW, adopted 29 January 2002, DSR 2002:I, 55
US – FSC (Article 21.5 – EC)	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/RW, adopted 29 January 2002, as modified by Appellate Body Report WT/DS108/AB/RW, DSR 2002:I, 119
US – FSC (Article 21.5 – EC II)	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW2, adopted 14 March 2006, DSR 2006:XI, 4721
US – FSC (Article 21.5 – EC II)	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/RW2, adopted 14 March 2006, upheld by Appellate Body Report WT/DS108/AB/RW2, DSR 2006:XI, 4761

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US – FSC (Article 22.6 – US)	Decision by the Arbitrator, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS108/ARB, 30 August 2002, DSR 2002:VI, 2517
US – Gambling	Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663 (Corr.1, DSR 2006:XII, 5475)
US – Gambling	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, 5797
US – Gambling (Article 21.3(c))	Award of the Arbitrator, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Arbitration under Article 21.3(c) of the DSU*, WT/DS285/13, 19 August 2005, DSR 2005:XXIII, 11639
US – Gambling (Article 21.5 – Antigua and Barbuda)	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Recourse to Article 21.5 of the DSU by Antigua and Barbuda*, WT/DS285/RW, adopted 22 May 2007, DSR 2007:VIII, 3105
US – Gambling (Article 22.6 – US)	Decision by the Arbitrator, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS285/ARB, 21 December 2007, DSR 2007:X, 4163
US – Gasoline	Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, 3
US – Gasoline	Panel Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/R, adopted 20 May 1996, as modified by Appellate Body Report WT/DS2/AB/R, DSR 1996:I, 29
US – Hot-Rolled Steel	Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697
US – Hot-Rolled Steel	Panel Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R, adopted 23 August 2001 modified by Appellate Body Report WT/DS184/AB/R, DSR 2001:X, 4769
US – Hot-Rolled Steel (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan – Arbitration under Article 21.3(c) of the DSU*, WT/DS184/13, 19 February 2002, DSR 2002:IV, 1389
US – Lamb	Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, 4051
US – Lamb	Panel Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/R, WT/DS178/R, adopted 16 May 2001, as modified by Appellate Body Report WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX, 4107
US – Large Civil Aircraft (2nd complaint)	Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, adopted 23 March 2012
US – Large Civil Aircraft (2nd complaint)	Panel Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/R, adopted 23 March 2012, as modified by Appellate Body Report WT/DS353/AB/R

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US – Lead and Bismuth II	Appellate Body Report, *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, WT/DS138/AB/R, adopted 7 June 2000, DSR 2000:V, 2595
US – Lead and Bismuth II	Panel Report, *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, WT/DS138/R and Corr.2, adopted 7 June 2000, upheld by Appellate Body Report WT/DS138/AB/R, DSR 2000:VI, 2623
US – Line Pipe	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, adopted 8 March 2002, DSR 2002:IV, 1403
US – Line Pipe	Panel Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/R, adopted 8 March 2002, as modified by Appellate Body Report WT/DS202/AB/, DSR 2002:IV, 1473
US – Line Pipe (Article 21.3(c))	Report of the Arbitrator, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea – Arbitration under Article 21.3(c) of the DSU*, WT/DS202/17, 26 July 2002, DSR 2002:V, 2061
US – Offset Act (Byrd Amendment)	Appellate Body Report, *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/R, WT/DS234/AB/R, adopted 27 January 2003, DSR 2003:I, 375
US – Offset Act (Byrd Amendment)	Panel Report, *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/R, WT/DS234/R, adopted 27 January 2003, as modified by Appellate Body Report WT/DS217/AB/R, WT/DS234/AB/R, DSR 2003:II, 489
US – Offset Act (Byrd Amendment) (Article 21.3(c))	Award of the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000 – Arbitration under Article 21.3(c) of the DSU*, WT/DS217/14, WT/DS234/22, 13 June 2003, DSR 2003:III, 1163
US – Offset Act (Byrd Amendment) (Brazil) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Brazil – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/BRA, 31 August 2004, DSR 2004:IX, 4341
US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Canada – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS234/ARB/CAN, 31 August 2004, DSR 2004:IX, 4425
US – Offset Act (Byrd Amendment) (Chile) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Chile – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/CHL, 31 August 2004, DSR 2004:IX, 4511
US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/EEC, 31 August 2004, DSR 2004:IX, 4591
US – Offset Act (Byrd Amendment) (India) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by India – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/IND, 31 August 2004, DSR 2004:X, 4691
US – Offset Act (Byrd Amendment) (Japan) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Japan – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/JPN, 31 August 2004, DSR 2004:X, 4771

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US – Offset Act (Byrd Amendment) (Korea) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Korea – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/KOR, 31 August 2004, DSR 2004:X, 4851
US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Mexico – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS234/ARB/MEX, 31 August 2004, DSR 2004:X, 4931
US – Oil Country Tubular Goods Sunset Reviews	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R, adopted 17 December 2004, DSR 2004:VII, 3257
US – Oil Country Tubular Goods Sunset Reviews	Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R and Corr.1, adopted 17 December 2004, as modified by Appellate Body Report W/DS/268/AB/R, DSR 2004:VIII, 3421
US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))	Award of the Arbitrator, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Arbitration under Article 21.3(c) of the DSU*, WT/DS268/12, 7 June 2005, DSR 2005:XXIII, 11619
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS268/AB/RW, adopted 11 May 2007, DSR 2007:IX, 3523
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)	Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS268/RW, adopted 11 May 2007, as modified by Appellate Body Report WT/DS268/AB/RW, DSR 2007:IX-X, 3609
US – Orange Juice (Brazil)	Panel Report, *United States – Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil*, WT/DS382/R, adopted 17 June 2011
US – Poultry (China)	Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010, DSR 2010:V, 1909
US – Section 110(5) Copyright Act	Panel Report, *United States – Section 110(5) of the US Copyright Act*, WT/DS160/R, adopted 27 July 2000, DSR 2000:VIII, 3769
US – Section 110(5) Copyright Act (Article 21.3(c))	Award of the Arbitrator, *United States – Section 110(5) of the US Copyright Act – Arbitration under Article 21.3(c) of the DSU*, WT/DS160/12, 15 January 2001, DSR 2001:II, 657
US – Section 110(5) Copyright Act (Article 25)	Award of the Arbitrators, *United States – Section 110(5) of the US Copyright Act – Recourse to Arbitration under Article 25 of the DSU*, WT/DS160/ARB25/1, 9 November 2001, DSR 2001:II, 667
US – Section 129(c)(1) URAA	Panel Report, *United States – Section 129(c)(1) of the Uruguay Round Agreements Act*, WT/DS221/R, adopted 30 August 2002, DSR 2002:VII, 2581
US – Section 211 Appropriations Act	Appellate Body Report, *United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R, adopted 1 February 2002, DSR 2002:II, 589
US – Section 211 Appropriations Act	Panel Report, *United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/R, adopted 1 February 2002, as modified by Appellate Body Report WT/DS176/AB/R, DSR 2002:II, 683
US – Section 301 Trade Act	Panel Report, *United States – Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, adopted 27 January 2000, DSR 2000:II, 815

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US – Shrimp	Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, 2755
US – Shrimp	Panel Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS58/AB/R, DSR 1998:VII, 2821
US – Shrimp (Article 21.5 – Malaysia)	Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6481
US – Shrimp (Article 21.5 – Malaysia)	Panel Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS58/AB/RW, DSR 2001:XIII, 6529
US – Shrimp (Ecuador)	Panel Report, *United States – Anti-Dumping Measure on Shrimp from Ecuador*, WT/DS335/R, adopted on 20 February 2007, DSR 2007:II, 425
US – Shrimp (Thailand) / US – Customs Bond Directive	Appellate Body Report, *United States – Measures Relating to Shrimp from Thailand / United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS343/AB/R / WT/DS345/AB/R, adopted 1 August 2008, DSR 2008:VII, 2385 / DSR 2008:VIII, 2773
US – Shrimp (Thailand)	Panel Report, *United States – Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R / WT/DS345/AB/R, DSR 2008:VII, 2539
US – Shrimp (Viet Nam)	Panel Report, *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam*, WT/DS404/R, adopted 2 September 2011
US – Softwood Lumber III	Panel Report, *United States – Preliminary Determinations with Respect to Certain Softwood Lumber from Canada*, WT/DS236/R, adopted 1 November 2002, DSR 2002:IX, 3597
US – Softwood Lumber IV	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, 571
US – Softwood Lumber IV	Panel Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/R and Corr.1, adopted 17 February 2004, as modified by Appellate Body Report WT/DS257/AB/R, DSR 2004:II, 641
US – Softwood Lumber IV (Article 21.5 – Canada)	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU*, WT/DS257/AB/RW, adopted 20 December 2005, DSR 2005:XXIII, 11357
US – Softwood Lumber IV (Article 21.5 – Canada)	Panel Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 [of the DSU]*, WT/DS257/RW, adopted 20 December 2005, upheld by Appellate Body Report WT/DS257/AB/RW, DSR 2005:XXIII, 11401
US – Softwood Lumber V	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004, DSR 2004:V, 1875
US – Softwood Lumber V	Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R, adopted 31 August 2004, as modified by Appellate Body Report WT/DS264/AB/R, DSR 2004:V, 1937
US – Softwood Lumber V (Article 21.3(c))	Report of the Arbitrator, *United States – Final Dumping Determination on Softwood Lumber from Canada – Arbitration under Article 21.3(c) of the DSU*, WT/DS264/13, 13 December 2004, DSR 2004:X, 5011

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US – Softwood Lumber V (Article 21.5 – Canada)	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/AB/RW, adopted 1 September 2006, DSR 2006:XII, 5087
US – Softwood Lumber V (Article 21.5 – Canada)	Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/RW, adopted 1 September 2006, as reversed by Appellate Body Report WT/DS264/AB/RW, DSR 2006:XII, 5147
US – Softwood Lumber VI	Panel Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*, WT/DS277/R, adopted 26 April 2004, DSR 2004:VI, 2485
US – Softwood Lumber VI (Article 21.5 – Canada)	Appellate Body Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/AB/RW, adopted 9 May 2006, and Corr.1, DSR 2006:XI, 4865
US – Softwood Lumber VI (Article 21.5 – Canada)	Panel Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/RW, adopted 9 May 2006, as modified by Appellate Body Report WT/DS277/AB/RW, DSR 2006:XI, 4935
US – Stainless Steel (Korea)	Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001, DSR 2001:IV, 1295
US – Stainless Steel (Mexico)	Appellate Body Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R, adopted 20 May 2008, DSR 2008:II, 513
US – Stainless Steel (Mexico)	Panel Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R, adopted 20 May 2008, as modified by Appellate Body Report WT/DS344/AB/R, DSR 2008:II, 599
US – Stainless Steel (Mexico) (Article 21.3(c))	Award of the Arbitrator, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico – Arbitration under Article 21.3(c) of the DSU*, WT/DS344/15, 31 October 2008, DSR 2008:XX, 8619
US – Steel Plate	Panel Report, *United States – Anti-Dumping and Countervailing Measures on Steel Plate from India*, WT/DS206/R and Corr.1, adopted 29 July 2002, DSR 2002:VI, 2073
US – Steel Safeguards	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted 10 December 2003, DSR 2003:VII, 3117
US – Steel Safeguards	Panel Reports, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/R / WT/DS249/R / WT/DS251/R / WT/DS252/R / WT/DS253/R / WT/DS254/R / WT/DS258/R / WT/DS259/R / and Corr.1, adopted 10 December 2003, as modified by Appellate Body Report WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, DSR 2003:VIII, 3273
US – Textiles Rules of Origin	Panel Report, *United States – Rules of Origin for Textiles and Apparel Products*, WT/DS243/R and Corr.1, adopted 23 July 2003, DSR 2003:VI, 2309
US – Tuna II (Mexico)	Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, circulated to WTO Members 16 May 2012 [adoption pending]

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US – Tuna II (Mexico)	Panel Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/R, circulated to WTO Members 15 September 2011 [appealed/adoption pending]
US – Tyres (China)	Appellate Body Report, *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS399/AB/R, adopted 5 October 2011
US – Tyres (China)	Panel Report, *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS399/R, adopted 5 October 2011, upheld by Appellate Body Report WT/DS399/AB/R
US – Underwear	Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997, DSR 1997:I, 11
US – Underwear	Panel Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted 25 February 1997, as modified by Appellate Body Report WT/DS24/AB/R, DSR 1997:I, 31
US – Upland Cotton	Appellate Body Report, *United States – Subsidies on Upland Cotton*, WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, 3
US – Upland Cotton	Panel Report, *United States – Subsidies on Upland Cotton*, WT/DS267/R, Corr.1, and Add.1 to Add.3, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, 299
US – Upland Cotton (Article 21.5 – Brazil)	Appellate Body Report, *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/AB/RW, adopted 20 June 2008, DSR 2008:III, 809
US – Upland Cotton (Article 21.5 – Brazil)	Panel Report, *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/RW and Corr.1, adopted 20 June 2008, as modified by Appellate Body Report WT/DS267/AB/RW, DSR 2008:III, 997-DSR 2008:VI, 2013
US – Upland Cotton (Article 22.6 – US I)	Decision by the Arbitrator, *United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS267/ARB/1, 31 August 2009, DSR 2009:IX, 3871
US – Upland Cotton (Article 22.6 – US II)	Decision by the Arbitrator, *United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 7.10 of the SCM Agreement*, WT/DS267/ARB/2 and Corr.1, 31 August 2009, DSR 2009:IX, 4083
US – Wheat Gluten	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717
US – Wheat Gluten	Panel Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/R, adopted 19 January 2001, as modified by Appellate Body Report WT/DS166/AB/R, DSR 2001:III, 779
US – Wool Shirts and Blouses	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, 323
US – Wool Shirts and Blouses	Panel Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/R, adopted 23 May 1997, upheld by Appellate Body Report WT/DS33/AB/R, DSR 1997:I, 343
US – Zeroing (EC)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, 417

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US – Zeroing (EC)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/R, adopted 9 May 2006, as modified by Appellate Body Report WT/DS294/AB/R, DSR 2006:II, 521
US – Zeroing (EC) (Article 21.5 – EC)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/AB/RW and Corr.1, adopted 11 June 2009, DSR 2009:VII, 2911
US – Zeroing (EC) (Article 21.5 – EC)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/RW, adopted 11 June 2009, as modified by Appellate Body Report WT/DS294/AB/RW, DSR 2009:VII, 3117
US – Zeroing (Japan)	Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R, adopted 23 January 2007, DSR 2007:I, 3
US – Zeroing (Japan)	Panel Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/R, adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R, DSR 2007:I, 97
US – Zeroing (Japan) (Article 21.3(c))	Report of the Arbitrator, *United States – Measures Relating to Zeroing and Sunset Reviews – Arbitration under Article 21.3(c) of the DSU*, WT/DS322/21, 11 May 2007, DSR 2007:X, 4160
US – Zeroing (Japan) (Article 21.5 – Japan)	Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan*, WT/DS322/AB/RW, adopted 31 August 2009, DSR 2009:VIII, 3441
US – Zeroing (Japan) (Article 21.5 – Japan)	Panel Report, *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan*, WT/DS322/RW, adopted 31 August 2009, upheld by Appellate Body Report WT/DS322/AB/RW, DSR 2009:VIII, 3553
US – Zeroing (Korea)	Panel Report, *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*, WT/DS402/R, adopted 24 February 2011

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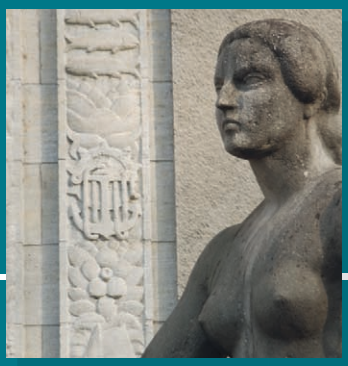

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