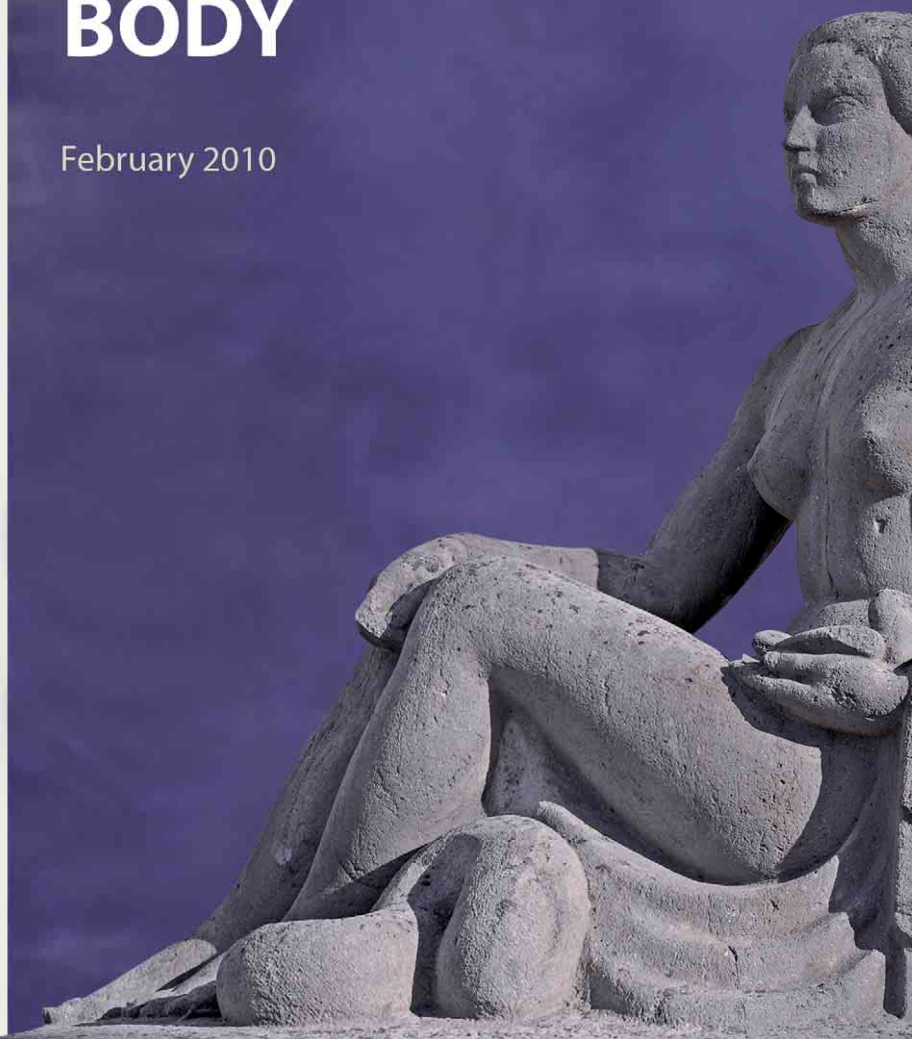
Annual Report for 2009

APPELLATE BODY

February 2010



WORLD TRADE ORGANIZATION

The Appellate Body welcomes comments and inquiries regarding this report at the following address:

Appellate Body Secretariat
World Trade Organization
rue de Lausanne 154
1211 Geneva, Switzerland
email: appellatebody.registry@wto.org
<www.wto.org/appellatebody>

Annual Report for 2009

APPELLATE BODY

February 2010

WORLD TRADE ORGANIZATION

APPELLATE BODY MEMBERS: AS AT 1 JANUARY 2009

From left to right: Mr. Giorgio Sacerdoti; Ms. Jennifer Hillman; Mr. Shotaro Oshima; Ms. Yuejiao Zhang; Mr. Luiz Olavo Baptista; Ms. Lilia R. Bautista; Mr. David Unterhalter.

APPELLATE BODY MEMBERS: AS AT 31 DECEMBER 2009

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

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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*
USDOC	United States Department of Commerce
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/5, 4 January 2005
WTO	World Trade Organization
WTO Agreement	*Marrakesh Agreement Establishing the World Trade Organization*

FOREWORD

2009 has been a year of great economic uncertainty. The financial crisis that commenced in 2008 gave rise to conditions of pervasive recession in 2009, with a significant contraction of international trade. There was much foreboding that a deep recession would threaten the international institutional order, and, in particular, the underpinnings of the world trading system, as every nation sought to secure its own interests. This has not happened. Rather, the gravity of the crisis has brought with it a widespread recognition that more ambitious collective action is required across a wider range of issues. And much thought has been given to the institutional arrangements that can achieve this, both regionally and globally.

The WTO has remained, amidst the turbulence, at the centre of the world trading system, and the centre has held. The value of a rule-based system has never been greater and in times of great economic peril the system has proved its worth. Significantly, the Members of the WTO have continued to adhere to their commitments to the WTO, and thereby provided much needed stability.

The dispute settlement system is an integral part of the WTO. A rule-based system cannot survive if its rules are not capable of being interpreted and adjudicated. This is the institutional contribution of the Appellate Body, within the scheme of the Dispute Settlement Understanding. And here too, the system has continued to function smoothly, resolving disputes by recourse to the rule of law.

2009 was a year of milestones for the WTO's dispute settlement system. As noted by the Director-General, 2009 saw the initiation of the 400th dispute since the WTO dispute settlement system was established in 1995. The Appellate Body, for its part, circulated its 100th Report at the end of 2009. WTO Members should feel justifiably proud of the system that they created and that they administer through the DSB. The WTO dispute settlement system plays a key role in providing security and predictability and is a key feature of the WTO as a rule-based system.

The appeals caseload has varied in recent years. 2009 was not as intense as previous years. Only three appeals were filed in 2009 and one additional appeal was carried forward from 2008. The majority of these appeals related to the *Anti-Dumping Agreement*, which is one of the agreements that is most frequently the subject of disputes. Some of these appeals also raised complex issues relating to the implementation obligations of WTO Members under the Dispute Settlement Understanding. The final appeal included issues relating to the GATS, which by contrast, has been raised infrequently in WTO dispute settlement. Interestingly, the low number of appeals in 2009 does not reflect a lower appeal rate. Only five panel reports could have been the subject of an appeal in 2009 and three of those were appealed. The appeal rate of 60 per cent in 2009 is not far off the historical average of 68 per cent.

The year ahead is likely to be more challenging. Several panels are expected to circulate their reports by mid-year. Some of these cases involve very complex issues. The appeal activity is likely to be intense in the upcoming years.

2009 saw the departure from the Appellate Body of two esteemed colleagues. Luiz Olavo Baptista's and Giorgio Sacerdoti's second terms of office expired in December 2009, although Luiz Olavo resigned a few months earlier for health reasons. Ricardo Ramírez-Hernández and Peter Van den Bossche were appointed and the Appellate Body is delighted to welcome these two fine lawyers.

The regime of fixed-term appointments to the Appellate Body has meant that in the last three years the membership of the Appellate Body has changed significantly. It has been a great privilege for newer Members to serve with Luiz Olavo and Giorgio. Both Luiz Olavo and Giorgio have contributed their considerable talents to the Appellate Body and upheld its institutional values. Others will now continue their work.

Luiz Olavo joined the Appellate Body from private practice. He also is a leading international arbitrator with experience both in private commercial litigation as well as in the State to State dispute settlement system of Mercosur. He is a Member of the Permanent Court of Arbitration at The Hague since 1996, and of the International Chamber of Commerce Institute for International Trade Practices, since 1999. Luiz Olavo also taught international trade law at the University of São Paulo and was the mentor to many of Brazil's new generation of international trade lawyers.

Luiz Olavo brought to the Appellate Body his great fund of experience in commercial law and trade law, and the application of these disciplines in the context of arbitration. Luiz Olavo was so often able, in debates on complex matters, to identify a solution, both practical and salient. As important, Luiz Olavo had an adamantine belief in the institutional integrity of the Appellate Body. He considered its independence to be a sovereign value and always exemplified that value in the manner in which he heard and decided cases. His belief in the principle of collegiality was not just a matter of respect, it was a habit of mind that made decision-making consensual and evolutionary, lending certainty to the system.

Of Giorgio Sacerdoti, let me begin with the matters that are well known. He came to the Appellate Body from Bocconi University, where he is Professor of International Law and European Law. Giorgio is a leading international law scholar and has participated in important international negotiations, including the Organisation for Economic Cooperation and Development (OECD) Working Group on Bribery in International Business Transactions, where he was one of the drafters of the "Anticorruption Convention of 1997".

Giorgio is distinctive, and so too has been his contribution to the Appellate Body. His rich knowledge of international economic law and public international law has been of great value to the work of the Appellate Body. Robust in debate, his position so often defined the terms of the problem. Yet no issue, however intractable, could not be better understood by taking time for a good espresso. His ebullience is infectious, and he has that unusual quality among lawyers: to render enjoyable what ordinarily passes as the dry discourse of legal analysis. He lent a certain brio to our proceedings that we will be hard pressed to emulate. A great friend to the institution and to his colleagues, the WTO will seem more muted for his departure (audibly and otherwise).

Giorgio was instrumental in helping us to educate the broader public about the WTO and its dispute settlement system. He made outreach a key component of his term as Appellate Body Chairman. The conference that Giorgio organized in Stresa (Italy), in 2005, commenced a series of events covering five continents where the operation of the WTO's dispute settlement system during its first 10 years was reviewed and analyzed among a broad array of stakeholders.

It has been a privilege to have served on the Appellate Body with Luiz Olavo and Giorgio.

It is our great fortune that Luiz Olavo and Giorgio have been replaced by two new Members that are equally distinguished.

Ricardo Ramírez-Hernández teaches international trade law at the Mexican National University in Mexico City. Ricardo served as Deputy General Counsel for Trade Negotiations of the Ministry of Economy in Mexico for more than a decade. In that capacity, he provided advice on trade and competition policy matters related to a number of 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, and the Latin American Integration Association. In addition, he represented Mexico in several international trade litigation and investment arbitration proceedings and has served on NAFTA panels. Later, Ricardo went into private practice, where he advised clients on issues relating to NAFTA and international trade dispute resolution.

Peter Van den Bossche is Professor of International Economic Law at Maastricht University where he serves as Director of the Advanced Master Programme in International and European Economic Law (IEEL). Peter also teaches at several other prestigious universities worldwide and has provided technical assistance to several developing countries. He is a distinguished academic and recognized authority in international trade law. And he is the author of one of the leading textbooks about the WTO: *The Law and Policy of the WTO: Text, Cases and Materials*.

The selection process to replace Luiz Olavo and Giorgio was carried out with the utmost efficiency and propriety by the Dispute Settlement Body. For this I wish to recognize the leadership of Ambassador John Gero as Chairman of the DSB, the contribution of the Director-General and the other members of the Selection Committee, and the support provided to the process by all WTO Members. Indeed, the Appellate Body and the WTO dispute settlement system more generally have been able to function effectively thanks to the support of WTO Members and of many individuals in the WTO Secretariat.

David Unterhalter
Chairman, Appellate Body

WORLD TRADE ORGANIZATION
APPELLATE BODY ANNUAL REPORT FOR 2009

I. INTRODUCTION

This Annual Report provides a summary of the activities undertaken in 2009 by the Appellate Body and its Secretariat.

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 one of the agreements annexed to the *Marrakesh Agreement Establishing the World Trade Organization* (*WTO Agreement*). According to Article 3.2 of the DSU, "[t]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system." Article 3.2 further 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, which are 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, trade in services, and the protection of intellectual property rights, as well as the DSU itself. Where the covered agreements contain special or additional rules and procedures in accordance with Article 1.2 and Appendix 2 of the DSU, these rules or procedures prevail to the extent that there is a difference. The application of the DSU to disputes under the plurilateral trade agreements annexed to the *WTO Agreement* is subject to the adoption of decisions by the parties to these agreements setting out the terms for the application to the individual agreement.

Proceedings under the DSU may be divided into several stages. In the first stage, Members are required to hold consultations in an effort to reach a mutually agreed solution to the matter in dispute. If the consultations are not successful, the dispute may advance to an adjudicative stage in which the complaining Member requests that the DSB establish a panel to examine the matter. Panelists are chosen by agreement of the parties; if the parties cannot agree, either party may request that the composition of the panel be determined by the WTO Director-General. Panels shall be composed of well-qualified governmental and/or non-governmental individuals with expertise in international trade law or policy. The panel's function is 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."[2] The panel

[1] Article 3.3 of the DSU.
[2] Article 11 of the DSU.

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 issued to the parties, and is then circulated to all WTO Members in the three official languages of the WTO (English, French, and Spanish) and posted on the WTO website.

Article 17 of the DSU stipulates that a standing Appellate Body will be established by the DSB. The Appellate Body is composed of seven Members each appointed to a four-year term, with a possibility to be reappointed once. The expiration dates of terms are staggered, ensuring 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. Members of the Appellate Body should 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*).[3] These Rules emphasize that Appellate Body Members shall be independent, impartial, and avoid any direct or indirect conflict of interest.

Any party to the dispute may appeal the 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* [4] (*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 include the filing of written submissions by the participants and the third participants, and an oral hearing. The Appellate Body report is 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.[5] 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 formally object to its adoption.[6] Upon adoption, Appellate Body reports and panel reports (as modified by the Appellate Body) become binding upon the parties.

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[3] 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/5), as Annex II thereto. (See WT/DSB/RC/2, WT/AB/WP/W/2)

[4] Shorter timeframes apply in disputes involving prohibited subsidies. (See Rule 31 of the *Working Procedures*)

[5] Articles 16.4 and 17.14 of the DSU.

[6] Article 22.1 of the DSU.

The final stage follows 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 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. Such arbitration 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.[7]

A party to a dispute may request good offices, conciliation, or mediation as alternative methods of dispute resolution at any time.[8] 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 and described

[7] Article 5 of the DSU.

[8] 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)*)

above.[9] Recourse to arbitration and the procedures to be followed are subject to mutual agreement of the parties.[10]

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 three Members of the Appellate Body were due to expire on 11 December 2009, when Luiz Olavo Baptista and Giorgio Sacerdoti would complete their second terms of office, and David Unterhalter would complete his first term of office. However, on 12 November 2008, Mr. Baptista had informed the Chairman of the DSB that, owing to health reasons, he was compelled to resign from the office of Appellate Body Member.[11] Pursuant to Rule 14 of the *Working Procedures*, his resignation became effective 11 February 2009.

As a result of Mr. Baptista's early resignation, the DSB, on 22 December 2008, decided to initiate a single selection process to fill the positions of both Mr. Baptista and Mr. Sacerdoti. The DSB also decided that, in the light of the exceptional circumstances resulting from the resignation of Mr. Baptista, it would deem the term of the position to which Mr. Baptista was appointed to expire on 30 June 2009, and that it would agree that the position previously held by Mr. Baptista would be filled for a four-year term commencing on 1 July 2009. The deadline to receive nominations of candidates for the two positions was set for 20 March 2009. 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 2009 DSB Chairperson and also consisting of the Director-General of the WTO and the 2009 Chairpersons of the General Council, the Goods Council, the Services Council, and the TRIPS Council. Six individuals were nominated. Argentina, Brazil, Costa Rica and Mexico each nominated one individual, while the European Communities[12] nominated two individuals, one from Belgium and the other from the Netherlands.

Based on the recommendations of the Selection Committee, on 19 June 2009, the DSB decided to appoint Ricardo Ramírez-Hernández (Mexico) with his term commencing on 1 July 2009, and Peter Van den Bossche (Belgium) with his term commencing on 12 December 2009. At the same meeting, the DSB also decided to appoint David Unterhalter to a second term beginning on 12 December 2009.[13] Mr. Ramírez was sworn-in on 20 July 2009. Mr. Van den Bossche's swearing-in took place on 19 November 2009.

The composition of the Appellate Body in 2009 and the respective terms of office of its Members are set out in Tables 1A-C.

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

[10] WT/DSB/M/242.

[11] WT/DSB/46.

[12] On 1 December 2009, the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the World Trade Organization received a Verbal Note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the *Treaty of Lisbon*, as of 1 December 2009, the European Union replaces and succeeds the European Community.

[13] WT/DSB/M/270.

TABLE 1A: COMPOSITION OF THE APPELLATE BODY – 1 JANUARY TO 30 JUNE 2009

Name	Nationality	Term(s) of office
Luiz Olavo Baptista*	Brazil	2001–2005 2005–2009
Lilia R. Bautista	Philippines	2007–2011
Jennifer Hillman	United States	2007–2011
Shotaro Oshima	Japan	2008–2012
Giorgio Sacerdoti	Italy	2001–2005 2005–2009
David Unterhalter	South Africa	2006–2009
Yuejiao Zhang	China	2008–2012

* His resignation became effective on 11 February 2009.

TABLE 1B: COMPOSITION OF THE APPELLATE BODY – 1 JULY TO 11 DECEMBER 2009

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
Giorgio Sacerdoti	Italy	2001–2005 2005–2009
David Unterhalter	South Africa	2006–2009 2009–2013
Yuejiao Zhang	China	2008–2012

TABLE 1C: COMPOSITION OF THE APPELLATE BODY AS OF 12 DECEMBER 2009

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

Pursuant to Rule 5(1) of the *Working Procedures*, Appellate Body Members elected David Unterhalter to serve as Chairman of the Appellate Body from 18 December 2008 to 11 December 2009.[14] In November 2009, Appellate Body Members re-elected Mr. Unterhalter for a second term as Chairman commencing on 12 December 2009.[15]

Biographical information about the Members of the Appellate Body is provided in Annex 1. 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 ten lawyers, one administrative assistant, and three support staff. Werner Zdouc is the Director of the Appellate Body Secretariat since 2006.

III. APPEALS

Under Rule 20(1) of the *Working Procedures*, 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 12 days of the filing of the Notice of Appeal.

Three appeals were filed in 2009, two of which included an "other appeal". One appeal related to original proceedings and two appeals related to panel proceedings brought pursuant to Article 21.5 of the DSU. Further information regarding the three appeals filed in 2009 is provided in Table 2.

[14] WT/DSB/48.
[15] WT/DSB/50.

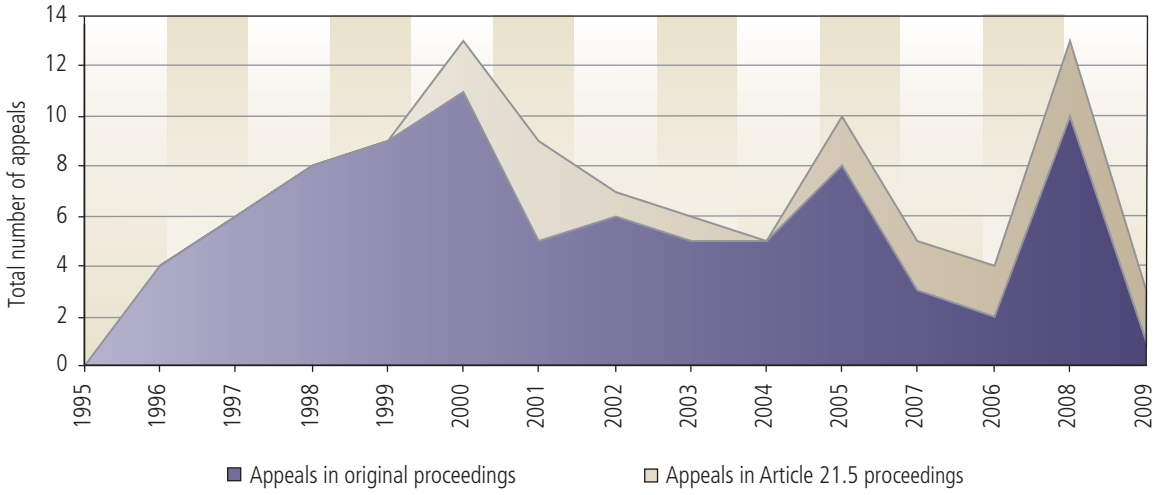
TABLE 2: APPEALS FILED IN 2009

Panel reports appealed	Date of appeal	Appellant [a]	Document number	Other appellant [b]	Document number
US – Zeroing (EC) (Article 21.5 – EC)	13 Feb 2009	European Communities	WT/DS294/28	United States	WT/DS294/29
US – Zeroing (Japan) (Article 21.5 – Japan)	20 May 2009	United States	WT/DS322/32	- - -	- - -
China – Publications and Audiovisual Products	22 Sept 2009	China	WT/DS363/10	United States	WT/DS363/11

[a] Pursuant to Rule 20 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 ratio of appeals dealing with original disputes to appeals dealing with complaints brought pursuant to Article 21.5 of the DSU.

FIGURE 1: APPEALS IN ORIGINAL PROCEEDINGS AND ARTICLE 21.5 PROCEEDINGS 1995–2009



One panel report was circulated in 2008 for which the 60-day deadline for adoption or appeal did not expire until 2009.[16] This panel report was appealed in 2009.[17] Four panel reports were circulated during 2009. Two of the panel reports circulated in 2009 were adopted by the DSB without having been appealed.[18] In total, three of the five panel reports for which the 60-day deadline expired in 2009 were appealed.

[16] The Panel Report in *US – Zeroing (EC) (Article 21.5 – EC)* was circulated on 17 December 2008.
[17] The Panel Report in *US – Zeroing (EC) (Article 21.5 – EC)* was appealed on 13 February 2009.
[18] The Panel Report in *China – Intellectual Property Rights* was adopted by the DSB on 20 March 2009, while the Panel Report in *Colombia – Ports of Entry* was adopted by the DSB on 20 May 2009.

Figure 2 shows the percentage of panel reports appealed by year of adoption since 1996. No panel reports were appealed in 1995. The overall average of panel reports that have been appealed from 1995 to 2009 is 68 per cent.

FIGURE 2: PERCENTAGE OF PANEL REPORTS APPEALED 1996–2009 *

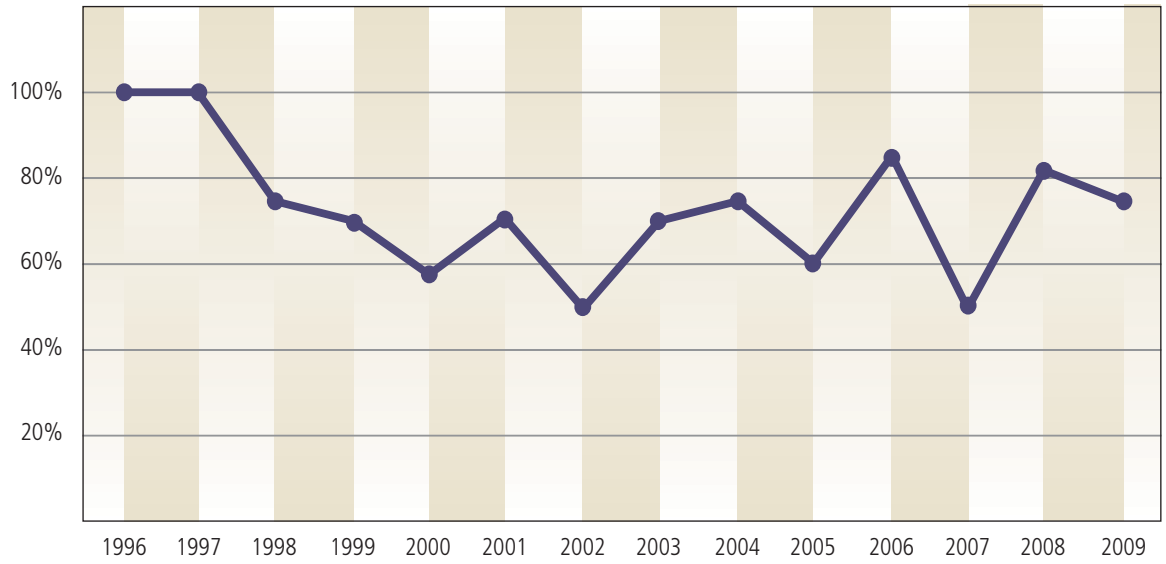


*Figure 2 is based on year of adoption by the DSB, which may not necessarily coincide with the year in which a panel report was circulated or appealed.

IV. APPELLATE BODY REPORTS

Four Appellate Body reports were circulated during 2009. As of the end of 2009, the Appellate Body has circulated a total of 100 reports. Table 3 provides further details on the Appellate Body reports circulated in 2009.

TABLE 3: APPELLATE BODY REPORTS CIRCULATED IN 2009

Case Title	Document number	Date circulated	Date adopted by the DSB
US – Continued Zeroing	WT/DS350/AB/R	4 February 2009	19 February 2009
US – Zeroing (EC) (Article 21.5 – EC)	WT/DS294/AB/RW and Corr.1	14 May 2009	11 June 2009
US – Zeroing (Japan) (Article 21.5 – Japan)	WT/DS322/AB/RW	18 August 2009	31 August 2009
China – Publications and Audiovisual Products	WT/DS363/AB/R	21 December 2009	19 January 2010

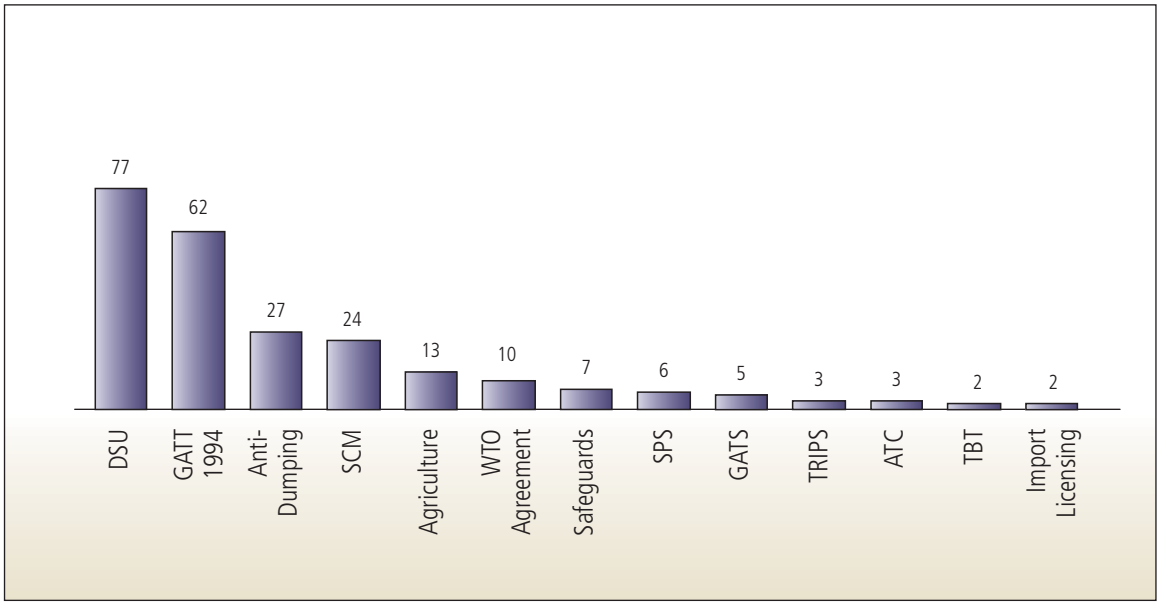
The following table shows which WTO agreements were addressed in the four Appellate Body reports circulated in 2009.

TABLE 4: WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED IN 2009

Case	Document number	WTO agreements covered
US – Continued Zeroing	WT/DS350/AB/R	*Anti-Dumping Agreement* GATT 1994 DSU
US – Zeroing (EC) *(Article 21.5 – EC)*	WT/DS294/AB/RW and Corr.1	*Anti-Dumping Agreement* GATT 1994 DSU
US – Zeroing (Japan) *(Article 21.5 – Japan)*	WT/DS322/AB/RW	*Anti-Dumping Agreement* GATT 1994 DSU
China – Publications and Audiovisual Products	WT/DS363/AB/R	GATS GATT 1994 China's Accession Protocol and Working Party Report

Figure 3 shows the number of times specific WTO agreements have been addressed in the 100 Appellate Body reports circulated from 1996 through 2009.

FIGURE 3: WTO AGREEMENTS ADDRESSED IN APPEALS 1996–2009



Annex 5 contains a breakdown by year of the frequency with which the specific WTO agreements have been addressed in appeals from 1996 through 2009.

The Appellate Body's findings and conclusions in the four Appellate Body reports circulated in 2009 are summarized below.

■ Appellate Body Report, *US – Continued Zeroing*, WT/DS350/AB/R

This dispute concerned a complaint brought by the European Communities in respect of the so-called "zeroing" methodology. Under this methodology, when calculating a margin of dumping for a product on the basis of comparisons of normal value and export prices, the United States Department of Commerce (the "USDOC") treats the results of comparisons, for which the export price exceeds normal value, as zero.

1. The Panel's Terms of Reference

The European Communities appealed the Panel's finding that the European Communities failed to identify the specific measure at issue in its panel request, as required by Article 6.2 of the DSU, in connection with its claims against the continued application of the 18 anti-dumping duties, and the Panel's consequential finding that such claims fell outside the Panel's terms of reference. The European Communities requested that the Appellate Body complete the analysis by finding that, because of the use of zeroing, "each of the 18 measures" is inconsistent with Articles VI:1 and VI:2 of the GATT 1994, Articles 2.4, 2.4.2, 9.3, 11.1 and 11.3 of the *Anti-Dumping Agreement* and Article XVI:4 of the *WTO Agreement*.

At the outset, the Appellate Body recalled its finding in prior disputes that compliance with the specificity requirement under Article 6.2 must be demonstrated on the face of the panel request, read as a whole. The Appellate Body noted that the European Communities' panel request linked the following three elements in seeking to identify the measures at issue: (i) duties resulting from the anti-dumping duty orders in the 18 cases listed in the annex to the panel request; (ii) the most recent periodic or sunset review proceedings pertaining to these duties[19]; and (iii) the use of the zeroing methodology in calculating the level of these duties in such proceedings. Taken together, the Appellate Body found that the United States could reasonably have been expected to understand that the European Communities was challenging the use of the zeroing methodology in successive proceedings, in each of the 18 cases, by which the anti-dumping duties are maintained. The Appellate Body further stated that the specificity requirement in Article 6.2 means that the measures at issue must be identified with sufficient precision so that what is referred to adjudication by a panel may be discerned from the panel request. Thus, contrary to the Panel's finding, an examination of the specificity requirement under Article 6.2 of the DSU need not involve a substantive inquiry into the existence and precise content of the measure. Such considerations may have to be explored by a panel and the parties during the panel proceedings, but are not prerequisites for the establishment of a panel. To impose such prerequisites would be inconsistent with the function of a panel request in commencing panel proceedings and setting the jurisdictional boundaries of such proceedings. On this basis, the Appellate Body reversed the Panel's finding that the European Communities failed to comply with Article 6.2 of the DSU, and found, instead, that the panel request identifies the specific measures at issue with regard to the European Communities' claims concerning the continued application of the 18 anti-dumping duties.

[19] The USDOC issues an anti-dumping duty order at the conclusion of an original anti-dumping investigation if the USDOC finds that dumping existed during the period of investigation, and the United States International Trade Commission (the "USITC") finds that domestic industry was materially injured, or threatened with material injury, by reason of dumped imports. Generally, this order imposes an estimated anti-dumping duty deposit rate for each exporter individually examined. Subsequently, if a request for a "periodic review" is made, the USDOC will determine the final amount of anti-dumping duties owed on sales made by the exporter during the previous period. In addition, the USDOC will calculate a going-forward cash deposit rate that will apply to all future entries of the subject merchandise from that exporter. In a "sunset review" of an order, the authorities determine whether revocation of the anti-dumping duty order would likely lead to continuation or recurrence of dumping and injury.

Turning to the second issue of whether the measures identified by the European Communities were susceptible to challenge in WTO dispute settlement, the Appellate Body observed that the distinction between "as such" and "as applied" claims, which has been developed in the jurisprudence as an analytical tool to facilitate the understanding of the nature of a measure at issue, does not define exhaustively the types of measures that may be subject to challenge in WTO dispute settlement. Thus, the Appellate Body found that, in order to be susceptible to challenge, a measure need not fit squarely within one of these two categories, that is, either as a rule or norm of general and prospective application, or as an individual instance of the application of a rule or norm. In this dispute, the Appellate Body found that the measures at issue consist of neither the zeroing methodology as a rule or norm of general and prospective application, nor discrete applications of the zeroing methodology in particular determinations; rather, they are the use of the zeroing methodology in a string of connected and sequential determinations, in each of the 18 cases, by which the duties are maintained over a period of time. In the Appellate Body's view, the ongoing conduct that consists of the use of the zeroing methodology is not precluded from being challenged in WTO dispute settlement. It is with respect to this ongoing conduct that the European Communities brought its challenge, seeking its cessation.

As regards the European Communities' request for completion of analysis, the Appellate Body further found that, with respect to four of the 18 anti-dumping cases challenged by the European Communities, the Panel's factual findings sufficiently established the continued use of the zeroing methodology in successive proceedings whereby duties in these cases are maintained. More specifically, in each of the four cases, the Panel's findings indicate that the zeroing methodology was repeatedly used in a string of determinations made sequentially in periodic reviews and sunset reviews over an extended period of time. In the Appellate Body's view, the density of factual findings in these cases, regarding the continued use of the zeroing methodology in a string of successive proceedings pertaining to the same anti-dumping duty order, provided a sufficient basis for it to conclude that the zeroing methodology would likely continue to be applied in successive proceedings whereby the duties in these four cases are maintained. By contrast, for the remaining 14 cases, the Appellate Body found that there were insufficient factual findings for it to complete the analysis and to find that the zeroing methodology would likely continue to be applied in successive proceedings whereby the duties are maintained in these 14 cases.

On this basis, the Appellate Body concluded that the application and continued application of anti-dumping duties in the four cases is inconsistent with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 to the extent that the duties are maintained at a level calculated through the use of the zeroing methodology in periodic reviews; and with Article 11.3 of the *Anti-Dumping Agreement* to the extent that reliance is placed upon a margin of dumping calculated through the use of the zeroing methodology in making sunset review determinations. With respect to the other 14 of the 18 cases challenged by the European Communities, the Appellate Body was unable to complete the analysis.

Next, the European Communities challenged the Panel's finding that the European Communities' claims regarding four preliminary determinations (three relating to sunset reviews and one relating to a periodic review) did not fall within the Panel's terms of reference because the European Communities had not raised specific claims challenging these determinations as provisional measures within the meaning of Articles 7.1 and 17.4 of the *Anti-Dumping Agreement*. The European Communities requested the Appellate Body to reverse the Panel's finding and to complete the analysis by finding that the preliminary determination in the periodic review was inconsistent with Articles VI:1 and VI:2 of the GATT 1994, Articles 2.1, 2.4, 2.4.2, 9.3 and 11.2 of the *Anti-Dumping Agreement*, and Article XVI:4 of

the *WTO Agreement*, and that the preliminary determinations in the sunset reviews were inconsistent with Articles 2.1, 2.4, 2.4.2, 11.1 and 11.3 of the *Anti-Dumping Agreement* and Article XVI:4 of the *WTO Agreement*.

The Appellate Body noted that, in this dispute, the European Communities was not challenging provisional measures within the meaning of Articles 7.1 and 17.4 of the *Anti-Dumping Agreement*. Rather, as it argued before the Panel, the European Communities was challenging the preliminary results in one periodic review and three sunset reviews that were conducted subsequent to the imposition of the anti-dumping duty orders. Thus, the Appellate Body reversed the Panel's finding that, because the European Communities did not bring any claims under Article 7.1 concerning the conditions for imposing provisional measures, the four preliminary determinations fell outside its terms of reference. Having reversed the Panel's finding, however, the Appellate Body found that the European Communities' challenge to the preliminary result of the periodic review and the preliminary result of one sunset review were premature because, at the time of the panel request, the USDOC had not issued the final results in these two proceedings. With regard to the determinations in the other two sunset reviews, the Appellate Body noted that, although the USDOC had issued the final result, the two sunset review proceedings were still pending before the United States International Trade Commission (the "USITC") at the time of the panel request. Thus, the USITC had not yet determined, for either case, whether expiry of the anti-dumping duty order would be likely to lead to the continuation or recurrence of injury. Under these circumstances, the Appellate Body did not consider that completion of the analysis as to whether these measures were inconsistent with the covered agreements would be appropriate and declined the European Communities' request for completion with regard to these four preliminary determinations.

In its other appeal, the United States alleged that the Panel erred in finding that 14 periodic and sunset reviews identified in the European Communities' panel request were within the Panel's terms of reference even though they were not listed in the European Communities' request for consultations, and requested the Appellate Body to reverse this finding of the Panel. The United States further requested the Appellate Body to find that the continued application of the 18 anti-dumping duties were also outside the Panel's terms of reference because they were not identified in the European Communities' consultations request.

The Appellate Body recalled its finding in prior disputes that, as long as the complaining party does not expand the scope of the dispute, the Appellate Body would not impose too rigid a standard for the precise and exact identity between the scope of consultations and the request for the establishment of a panel, as this would substitute the consultations request for the panel request. Examining the European Communities' consultations request, the Appellate Body noted that the measures referred to therein encompass the anti-dumping duties resulting from the proceedings identified in the consultations request in which the zeroing methodology was allegedly used. The Appellate Body further found that, although 14 periodic and sunset reviews identified in the panel request were not listed in the consultations request, these 14 additional measures relate to the same duties identified in the consultations request, which were imposed pursuant to the same anti-dumping duty orders on the same products from the same countries. Moreover, the Appellate Body recalled the Panel's finding that the legal nature of the European Communities' claims regarding the additional 14 measures does not in any way differ from that of the 38 measures identified in the consultations request. On this basis, the Appellate Body upheld the Panel's finding that the 14 additional measures not listed in the consultations request fell within the Panel's terms of reference.

With respect to the United States' submission that the continued application of the 18 anti-dumping duties were outside the Panel's terms of reference because they were not identified in the consultations request, the Appellate Body recalled its finding that the 18 anti-dumping duties listed in the European Communities' panel request are the same duties as those resulting from the proceedings listed in the consultations request. Moreover, with respect to these 18 anti-dumping duties, the consultations request and the panel request concern the same matter, that is, the challenge under the GATT 1994 and the *Anti-Dumping Agreement* of the 18 anti-dumping duties due to the use of the zeroing methodology in the determination of the dumping margins or the cash deposit rates. On this basis, the Appellate Body concluded that the continued application of the anti-dumping duties in each of the 18 cases had been identified in the European Communities' consultations request.

2. "Zeroing" as Applied in Periodic Reviews

The Appellate Body turned next to examine the United States' other appeal of the Panel's finding that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by using simple zeroing in 29 periodic reviews.

a. The Standard of Review under Article 17.6 of the *Anti-Dumping Agreement*

Regarding the standard of review applicable to claims brought under the *Anti-Dumping Agreement*, the Appellate Body noted that Article 17.6(ii) of the *Anti-Dumping Agreement* contemplates a sequential analysis. The first step requires a panel to apply the customary rules of interpretation to the treaty to see what is yielded by a conscientious application of such rules, including those codified in the *Vienna Convention on the Law of Treaties* (the "*Vienna Convention*"). Only *after* engaging in this exercise will a panel be able to determine whether the second sentence of Article 17.6(ii) referring to "permissible" interpretations applies.

The Appellate Body further explained that a proper interpretation of the second sentence of Article 17.6(ii) of the *Anti-Dumping Agreement* must itself be consistent with the rules and principles set out in the *Vienna Convention*. This means that it cannot be interpreted in a way that would render it redundant, or that derogates from the customary rules of interpretation of public international law. However, the second sentence allows for the possibility that the application of the rules of the *Vienna Convention* may give rise to an interpretative range and, if it does, an interpretation falling within that range is permissible and must be given effect by holding the measure to be in conformity with the *Anti-Dumping Agreement*. The function of the second sentence is thus to give effect to the interpretative range, rather than to require the interpreter to pursue further the interpretative exercise to the point where only one interpretation within that range may prevail.

The Appellate Body added that the rules and principles of the *Vienna Convention* cannot contemplate interpretations with mutually contradictory results. Instead, the enterprise of interpretation is intended to ascertain the proper meaning of a provision; one that fits harmoniously with the terms, context, and object and purpose of the treaty. The purpose of such an exercise is therefore to narrow the range of interpretations, not to generate conflicting, competing interpretations. Interpretative tools cannot be applied selectively or in isolation from one another. For the Appellate Body, it would be a subversion of the interpretative disciplines of the *Vienna Convention* if application of those disciplines yielded contradiction instead of coherence and harmony among, and effect to, all relevant treaty provisions. Moreover, a permissible interpretation for purposes of the second sentence of Article 17.6(ii) is not the result of an inquiry that asks whether a provision of domestic law is "necessarily excluded" by the application of the *Vienna Convention*. Such an approach, the Appellate Body explained, subverts the hierarchy between the treaty and a WTO Member's municipal law.

b. The Concept of "Margin of Dumping" and Zeroing in Periodic Reviews

The Appellate Body then turned to examine the United States' arguments relating to the interpretation and operation of the terms "dumping" and "margin of dumping" as they appear in the *Anti-Dumping Agreement* and Article VI of the GATT 1994. The Appellate Body noted that the disagreement between the participants flows from their respective interpretations of the terms "dumping" and "margin of dumping" in Articles 2.1 and 9.3 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, and whether these terms apply at the level of the product under consideration or at the level of an individual export transaction.

The Appellate Body noted, first, that mere scrutiny of particular terms—such as "product" and "export price"—in Article 2.1 does not resolve the issue of whether the concept of dumping is concerned with individual transactions or whether it is necessarily an aggregative concept attributable to an exporter. The Appellate Body recalled that the interpretative exercise that is mandated under the *Vienna Convention* is a holistic and integrated one that cannot result in interpretations that are mutually contradictory. With this in mind, the Appellate Body turned to examine the context found in various other provisions of the *Anti-Dumping Agreement* in order to better elucidate what the concept of "dumping" means.

The Appellate Body observed that a number of provisions in the *Anti-Dumping Agreement* require a determination of dumping by reference to an exporter and to a product under consideration. More specifically, Article 5.8 requires that an anti-dumping investigation be terminated if the investigating authority determines that the margin of dumping is *de minimis*, which is defined as less than two per cent, expressed as a percentage of the export price. A plain reading of Article 5.8 indicates that the term "margin of dumping" as used in that provision refers to a single margin. Moreover, the first sentence of Article 6.10 of the *Anti-Dumping Agreement* stipulates that authorities "shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation". Likewise, Article 9.5, dealing with new shipper reviews, requires the authorities to determine *an individual margin of dumping* for any exporter that had not exported the product during the period of investigation. The Appellate Body explained that these provisions suggest that a single margin of dumping is to be established for each individual exporter or producer investigated as they do not refer to multiple margins occurring at the level of individual transactions. The Appellate Body further noted that, under the *Anti-Dumping Agreement*, the concepts of "dumping", "injury", and "margin of dumping" are interlinked and should be considered and interpreted in a coherent and consistent manner for all parts of the *Anti-Dumping Agreement*.

Based on this reasoning, the Appellate Body was unable to agree with the proposition that "dumping" may be determined at the level of individual transactions, and that multiple comparison results are "margins of dumping" in themselves. Instead, the Appellate Body found that a proper determination as to whether an exporter is engaged in injurious dumping can only be made on the basis of an examination of the exporter's pricing behaviour as reflected in all of its transactions over a period of time.

As regards the question of whether it is permissible—in duty assessment proceedings under Article 9.3 of the *Anti-Dumping Agreement*—to disregard the amount by which the export price exceeds the normal value, the Appellate Body recalled the requirement in Article 9.3 that the amount of anti-dumping duty "shall not exceed the margin of dumping as established under Article 2" of that Agreement. The Appellate Body observed that its examination of the context of Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* had confirmed that the term "margin

of dumping", as used in those provisions, relates to the "product" under consideration and not to individual "export transactions", and that the definitions of "dumping" and "dumping margin" apply in the same manner throughout the *Anti-Dumping Agreement*. The Appellate Body concluded that, under Article VI:2 and Article 9.3, the margin of dumping established for an exporter in accordance with Article 2 operates as a *ceiling* for the total amount of anti-dumping duties that can be levied on the entries of the subject merchandise from that exporter. The Appellate Body added that it saw no basis in Articles VI:1 and VI:2 of the GATT 1994 or in Articles 2 and 9.3 of the *Anti-Dumping Agreement* for disregarding the results of comparisons where the export price exceeds the normal value when calculating the margin of dumping for an exporter.

On this basis, the Appellate Body upheld the Panel's finding that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 by applying simple zeroing in 29 periodic reviews.

3. The Seven Periodic Reviews

The Appellate Body then turned to the European Communities' claim that the Panel acted inconsistently with its duty to make an objective assessment of the facts of the case, as required under Article 11 of the DSU, in concluding that the European Communities did not make a *prima facie* case that simple zeroing was used in seven periodic reviews.

The Appellate Body examined the Panel's approach to the evidence in respect of seven periodic reviews. Observing that the Panel's reasoning indicated that it had evaluated individual pieces of evidence in order to determine whether any of the pieces, by itself, proved that zeroing had been applied, the Appellate Body considered that the Panel had disregarded the significance of the submitted evidence by failing to give consideration to that evidence in its totality. The Appellate Body added that, while authenticated USDOC documents may have offered greater certainty as to their content, this did not render non-authenticated documents not probative of the fact asserted, particularly if such evidence was produced or replicated from documents or data supplied by the USDOC. The Appellate Body therefore considered that the Panel failed to make an objective assessment by allowing a challenge to the authenticity of evidence originating from the USDOC, but later reproduced by interested parties, to skew its consideration of the probative value of that evidence. Due to these errors, the Appellate Body remarked that the Panel could not properly have reached a conclusion as to whether the European Communities had established a *prima facie* case. The Appellate Body therefore found that the Panel had acted inconsistently with its obligation under Article 11 of the DSU when it found that the European Communities had not shown that simple zeroing was used in the seven periodic reviews and, consequently, reversed this finding of the Panel.

Having reversed the Panel's finding in respect of the seven periodic reviews, the Appellate Body turned to consider the European Communities' request that the Appellate Body complete the analysis and find that zeroing was used in these periodic reviews. On the basis of the factual findings and uncontested facts in the Panel record in connection with five reviews, the Appellate Body was able to complete the analysis, and found that the European Communities had shown that simple zeroing was used and that the United States acted inconsistently with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* by applying simple zeroing in these reviews. The Appellate Body was unable to complete the analysis with respect to the two remaining reviews.

4. Conditional Appeals

The European Communities submitted what it characterized as two "conditional appeals". First, the European Communities argued that, if the Panel Report is construed as finding that a panel can invoke "cogent reasons" for departing from previous Appellate Body rulings on the same issue of legal interpretation, then the European Communities requests the Appellate Body to "modify or reverse" that finding by the Panel.

The Appellate Body found that it was not clear whether the Panel in fact found that it could invoke "cogent reasons" to depart from previous Appellate Body rulings on the same legal issue and that, ultimately, the Panel did follow previous Appellate Body reports adopted by the DSB. Consequently, and since it had ruled on the merits of the United States' claims under Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994, the Appellate Body found that there was no need for it to address this aspect of the European Communities' conditional appeal.

The second conditional appeal by the European Communities was premised on the assumption that the Appellate Body would "modify or reverse" the Panel's finding that simple zeroing is inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* as a result of the other appeal by the United States. Noting that it had upheld the Panel's finding that the United States acted inconsistently with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* by applying simple zeroing in 29 periodic reviews, the Appellate Body found that it was not required to rule on this aspect of the European Communities' conditional appeal.

5. The Eight Sunset Reviews

The Appellate Body then turned to the United States' claim that the Panel failed to undertake an objective assessment of the matter before it, as required by Article 11 of the DSU, in finding that the United States acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement* in eight sunset reviews by allegedly using dumping margins obtained through model zeroing in prior original investigations.

The Appellate Body recalled that in the eight sunset reviews at issue, the USDOC used margins obtained in the underlying original investigations, and that, to the extent that a sunset review determination is based on previous margins obtained through a methodology that is inconsistent with the covered agreements (such as the model zeroing in original investigations), the resulting sunset review determinations would also be inconsistent with the covered agreements. The Appellate Body also recalled that, when reaching its finding that the dumping margins from the original investigations were calculated on the basis of the model zeroing methodology, the Panel relied on the following evidence: (i) an announcement in a Notice issued by the USDOC in December 2006 stating that the USDOC would no longer apply the model zeroing methodology in original investigations; and (ii) the fact that the original investigations underlying the eight sunset reviews were all completed before this announced change became effective on 22 February 2007. The Appellate Body noted that, in the same document relied upon by the Panel, the USDOC also made clear that it consistently applied the model zeroing methodology in original investigations prior to this change in its methodology. Finally, the Appellate Body recalled that the United States did not submit any evidence in rebuttal to show that the model zeroing methodology was not used in the original investigations at issue. The Appellate Body concluded, therefore, that the Panel had before it a sufficient evidentiary basis for its finding that the margins relied upon by the USDOC in these eight sunset reviews were calculated using the model zeroing methodology.

Thus, the Appellate Body considered that the Panel's finding in this dispute was supported by the evidence before it and, on that basis, dismissed the United States' appeal that the Panel acted inconsistently with Article 11 of the DSU in reaching its finding that the model zeroing methodology was used in the investigations underlying the eight sunset reviews at issue.

6. Article 19 of the DSU

Finally, the European Communities argued that the Panel erred in rejecting the European Communities' request that it make a suggestion for implementation under the second sentence of Article 19.1 of the DSU, particularly with regard to the issue of zeroing. The European Communities further requested that the Appellate Body make such a suggestion.

The Appellate Body noted that it had upheld the Panel's findings that simple zeroing, as applied by the United States in 29 periodic reviews, is inconsistent with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994; that it had also found that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 in respect of five additional periodic reviews; and that it had upheld the Panel's findings that the United States acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement* in eight sunset reviews by relying on margins of dumping calculated through the use of zeroing. In the light of these findings, and other findings that it had made regarding the European Communities' claims against the continued application of the zeroing methodology in 18 cases, the Appellate Body did not consider it necessary to further consider the European Communities' request for a suggestion under Article 19.1 of the DSU.

■ Appellate Body Report, *US – Zeroing (EC) (Article 21.5 – EC)*, WT/DS294/AB/RW and Corr.1

This dispute concerned the implementation by the United States of the DSB's recommendations and rulings in *US – Zeroing (EC)*. In that dispute, the original panel and the Appellate Body found that the application of the so-called "zeroing" methodology in original anti-dumping investigations was inconsistent with Article 2.4.2 of the *Anti Dumping Agreement*. The Appellate Body also found that the application of "zeroing" in the periodic reviews at issue was inconsistent with Article 9.3 of the *Anti Dumping Agreement* and Article VI:2 of the GATT 1994. The panel and Appellate Body reports in the original proceedings were adopted by the DSB on 9 May 2006. Pursuant to Article 21.3(b) of the DSU, the United States and the European Communities agreed that the reasonable period of time to implement the recommendations and rulings of the DSB would be 11 months, expiring on 9 April 2007.

1. The Panel Composition

The Appellate Body first examined the European Communities allegation that the Panel acted inconsistently with the basic requirements of due process and the full exercise of the judicial function by failing to address properly its claim that the Panel was composed in a manner inconsistent with Articles 8.3 and 21.5 of the DSU. Noting that the Director-General was requested to determine the composition of the compliance panel under Article 8.7 of the DSU, the Appellate Body underscored that this provision confers on the Director-General the discretion to compose panels, and that this discretion was properly exercised in this case. Accordingly, the Appellate Body found that the Panel did not err in refraining from making a finding on whether it was improperly composed.

2. The Panel's Terms of Reference

Turning to the European Communities' and the United States' appeals of the Panel's jurisdictional findings, the Appellate Body rejected the European Communities' allegation that periodic reviews, changed circumstances reviews, and sunset reviews issued subsequently to the 15 original investigations and 16 periodic reviews at issue in the original proceedings fell within the Panel's terms of reference as "amendments" to those measures. For the Appellate Body, successive periodic, changed circumstances, and sunset review determinations issued in connection to the measures at issue in the original proceedings constitute separate and distinct measures. The Appellate Body also noted that the European Communities identified in its original panel request successive periodic reviews as separate "Cases". On this basis, the Appellate Body upheld the Panel's finding that the subsequent reviews identified in the European Communities' panel request did not fall within the Panel's terms of reference under Article 21.5 of the DSU as "amendments" to the measures at issue in the original proceedings.

The Appellate Body next examined the European Communities' and the United States' appeals of the Panel's findings that certain periodic and sunset reviews issued subsequent to the 15 original investigations and 16 periodic reviews listed in the European Communities' panel request fell within the Panel's terms of reference under Article 21.5 of the DSU by virtue of their "close nexus" with the measures at issue in the original proceedings and the recommendations and rulings of the DSB. Addressing first the European Communities' appeal of the Panel's finding that the measures that were issued *before* the adoption of the recommendations and rulings of the DSB did not fall within the Panel's terms of reference, the Appellate Body reasoned that the *timing* of a measure cannot be determinative of whether it bears a sufficiently close nexus with a Member's implementation of the recommendations and rulings of the DSB, because compliance can be achieved before the DSB adopts recommendations and rulings. The relevant inquiry, for the Appellate Body, was not whether these subsequent reviews were taken with the intention to comply with the recommendations and rulings of the DSB; rather, the relevant inquiry was whether the subsequent reviews, despite the fact that they were issued before the adoption of the recommendations and rulings of the DSB, still bore a sufficiently close nexus, in terms of nature, effects and timing, with those recommendations and rulings, and with the declared measures "taken to comply", so as to fall within the scope of the Article 21.5 proceedings. On this basis, the Appellate Body reversed the Panel's finding that the periodic and sunset reviews subsequent to the original measures that pre-dated the adoption of the recommendations and rulings by the DSB did not fall within the Panel's terms of reference under Article 21.5 of the DSU.

Having reversed this finding of the Panel, the Appellate Body sought to complete the analysis and determine which of the subsequent reviews that the Panel excluded from its terms of reference had a sufficiently close nexus with the declared measures "taken to comply" and the recommendations and rulings of the DSB, so as to fall within the scope of the compliance proceedings. The Appellate Body found that the use of zeroing in subsequent reviews provided the necessary link, in terms of *nature*, between such measures, the declared measures "taken to comply", and the recommendations and rulings of the DSB. The Appellate Body reasoned that all the subsequent reviews excluded by the Panel were issued under the same anti-dumping duty orders as the measures challenged in the original proceedings. The Appellate Body also noted that the issue of zeroing was the precise subject of the recommendations and rulings of the DSB, the only aspect of the original measures that was modified by the United States in its Section 129 determinations, and the only aspect of the excluded subsequent reviews challenged in the Article 21.5 proceedings.

Turning to the *effects* element of the close-nexus test, the Appellate Body observed that many of the reviews excluded by the Panel from its terms of reference generated assessment rates calculated with zeroing, and replaced cash deposits that were found to be WTO-inconsistent in the original proceedings with cash deposits similarly calculated with zeroing. For the Appellate Body, this would provide the necessary link, in terms of *effects*, between those periodic reviews and the recommendations and rulings of the DSB, insofar as the requirement to cease using zeroing was concerned. However, the Appellate Body found that, with respect to the 15 original investigations subject to the recommendations and rulings of the DSB, the United States issued Section 129 determinations in which it recalculated, without zeroing, the going-forward cash deposit rates for the relevant anti-dumping duty orders (where the orders had not been revoked entirely or with respect to specific exporters). Consequently, to the extent that the effects of periodic and sunset reviews excluded from the Panel's terms of reference were replaced with those of subsequent Section 129 determinations in which zeroing was not applied, those subsequent reviews generally did not have the necessary link, in terms of effects, with the declared measures "taken to comply", and with the recommendations and rulings of the DSB, so as to fall within the Panel's terms of reference.

With respect to reviews subsequent to the 16 periodic reviews at issue in the original proceedings, the Appellate Body found that periodic reviews could have an effect on the United States' implementation of the recommendations and rulings of the DSB after the end of the reasonable period of time. Accordingly, to the extent that the respective anti-dumping duty orders had been continued as a result of a sunset review in each of those Cases, the Appellate Body found that they had a sufficiently close nexus, in terms of *effects*, with the recommendations and rulings of the DSB. Finally, the Appellate Body found that the fact that the likelihood-of-dumping determinations in these sunset reviews pre-date the adoption of the recommendations and rulings of the DSB was not sufficient to sever the pervasive links, in terms of nature and effects, between such sunset reviews, the recommendations and rulings of the DSB, and the declared measures "taken to comply". On this basis, the Appellate Body found that the sunset reviews in specific cases, namely, Cases 24, 28, 29, 30, and 31 had a sufficiently close nexus with the declared measures "taken to comply", and with the recommendations and rulings of the DSB, so as to fall within the Panel's terms of reference under Article 21.5 of the DSU.

Next, the Appellate Body addressed the United States' other appeal of the Panel's finding that the 2004-2005 periodic reviews in Cases 1 and 6 (both issued after the end of the reasonable period of time) fell within the Panel's terms of reference. The Appellate Body reiterated that the use of zeroing in those two periodic reviews provided the necessary link, in terms of *nature*, between those reviews, the recommendations and rulings of the DSB, and the declared measures "taken to comply" by the United States. The Appellate Body reasoned that both the original investigations and the 2004-2005 periodic reviews in these two Cases involved the same products from the same countries; they occurred under the same anti-dumping duty orders; and involved the use of the zeroing methodology in the context of calculating estimated margins of dumping for particular exporters, or assessment rates for particular importers. The Appellate Body also found significant that the use of zeroing was the only aspect of the original measures at issue that was corrected by the United States in the Section 129 determinations. The Appellate Body considered that the distinctions between comparison methodologies in original investigations and periodic reviews were not decisive as to the links, in terms of nature or subject matter, between those reviews, the declared measures "taken to comply", and the recommendations and rulings of the DSB.

The Appellate Body also observed that the 2004-2005 periodic reviews involved the calculation of assessment rates based on zeroing after the end of the reasonable period of time, and therefore such

assessment rates calculated with zeroing provided the necessary link, in terms of *effects*, between the 2004-2005 periodic reviews, the declared measures "taken to comply", and the recommendations and rulings of the DSB. According to the Appellate Body, subsequent periodic reviews using zeroing would be relevant for assessing, in an Article 21.5 proceeding, whether an original investigation found to be inconsistent due to zeroing has been brought into conformity. The Appellate Body reasoned that the use of zeroing to calculate assessment rates in periodic reviews issued after the end of the reasonable period of time indicates that these reviews could undermine the compliance allegedly achieved by the United States.

On this basis, the Appellate Body considered that the 2004-2005 periodic reviews in Cases 1 and 6 had a sufficiently close nexus, in terms of nature, effects, and timing, with the declared measures "taken to comply" and with the recommendations and rulings of the DSB. Accordingly, the Appellate Body upheld the Panel's finding that these periodic reviews fell within the Panel's terms of reference under Article 21.5 of the DSU.

3. The Scope of the United States' Compliance Obligation

As regards the scope of the United States' compliance obligations, the Appellate Body began its analysis with the relevant recommendations and rulings adopted by the DSB in the original proceedings. The Appellate Body observed that, in this case, these recommendations and rulings of the DSB concerned the use of zeroing "as such" and "as applied" in 15 original investigations and "as applied" in 16 periodic reviews. In response to the WTO-inconsistencies found in relation to the 15 original investigations (Cases 1 through 15), the United States recalculated, in 12 Cases, the margins of dumping without zeroing in Section 129 determinations, with the consequent revocation—full or partial—of the anti-dumping duty orders with respect to entries occurring after 23 April/31 August 2007. In the three remaining Cases, the anti-dumping duty orders were revoked for reasons other than zeroing. The Appellate Body recalled, however, that the examination under Article 21.5 of the DSU extends beyond the analysis of the consistency of the declared measures "taken to comply", because the compliance panel may have to determine whether other closely connected measures taken by the responding WTO Member undermine or negate the compliance achieved by the declared measures "taken to comply" and demonstrate omissions or partial compliance. The Appellate Body observed in this respect that the Section 129 determinations did not relate to periodic reviews completed after the end of the reasonable period of time but covering entries occurring prior to that date.

In the original proceedings, the DSB also adopted the Appellate Body's "as applied" findings that the determinations in 16 specific periodic reviews (Cases 16 through 31) were inconsistent with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994. The Appellate Body noted that these recommendations and rulings of the DSB concern the use of zeroing in the assessment of final duty liability as well as the setting of cash deposit rates with respect to specific products from specific countries that have been subject to anti-dumping duty orders. The Appellate Body rejected the United States' argument that, because the 16 periodic reviews at issue in the original proceedings have been superseded by subsequent periodic reviews, no further action was required in order to implement the DSB's recommendations and rulings in relation to those periodic reviews. According to the Appellate Body, due to its prospective nature, compliance is not confined by the limited duration of the original measures at issue, especially when a subsequent measure replaces or supersedes the measure at issue in the original proceedings.

The Appellate Body explained that, in order to achieve compliance in relation to the measures at issue in the original proceedings, the United States had to cease using zeroing in the assessment of duties by the end of the reasonable period of time. Thus, the Appellate Body agreed with the Panel's statement that "[t]o implement the DSB's recommendations and rulings, the United States was at least obligated, after 9 April 2007, to cease using the 'zeroing' methodology in the calculation of anti-dumping duties, not only with respect to imports entered after the end of the reasonable period of time, but also in the context of decisions involving the calculation of dumping margins made after the end of the reasonable period of time with respect to imports entered before that date."[20] Accordingly, in relation to the Cases at issue in the original proceedings, the Appellate Body considered that a subsequent periodic review determination issued after the end of the reasonable period of time in which zeroing is used, or if no such review is requested, a determination issued after the end of the reasonable period of time by which anti-dumping liability is assessed on the basis of cash deposit rates calculated with zeroing, would establish a failure by the United States to comply with the recommendations and rulings of the DSB.

The Appellate Body, however, disagreed with the Panel's view regarding measures that are consequent to assessment reviews. For the Appellate Body, consequent measures that, in the ordinary course of the imposition of anti-dumping duties, derive *mechanically* from the assessment of duties would establish a failure to comply with the recommendations and rulings of the DSB, to the extent that they are based on zeroing and that they are applied after the end of the reasonable period of time. On this basis, the Appellate Body reversed the Panel's interpretation that the United States' obligation to implement does not extend to the actual collection and liquidation of duties, and to the issuance of assessment or liquidation instructions, when these actions result from periodic review determinations made before the end of the reasonable period of time. The Appellate Body did not, however, express any opinion on the question of whether actions to liquidate duties that are based on periodic review determinations issued before the end of the reasonable period of time, and that have been delayed as a result of judicial proceedings, fall within the scope of the implementation obligations of the United States, as it considered it did not need to do so in the context of its analysis of this issue in this case.

4. The Specific Cases Covered by the Appeal and Other Appeal

Next, the Appellate Body addressed the claims raised in the European Communities' appeal and the United States' other appeal with respect to specific Cases.

In relation to Case 1, the Appellate Body observed that final duty liability for entries in the period 2004-2005 was assessed with zeroing in a periodic review that was concluded on 22 June 2007, which is after the expiration of the reasonable period of time on 9 April 2007. Whereas original investigations and periodic reviews are distinct proceedings and serve distinct purposes, they form part of a continuum of events under a single anti-dumping duty order; permitting simple zeroing in periodic reviews would allow WTO Members to circumvent the prohibition of zeroing in original investigations. The fact that no going-forward cash deposit rate was set pursuant to the 2004-2005 periodic review, and that the anti-dumping duty order was revoked as of 23 April 2007, do not change the fact that the final duty liability was assessed with zeroing after the end of the reasonable period of time. Accordingly, the Appellate Body upheld the Panel's finding that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 in its determination in the 2004-2005 periodic review and in issuing the consequent assessment instructions. As a result,

[20] Panel Report, para. 8.175.

the United States failed to comply with the recommendations and rulings of the DSB to bring the original investigation in this Case into conformity.[21]

In relation to Case 6, the Appellate Body observed that final duty liability for entries in the period 2004-2005 was assessed with zeroing in a periodic review concluded on 9 May 2007, that is, after the end of the reasonable period of time and the revocation of the anti-dumping duty order pursuant to the Section 129 determination. Accordingly, the Appellate Body upheld the Panel's finding that the United States acted inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 in issuing the results of the 2004-2005 periodic review on 9 May 2007, as well as the consequential assessment and liquidation instructions. The Appellate Body also upheld the Panel's finding that the United States failed to comply with the recommendations and rulings of the DSB to bring the original investigation in this Case into conformity with its WTO obligations.

In relation to Case 31, the cash deposit rates applied after the end of the reasonable period of time were derived from the latest determination in which duties were assessed on the basis of the collected cash deposits, reflecting the margin of dumping calculated with zeroing in the 2000-2001 periodic review. The Appellate Body found that the Panel erred in refraining from making a specific finding with respect to this Case, and that the United States had failed to comply with the recommendations and rulings of the DSB.

The Appellate Body turned to the European Communities' appeal relating to the Panel's decision not to make additional substantive findings in relation to Cases 18 through 24, and 27 through 30. The Appellate Body observed that, with respect to those Cases, the results of the subsequent reviews listed in the Annex to the Panel request that fell within the Panel's terms of reference were issued before the expiry of the reasonable period of time. The Appellate Body considered that, given insufficient undisputed facts on record, it was not in a position to complete the analysis. However, the Appellate Body agreed with the Panel that the United States fails to comply if it continues to apply cash deposits on the basis of zeroing after the end of the reasonable period of time in respect of those Cases.

5. The Subsequent Sunset Reviews

Turning to the sunset reviews, the Appellate Body upheld the Panel's finding that that the European Communities had not demonstrated that the United States failed to comply with the recommendations and rulings of the DSB in respect of the sunset review in Case 3. The Appellate Body reasoned that, in the sunset review in Case 3, the USDOC had made only a preliminary affirmative likelihood-of-dumping determination by the time the Panel was established.

Regarding the sunset review determinations in Cases 2, 4, and 5, the Appellate Body upheld the Panel's decision not to make findings on whether in these sunset reviews the United States failed to comply with the recommendations and rulings of the DSB. The Appellate Body noted that the anti-dumping duty orders in these Cases were revoked following negative injury determinations by the USITC effective prior to the end of the reasonable period of time. On this basis, the Appellate Body

[21] In addition, the Appellate Body noted that the assessment instructions and liquidation instructions consequent to the rescission of the 2005-2006 periodic review were issued after the end of the reasonable period of time, and that they related to anti-dumping duties assessed on the basis of cash deposits previously calculated with zeroing. Such assessment and liquidation instructions are measures "mechanically derived" from the final assessment of anti-dumping duties and applied in the ordinary course of the imposition of such duties. Accordingly, the Appellate Body reversed the Panel's finding that those assessment and liquidation instructions do not establish that the United States has failed to comply with the recommendations and rulings of the DSB to bring the original investigation in this Case into conformity with its obligations under the covered agreements.

concluded that the USDOC's affirmative final likelihood-of-dumping determinations in these sunset reviews did not ultimately undermine compliance by the United States with the recommendations and rulings of the DSB, considering that the anti-dumping duty orders were revoked as a result of the sunset reviews with an effective date of 7 March 2007, that is, prior to the expiration of the reasonable period of time of 9 April 2007. The Appellate Body, therefore, declined to make a finding on whether the Panel erred in not ruling on the European Communities' claim that the United States failed to comply with the recommendations and rulings of the DSB in the sunset reviews in Cases 2, 4, and 5.

Regarding the sunset review determination in Case 19, the Appellate Body reversed the Panel's finding that any failure by the United States in this sunset review had not yet materialized as of the date of establishment of the Panel and that, as a consequence, the European Communities had not demonstrated that the United States failed to comply with the recommendations and rulings of the DSB. The Appellate Body further noted that, even if a formal continuation order was issued after the Panel's establishment, at the time the Panel was established, both determinations required by Article 11.3 of the *Anti-Dumping Agreement* in a sunset review had been made and, therefore, considering that both determinations were affirmative, the sunset review would result in a continuation order by operation of law in the United States' anti-dumping system.

Having reversed the Panel's finding on the sunset review in Case 19 and the Panel's findings that the sunset reviews in Cases 24, 28, 29, 30, and 31 did not fall within its terms of reference, the Appellate Body considered whether it could complete the legal analysis. The Appellate Body found that it could not complete the analysis with respect to the sunset review in Case 24, as there were not sufficient undisputed facts in the Panel record for it to do so. However, the Appellate Body completed the legal analysis in respect of Cases 19, 28, 29, 30, and 31 on the basis of the USDOC's Decision and Issues Memoranda submitted by the European Communities to the Panel, and found that, in all these sunset reviews, the USDOC had based its likelihood-of-dumping determination on margins of dumping calculated using zeroing. Therefore, the Appellate Body found that, in the sunset reviews in Cases 19, 28, 29, 30, and 31, the United States had acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement* and had failed to comply with the recommendations and rulings of the DSB. Finally, the Appellate Body rejected the claim that the Panel had acted inconsistently with Article 11 of the DSU in its assessment of the subsequent sunset reviews by the United States.

6. The Non-Existence of Measures Between 9 April and 23 April/31 August 2007

As regards the European Communities claim concerning the non-existence of compliance measures between 9 April, when the reasonable period of time expired, and 23 April/31 August 2007[22], respectively, the Appellate Body noted that, in its assessment under Article 21.5 of the DSU, the Panel took into account events that occurred between the end of the reasonable period of time and the establishment of the Panel on 25 September 2007. These events include the entry into force of 11 Section 129 determinations (issued by the USDOC on 9 April 2007) on 23 April 2007, the issuance of another Section 129 determination on 20 August 2007, and its entry into force on 31 August 2007. For the Appellate Body, in its analysis of whether the United States had complied with the recommendations and rulings of the DSB, the Panel took into account implementation actions taken subsequent to the expiry of the reasonable period of time but before that Panel was established. Accordingly, the Appellate Body found that the Panel did not act inconsistently with Article 11 of the DSU in declining to make findings on the European Communities' claim that, by not taking measures

[22] Eleven Section 129 determinations came into force on 23 April 2007; and one Section 129 determination entered into force on 31 August 2007.

to comply in this period, the United States violated Article 21.3 of the DSU. The Appellate Body underscored, however, that the responding Member is expected to comply with the recommendations and rulings of the DSB within, or at the latest by, the end of the reasonable period of time.

7. The Alleged Mathematical Error

The Appellate Body reversed the Panel's finding that the European Communities could not properly raise, in the compliance proceedings, a claim with respect to an alleged arithmetical error in the calculation of an exporter's dumping margin in the Section 129 determination relating to Case 11, because it could have raised it in the original proceedings, but failed to do so. The Appellate Body disagreed with the Panel's reasoning that the scope of Article 21.5 of the DSU is not so broad as to allow a complaining party to make claims that it could have made, but did not make, in the original proceedings, with respect to aspects of the original measure at issue that were incorporated, but remained unchanged, in the measure taken to comply. The Appellate Body disagreed with the Panel, insofar as it precluded new claims against inseparable aspects of a measure taken to comply, which are unchanged from the original measure. According to the Appellate Body, the critical question before the Panel was whether the alleged arithmetical error was an integral part of the measure taken to comply. If it was, then the Panel should have addressed the claim against the alleged arithmetical error in the measure taken to comply; if it was not, then the Panel was correct in declining to rule on this claim in the Article 21.5 proceedings.

Having reversed the Panel's findings that the European Communities could not raise claims against the alleged arithmetical error, the Appellate Body examined whether it could complete the analysis and concluded that there were insufficient undisputed facts in the Panel record that would allow it to reach a conclusion as to whether the alleged error is separable from the compliance measure or is an integral part thereof. Therefore, it was unable to rule on whether the United States failed to comply with the recommendations and rulings of the DSB by not correcting the alleged arithmetical error in the relevant Section 129 determination.

8. The "All Others" Rate

In cases where the number of exporters, producers or importers or products involved is so large that the determination of individual margins of dumping for each known exporter or producer of the product under investigation is impracticable, the authorities may limit their examination pursuant to Article 6.10 of the Anti-Dumping Agreement. In cases where the authority have limited their examination, an "all others" anti-dumping rate is applied to imports from exporters or producers not individually investigated. With respect to the "all others" rate, the Appellate Body noted that Article 9.4 of the *Anti-Dumping Agreement* requires, in calculating the ceiling for that rate, to disregard *de minimis*, zero, and margins based on "facts available". The Appellate Body disagreed with the Panel's interpretation that in situations where all margins of dumping are either zero, *de minimis*, or based on facts available, Article 9.4 imposes no obligation. The Appellate Body emphasized that Article 9.4, first, imposes a ceiling that the "all others" rate "shall not exceed". Secondly, investigated authorities are required to disregard, for the purposes of that calculation, any zero, *de minimis*, and "facts available" margins. The fact that all margins of dumping for the investigated exporters fall within one of the categories that Article 9.4 directs investigating authorities to disregard, does not imply that the investigating authorities' discretion to apply duties on non-investigated exporters is unbounded.

However, the Appellate Body did not consider it necessary to make findings in relation to the claim

that the United States acted inconsistently with Article 9.4 of the *Anti-Dumping Agreement* in the establishment of the "all others" rates in the Section 129 determinations in Cases 2, 4, and 5. In this respect, the Appellate Body observed that, on 7 February 2008, the USDOC revoked the anti-dumping duty orders in Cases 2, 4, and 5, following negative likelihood-of-injury determinations made by the USITC in the context of sunset reviews. These revocation orders took effect as of 7 March 2007 (that is, prior to the expiry of the reasonable period of time on 9 April 2007). As a result, any cash deposits imposed on imports of non-investigated exporters in this period, including those resulting from the recalculated "all others" rate, have been refunded.

The Appellate Body also found that the Panel did not err in making no findings in respect of the European Communities' claims under Article 6.8 and Annex II of the *Anti-Dumping Agreement*. The Appellate Body noted that, by its express terms, Article 6.8 permits the application of "facts available" to an "interested party" who "refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation". According to the Appellate Body, this confirms that Article 6.8 applies exclusively to those "interested parties" from which information *was* required, rather than to those parties from which information was not requested. Thus, the disciplines regarding the application of "facts available" under Article 6.8 and Annex II do not apply to non-investigated exporters that eventually are subject to the "all others" rate. The Appellate Body further observed that the investigating authorities' discretion to impose duties on non-investigated exporters is subject to the disciplines provided in Article 9.4, including the exclusion of any "facts available" margins of dumping in the calculation of the maximum permissible duty applied to those exporters.

9. Suggestion on Implementation under Article 19.1 of the DSU

Finally, the Appellate Body declined a request by the European Communities to make a suggestion, pursuant to Article 19.1 of the DSU, on how the United States should implement the DSB's recommendations and rulings. The Appellate Body found that the requested suggestion would not provide useful guidance or facilitate the implementation beyond its specific findings that the use of zeroing in subsequent reviews after the end of the reasonable period of time establishes a failure to comply with the DSB recommendations and rulings in respect of the Cases at issue in the original proceedings; if no such review is requested, a determination after the end of the reasonable period of time by which anti-dumping liability is assessed on the basis of cash deposits calculated with zeroing also establishes such a failure. The Appellate Body also expressed its agreement with the Panel's view that the United States fails to comply with the DSB recommendations and ruling if it continues to apply cash deposit rates established on the basis of zeroing after the end of the reasonable period of time in respect of the Cases at issue here. With respect to measures that derive mechanically from the assessment of duties, such measures would establish a failure to comply with the DSB recommendations or rulings to the extent that they reflect zeroing and that they are applied after the end of the reasonable period of time, even if such a measure is consequent to a periodic review issued before the end of that period. Subsequent sunset reviews in which zeroing was used and that provide the legal basis for the continued imposition of anti-dumping duties after the end of the reasonable period of time also establish are failure to comply with the DSB's recommendations and rulings.

■ Appellate Body Report, *US – Zeroing (Japan) (Article 21.5 – Japan)*, WT/DS322/AB/RW

This appeal concerned the implementation by the United States of the recommendations and rulings of the DSB in the dispute in *US – Zeroing (Japan)*. In the original proceedings, the Appellate

Body found, *inter alia*, that the use of zeroing procedures in periodic reviews is inconsistent "as such" with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994. The Appellate Body also found that the use of zeroing in certain periodic reviews, namely, Reviews 1, 2, 3, 7 and 8, was inconsistent with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994. The panel and Appellate Body reports in the original proceedings were adopted by the DSB on 23 January 2007. Pursuant to Article 21.3(b) of the DSU, the United States and Japan agreed that the reasonable period of time to implement the recommendations and rulings of the DSB would be 11 months, expiring on 24 December 2007.

On 7 April 2008, Japan requested that the matter be referred to the original panel pursuant to Article 21.5 of the DSU, because it did not consider that the United States had brought itself into compliance with the DSB's recommendations and rulings. Japan argued that the United States had failed to implement the DSB's recommendations and rulings regarding the importer-specific assessment rates determined in Reviews 1, 2, 3, 7, and 8, contrary to Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994.[23] In addition, Japan asserted that four subsequent periodic reviews—Reviews 4, 5, 6, and 9—were "measures taken to comply" that are inconsistent with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994. Finally, Japan submitted that the United States acted in violation of Articles II:1(a) and II:1(b) of the GATT 1994 when it took certain actions to liquidate the entries covered by Reviews 1, 2, 7, and 8 after the expiry of the reasonable period of time.

Reviews 1-6 and 9 were consecutive sunset reviews of the same anti-dumping duty order on imports of ball bearings from Japan. They followed one another consecutively. Review 7 related to an anti-dumping duty order on imports of cylindrical roller bearings from Japan. Review 8 related to an anti-dumping duty order on imports of spherical plain bearings from Japan. The Panel explained that, under the United States' retrospective anti-dumping system, periodic reviews involve the determination of "importer-specific assessment rates for previous entries imported during the review period" and "exporter-specific cash deposit rates that will apply prospectively to future import entries".[24] After the conclusion of the periodic review, the United States Customs and Border Protection ("Customs") collects anti-dumping duties in accordance with the rates determined in the periodic review. For this purpose, the USDOC sends liquidation instructions to Customs. The liquidation instructions will usually be sent to Customs within 15 days of publication of the final results of the periodic review. Private parties may challenge the final results of the periodic review before the United States Court of International Trade (the "USCIT"). The United States explained that the USCIT has jurisdiction provided that the anti-dumping duties remain uncollected. Consequently, private parties must request that the USCIT issue an injunction ordering the temporary suspension of the collection of anti-dumping duties while the judicial proceedings are pending. Collection resumes upon the conclusion of domestic litigation and the consequent lifting of any applicable injunctions, at which point the USDOC will send instructions to Customs ordering liquidation of the entries in accordance with the court's decision and Customs will collect duties accordingly. All nine reviews at issue in the Article 21.5 proceedings were challenged by private parties before the USCIT, which ordered the suspension of liquidation with respect to all nine reviews. In some cases, domestic litigation ended and the injunctions had been lifted.[25] In other cases, domestic litigation was ongoing and the injunctions remained in force.[26]

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[23] Japan also argued that the United States' failure to implement is inconsistent with Articles 17.14, 21.1, and 21.3 of the DSU.

[24] Under Section 751(a) of the United States Tariff Act of 1930, the USDOC must review and determine the amount of any anti-dumping duty at least once during each 12-month period, beginning on the anniversary of the date of publication of an anti-dumping duty order, if a request for such a review has been received.

[25] Domestic litigation had ended in respect of Reviews 1-3, 7, and 8.

[26] Domestic litigation was pending in respect of Reviews 4-6 and 9.

1. The Panel's Terms of Reference

The United States appealed the Panel's finding that Review 9 was within the Panel's terms of reference, relying on the two arguments that it had made before the Panel: (i) that the phrase "subsequent closely connected measures" in the panel request does not meet the requirement of Article 6.2 of the DSU to "identify the specific measures at issue"; and (ii) that Review 9 had not been completed when Japan submitted its panel request.[27]

The Appellate Body began with an analysis of Japan's panel request, and in particular the phrase "subsequent closely connected measures". It observed that the phrase "subsequent closely connected measures" indicates that the measures would have to be enacted after (that is, "subsequent" to) the eight periodic reviews identified by Japan in its panel request and related (that is, be "closely connected") to these eight reviews. Thus, the Appellate Body rejected the United States' argument that the phrase was too "broad" and "vague" to meet the requirement of Article 6.2 of the DSU. The Appellate Body agreed with the Panel that the use of the term "closely connected" earlier in paragraph 12 of the panel request to describe Reviews 4, 5, and 6 provided further support for this conclusion. Next, the Appellate Body recalled that in previous reports it had stated that Article 6.2 must be adapted to a panel request under Article 21.5, and that, in compliance proceedings, the "specific measures at issue" are measures "that have a bearing on compliance with the recommendations and rulings of the DSB". The Appellate Body observed that, if zeroing were used in Review 9, it would mean that the United States had not ceased using zeroing procedures in periodic reviews, contrary to the DSB's recommendations and rulings. Thus, the Appellate Body concluded that Review 9 is a measure that has "a bearing on compliance with the recommendations and rulings of the DSB" and this must be taken into account in assessing whether Japan's panel request meets the requirements of Article 6.2, read in the light of Article 21.5.

In addition, the Appellate Body disagreed with the United States' argument that the "separate and distinct" nature of each periodic review required identification of each periodic review in Japan's panel request. The Appellate Body clarified that subsequent reviews under the same anti-dumping duty order constitute "connected stages" involving the same products, from the same countries, and formed part of a continuum of events. As regards the United States' argument that the Panel erred by considering whether Japan's challenge to "subsequent closely connected measures" would "violate any due process objective of the DSU", the Appellate Body recalled that the request for the establishment of a panel serves the due process objective of notifying respondents and potential third parties of the nature of the dispute and of the parameters of the case. Thus, the Appellate Body found no error in the Panel's approach and could not identify itself any due process concerns in this case.

The Appellate Body then turned to the United States' argument that Review 9 was a "future measure" that had not yet come into existence at the time Japan submitted its panel request, and therefore could not have been included within the Panel's terms of reference. First, the Appellate Body observed that Article 6.2 does not set out an express temporal condition or limitation on the measures that can be identified in a panel request. Secondly, it explained that a measure initiated before recourse to an Article 21.5 panel, which is completed during those compliance proceedings, may have a bearing on whether compliance with the DSB's recommendations and rulings is achieved. The Appellate Body added that to exclude such a measure would mean that the disagreement between the parties would not be fully resolved by that Article 21.5 panel, and would thus frustrate the function of compliance

[27] The United States did not appeal the Panel's finding that Review 9 is a "measure taken to comply".

proceedings and be inconsistent with the objectives of the DSU. In this case, Review 9 related to the same antidumping duty order as Reviews 1, 2, and 3, found to be inconsistent in the original proceedings, and to Reviews 4, 5, and 6 which Japan had challenged as "measures taken to comply". Furthermore, Review 9 had been initiated at the time the matter was referred to the Panel and was due to be completed during the compliance proceedings. The Panel's inclusion of Review 9 therefore enabled the Article 21.5 Panel to fulfil its mandate and determine, in a prompt manner, whether the United States had achieved compliance with the DSB's recommendations and rulings.[28]

The Appellate Body disagreed that the reference in Article 3.3 of the DSU to "any measures *taken* by another Member", as interpreted by the panel in *US – Upland Cotton*, supported the United States' arguments. It recalled that Article 3.3 focuses on the perception or understanding of an aggrieved Member and stated that, given the use of zeroing in the preceding periodic reviews under the same anti-dumping duty order, Japan could have considered that its benefits would be impaired if zeroing was used in Review 9. It was then for the Panel to decide whether Review 9 fell within its terms of reference.

The United States argued that certain "systemic" considerations would arise if compliance panels were allowed to examine new measures or modifications made during the course of proceedings. As examples of these concerns, it referred to possible delays in the proceedings or parties having to respond on short notice to arguments relating to new measures. While the Appellate Body recognized that, in certain circumstances, these concerns may be relevant, it did not consider that any such concerns arose in this case, because the United States and the third parties were given adequate notice and opportunities to respond to Japan's allegations concerning Review 9.

Finally, the Appellate Body examined the United States' argument that the Panel's approach resulted in "asymmetrical" treatment between complainants and respondents regarding requests to include measures that are completed during the panel proceedings. The United States referred to previous panels that had rejected requests from respondents to examine measures enacted during the panel proceedings. The Appellate Body stated that it did not detect such asymmetrical treatment of complainants and respondents, noting that, in some cases, developments occurring during the proceedings have been taken into account to the benefit of respondents. In particular, it referred to *US – Zeroing (EC) (Article 21.5 – EC)*, where developments subsequent to the establishment of the panel were taken into account by the Appellate Body in finding that the United States had "ultimately" not failed to comply with the DSB's recommendations and rulings in relation to certain sunset reviews.[29] For these reasons, the Appellate Body upheld the Panel's findings that Review 9 was properly within its terms of reference.

2. The Scope of the United States' Compliance Obligations

Before addressing the specific findings made by the Panel with respect to Reviews 1 through 9, the Appellate Body set out its general understanding of the scope of a WTO Member's obligation to comply with the DSB's recommendations and rulings and of the timeframe within which compliance must be achieved. The Appellate Body examined Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU. Based

[28] In support of its position, the United States relied on a statement of the Appellate Body in *EC – Chicken Cuts* that "[t]he term 'specific measures at issue' in Article 6.2 suggests that, as a general rule, the measures included in a panel's terms of reference must be measures that are in existence at the time of the establishment of the panel". The Appellate Body observed, however, that, in that case, it did not rule that Article 6.2 categorically prohibits the inclusion of measures that are completed after a panel is requested. It noted, moreover, that *EC – Chicken Cuts* was an original WTO proceeding, whereas this case involved Article 21.5 proceedings and Review 9 was a measure that would have a bearing on compliance.

[29] See Appellate Body Report, *US – Zeroing (EC) (Article 21.5 – EC)*, paras. 372 and 375-381.

on its analysis of these provisions, the Appellate Body explained that the mandate of an Article 21.5 panel is to determine whether a WTO Member has implemented the DSB's recommendations and rulings fully and in a timely manner; it is not within its mandate to modify the reasonable period of time agreed or determined under Article 21.3. A WTO Member will not have met its obligation to implement the DSB's recommendations and rulings if measures taken to comply are inconsistent with the covered agreements or if there is an omission in implementation. Furthermore, in accordance with Article 21.3 of the DSU, implementation of the recommendations and rulings of the DSB must be done "immediately", unless it is "impracticable" to do so, in which case Article 21.3 foresees the possibility of the implementing Member being given a reasonable period of time to comply. However, the reasonable period of time is a limited exemption from the obligation to comply immediately. Thus, Article 21.3 requires that full implementation of the DSB's recommendations and rulings be achieved by the end of the reasonable period of time and, consequently, the WTO-inconsistent conduct must cease at the latest by that time.

a. The Collection of Duties After Expiration of the Reasonable Period of Time

Having discussed a WTO Member's obligation to comply with the DSB's recommendations and rulings, the Appellate Body turned to the issue of whether the obligation to comply applies also in respect of imports that entered the territory of the implementing WTO Member prior to the expiration of the reasonable period of time, when matters concerning those imports have not been fully settled by the end of that period. The Appellate Body reiterated its finding in *US – Zeroing (EC) (Article 21.5 – EC)* that, irrespective of the date on which the imports entered the territory of the implementing Member, any conduct of the implementing Member that was found to be WTO-inconsistent by the DSB must cease by the end of the reasonable period of time. It explained that full compliance is not achieved where the implementing Member fails to take action to rectify the WTO-inconsistent aspects of a measure that remains in force after the end of the reasonable period of time. Likewise, actions taken by the implementing Member after the end of the reasonable period of time must be WTO-consistent, even if those actions concern imports that entered the Member's territory before the end of the reasonable period of time. Where the importer-specific assessment rates or cash deposit rates determined in a periodic review are found to be WTO-inconsistent, the implementing Member is under an obligation to rectify these inconsistencies by the end of the reasonable period of time. Where periodic reviews cover imports that entered the implementing Member's territory prior to the expiration of the reasonable period of time, the WTO-inconsistencies may not persist after the reasonable period of time has expired. In other words, full compliance with the DSB's recommendations and rulings cannot be said to have occurred if WTO-inconsistent conduct does not cease completely by the end of the reasonable period of time, even if it relates to imports that entered the implementing Member's territory before that period expired.

The Appellate Body addressed various arguments raised by the United States in support of its position that the date of entry of the imports is the relevant parameter for determining compliance. First, the Appellate Body examined whether Article VI of the GATT 1994, the Interpretive Note to paragraphs 2 and 3 of Article VI, and Articles 8.6, 10.1, 10.6, and 10.8 of the *Anti-Dumping Agreement* provided relevant context for the United States' argument. The Appellate Body observed that an analysis of the text of these provisions reveals that they do not address a Member's compliance obligations after the DSB has adopted recommendations and rulings and the reasonable period of time for implementation has expired. Secondly, the Appellate Body examined the United States' argument that disregarding the date of entry would disadvantage WTO Members with retrospective anti-dumping systems and would create "inequality" between retrospective and prospective anti-dumping systems. The Appellate Body explained that this argument could not be reconciled with the text of Article 9.3.2

of the *Anti-Dumping Agreement*, which requires that WTO Members with prospective anti-dumping systems provide a mechanism allowing importers to request refunds of any duty paid in excess of the margin of dumping. If the refund procedures are challenged both domestically and in WTO dispute settlement, and the refund procedures are not completed before the end of the reasonable period of time, a WTO Member with a prospective anti-dumping system would also have compliance obligations in respect of those refund procedures even if they concern past imports. Thirdly, the Appellate Body examined the United States' assertion that failing to determine compliance by reference to the date of entry of imports would amount to "retroactive relief". The Appellate Body recalled that the DSU requires cessation of all WTO-inconsistent conduct either immediately upon adoption of the DSB's recommendations and rulings or no later than upon expiration of the reasonable period of time, regardless of the date of importation. It added that there is no "retroactive relief" involved when a WTO Member's conduct is examined from the proper reference point, which is the end of the reasonable period of time. Finally, the Appellate Body noted that the obligation in Article 9.3 that "[t]he amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2" would not be respected if a Member fails to comply with the DSB's recommendations and rulings and collects anti-dumping duties after the end of the reasonable period of time based on rates that were determined in periodic reviews using zeroing. For these reasons, the Appellate Body found that, in the case of periodic reviews of anti-dumping duty measures, the obligation to comply covers actions or omissions subsequent to the reasonable period of time, even if they relate to imports that entered the territory of a WTO Member at an earlier date.

b. Liquidation After the End of the Reasonable Period of Time of Prior Imports Due to Delays Resulting from Domestic Litigation

Next, the Appellate Body examined the United States' argument that, even if the date of collection were relevant for assessing compliance, liquidation actions that were delayed beyond the end of the reasonable period of time as a result of domestic litigation cannot provide a basis for a finding of non-compliance. The United States relied primarily on Articles 13 and footnote 20 to Article 9.3.1 of the *Anti-Dumping Agreement*.[30] The Appellate Body noted that the obligation in Article 13 is general in nature, requiring the maintenance of tribunals or procedures for the prompt review of administrative anti-dumping actions. It further observed that Article 13 does not speak directly to the issue raised in this appeal, as it contains no mention that judicial review procedures may excuse non-compliance with the DSB's recommendations and rulings after the end of the reasonable period of time. The fact that WTO Members are required to maintain independent review procedures for administrative anti-dumping actions does not exonerate them from the requirement to comply with the DSB's recommendations and rulings within the reasonable period of time. Therefore, the Appellate Body did not consider that Article 13 provides support for the proposition that a WTO Member is excused from complying with the DSB's recommendations and rulings by the end of the reasonable period of time, where a periodic review has been challenged in that Member's domestic courts and this has resulted in the collection of duties being delayed.

As regards footnote 20 to Article 9.3.1 of the *Anti-Dumping Agreement*, the Appellate Body explained that this provision expressly recognizes that domestic judicial proceedings may result in delays and that this may excuse exceeding the time-limits imposed under Articles 9.3.1 and 9.3.2 for the conduct of periodic reviews and for refund procedures under retrospective and prospective systems. However, the Appellate Body noted that footnote 20 does not address compliance with

[30] The footnote also applies to Article 9.3.2.

the DSB's recommendations and rulings. Further, the Appellate Body reasoned that the fact that the text of footnote 20 expressly limits its application to Articles 9.3.1 and 9.3.2 weighs against invoking footnote 20 to excuse delays in complying with obligations set out in other provisions of the covered agreements. The Appellate Body also recalled that Article 21.3 indicates that the "reasonable period of time" is an exception to immediate compliance, thus implying that further delays would not be justified.

The Appellate Body then addressed the United States' argument, based on *US – Zeroing (EC) (Article 21.5 – EC)*, that, where liquidation is delayed because of domestic judicial proceedings, it can no longer be said to "derive mechanically" from the periodic reviews challenged by Japan. The Appellate Body noted that the statement in *US – Zeroing (EC)(Article 21.5 – EC)* does not stand for the proposition that, if the liquidation actions do not "mechanically derive" from the challenged reviews, then such actions would be outside the scope of the implementing Member's compliance obligations. Even if liquidation occurring after the reasonable period of time due to court proceedings did not derive mechanically from the periodic review, but was "somehow autonomous", it would still be inconsistent if the use of zeroing had not been rectified. The Appellate Body concluded that it could not see why such actions—be they "mechanically derived" or not from the challenged periodic reviews—would be exempted from the United States' obligation to comply with the DSB's recommendations and rulings by the end of the reasonable period of time.

The United States also pointed out that the timing of liquidation is controlled by an independent judiciary and that litigation is initiated by private parties. The Appellate Body recalled that a WTO Member "bears responsibility for acts of all its departments of government, including its judiciary".[31] It further observed that the periodic reviews, and the collection of duties after the reasonable period of time by the USDOC and Customs, are not judicial acts, and that Japan had not attributed the failure to comply to the United States courts. As for the initiation of domestic litigation by private parties, the Appellate Body noted that it is the court that decides whether or not to grant an injunction and private parties do not control the timing or content of the court's decisions.

An additional argument made by the United States was that the precise action to be taken once domestic litigation is completed would depend on the outcome of judicial review. In particular, the United States asserted that, as a result of the decision of the domestic court, there could be circumstances where the USDOC would have to recalculate the importer-specific assessment rates without using zeroing, such as where all relevant export prices are below normal value. The Appellate Body did not consider that this example was to the point because zeroing does not manifest itself in such a case in which all export prices are below normal value. Moreover, the Appellate Body observed that domestic litigation had been completed in relation to Reviews 1, 2, 3, 7, and 8 and there was no indication on the Panel record that the use of zeroing was subsequently corrected in any of these Reviews. The Appellate Body also noted that judicial review was also required under other covered agreements (for example, Article X:3(b) of the GATT 1994, Article 23 of the *SCM Agreement*, and Article VI:2(a) of the GATS). Thus, the Appellate Body was concerned that exempting measures subject to domestic judicial review procedures from the obligation to comply by the end of the reasonable period of time could have implications for the effectiveness of WTO dispute settlement in areas beyond anti-dumping.

[31] Appellate Body Report, *US – Shrimp*, para. 173.

For these reasons, the Appellate Body found that the fact that collection of anti-dumping duties is delayed as a result of domestic judicial proceedings does not provide a valid justification for the failure to comply with the DSB's recommendations and rulings by the end of the reasonable period of time.

The Appellate Body next turned to the findings of the Panel with respect to Reviews 1, 2, 3, 7, and 8. As the United States' appeal was premised entirely on the arguments concerning the date of entry and the delay in liquidation resulting from judicial review, which had been rejected, the Appellate Body upheld the Panel's finding that the United States had failed to comply with the recommendations and rulings of the DSB regarding the importer-specific assessment rates determined in Reviews 1, 2, 3, 7, and 8 that apply to entries covered by those Reviews and that were, or will be, liquidated after the expiry of the reasonable period of time.[32] For the same reasons, the Appellate Body upheld the Panel finding that the United States remains in violation of Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994, in respect of those importer-specific assessment rates.

The United States also appealed the Panel's findings with respect to Reviews 4, 5, and 6 and 9, for which liquidation of duties remained suspended as a result of pending judicial proceedings. In addition to the arguments mentioned earlier, the United States argued that Reviews 4, 5, and 6 could not have provided a basis for a finding of inconsistency with the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 at the time Japan submitted its panel request. The United States explained that, because the collection of duties determined in these Reviews was enjoined prior to the conclusion of the reasonable period of time and continued to be enjoined, these Reviews had not had effects after the end of the reasonable period of time of the kind that could give rise to a finding of inconsistency.

The Appellate Body recalled that the United States did not appeal the Panel's finding that Reviews 4, 5, and 6 are "measures taken to comply". It also recalled the Panel's findings that the exporter-specific margins of dumping and importer-specific assessment rates in Reviews 4, 5, and 6 were affected (in the sense of being inflated) by zeroing, that "Reviews 4, 5 and 6 continued to have legal effect long after the adoption of the DSB's recommendations and rulings", and that some of the import entries covered by Reviews 4, 5, and 6 had not been liquidated when the reasonable period of time expired. Moreover, the Appellate Body stated that, under Article 3.8 of the DSU, there is a presumption that a breach of the WTO agreements nullifies or impairs benefits of other Members. Therefore, the Appellate Body disagreed that there was no basis to find the application of zeroing in Reviews 4, 5, and 6 to be inconsistent with the United States' obligations under the *Anti-Dumping Agreement* and the GATT 1994. For these reasons, the Appellate Body upheld the Panel's finding that the application of zeroing in the context of Reviews 4, 5, and 6 is inconsistent with Articles 2.4 and 9.3 of the *Anti-Dumping* and Article VI:2 of the GATT 1994.

The Appellate Body noted that Review 9 was concluded after the expiration of the reasonable period of time. The argument of the United States, that Review 9 covered imports that entered the United States prior to the expiration of the reasonable period of time, had been rejected by the Appellate Body in its earlier analysis. Consequently, the Appellate Body upheld the Panel's finding that the application of zeroing in the context of Review 9 is inconsistent with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994.

[32] The Appellate Body referred in this respect to the Panel's finding that the status of the importer-assessment rates determined in Reviews 1, 2, 3, 7 and 8 had not changed since the original proceeding, in which they were found to be WTO-inconsistent.

3. Article II of the GATT 1994

Finally, the Appellate Body considered whether the Panel erred in finding that certain liquidation instructions and notices taken by the United States relating to Reviews 1, 2, 7, and 8, are inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994, because they resulted in the imposition of duties in excess of bound rates set forth in the United States' Schedule of Concessions. The Panel found that the duties in excess of bound rates were not justified under Article II:2(b) because the anti-dumping duties were not applied consistently with Article VI. Because the United States had not challenged the Panel's interpretation of Article II, the Appellate Body explained that it did not need to engage in an extensive analysis of this provision.[33]

The United States argued that the Appellate Body's reversal of the Panel's findings relating to Reviews 1, 2, 7, and 8 would necessarily require a reversal of the Panel's findings under Article II of the GATT 1994. The Appellate Body observed that, since it had upheld the findings of the Panel with respect to these Reviews, the condition on which the United States' appeal was premised had not been met.[34] Accordingly, the Appellate Body upheld the Panel's finding that the United States was in violation of Articles II:1(a) and II:1(b) of the GATT 1994 with respect to certain liquidation actions relating to Reviews 1, 2, 7, and 8 taken after the expiry of the reasonable period of time.

The Appellate Body concluded that, to the extent that the United States had failed to comply with the recommendations and rulings of the DSB in the original proceedings, the recommendations and rulings remain operative. The Appellate Body also recommended that the DSB request the United States to bring into conformity with its obligations under the *Anti-Dumping Agreement* and the GATT 1994 the measures found in its Report and in the Panel Report to be inconsistent with those Agreements.

■ Appellate Body Report, *China – Publications and Audiovisual Products*, WT/DS363/AB/R

This dispute concerned a complaint brought by the United States with respect to various measures relating to the importation into and distribution within China of reading materials, audiovisual home entertainment products, sound recordings, and films for release in movie theatres. China explained before the Panel that a series of measures challenged by the United States establish a content review mechanism and a system for the selection of import entities for specific types of goods that China considers to be "cultural goods". China explained that its regulatory regime defines the content that China considers to have a negative impact on public morals and, in order to ensure that such content is not imported into China, establishes a mechanism for content review of relevant products that is based upon the selection of import entities. China submitted that, because these import entities play an essential role in the content review process, and because, in the case of imported products, it is critical that content review be carried out at the border, only "approved" and/or "designated" import entities are authorized to import the relevant products. China further explained that domestic publishers

[33] It did note that the Panel's interpretative approach was "coherent with" the Appellate Body's interpretation in *India – Additional Import Duties* of the relationship between Articles II:1(b) and II:2(a). The Appellate Body noted, in that case, that "the participants agree that, if a charge satisfies the conditions of Article II:2(a), it would not result in a violation of Article II:1(b). Thus, ... in the context of this case involving the application of duties that are claimed to correlate to certain internal taxes, Article II:1(b) and Article II:2(a) are closely related and must be interpreted together." (Appellate Body Report, *India – Additional Import Duties*, para. 153)

[34] The Appellate Body further noted that it had already rejected the other arguments on which the United States' appeal was based, namely, the "date of entry" argument, and the argument that liquidation would have occurred before the expiration of the reasonable period of time but for the domestic judicial proceedings.

of cultural goods also face limitations on the publication of prohibited content, and content review requirements.

Although the Panel made a large number of findings, only the following were the subject of China's appeal and the United States' other appeal: (i) the Panel's finding that specific provisions in China's measures pertaining to films for theatrical release and audiovisual products imported for publication ("unfinished audiovisual products") are subject to, and inconsistent with, China's trading rights commitments[35]; (ii) the Panel's finding that China has not demonstrated that relevant provisions in China's measures are "necessary" to protect public morals within the meaning of Article XX(a) of the GATT 1994; and (iii) the Panel's finding that the entry "Sound recording distribution services" in China's GATS Schedule covers the electronic distribution of sound recordings, and, consequently, that the provisions regulating such distribution are inconsistent with China's scheduled national treatment obligations under Article XVII of the GATS.

1. Applicability of China's Trading Rights Commitments to Measures Pertaining to Films for Theatrical Release and Unfinished Audiovisual Products

China appealed the Panel's findings that specific provisions in its measures pertaining to films for theatrical release and unfinished audiovisual products are subject to its trading rights commitments, and, as a consequence, sought reversal of the Panel's findings that these provisions are inconsistent with China's trading rights commitments. According to China, these provisions regulate services and content, and are therefore not covered by China's trading rights commitments, which apply only to goods. Thus, China did not dispute that these provisions restrict *who* may import films and unfinished audiovisual products, but rather contended that *what* are imported are not goods.

China's appeal concerned four specific provisions, including Article 30 of the *Film Regulation*.[36] Under these provisions, only entities designated or approved by the relevant Chinese authority may engage in the importation of films for theatrical release or unfinished audiovisual products. Noting that China presented arguments specifically concerning Article 30 of the *Film Regulation* and explained that the same arguments apply, *mutatis mutandis*, to the other provisions, the Appellate Body focused its analysis on the Panel's finding concerning Article 30 of the *Film Regulation*.

China maintained to the Panel that the term "film" in the English translations of the *Film Regulation* submitted by both parties is translated from the Chinese term "*Dian Ying*", which, according to China, refers exclusively to content and not to any physical good—such as a hard-copy cinematographic film. China submitted that its view was confirmed by the independent translator[37] consulted by the Panel. The Panel found, however, that even if the term "*Dian Ying*" refers exclusively to the content of a film, in those cases where relevant content is to be imported on hard-copy cinematographic films, Article 30 would necessarily affect who may import such goods. Thus, because the Panel's finding—that Article 30 of the *Film Regulation* necessarily affects the right to import a good—was made irrespective of the precise meaning of the term "*Dian Ying*", the Appellate Body rejected the contention that the

[35] Pursuant to the trading rights commitments, within three years of China's accession to the WTO, all enterprises in China, as well as foreign enterprises and foreign individuals, are to be granted the right to import and export all goods (except for certain goods not at issue in this dispute). With respect to foreign enterprises and individuals, these commitments also require that the right to import and export all goods be granted in a non-discretionary manner.

[36] The other relevant provisions are Article 16 of the *Film Enterprise Rule*, Article 5 of the *2001 Audiovisual Products Regulation*, and Article 7 of the *Audiovisual Products Importation Rule*.

[37] The Panel requested the United Nations Office at Nairobi (the "UNON") to provide English translations of relevant terms or provisions of China's measures.

Panel erred in not specifically excluding "hard-copy cinematographic film" as a possible meaning of the term "*Dian Ying*" in Article 30 of the *Film Regulation*. The Appellate Body also disagreed with China's argument that other provisions of the *Film Regulation* show that the measure is concerned with content, not goods. The Appellate Body found, instead, that none of the provisions referred to by China contradicts the Panel's finding that, where content is embedded in hard-copy cinematographic films, Article 30 necessarily affects the importation of goods.

The Appellate Body was not persuaded by China's argument that, because Article 30 regulates the content of films and the services associated with the importation of such content, any effect this provision has on the importation of goods is merely incidental and practical, and is therefore not subject to China's trading rights commitments. The Appellate Body reasoned that measures regulating content and services may also be subject to China's trading rights commitments in respect of goods, and that China's arguments were based on an artificial distinction between content, on the one hand, and the goods in which the content is embedded, on the other hand. Moreover, in the Appellate Body's view, where physical goods are used for purposes of importing the content of films, Article 30 has an inevitable, rather than an incidental, effect on who may import goods, and is therefore subject to China's trading rights commitments.

On this basis, the Appellate Body upheld the Panel's finding that the relevant provisions of China's measures pertaining to films for theatrical release and unfinished audiovisual products are subject to, and inconsistent with, China's trading rights commitments.

2. China's Defence under Article XX(a) of the GATT 1994

a. The Availability of a Defence under Article XX(a) of the GATT 1994

The Appellate Body recalled that, before the Panel, China asserted that the introductory clause of paragraph 5.1 of its Accession Protocol allowed it to justify measures found to be inconsistent with its trading rights commitments as measures "necessary" to protect public morals, within the meaning of Article XX(a) of the GATT 1994. The Panel did not decide whether paragraph 5.1 gave China access to a defence under Article XX(a), but proceeded on the assumption that such a defence was available. In the Appellate Body's view, assuming *arguendo* that China can invoke Article XX(a) may not provide a solid foundation upon which to rest legal conclusions. Assuming *arguendo* could be at odds with the objective of promoting security and predictability through dispute settlement, and may not assist the DSB in making recommendations and rulings so as to resolve the dispute. In particular, such an approach risks creating uncertainty with respect to China's implementation obligations. The Appellate Body also noted that whether the introductory clause of paragraph 5.1 allows China to assert a defence under Article XX(a) is an issue of legal interpretation falling within the scope of Article 17.6 of the DSU. Thus, the Appellate Body proceeded to examine this issue.

The introductory clause of paragraph 5.1 of China's Accession Protocol provides that China's obligation to grant the right to trade in goods to all enterprises in China is "[w]ithout prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement". The Appellate Body reasoned that the phrase "right to regulate trade in a manner consistent with the WTO Agreement" encompasses rights that the covered agreements affirmatively recognize as accruing to WTO Members, such as WTO-consistent requirements "concerning import licensing, TBT, and SPS". The Appellate Body found that the introductory clause also encompasses certain rights to take regulatory action that derogates from obligations under the *WTO Agreement*—that is, to relevant exceptions, such as Article XX of the GATT 1994. In this respect, the Appellate Body observed that the obligations

assumed by China in respect of trading rights, which relate to traders, and the obligations imposed on all WTO Members in respect of their regulation of trade in goods (such as those under Articles III and XI of the GATT 1994), are closely intertwined. The Appellate Body further noted that the close relationship between restrictions on entities engaged in trade and GATT obligations relating to trade in goods had also been recognized in previous GATT panel and WTO panel and Appellate Body reports, where measures that did not directly regulate goods, or the importation of goods, were nonetheless found to contravene GATT obligations.

The Appellate Body thus considered that whether a measure regulating those engaged in the import and export of goods falls within the scope of China's right to regulate trade may depend on whether the measure has a clearly discernable, objective link to the regulation of trade in the goods at issue. Whether the necessary objective link exists in a specific case needs to be established through careful scrutiny of the nature, design, structure, and function of the measure, often in conjunction with an examination of the regulatory context within which it is situated. When such a link exists, then China may seek to show that, because its measure complies with the conditions of a GATT exception, the measure represents an exercise of China's right to regulate trade in a manner consistent with the *WTO Agreement* and, as such, may not be impaired by China's trading rights commitments.

Turning to the measures in this dispute, the Appellate Body noted that the requirements and provisions found to be inconsistent with China's trading rights commitments under its Accession Protocol and Working Party Report all form part of a broader regime regulating trade in the specific goods at issue and designed to prevent the dissemination of specific types of prohibited content within China. As the Panel found, certain of the inconsistent provisions are contained in a legal instrument that, itself, sets out a content review mechanism. With respect to other provisions contained in instruments that do not themselves incorporate a content review mechanism, the Panel accepted China's argument that these are not isolated measures but are the result of its system of selecting import entities with the content review mechanism in mind. The Appellate Body further noted that the United States had not contested that the provisions restricting trading rights are part of China's system for reviewing the content of the relevant goods. Thus, the Appellate Body considered that the provisions that China sought to justify under Article XX(a) of the GATT 1994 have a clearly discernable, objective link to China's regulation of trade in the relevant products. On this basis, the Appellate Body found that China could rely upon the introductory clause of paragraph 5.1 of China's Accession Protocol and seek to justify the relevant provisions and requirements as "necessary" to protect public morals in China, within the meaning of Article XX(a) of the GATT 1994.

b. The "Necessity" Test under Article XX(a) of the GATT 1994

China challenged four elements of the Panel's analysis under Article XX(a) of the GATT 1994, as well as the Panel's ultimate finding that various provisions[38] of China's measures are not "necessary" to protect public morals in China within the meaning of Article XX(a). Specifically, China appealed the Panel's findings: (i) relating to the contribution made by the requirement in Article 42(2) of the *Publications Regulation* that only wholly State-owned enterprises may be approved as publications import entities (the "State-ownership requirement") to the protection of public morals in China; (ii) relating to the contribution made by the provisions excluding foreign-invested enterprises from

[38] Articles X:2 and X:3 of the List of Prohibited Foreign Investment Industries in the *Catalogue*, in conjunction with Articles 3 and 4 of the *Foreign Investment Regulation*; Article 4 of the *Several Opinions*; Article 41, and Article 42 in conjunction with Article 41, of the *Publications Regulation*; Article 27 of the *2001 Audiovisual Products Regulation*; Article 8 of the *Audiovisual Products Importation Rule*; and Article 21 of the *Audiovisual (Sub-)Distribution Rule*.

engaging in the importation of the relevant products[39] to the protection of public morals in China; (iii) that the restrictive effect of the provisions on "those wishing to engage in importing" is, in addition to the restrictive effect on imports, relevant for assessing the necessity of such provisions under Article XX(a); and (iv) that at least one of the alternative measures proposed by the United States (that is, giving the Chinese Government sole responsibility for conducting content review) was an alternative "reasonably available" to China. China requested the Appellate Body to reverse the Panel's ultimate finding on "necessity", and to complete the analysis and find that the relevant provisions in China's measures are justified under Article XX(a).

The United States appealed the Panel's intermediate finding that the requirement that the approval of publications import entities conform with China's State plan for the total number, structure, and distribution of publications import entities contained in Article 42 of the *Publications Regulation* (the "State plan requirement") can be characterized as "necessary", in the absence of reasonably available alternatives, to protect public morals in China within the meaning of Article XX(a). The United States requested the Appellate Body to reverse this intermediate finding or, should the Appellate Body uphold the Panel's ultimate finding, to declare the intermediate finding moot and of no legal effect.

At the outset of its examination of the Panel's analysis under Article XX(a) of the GATT 1994, the Appellate Body addressed certain "concerns" expressed by the United States regarding the Panel's approach to analyzing the "necessity" of China's measures. The United States maintained that even though the "necessity" test under Article XX(a) involves a single, integrated, yet multifaceted inquiry, the Panel appeared to have taken a two-step analysis by examining, first, whether China demonstrated that the measures were "necessary" within the meaning of Article XX(a), before examining whether reasonably available alternatives had been identified. The Appellate Body observed that, in several prior reports, including *Korea – Various Measures on Beef*, *US – Gambling*, and *Brazil – Retreaded Tyres*, it has set out a sequential process of weighing and balancing a series of factors to be used when analyzing a measure's "necessity" under Article XX. The factors to be weighed and balanced include: (i) the relative importance of the values pursued by the challenged measure; (ii) the contribution to the realization of such values by the challenged measure; and (iii) the restrictive effect of the measure. A comparison of the challenged measure and possible alternative measures should also be undertaken in the light of these factors to ascertain whether the alternative measures are reasonably available to the Member concerned. The Appellate Body did not consider that the Panel's approach to the "necessity" test in this dispute was erroneous or contradicted the approach set out in previous Appellate Body reports.

The Appellate Body then turned to review the Panel's analysis of whether relevant provisions or requirements of China's measures make a contribution to the protection of public morals in China. With respect to the State-ownership requirement in Article 42(2) of the *Publications Regulation*, China argued that the Panel committed an error of law and failed to make an objective assessment of the matter before it, as required by Article 11 of the DSU, by misrepresenting China's argument that the Chinese Government could require only those enterprises in which the State owns all of the equity to bear the cost of carrying out the public policy function of content review. The Appellate Body disagreed that the Panel reduced this argument to a mere "cost analysis". The Appellate Body found, instead, that the Panel did not consider the cost element of China's argument in isolation, but rather in relation to the public policy function of content review. The Appellate Body added that, in any event, China

[39] This exclusion is set out in the following provisions: Articles X:2 and X:3 of the List of Prohibited Foreign Investment Industries in the *Catalogue*, in conjunction with Articles 3 and 4 of the *Foreign Investment Regulation*; Article 4 of the *Several Opinions*; and Article 21 of the *Audiovisual (Sub-)Distribution Rule*.

had not established a connection between the exclusive ownership of the State in the equity of an import entity and that entity's contribution to the protection of public morals in China. The Appellate Body also upheld the Panel's finding that the provisions excluding foreign-invested enterprises from engaging in the importation of the relevant products do not make a contribution to the protection of public morals. The Appellate Body found, in this respect, that China's appeal relied on the same reasons as those advanced, and rejected by the Appellate Body, with regard to the Panel's finding on the contribution made by the State-ownership requirement to the protection of public morals.

As regards the contribution made by the State plan requirement to the protection of public morals, the Appellate Body stated that the burden of demonstrating that this requirement is "necessary" to protect public morals within the meaning of Article XX(a) resided with China. The Appellate Body noted, however, that China had not pointed the Panel to any evidence about the operation of the State plan or the nature of the limitation contained in that plan. Moreover, in reaching its finding regarding the State plan requirement, the Panel failed to explain how or to what extent the State plan requirement can or does make a contribution to the protection of public morals. Therefore, the Appellate Body found that the Panel had erroneously determined that China had met its burden of proof under Article XX(a). On this basis, the Appellate Body found that the Panel erred in finding that the State plan requirement in Article 42 of the *Publications Regulation* is apt to make a material contribution to the protection of public morals and that, in the absence of a reasonably available alternative, it can be characterized as "necessary" to protect public morals in China.

Next, the Appellate Body examined the Panel's analysis of the restrictive effect of the provisions of China's measures as part of the "necessity" test under Article XX(a). The Panel found it appropriate, in its weighing and balancing of various factors, to take into account two different types of restrictive effect, namely, the restrictive effect of the provisions on imports of the relevant products, as well as the restrictive effect of those provisions on those wishing to engage in importing, in particular on their right to trade. China alleged that the Panel erred in taking into account the effect of China's measures on those wishing to engage in importing the relevant goods. China argued that the Panel's approach was circular because it relied on such restrictive effect both in finding that the measures are inconsistent with China's trading rights commitments and in finding that the measures are not "necessary" to protect public morals in China.

In the Appellate Body's view, a panel's assessment of the restrictive effect of a measure on international commerce must be conducted in the light of the measure at issue, the specific obligation of the covered agreements that the measure infringes, and the defence being invoked. In this dispute, given that China's provisions impose a restriction on *who* may engage in importing the relevant products, and the fact that China's trading rights commitments stipulate *who* China must permit to engage in importing, the Appellate Body saw no error in the Panel's tailoring of its assessment to take into account the restrictive effect of the provisions of China's measures on the beneficiaries of the right to trade. The Appellate Body also found that, contrary to China's assertion, the Panel's approach was not circular, because the restrictive effect of the provisions was relevant in two distinct contexts of the Panel's analysis. More specifically, the restrictive effect was relevant for the Panel's analysis of *whether* the provisions restrict who may engage in importing and are thus inconsistent with China's trading rights commitments. The restrictive effect of the provisions was relevant also for the Panel's analysis regarding the *extent to which* the provisions restrict those who wish to engage in importing, as well as *how* such restrictive effect comports with the degree of contribution to the protection of public morals in China and the societal importance and value of the legitimate objective concerned.

The last element in the Appellate Body's review under Article XX(a) of the Panel's findings concerned the Panel's analysis of whether one of the less trade-restrictive alternative measures proposed by the

United States is an alternative reasonably available to China. The Appellate Body recalled that the Panel had reached preliminary findings that the State plan requirement, and the requirement that publications import entities have suitable organization and qualified personnel[40], are "necessary" to protect public morals "in the absence of reasonably available alternatives". The Panel then examined one of the alternative measures proposed by the United States, namely, that the Chinese Government be given sole responsibility for conducting content review and that the restrictions on who may import be eliminated.[41] The Panel found that China failed to demonstrate that this alternative is not reasonably available. On appeal, China challenged this finding, claiming that the Panel had erred in law and failed to address China's arguments that the proposed alternative would require China to engage in tremendous restructuring within the Government and would pose substantial technical difficulties, including the burden on the Government to implement a completely upgraded electronic communications system, and would thus impose an undue burden on China.

The Appellate Body found, however, that the Panel had not ignored China's arguments. Instead, the Panel had recognized that the proposed alternative might require China to allocate additional human and financial resources to the content review authorities. Yet, the Panel also observed, rightly, that the Chinese Government already conducts final content review for products other than reading materials, and that China had not provided evidence demonstrating that the estimated cost of the alternative would be unreasonably high. The Appellate Body recalled, in this regard, that at present all approved publication import entities are wholly owned by the State and that Chinese law expressly authorizes the Government to charge fees for providing content review services. The Appellate Body also noted that China had not established that substantial technical difficulties would be incurred or an undue burden imposed if the alternative of giving the Chinese Government sole responsibility for conducting content review were implemented. China also argued that the Panel failed to conduct an objective assessment of the matter, as required by Article 11 of the DSU, in finding that China had not asserted that its Government would lack the capacity to conduct content review for reading materials. The Appellate Body did not see that the Panel had made such a finding. Rather, the Panel recognized that the content review authorities may not currently have sufficient human and financial resources, but held that the additional resources implicated by the alternative had not been shown to amount to an undue burden. On this basis, the Appellate Body upheld the Panel's finding that China had not demonstrated that the alternative of giving the Chinese Government sole responsibility to conduct review was not reasonably available. The Appellate Body emphasized that its finding does not mean that the proposed alternative is the only alternative available to China. Rather, China retains the prerogative to select its preferred method of implementing the recommendations and rulings of the DSB in this dispute, consistently with the covered agreements.

For the reasons described above, the Appellate Body upheld the Panel's conclusion that China had not demonstrated that the relevant provisions are "necessary" to protect public morals, within the meaning of Article XX(a) of the GATT 1994 and that, as a result, China had not demonstrated that these provisions are justified under Article XX(a).

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[40] Article 42(4) of the *Publications Regulations* requires that publication import entities have a suitable organization and personnel that satisfies qualification requirements determined by the Chinese Government. The Panel characterized this as "necessary", "in the absence of reasonably available alternatives", to protect public morals in China, although this intermediate finding was not subject to appeal.

[41] As further alternatives, the United States proposed that a foreign-invested enterprise could develop the expertise to conduct content review for a particular type of product. The foreign-invested enterprise could complete the review and then import the publication into China, or it could perform the content review either while importation is underway and/or once the importation was complete, but before the good is released into commerce in China. Alternatively, the foreign-invested enterprise importing the good into China could hire specialized domestic entities with the appropriate expertise to conduct the content review process before, during, or after importation.

3. The Scope of China's GATS Schedule Entry "Sound Recording Distribution Services"

China appealed the Panel's finding that the provisions of China's measures[42] prohibiting foreign-invested entities from engaging in the distribution of sound recordings in electronic form (such as through the Internet) are inconsistent with Article XVII of the GATS.[43] According to China, the Panel erred in interpreting the entry "Sound recording distribution services" in China's GATS Schedule as encompassing distribution by electronic means. China maintained that this entry covers only the distribution of sound recordings in physical form. In China's view, the application of Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the "Vienna Convention") to the interpretation of this entry yields an inconclusive result and, therefore, the Panel should have applied the in dubio mitius principle and refrained from adopting the interpretation less favourable to China.

The Appellate Body began by addressing China's arguments regarding several elements of the Panel's interpretation of the entry "Sound recording distribution services" pursuant to Article 31(1) of the *Vienna Convention*. China argued that, in interpreting the ordinary meaning of "Sound recording distribution services", the Panel disregarded relevant dictionary definitions submitted by China showing that "sound recording" means the physical carrier on which sound is recorded. The Appellate Body considered that the Panel did not disregard the dictionary definitions submitted by China but, rather, examined several definitions in order to assess whether the meaning of the term "sound recording" includes *only* the physical medium on which the content is embedded *or also* the recorded content. Ultimately, the Panel was not persuaded that the meaning of the term "sound recording" excluded recorded content stored or distributed in electronic form. The Appellate Body further noted that the Panel was not required to quote each dictionary definition submitted by the parties expressing similar meanings in different form. Moreover, in the Appellate Body's view, the definitions of "distribution" submitted by China did not compel the Panel to conclude that this term referred only to the distribution of physical goods. Rather, dictionary definitions of the term included the dispersal of intangible products.

With respect to the context of the entry "Sound recording distribution services", the Appellate Body noted that the Panel had analyzed the contextual relevance of other parts of China's GATS Schedule, provisions of the GATS, and the GATS Schedules of other WTO Members. China argued that the Panel's analysis of each element of context was inconclusive as to whether the entry "Sound recording distribution services" extends to electronic distribution. The Appellate Body found, however, that several contextual elements support the Panel's interpretation. For example, the Panel properly found that, in sector 2.D (Audiovisual Services) of China's GATS Schedule, under which the entry "Sound recording distribution services" is inscribed, the reference to audiovisual "products" in the limitation in the market access column encompasses both tangibles and intangibles. Moreover, in the same sector, China made commitments that cover distribution services for both physical and non-physical products, such as "entertainment software" and motion pictures for theatrical release. The Appellate Body also agreed with the Panel regarding the contextual relevance of the fact that the entry "Sound recording distribution services" has been inscribed under the sector concerned with audiovisual content, "Audiovisual Services", as opposed to the sector "Distribution Services", which covers the distribution of physical goods in China's GATS Schedule.

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[42] Article X:7 of the List of Prohibited Foreign Investment Industries in the *Catalogue*, in conjunction with Articles 3 and 4 of the *Foreign Investment Regulation*; Article 4 of the *Several Opinions*; Article II of the *Circular on Internet Culture*; and Article 8 of the *Network Music Opinions*.

[43] The Panel found that the United States' claims were not, as alleged by China, limited to claims relating to the digital distribution of sound recordings over the Internet. Instead, the Panel accepted that the claims in respect of digital distribution also referred to other forms of digital communication, "which might include, for example, mobile telephone networks".

The Appellate Body also found relevant context in provisions of the GATS. It observed that provisions of the GATS concerning the scheduling of specific commitments allow Members to undertake specific commitments and to circumscribe the scope of these commitments by qualifying the scope of sectors or subsectors inscribed in the Schedule, by including or excluding modes of supply, and by listing limitations, qualifications, or conditions on market access and national treatment. The Appellate Body considered that, in the absence of specific limitations, conditions, or qualifications, the meaning of the entry "Sound recording distribution services" would seem to encompass distribution in electronic form. The Appellate Body also noted that the definition of "supply of a service" in Article XXVIII(b) of the GATS includes "the production, distribution, marketing, sale and delivery of a service". The Appellate Body agreed with the Panel that this definition supports the view that the term "distribution" covers the distribution of something intangible—services. Moreover, the Appellate Body found no error in the Panel's analysis of the context provided by other Members' GATS Schedules, which the Panel in any event considered to be of limited relevance.

As regards the object and purpose of the treaty, China maintained that the principle of progressive liberalization set out in the preamble of the GATS does not allow for the expansion of the scope of a WTO Member's commitments by interpreting the terms in its Schedule based on their meaning at the time of interpretation. Thus, China argued that the Panel wrongly interpreted the entry "Sound recording distribution services" according to its contemporary meaning, rather than the meaning at the time China's accession negotiations were concluded. The Appellate Body disagreed with China that the objectives listed in the GATS preamble contradict the Panel's interpretation of "Sound recording distribution services" as extending to electronic distribution of sound recordings. In the Appellate Body's view, the principle of progressive liberalization, which contemplates liberalizing services sectors and modes of supply incrementally, does not lend support to an interpretation that would constrain the scope and coverage of specific commitments already undertaken by Members. The Appellate Body recalled the Panel's finding that the term "sound recording" encompasses recorded content, and that the term "distribution" covers distribution of intangibles, and opined that the same meanings would equally have prevailed when the WTO entered into force as well as at the time China acceded to the WTO in 2001. The Appellate Body added that the terms "sound recording" and "distribution" are sufficiently generic that what they apply to may change over time. Finally, the Appellate Body observed that interpreting the terms of GATS commitments on the basis of their meaning at the time relevant negotiations were concluded would mean that similarly worded commitments could be given different meaning, content and coverage, depending on the date the negotiations were concluded, which would undermine the predictability, security, and clarity of GATS commitments. On the basis of the above reasons, the Appellate Body considered that the Panel did not err under Article 31 of the *Vienna Convention* in concluding that this commitment extends to sound recordings distributed in non-physical form, through technologies such as the Internet.

Turning to Article 32 of the *Vienna Convention*, China argued that the Panel erred in resorting to supplementary means of interpretation under Article 32 for purposes of *confirming* the meaning of the entry "Sound recording distribution services" that it had found by applying Article 31 of the *Vienna Convention*. In China's view, because the interpretation under Article 31 should have been inconclusive, the Panel ought to have applied Article 32 to "determine", rather than "confirm", the meaning of this entry. The Appellate Body rejected the assumption that the Panel's analysis under Article 32 would necessarily have been different had the Panel followed the approach suggested by China. In any event, the Appellate Body found no error in the Panel's analysis under Article 32. The Appellate Body noted that the Panel did not err in finding that certain circumstances of the conclusion of the treaty did not contradict its interpretation under Article 31. Specifically, the Appellate Body was not persuaded that the Panel relied on the fact that it had found the electronic distribution of

sound recordings to be technically feasible and a commercial reality when China acceded to the WTO. Finally, having rejected the contention that the meaning of the entry "Sound recording distribution services" remained inconclusive after the application of Articles 31 and 32 of the *Vienna Convention*, the Appellate Body added that, even if the principle of *in dubio mitius* were relevant in WTO dispute settlement, there was no scope for its application in this dispute.

Because the Appellate Body found that the Panel had not erred in interpreting the entry "Sound recording distribution services" as encompassing the distribution of sound recordings in electronic form, it upheld the Panel's findings that the provisions of China's measures prohibiting foreign-invested enterprises from engaging in the supply of such services are inconsistent with China's scheduled national treatment obligations under Article XVII of the GATS.

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 2009. 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 12 days after the filing of the Notice of Appeal.

Table 5 also identifies those Members that participated in appeals as third participants under paragraph (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 25 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 25 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 2009

Case	Appellant [a]	Other appellant [b]	Appellee(s) [c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
US – Continued Zeroing	European Communities	United States	European Communities United States	Brazil Japan Korea	China India Mexico Norway Chinese Taipei Thailand	Egypt

Case	Appellant [a]	Other appellant [b]	Appellee(s) [c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
US – Zeroing (EC) (Article 21.5 – EC)	European Communities	United States	European Communities United States	Japan Korea Norway	India Mexico Chinese Taipei Thailand	- - -
US – Zeroing (Japan) (Article 21.5 – Japan)	United States	- - -	Japan	European Communities Korea Mexico Norway	China Hong Kong, China Chinese Taipei Thailand	- - -
China – Publications and Audiovisual Products	China	United States	China United States	Australia European Communities Japan Korea	Chinese Taipei	- - -

[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*.

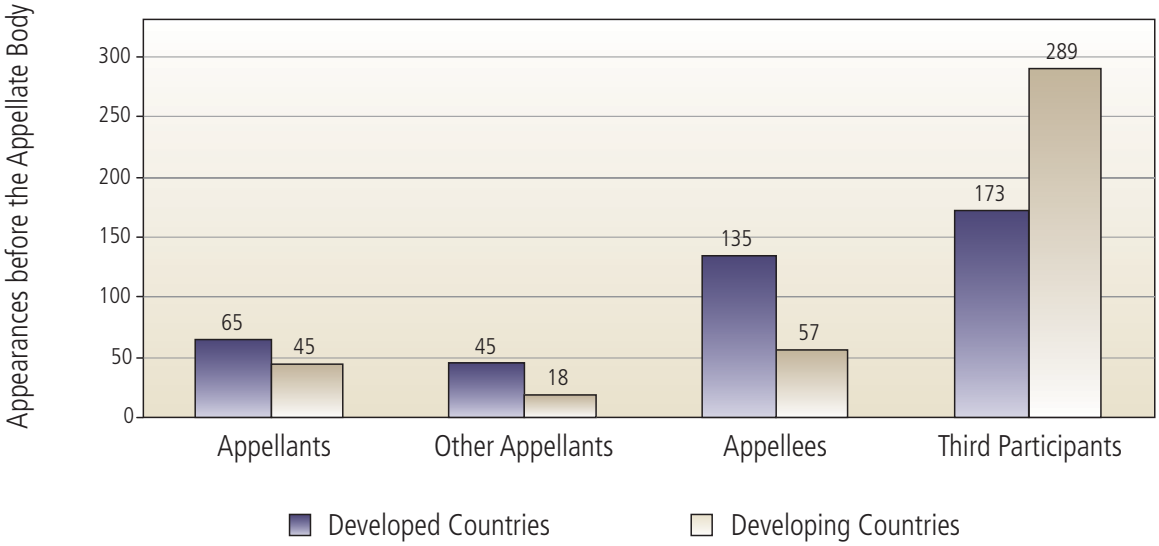
A total of 14 WTO Members appeared at least once as appellant, other appellant, appellee, or third participant in appeals for which an Appellate Body report was circulated in 2009. Of these 14 WTO Members, 5 were developed country Members and 9 were developing country Members.

Of the 44 total appearances by WTO Members before the Appellate Body during 2009, 21 were by developed country Members and 23 by developing country Members. Developed country Members made 3 appearances as appellant, 3 as other appellant, 6 as appellee, and 9 appearances as third participant. Developing country Members made 1 appearance as appellant, none as other appellant, 1 as appellee, and 21 as third participant.

Figure 4 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 appellate proceedings from 1996 through 2009.

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 2009.

FIGURE 4: WTO MEMBER PARTICIPATION IN APPEALS 1996–2009



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 2009.

VI. WORKING PROCEDURES FOR APPELLATE REVIEW

No amendments were made to the *Working Procedures* during 2009. The current version of the Working Procedures is contained in document WT/AB/WP/5, which was circulated to WTO Members on 4 January 2005.

A procedural issue that arose in appeals for which an Appellate Body report was circulated in 2009 concerned the public observation of the oral hearing. Public observation of the oral hearing was requested by the participants in three appeals: *US – Continued Zeroing*, *US – Zeroing (EC) (Article 21.5 – EC),* and *US – Zeroing (Japan) (Article 21.5 – Japan).* In each case, third participants were given an opportunity to comment in writing on the request. Having considered the views of the participants and third participants, the Divisions hearing the three appeals decided to authorize the public observation of the oral hearings. The reasons underlying the Divisions' decisions and the additional procedures adopted for that purpose were set out in Procedural Rulings, which may be found as an annex to the corresponding Appellate Body report. In the three appeals, observation of the oral hearing by the public was made possible via closed-circuit television broadcast to a separate room. Notice concerning the authorization of public observation and registration instructions were posted on the WTO website. The number of individuals who registered to observe the oral hearing was 33 in *US – Continued Zeroing*, 37 in *US – Zeroing (EC) (Article 21.5 – EC)*, and 36 in *US – Zeroing (Japan) (Article 21.5 – Japan).*

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

Individual Appellate Body Members have been asked to act as arbitrators under Article 21.3(c) of the DSU to determine the "reasonable period of time" for the implementation by a WTO Member of the recommendations and rulings adopted by the DSB in dispute settlement cases. The DSU does not specify who shall serve as arbitrator. The parties to the arbitration select the arbitrator by agreement or, if they cannot agree on an arbitrator, the Director-General of the WTO appoints the arbitrator. To date, all those who have served as arbitrators pursuant to Article 21.3(c) have been current or former Appellate Body Members. In carrying out arbitrations under Article 21.3(c), Appellate Body Members act in an individual capacity.

One Article 21.3(c) arbitration proceeding was carried out in 2009. Further information about the arbitration is provided below.

■ *Colombia – Ports of Entry*, WT/DS366/13

On 20 May 2009, the DSB adopted the panel report in *Colombia – Ports of Entry*. On 24 July 2009, Panama requested the Director-General to appoint an Arbitrator pursuant to footnote 12 to Article 21.3(c) of the DSU. The Director-General requested that Giorgio Sacerdoti act as Arbitrator in these proceedings. Mr. Sacerdoti accepted the appointment on 3 August 2009.[44] The Arbitrator issued his award on 2 October 2009.

Colombia proposed that the reasonable period of time for implementation of the DSB's recommendations and rulings should be 15 months from the date of adoption of the Panel Report, that is, until 20 August 2010. Colombia argued that the modification of the indicative prices mechanism and of the ports of entry measure so as to rectify the particular inconsistencies found by the Panel would entail the following steps under Colombian Law: First, preliminary evaluation stages that would determine whether and to what extent various provisions of Colombia's laws would be impacted by the recommendations and rulings of the DSB and by the modification of both the indicative prices mechanism and the ports of entry measure. Secondly, the drafting of specific proposals for a revised customs control mechanism and a ports of entry measure would be subject to the decision-making process of the Directorate of Taxes and National Customs (*Dirección de Impuestos y Aduanas Nacionales*) ("DIAN"). Thirdly, the revised measures would be subject to review and approval by the Department of Public Administration, the Ministry of Finance, the Ministry of Trade, Industry and Tourism, and by the *Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior* (the "Triple A Committee"). Fourthly, review of the revised measures by the Legal Office of the President, signature by the President, and publication in the Official Gazette. Finally, Colombia would amend the specific Resolutions establishing indicative prices to reflect the modified mechanism, implement such modified mechanism in its computerized system of customs administration, and train customs administration officials in the revised indicative prices mechanism. In addition to the particular steps outlined above, Colombia said it intended to reform the provisions of its Commercial Code dealing with customs securities, in order to ensure that bank or insurance guarantees are effectively available to importers in the context of its revised indicative prices mechanism. According to Colombia, the amendment of its Commercial Code would require a legislative process consisting of four successive stages before the Colombian Parliament.

[44] WT/DS366/11.

Colombia also claimed that the following "particular circumstances" justified the assessment of a reasonable period of time of at least 15 months following the adoption of the Panel Report by the DSB: (i) the need for both regulatory and legislative action; (ii) the complexity of the implementing measures; (iii) the importance of the measures in its domestic legal system; and (iv) Colombia's developing country status.

Panama contested that implementation of the recommendations and rulings of the DSB in this dispute would require 15 months. Instead, Panama requested that the Arbitrator grant an additional week following the circulation of the arbitral award—that is, until 9 October 2009, or 4 months and 19 days following the adoption of the Panel Report by the DSB—for Colombia to implement the DSB's recommendations and rulings. Referring to Article 3.7 of the DSU, Panama claimed that any action other than the withdrawal of the WTO-inconsistent measures was not within the permissible range of actions for implementation by Colombia, and suggested that Colombia's previous repeal of similar measures following a mutually agreed solution reached by the parties in 2006 illustrated that Colombia could implement the DSB's recommendations and rulings almost immediately. Panama also stressed that Colombia retained the discretion to amend or withdraw the WTO-inconsistent measures exclusively through administrative means, and considered that a wider reform of Colombia's Commercial Code was not relevant to the Arbitrator's determination, because such reforms were not required to implement the recommendations and rulings of the DSB. Panama requested further that the Arbitrator disregard "non-legal factors" such as changes to Colombia's computerized system of customs control and the training of DIAN's officials in making his determination. Finally, Panama dismissed the relevance of any of the "particular circumstances" which, according to Colombia, justified a longer period of time for implementation.

Like previous arbitrators, the Arbitrator found that Colombia, as the implementing Member, has a measure of discretion in choosing the means of implementation that it deems most appropriate. Therefore, the Arbitrator considered that modification of both the indicative prices mechanism and the ports of entry measure is within the range of permissible actions available to Colombia to implement the recommendations and rulings of the DSB in this dispute. Accordingly, the Arbitrator made his determination on the basis of the shortest period of time possible within Colombia's domestic legal system to modify the indicative prices mechanism and the ports of entry measure so as to bring them into conformity with Colombia's WTO obligations.

The Arbitrator observed that, since the adoption of the Panel Report by the DSB, Colombia had established an "Inter-Institutional Working Group" to evaluate how to implement the recommendations and rulings of the DSB. The Arbitrator considered that the work of such Inter-Institutional Working Group was relevant to his determination, insofar as it establishes an institutional framework responsible for proposing and coordinating an administrative plan of action for implementation. At the same time, the Arbitrator noted Colombia's indication that such Inter-Institutional Working Group had concluded its work, and said that Colombia is therefore expected to speedily proceed with the legal process necessary to bring the measures into conformity.

Turning to the legal process necessary to modify the WTO-inconsistent measures, the Arbitrator agreed with Colombia that the following steps were administratively mandated under Colombian law: (i) an internal decision-making process within DIAN; (ii) review of any new customs procedures by the Department of Public Administration; (iii) review of the new measures by the Triple A Committee, the Ministry of Trade, Industry and Tourism, and the Ministry of Finance; and (iv) signature by the President of Colombia and publication in the Official Gazette. At the same time, the Arbitrator considered that Colombia's decision-making process is characterized by a considerable degree of flexibility, insofar as

it does not prescribe minimum mandatory timeframes. Therefore, the Arbitrator expected Colombia to make use of such flexibility in order to promptly implement the recommendations and rulings of the DSB. The Arbitrator also considered that some of the implementing steps outlined by Colombia, such as successive reviews by different Ministries, or drafting of Resolutions establishing new indicative prices, were either duplicative or could be pursued in parallel, to the extent that they were not necessarily sequential.

Further, the Arbitrator considered that a wider reform of the customs securities provisions of Colombia's Commercial Code did not justify a longer period of time for implementation. The Arbitrator reasoned that the measures that had to be brought into conformity were the indicative prices mechanism and the ports of entry measure, and that in any event Colombia had confirmed that such reforms could be accomplished in the same timeframe estimated for the completion of the remainder of its implementing measures. Similarly, the Arbitrator did not attribute significance to steps such as the implementation of revised measures in Colombia's computerized customs administration system, and the training of DIAN officials, because such steps were merely consequential to the enactment of the implementing measures.

The Arbitrator further found that the "particular circumstances" identified by Colombia did not warrant the assessment of a longer period of time for implementation. In particular, he disagreed with Colombia that implementation required both legislative and regulatory action. The Arbitrator acknowledged that implementation in this dispute required a certain degree of regulatory rule-making, which could be more time-consuming than simple administrative action. However, he was not persuaded that legislative action was required. Instead, the Arbitrator was of the view that implementation could be accomplished exclusively by the executive branch of Colombia's Government.

The Arbitrator was also not persuaded that circumstances such as the complexity of the implementing measures, or the importance of the measures in Colombia's domestic system, justified a longer period of time for implementation. He reasoned that Colombia had not demonstrated that implementation would impact many interconnected and overlapping laws concerning customs control and enforcement. Nor, in the Arbitrator's view, had Colombia demonstrated how the relative importance of the challenged measures in Colombia's overall customs control and enforcement framework impacted the implementing process in a manner that justified a longer period of time for implementation.

Finally, the developing country status of Colombia and Panama did not sway the Arbitrator either to a longer, or shorter, reasonable period of time for implementation. The Arbitrator reasoned that Article 21.2 of the DSU directs arbitrators to pay particular attention to matters affecting the interests of both implementing and complaining developing country Members. Thus, in situations where both parties are developing countries, Article 21.2 is of little relevance except if one party succeeds in demonstrating that it is more severely affected by relevant challenges than the other party. The Arbitrator considered that neither party had made the requisite showing.

On this basis, the Arbitrator determined a "reasonable period of time" for implementation of the DSB's recommendations and rulings in this dispute of 8 months and 15 days, expiring on 4 February 2010.

VIII. TECHNICAL ASSISTANCE

Appellate Body Secretariat staff participated in the WTO Biennial Technical Assistance and Training Plan: 2008-2009[45], particularly in activities relating to training in dispute settlement procedures. Overall, Appellate Body Secretariat staff participated in 25 technical assistance activities during the course of 2009.

Annex 8 provides further information about the activities carried out by Appellate Body Secretariat staff in 2009 falling under the WTO Technical Assistance and Training Plan.

IX. OTHER ACTIVITIES

The WTO Public Forum was held on 28-30 September 2009 and its theme was "Global Problems, Global Solutions: Towards Better Global Governance". The 2009 Public Forum included a session hosted by the Appellate Body, which took place on 29 September. The title of the session was "Promoting Global Governance By Strengthening the Rule of Law". The speakers on the panel were: Gary Hufbauer, Reginald Jones Senior Fellow at the Peter G. Peterson Institute for International Economics; Jennifer Hillman, Member of the WTO Appellate Body; Luiz Felipe Lampreia, Vice-President of the Centro Brasileiro de Relações Internacionais and former Foreign Minister of Brazil; and David Unterhalter, Chairman of the Appellate Body. The panel was moderated by Paul Blustein, Journalist in Residence at the Brookings Institution.

The session examined the concept of the rule of law, the WTO's role in promoting the rule of law at the international level, and the potential applicability of the WTO model to other fields of international cooperation. David Unterhalter described the main characteristics of a system based on the rule of law and how the rule of law operated in the WTO. He submitted that the WTO, as a rules-based system, provides a useful model for other areas of international cooperation, such as climate change and international financial regulation. Jennifer Hillman provided an overview of the operation of the WTO dispute settlement mechanism. She further noted that, in addition to rule-making and adjudication, the WTO plays an important role supervising the proper implementation of the obligations contained in the WTO agreements. This function, which is performed by the relevant WTO Committees, should not be overlooked and could be strengthened. Luiz Felipe Lampreia expressed concern about the slow progress of the Doha Round of negotiations and the potential impact a failure could have on the other functions of the WTO. He was sceptical about the applicability of a WTO-type dispute settlement mechanism in other areas of international cooperation. Gary Hufbauer praised the WTO dispute settlement mechanism, but also made several proposals for improvement. He said that the WTO system could benefit from more dispute settlement activity in certain areas that Members have so far avoided (in particular, Article XXIV of the GATT 1994), proposed the creation of a WTO ombudsman who could bring disputes that are of systemic interest, and suggested that retroactive remedies be introduced. A detailed report of the session is included in a book about the 2009 Public Forum to be published by the WTO Secretariat.

[45] WT/COMTD/W/160.

David Unterhalter, Jennifer Hillman and Giorgio Sacerdoti participated in an event to commemorate the twentieth anniversary of the Court of First Instance of the European Communities, which took place on 25 September 2009, in Luxembourg.

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. 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. The Appellate Body Secretariat routinely hosts two interns concurrently; each internship is generally for a three-month period. During 2009, the Appellate Body Secretariat welcomed interns from Spain, the Netherlands, Australia, South Africa, Germany, and the United Kingdom. A total of 80 post-graduate students, of 40 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: <http://www.wto.org/english/thewto_e/vacan_e/intern_e.htm>.

Appellate Body Secretariat staff participate in briefings organized for groups visiting the WTO, including students. In these briefings, Appellate Body Secretariat staff speak to visitors about the WTO dispute settlement system in general, and appellate proceedings in particular. Appellate Body Secretariat staff also participate as judges in moot court competitions. A summary of these activities carried out by Appellate Body Secretariat staff during the course of 2009 can be found in Annex 8.

The Appellate Body Secretariat also hosts a *Speakers Series*, in which it invites scholars and practitioners with expertise in law, economics, and trade policy to speak on topical issues relating to international trade, public international law, and international dispute settlement. Nathalie Ferraud-Ciandet, David Heaton, Jorge Miranda, Andrew Mitchell, and Tania Voon participated in the Speakers Series in 2009. In addition to the *Speakers Series*, the Appellate Body Secretariat runs a Research Series, aimed at doctoral students and young academics. The objective of the programme is to provide an opportunity for doctoral students working on their theses, and young academics working on research papers, to present and discuss their research in an informal setting with the Geneva-based trade community.

ANNEX 1

MEMBERS OF THE APPELLATE BODY (1 JANUARY TO 31 DECEMBER 2009) BIOGRAPHICAL NOTES

Luiz Olavo Baptista (Brazil) (2001–2009)

Born in Brazil on 24 July 1938, Luiz Olavo Baptista taught International Trade Law at the University of São Paulo Law School for many years. He has been a Member of the Permanent Court of Arbitration at The Hague since 1996, and of the International Chamber of Commerce Institute for International Trade Practices and of its Commission on Trade and Investment Policy, since 1999. In addition, he has been one of the arbitrators designated under MERCOSUR's Protocol of Brasilia since 1993. Professor Baptista was senior partner at the L.O. Baptista Law Firm, in São Paulo, Brazil, where he focused his practice on corporate law, arbitration, and international litigation. He has been practicing law for almost 40 years, advising governments, international organizations, and large corporations in Brazil and in other jurisdictions. Professor Baptista has been an arbitrator at the United Nations Compensation Commission, in several private commercial disputes and State-investor proceedings, as well as in disputes under MERCOSUR's Protocol of Brasilia. In addition, he has participated as a legal advisor in diverse projects sponsored by the World Bank, UNCTAD, UNCTC, and UNDP. He obtained his law degree from the Catholic University of São Paulo, pursued post-graduate studies at Columbia University Law School and The Hague Academy of International Law, and received a Ph.D. in International Law from the University of Paris II. He was Visiting Professor at the University of Michigan (Ann Arbor) from 1978 to 1979, and at the University of Paris I and the University of Paris X between 1996 and 2000. Professor Baptista has published extensively on various issues in Brazil and abroad.

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 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 at the law firm of Chadbourne & Parke in Mexico City. His practice has 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 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 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 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.

Giorgio Sacerdoti (European Communities: Italy) (2001–2009)

Born on 2 March 1943, Giorgio Sacerdoti has been Professor of International Law and European Law at Bocconi University, Milan, Italy, since 1986.

Professor Sacerdoti has held various posts in international bodies, including Vice-Chairman of the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery in International Business Transactions until 2001, where he was one of the drafters of the "Anticorruption Convention of 1997". He has acted as consultant to the Council of Europe, UNCTAD, and the World Bank in matters related to foreign investments, trade, bribery, development, and good governance. He has been on the list of arbitrators at the World Bank International Centre for Settlement of Investment Disputes (ICSID) since 1981, where he has served as arbitrator and as chairman of various arbitral tribunals in investment disputes between States and foreign investors. In the private sector, he has often served as arbitrator in international commercial disputes and has acted as counsel in connection with international business transactions.

Professor Sacerdoti has published extensively, especially on international trade law, investments, international contracts, arbitration, and various areas of European Union law.[1]

After graduating from the University of Milan with a law degree *cum laude* in 1965, Professor Sacerdoti gained a Master in Comparative Law from Columbia University Law School as a Fulbright Fellow in 1967. He was admitted to the Milan Bar in 1969 and to the Supreme Court of Italy in 1979. He is a Member of the Committee on International Trade Law of the International Law Association and an editor of the Italian Yearbook of International Law.

David Unterhalter (South Africa) (2006–2009)

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.

[1] His publications include: "Bilateral Treaties and Multilateral Instruments on Investment Protection", *Recueil des cours* (Hague Academy Courses), vol. 269 (1997), pp. 255-460; *Illicit Payments*, UNCTAD Series on issues in international investment agreements (United Nations 2001); *The WTO at Ten: The Contribution of the Dispute Settlement System* (Cambridge University Press/WTO, 2006) (co-editor with A. Yanovich and J. Bohanes); "Structure et fonction du système de règlement des différends de l'OMC: les enseignements des dix premières années», in *Rev. gen. droit int. Public* (2006), pp. 769-800. His lecture on the WTO dispute settlement system is available at the *UN Audiovisual Library of International Law*, <www.un.org/law/avl>.

Peter Van den Bossche (European Communities: Belgium) (2009–2013)

Born in Belgium on 31 March 1959, Peter Van den Bossche is Professor of International Economic Law at Maastricht University where he serves as Director of the Advanced Master Programme in International and European Economic Law (IEEL). He also serves on the faculty of the World Trade Institute in Berne, the China EU School of Law (CESL) in Beijing, the IELPO programme of the University of Barcelona, the Trade Policy Training Centre in Africa (trapca) in Arusha and the IEEM Academy of International Trade and Investment Law in Macau. 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.

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 was born in China on 25 October 1944 and is Professor of Law at Shantou University in China. She is an arbitrator on China's International Trade and Economic Arbitration Commission. She also served as Vice-President of China's International Economic Law Society.

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 of the ADB. 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 WTO accession. 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 (International Development Law Organization) from 1988 to 1999. Ms. Zhang has a Bachelor of Arts from China High Education College, a Bachelor of Arts from Rennes University of France, and a Master of Laws from Georgetown University Law Center.

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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 country 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, St. Gallen and Barcelona, and the European Inter-University Centre for Human Rights and Democratization in Venice. 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 APPELLATE BODY MEMBERS

Farewell remarks of Giorgio Sacerdoti to the Dispute Settlement Body of the WTO, Geneva, 19 November 2009

Ambassador John Gero, Chairman of the DSB, Director-General Pascal Lamy, WTO Members, friends and colleagues,

I am very grateful for this opportunity to address the DSB and the wider WTO community on the occasion of the swearing in of Mr. Peter Van den Bossche as a new Member of the Appellate Body and the conclusion of my second term of office. This "passage de consignes" has become a regular event at each transition. That it is so well attended—and I thank all of you for coming today—is an indicator of the vitality of the WTO 15 years after it was established and the ongoing interest in the Appellate Body and its work.

Looking back to when I was appointed in the summer of 2001, the world was very different then. Not all of the changes that have taken place have been improvements: my appointment was before 9/11 and the momentous developments that followed. Many developments have also taken place within the WTO during this period. These developments, by contrast, are on balance quite positive. Let me recall that, in 2001, the WTO was still suffering from the failure of Seattle and the widespread criticism from civil society, which accused the WTO of putting trade and mercantilist interests above fundamental issues on the global agenda, such as poverty reduction, human rights, workers' rights, public health, and the protection of the environment.

By the time I took office at the end of 2001, the Doha Development Round had been launched showing that the multilateral trading system was capable of facing new challenges and accommodating the needs of the poor, and is attentive to the wider implications of trade commitments and the ultimate goal of increasing welfare for all through multilateral cooperation. Although the Round has yet to be concluded (and I hope that the renewed high-level commitments expressed in recent months and weeks and the relentless efforts of the Director-General will deliver results in 2010) the multilateral trading system has made significant progress. It has been able to accommodate special needs, such as in the field of TRIPS and public health, has maintained its preeminent position notwithstanding the proliferation of regional trade agreements, which are not necessarily competing with it, but should be viewed as complementary, and has expanded in membership both in terms of the number of Members and in terms of the share of world trade covered by its rules.

The dispute settlement system, within which the Appellate Body exercises a key function, is an integral part of the multilateral trading system. A few days ago, the Director-General announced that the milestone of 400 disputes brought to the system had been reached. Most of the disputes have been resolved through negotiations and consultations held within and outside this building. About 170 disputes have been brought to panels. The Appellate Body has issued 98 reports since it was established in 1995. Eighty-two WTO Members have appeared before a WTO panel or the Appellate Body at least once as main parties or as third parties. One could ask whether the number of disputes is a positive reflection of the effectiveness of the system. I would venture to say that the answer is that indeed it is. I think we can all agree that the fact that a WTO Member can invoke the rules of the WTO where it has a disagreement with another Member, has a forum where the matter may be settled to the satisfaction of the parties, or be impartially and speedily adjudicated, and finally obtain compliance,

is fundamental. The dispute settlement system not only benefits WTO Members, but more generally provides security and predictability to thousands of people engaged in trade. The number of disputes is relatively low when one considers that WTO rules are applied on a daily basis around the world.

The contribution of the dispute settlement system to the success of the WTO has been widely recognized even beyond the trade community. In its "Review of the Year for 2008", the *Economist magazine* said:

> The WTO is the single most successful example of international cooperation. It is an international organisation with binding procedures for settling disputes. Even superpowers like America and China are prepared to accept its rulings.

Some of the features of the Appellate Body are fundamental in this context. I wish to highlight some of them from the perspective of my own experience, in particular, those which are innovative—as compared to other international courts and similar adjudicating bodies—and that have been instrumental to enhancing the legitimacy and efficiency of the system. First of all, the Appellate Body has been set up in a manner that guarantees its independence. Those appointed have been qualified persons, experts in the relevant fields, with broad experience, and geographic and cultural diversity as required by the DSU. The successive DSB Chairmen and the members of the various selection committees deserve praise for having stuck to their mandate focusing consistently on the competence of the candidates and their commitment to the difficult task foreseen for the Appellate Body in the DSU, and for not having allowed geopolitical considerations to prevail. In turn, WTO Members, and their Geneva and capital-based officials, have to be commended for having abstained from any improper interference and having respected the independence and the role of the Appellate Body and of its Members. This is especially important in view of the fact that the Appellate Body is composed of only seven individuals and that Appellate Body Members hear appeals even where they are nationals of one of the Members involved in the dispute depending on the random selection of the Members of specific Divisions.

Another related feature of the Appellate Body that I wish to highlight is that, despite operating independently from the rest of the WTO, it is housed in the same building and is an integral part of the Organization. Thus, the judicial branch is not located far away from the seat of the organization to which it belongs, on its own "Olympus" as is the case of international courts in The Hague, Luxembourg and Costa Rica. This relationship is also reflected by the fact that the Appellate Body, like panels, does not issue judgments that are *per se* binding, but reports that are adopted by the membership, in the DSB, through the device of the reverse consensus. Once adopted by the DSB, what is initially less than a judgment transforms itself into a binding decision of the Organization that commands even more authority. Multilateral surveillance of compliance ensures respect for the rules through effective implementation, given that findings of violation are backed both by rule-based adjudication and political will. The process involves the entire Membership in what may be initially just a bilateral dispute, reinforcing the general function of dispute settlement in the interest of all Members. We at the Appellate Body are mindful of being a key element of this wider, innovative framework.

The respect that the dispute settlement system commands, both in terms of the high rate of compliance and of its reputation in the trade and legal communities, is also the result, I submit, of the procedures and practices adopted by the Appellate Body in accordance with the DSU and as set out in the *Working Procedures for Appellate Review*. I recall that the *Working Procedures* are adopted by the Appellate Body in consultation with the Director-General and the DSB Chair, who in turn consults with all WTO Members. This is another example of cooperation in the general interest of efficiency and legitimacy.

I pay tribute to the "founding fathers", the first generation of Appellate Body Members who instituted the practice of rigorous application of the rules of the DSU. Appellate Body Members—myself and my dear colleagues with whom I have been fortunate to work during all these years—have greatly benefited from their guidance from time to time in the internal seminars or retreats that the Appellate Body organizes when new Members are appointed, continuing the tradition of collegiality that has always inspired the Appellate Body.

Collegiality implies more than just sharing views in each case on the legal issues. It is a way of conducting ourselves as members of a "college", establishing close personal ties and solidarity. This helps overcome issues that naturally arise when operating under strict rules and transform potential challenges to continuity and consistency into elements of strength and richness. I am referring to: the tight 90-day deadline for deciding an appeal; our part-time employment arrangement (which is, however, justified by the variable number of cases that may be filed each year); the diversity of Members in terms of professional backgrounds, countries of origin, and maternal languages; and, finally the short term of the appointment that brings about, at times, a rapid turnover, as in the last two years.

I have often been amazed on how our legal education, despite our diverse backgrounds, constitutes a common basis for working together fruitfully. It is thanks to this strength and cohesion that the Appellate Body has been able to rule on certain difficult issues that parties have raised in some appeals, and which some believe should have been resolved by WTO Members themselves. I am referring to transparency issues—such as accepting *amicus curiae* briefs and opening the Appellate Body hearings to public viewing upon request of the parties—and to certain issues of procedure, such as the right of responding parties to initiate compliance proceedings under Article 21.5. I believe that, since WTO Members were unable to find common ground on how to resolve these "hot potatoes" on a general basis, the Appellate Body's ability to find solutions in particular cases, always based on the principles of international law, may have helped relieve some of the pressure and has, at the end of the day, enhanced the reputation of the system beyond the Members of the Organization in the general interest. In some cases, the Appellate Body's decisions on procedural issues may facilitate the ultimate solution of the dispute (such as in the *US/Canada – Continued Suspension* and, hopefully, the *EC – Bananas III* disputes).

It seems to me that the role of the Appellate Body is now well settled, performing a key adjudicative function within the overall dispute settlement system, as a permanent body established and operating under the highest standards of international justice, based on the impartial application of the rules, in accordance with international law, and seeking to promote security and predictability to the benefit of all Members, and also as a foundation for further development through negotiations.

The functioning of the system naturally brings about reflection and initiatives for improvements:

- some pertain to the Members themselves, such as the ongoing DSU review;
- some are the responsibility of the Appellate Body itself, such as updating its Working Procedures in the light of practice;
- and some involve the administrative branch of the WTO. Disputes are growing in complexity making it more challenging to adjudicate them within the prescribed timeframes both at the panel and at the Appellate Body level. Options to maintain the system's efficiency should be continuously explored.

Thank you.

Farewell remarks of Luiz Olavo Baptista to the Dispute Settlement Body of the WTO, Geneva, 20 July 2009

Monsieur l'ambassadeur John Gero,
Señor director adjunto, Embajador Alejandro Jara, caro amigo,
WTO Members, Secretariat, interpreters,
Ladies and gentlemen,

I greeted you in the three official languages of this institution to recall on this occasion that I came here to serve *all of you* without distinction—which I did until my last day in office with the same enthusiasm and gratitude as when I was first chosen as an Appellate Body Member.

It was a big challenge to step in the shoes of my dear friend, Julio Lacarte, who was the first South American Appellate Body Member. I tried my best to rise to the challenge that being an Appellate Body Member represents, and I did it through a very difficult period in my personal life.

During these years, I had the opportunity of meeting people who are extraordinary because of their intelligence, their dedication, their idealism, and their capacity to work for the good of mankind.

The modesty of most is such that they never talk about what they have helped to build here. However, the WTO is something never before seen in the history of our species: a forum for negotiating trade rules; a unique, efficient and peaceful system of dispute resolution with an effective enforcement mechanism where the 153 Members can solve their problems without creating political turmoil. In this same forum you meet and work reviewing peacefully and constantly the trade practices of the Members, assuring to all transparency and fairness.

All of this has been achieved through a careful and well-negotiated balance of concessions which respects the identity and sovereignty of each Member and its needs. The traditional use of consensus in the decision-making process has ensured a fair and democratic process that gives stability to the agreements and the institution.

In a few words, the WTO is the best and most modern international organization set up in our days. For this, the WTO Members and their representatives should be proud.

My colleagues and predecessors at the Appellate Body have given the best of themselves to create and maintain the highest standards in our modest function of helping you to interpret and apply the rules you established through negotiation.

I have participated in almost 60 cases during the last seven years and sat in 20 or more Divisions. I was happy to help all of you build this cathedral!

But today, we are living through difficult times. Governments, international organizations, and many good people are working hard, trying to minimize the effects of a huge economic crisis that affects everyone. This crisis arrived when the Doha Round negotiations were still facing obstacles and difficulties. One cannot ignore Pascal Lamy's role in pushing to bring this negotiation toward a successful conclusion, and that is why you re-appointed him as Director-General. He is one of the most intelligent, hardworking, idealistic and lucid men I have known in more than seven decades of life. I regret he cannot be here to hear how much I admire his efforts and work.

The WTO is more important and more threatened than ever. Although WTO Members remain fully committed to the multilateral trading system, there are those who see the WTO as an obstacle to protectionist measures that they believe will alleviate the effects of the crisis. Some would like to dismantle the dispute settlement system, hoping to return to the Hobbesian past where rules existed to be applied only when convenient. But panelists and Appellate Body Members do not react when attacked, and thus are an easy target. WTO Members continue to demonstrate their commitment to the system by pledging to implement the DSB's recommendations and rulings, even in those cases when they disagree with the results. Panels and the Appellate Body have sometimes been accused of "creating rules" or, on the contrary, of being excessively conservative and restrictive in their interpretation. However, the dispute settlement system has survived and must continue to do so in order for the WTO to keep existing.

Upon taking office, Appellate Body Members swear solemnly to perform their duties honourably, independently, impartially, conscientiously, and in accordance with the law of the WTO. They have done so since the beginning and, because of this, they are respected by the Membership.

During all the years I sat on the Appellate Body, I was never approached by a delegate or anyone related to a case trying to lobby, and was never told how the case should be decided. We certainly know the repercussions of our decisions—the DSB meetings being the right place to comment on them, the Members of the WTO have never restrained themselves from doing so, as it is their undeniable right. I always read their comments and mulled over them, reviewing what I had thought and written to confirm to myself if I had made the right decision. Conscience is a hard judge, one which accuses, decides and executes the penalties with full knowledge of the subject, and that is why any honest person must always keep one's conscience at peace.

Thus, I always decided appeals fully informed, and performed my duties with absolute independence, as I firmly believe my colleagues also did. The consequence is that I come here to say goodbye to you and that I have accomplished the promise I made to you in this same room on a cold December night in 2001.

Today, I pass the torch over to Ricardo Ramírez-Hernández. I wish him all the best in his new position, and am sure that his professional competence, independence, and integrity will be invaluable to the Appellate Body.

I thank you all for the help, friendship, and lessons given to me while I served this Organization.

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 Abi-Saab	Egypt	2000–2004 2004–2008
Luiz Olavo Baptista	Brazil	2001–2005 2005–2009
Giorgio Sacerdoti	Italy	2001–2005 2005–2009

* 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

ANNEX 3

APPEALS FILED: 1995–2009

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
Total	**102**	**83**	**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: 1995–2009[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%
Total	**151**	**103**	**68%**	**124**	**84**	**68%**	**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 2009[a]

Year of circulation	DSU	WTO Agmt	GATT 1994	Agriculture	SPS	ATC	TBT	TRIMs	Anti-Dumping	Import Licensing	SCM	Safe-guards	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
Total	**77**	**10**	**62**	**13**	**6**	**3**	**2**	**0**	**27**	**2**	**24**	**7**	**5**	**3**

[a] No appeals were filed in 1995.

ANNEX 6

PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS: 1995–2009

As of the end of 2009, there were 153 WTO Members[1], of which 67 have participated in appeals in which Appellate Body reports were circulated between 1996 and 2009.[2]

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	12	**22**
Australia	2	1	5	23	**31**
Barbados	0	0	0	1	**1**
Belize	0	0	0	4	**4**
Benin	0	0	0	1	**1**
Bolivia	0	0	0	1	**1**
Brazil	8	4	12	23	**47**
Cameroon	0	0	0	3	**3**
Canada	10	7	16	15	**48**
Chad	0	0	0	2	**2**
Chile	3	0	2	7	**12**
China	4	1	2	26	**33**
Colombia	0	0	0	7	**7**
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**

[1] The Government of Ukraine submitted, on 16 April 2008, its acceptance of the terms and conditions of membership set out in the Accession Protocol (see WT/L/718). Ukraine became the 152nd Member of the WTO on 16 May 2008.

The Government of the Republic of Cap Verde submitted, on 23 June 2008, its acceptance of the terms and conditions of membership set out in the Accession Protocol (see WT/L/715). The Republic of Cap Verde became the 153rd Member of the WTO on 23 July 2008.

[2] 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
Dominican Republic	1	0	1	3	**5**
Ecuador	0	2	2	6	**10**
Egypt	0	0	0	2	**2**
El Salvador	0	0	0	2	**2**
European Communities	18	13	35	47	**113**
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	23	**38**
Indonesia	0	0	1	1	**2**
Israel	0	0	0	1	**1**
Jamaica	0	0	0	5	**5**
Japan	6	4	11	38	**59**
Kenya	0	0	0	1	**1**
Korea	4	3	6	16	**29**
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	27	**37**
New Zealand	0	2	5	11	**18**
Nicaragua	0	0	0	4	**4**
Nigeria	0	0	0	1	**1**
Norway	0	1	1	13	**15**
Pakistan	0	0	2	2	**4**
Panama	0	0	0	3	**3**
Paraguay	0	0	0	5	**5**

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Peru	0	0	1	2	**3**
Philippines	1	0	1	1	**3**
Poland	0	0	1	0	**1**
Saint Kitts & Nevis	0	0	0	1	**1**
Saint Lucia	0	0	0	4	**4**
Saint Vincent & the Grenadines	0	0	0	3	**3**
Senegal	0	0	0	1	**1**
Suriname	0	0	0	3	**3**
Swaziland	0	0	0	1	**1**
Switzerland	0	1	1	0	**2**
Chinese Taipei	0	0	0	19	**19**
Tanzania	0	0	0	1	**1**
Thailand	4	0	5	16	**25**
Trinidad &Tobago	0	0	0	1	**1**
Turkey	1	0	0	1	**2**
United States	29	16	60	27	**132**
Venezuela	0	0	1	6	**7**
Viet Nam	0	0	0	2	**2**
Total	**109**	**63**	**192**	**462**	**826**

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'd)

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

2008 (cont'd)

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'd)

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

ANNEX 7

APPELLATE BODY SECRETARIAT PARTICIPATION IN TECHNICAL ASSISTANCE, TRAINING, AND OTHER ACTIVITIES IN 2009

I. WTO BIENNIAL TECHNICAL ASSISTANCE AND TRAINING PLAN: 2009–2010

Course / Seminar	Location	Dates
Sessions on Trade Remedies and Dispute Settlement in a three-week regional Trade Policy Course jointly organized by Banque Islamique de Développement (BID) and WTO.	Burkino Faso (French)	9–11 February 2009
Doha Round	Honduras (Spanish)	25–27 February 2009
Regional Trade Policy Course – Dispute Settlement Module	Tanzania (English)	23–27 March 2009
Regional Trade Policy Course – Dispute Settlement Module (Spanish)	Colombia (Spanish)	17–20 March 2009
Regional Seminar on Dispute Settlement	Turkey (English)	4–8 May 2009
Regional Seminar on Dispute Settlement	St. Kitts and Nevis (English)	11–15 May 2009
Advanced Course on WTO Dispute Settlement to Legal Scholars	Shanton University, Beijing and Guangzhou, China (English/Chinese)	25–29 May 2009
National Seminar on GATS and Domestic Regulation	Guatemala (Spanish)	28–29 May 2009
Dispute Settlement with a Focus on Trade Remedies and Services	Singapore (English)	15–17 June 2009
Regional Trade Policy Course – Basic Principles	Swaziland (English)	17–18 June 2009
2nd Summer Program on WTO by Shanghai WTO Affairs Consulting Center and Shanghai Institute of Foreign Trade	Shanghai, China (English / Chinese)	5–10 July 2009
Advanced Course for Government Officials: A Commercial Agenda for the Americas – The Doha Agenda for Development and Services Agreements in the Hemisphere	Washington D.C. (English)	16–17 July 2009
National Seminar on WTO Dispute Settlement	Luanda, Angola (Portuguese)	20–22 July 2009
Regional Trade Policy Course for Asia/Pacific – WTO Dispute Settlement	Singapore (English)	28–31 July 2009
Regional Trade Policy Course – Dispute Settlement	Swaziland (English)	10–14 August 2009

Course / Seminar	Location	Dates
National Activity on Dispute Settlement	Bangkok (English)	18–21 August 2009
Regional Seminar on Dispute Settlement	Beijing, China (English)	31 August–4 September 2009
National Dispute Settlement Workshop	Papua New Guinea (English)	23–24 September 2009
Ninth Short Trade Policy Course (Spanish)	Montevideo, Uruguay (Spanish)	8–9 October 2009
Regional Trade Policy Course – Basic Principles (French)	Bénin (French)	13–14 October 2009
Advanced Workshop on Dispute Settlement with Focus on Non-discrimination and General Exceptions	Singapore (English)	19–21 October 2009
Regional Seminar on Dispute Settlement (Spanish)	Buenos Aires, Argentina (Spanish)	9–13 November 2009
Asia Pacific Regional Public International Trade Law Course – Dispute Settlement	Sydney, Australia (English)	25–26 November 2009
Regional Trade Policy Course – Dispute Settlement (French)	Bénin (French)	7–11 December 2009
National Seminar/Workshop – Dispute Settlement (Spanish)	El Salvador (Spanish)	14–16 December 2009

II. OTHER ACTIVITIES – 2009

Activity	Location	Dates
ELSA Moot Court Competition	Barcelona, Spain	12–14 March 2009
ELSA Moot Court Competition	Bogota, Colombia	16–21 March 2009
ELSA Moot Court Competition	Frankfurt, Germany	19–21 March 2009
ELSA Moot Court Competition	Chinese Taipei	19–24 May 2009
47th Trade Policy Course – Dispute Settlement presentation and simulation	Geneva, Switzerland	23–27 March 2009
48th Trade Policy Course – Dispute Settlement	Geneva, Switzerland (French)	29 June–3 July 2009
Talk on basic legal principles of GATT/WTO at the 23rd WTO Introduction Day	Geneva, Switzerland	15 July 2009
23rd Thematic Course on WTO Dispute Settlement	Geneva, Switzerland (Spanish)	19–23 October 2009
1st Advanced Thematic Course on WTO Dispute Settlement	Geneva, Switzerland (English)	4–6 November 2009

III. BRIEFINGS TO GROUPS VISITING THE WTO – 2009

Activity	Location	Dates
Talk on appellate review and WTO dispute settlement to law students from Amsterdam University of Applied Sciences	Geneva, Switzerland	14 January 2009
Talk on recent cases in the WTO dispute settlement system to law students from Zurich University	Geneva, Switzerland	16 January 2009
Talk on WTO dispute settlement and agriculture disputes to German farmers	Geneva, Switzerland	12 February 2009
Talk on WTO dispute settlement to students from Australia National University, Canberra	Geneva, Switzerland	12 February 2009
Talk on the activities of the WTO to students from the Institute for the International Education of Students of the University of Freiburg, Germany	Geneva, Switzerland	12 February 2009
Talk on WTO appellate review to students from University of Geneva	Geneva, Switzerland	11 March 2009
Talk on WTO dispute settlement settlement to law students from University of Nijmegen, Netherlands	Geneva, Switzerland	18 March 2009
Talk on WTO dispute settlement system to students on Study Tour for Russian Member Universities of the Vi Network	Geneva, Switzerland	25 March 2009
Talk on WTO dispute settlement system to students from the University of the West of England	Geneva, Switzerland	2 April 2009
Talk on WTO dispute settlement system to students from Leuven/ ELSA	Geneva, Switzerland	6 April 2009
Talk on WTO dispute settlement system to MBA students on the Pori Executive MBA programme	Geneva, Switzerland	22 April 2009
Talk on WTO dispute settlement system to the European Law Students' Association, Bonn e.V. (ELSA)	Geneva, Switzerland	27 April 2009
Talk on WTO dispute settlement system to students from the University of the West Indies	Geneva, Switzerland	14 May 2009
Talk on appellate review in the WTO to students from the Straus Institute, Pepperdine University	Geneva, Switzerland	25 May 2009
Talk on WTO dispute settlement system to students from University of Buckingham	Geneva, Switzerland	11 June 2009
Talk on WTO dispute settlement system to students from St. Gallen	Geneva, Switzerland	8 July 2009
Talk on WTO dispute settlement system to students from University of Melbourne's Institutions in International Law programme	Geneva, Switzerland	9 July 2009
Talk on panel proceedings and appellate review in the WTO UNOG International Law Seminar	Geneva, Switzerland	22 July 2009
Talk on WTO dispute settlement system to students from Universidad Adolfo Ibañez, Chile	Geneva, Switzerland	15 September 2009

Activity	Location	Dates
Talk on WTO dispute settlement system and appellate review to students from University of Lausanne's European and Commercial Law Program	Geneva, Switzerland	16 October 2009
Talk on WTO dispute settlement system to students from EAFIT University, Medellin, Colombia	Geneva, Switzerland	21 October 2009
Talk on WTO dispute settlement system to lawyers from Sidley Austin LLP	Geneva, Switzerland	27 October 2009

ANNEX 8

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS: 1995–2009

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 – 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
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

Short Title	Full Case Title and Citation
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
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
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

Short Title	Full Case Title and Citation
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
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
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, 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
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

Short Title	Full Case Title and Citation
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
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
China – Intellectual Property Rights	Panel Report, *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, WT/DS362/R, adopted 20 March 2009
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
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

Short Title	Full Case Title and Citation
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
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
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
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
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

Short Title	Full Case Title and Citation
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
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
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
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
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

Short Title	Full Case Title and Citation
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
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 – 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

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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 – 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
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
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

Short Title	Full Case Title and Citation
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
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
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 modified 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
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, reversed by Appellate Body Report WT/DS360/AB/R
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*, 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
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
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
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

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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 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 – 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 – Continued Suspension	Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted 14 November 2008
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
US – Continued Zeroing	Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 February 2009
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

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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
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
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

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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
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

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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 – 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 – 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
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

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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
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
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
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, 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

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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
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
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
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 – 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
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
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

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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
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
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*
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
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
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



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