Dispute settlement

In 2009 the total number of disputes brought to the Dispute Settlement Body (DSB) since the WTO's creation in 1995 topped 400. During the year, the DSB received 14 notifications from WTO members formally requesting consultations under the Dispute Settlement Understanding. In December the EU concluded agreements with the US and Latin American banana-producing nations intended to bring to an end the longest-running dispute in the WTO.

Background
The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any WTO agreement that is covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB has sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of the implementation of recommendations and rulings, and authorize suspension of concessions (trade sanctions) in the event of non-compliance.

Dispute settlement activity in 2009

In 2009 the total number of disputes brought to the Dispute Settlement Body (DSB) since the WTO's creation in 1995 topped 400. During the year, the DSB received 14 notifications from WTO members formally requesting consultations under the Dispute Settlement Understanding (DSU). It met 16 times in 2009, establishing 10 panels to adjudicate 13 new cases. (Where more than one complaint deals with the same matter, they are adjudicated by a single panel.)

During 2009 the DSB also adopted four panel and/or Appellate Body reports in six cases, concerning four distinct matters, and two panel and/or Appellate Body reports relating to compliance, concerning a single matter. (Where more than one complaint is adjudicated by a single panel, it issues a separate report for each complaint.) Mutually agreed solutions, settlements or withdrawals were notified in three cases.

Since 1995, WTO members have initiated, on average, about 27 disputes each year under the provisions of the DSU. Of the 402 cases filed up to the end of 2009, roughly half were eventually settled directly between the parties following the consultations mandated by the DSU, without going into litigation. The vast majority of the remaining cases were settled satisfactorily through litigation. Director-General Pascal Lamy noted that "this is surely a vote of confidence in a system which many consider to be a role model for the peaceful resolution of disputes in other areas of international political or economic relations".

On 15 December 2009 the European Union concluded agreements with the United States and Latin American banana-producing nations intended to bring to an end the longest-running dispute in the WTO. The dispute concerned the preferential treatment that the European Union gave to the import of bananas from African, Caribbean and Pacific countries.

As of 31 December 2009, 402 disputes had been brought to the WTO (see Table 1), of which:

- 84 appear to have been resolved bilaterally (no outcome notified to the WTO)
- 95 were resolved bilaterally (outcome notified to the WTO)
- 23 were resolved bilaterally after a panel was established but before the panel was composed
- 14 are currently the subject of active consultations between the parties
- 186 went into litigation.

Table 1: WTO members involved in disputes, 1995 to 2009

Member	Complainant	Respondent
Antigua and Barbuda	1	0
Argentina	15	16
Australia	7	10
Bangladesh	1	0
Belgium	0	3
Brazil	24	14
Canada	33	15
Chile	10	13
China	6	17
Colombia	5	3
Costa Rica	4	0

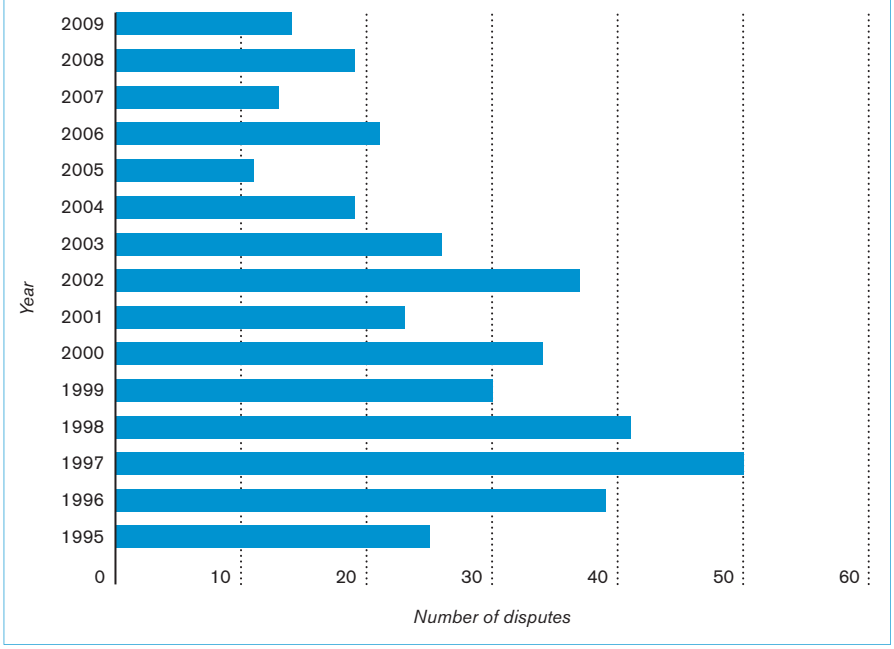
Table 1: WTO members involved in disputes, 1995 to 2009 (continued)

Member	Complainant	Respondent
Croatia	0	1
Czech Republic	1	2
Denmark	0	1
Dominican Republic	0	3
Ecuador	3	3
Egypt	0	4
European Union (formerly EC)	81	67
France	0	3
Germany	0	1
Greece	0	2
Guatemala	7	2
Honduras	6	0
Hong Kong, China	1	0
Hungary	5	2
India	18	20
Indonesia	4	4
Ireland	0	3
Japan	13	15
Korea, Republic of	14	14
Malaysia	1	1
Mexico	21	14
Netherlands	0	1
New Zealand	7	0
Nicaragua	1	2
Norway	4	0
Pakistan	3	2
Panama	5	1
Peru	2	4
Philippines	5	5
Poland	3	1
Portugal	0	1
Romania	0	2
Singapore	1	0
Slovak Republic	0	3
South Africa	0	3
Spain	0	1
Sri Lanka	1	0
Sweden	0	1
Switzerland	4	0
Chinese Taipei	3	0
Thailand	13	3
Trinidad and Tobago	0	2
Turkey	2	8
United Kingdom	0	2
United States	93	108
Uruguay	1	1
Venezuela	1	2

As of end-2009, 402 disputes had been brought to the WTO.

Dispute settlement

Figure 1: Disputes per year



The following section provides an update on developments in 2009 in cases which are currently active within the dispute settlement system. The cases are listed in order of their dispute settlement (DS) number, which is created when the case is opened. Cases opened in 2009 and still at the consultation stage are listed at the end of this section.

Trade dispute: WT/DS26

European Communities – Measures Concerning Meat and Meat Products (Hormones)

Complainant: **United States**
Respondent: **European Communities**

On 25 September 2009 the European Communities and the United States notified the DSB that they had signed a Memorandum of Understanding regarding the importation of beef from animals not treated with certain growth-promoting hormones and increased duties applied by the United States to certain products of the European Communities.

Trade dispute: WT/DS27

European Communities – Regime for the Importation, Sale and Distribution of Bananas

Complainants*: **Ecuador, Guatemala, Honduras, Mexico, United States**
Respondent: **European Communities**

* The agreement concluded involved a number of Latin American members who were not complainants in the dispute.

On 15 December 2009, an agreement was concluded between the European Union and certain Latin American banana-producing nations regarding the structure and operation of the EU trading regime for fresh bananas. At the DSB meeting of 21 December 2009, the United States said it had initialled an agreement at the same time intended to lead to a settlement of the dispute.

Trade dispute:	WT/DS267

United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 (Compensation and the Suspension of Concessions) of the DSU and Article 4.11 (Remedies) of the Subsidies and Countervailing Measures (SCM) Agreement;
United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 7.10 (Remedies) of the SCM Agreement

Complainant: **Brazil**
Respondent: **United States**

Decisions by the Arbitrator circulated: 31 August 2009

Upon the expiry of the respective implementation periods for the prohibited and actionable subsidies in this case, Brazil requested authorizations to apply countermeasures against the United States. The United States challenged these requests and the matter was referred to arbitration in accordance with Article 22.6 (Compensation and the Suspension of Concessions) of the DSU. These proceedings were resumed after the completion of the compliance proceedings.

There are two decisions in this arbitral proceeding because Brazil made separate requests relating to the prohibited export subsidies (Step 2 and GSM 102) and to the actionable subsidies (marketing loans and countercyclical payments) at issue, and the United States challenged both requests.

With respect to the prohibited subsidies, Brazil was seeking an authorization in a total amount of US$ 1.644 billion, consisting of a 'one-time' countermeasure for the Step 2 programme (which compensated cotton millers and exporters for buying higher-priced US-grown cotton) and an annual amount based on the 'interest rate subsidy' and additional sales arising for US exporters as a result of the subsidies for the GSM 102 Export Credit Guarantee programme.

The arbitrator determined that Brazil was not entitled to 'one-time' countermeasures with respect to a past period of non-compliance in relation to Step 2 payments. With respect to the GSM 102 subsidies, the arbitrator determined that the amount of US$ 1.122 billion proposed by Brazil would not result in appropriate countermeasures and that the amount of countermeasures that could be authorized as being appropriate, based on the amount of GSM 102 transactions in fiscal year 2006, is US$ 147.4 million. The arbitrator also determined that this level would be variable on an annual basis depending on, among other things, the total amount of GSM 102 transactions in the most recent concluded fiscal year.

With respect to the actionable subsidies (constituting 'serious prejudice' to the interests of Brazil), Brazil was seeking an authorization in a total amount of US$ 1.037 billion, representing the effect of price suppression on the world market for upland cotton resulting from the marketing loans and countercyclical payments. The arbitrator determined that the amount of countermeasures commensurate with the degree and nature of the adverse effects determined to exist was US$ 147.3 million annually.

Brazil had also requested, with respect to both the prohibited and the actionable subsidies, to be allowed to retaliate under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services (GATS), in addition to trade in goods.

The arbitrator found that, at current levels of permissible retaliation, Brazil had not satisfied the conditions under the DSU to allow it to cross-retaliate. However, because part of the amount of permissible retaliation is variable on an annual basis, the arbitrator also determined that if the permissible amount of retaliation increased above a certain threshold (variable on an annual basis), then Brazil would be entitled to retaliate under the TRIPS Agreement and the GATS for any amount of retaliation applied above that threshold.

Further trade disputes involving these countries can be seen on the following pages:

Brazil
8, 93, 98

European Communities
87, 88, 89, 90, 91, 92, 93, 97, 98, 99, 100

United States
86, 88, 90, 91, 93, 94, 97, 98, 99, 100

Trade dispute: **WT/DS292**

European Communities – Measures Affecting the Approval and Marketing of Biotech Products

Complainant: **Canada**
Respondent: **European Communities**

Panel Report adopted: 21 November 2006

On 17 July 2009, Canada and the European Communities informed the DSB of a mutually agreed solution under Article 3.6 (General Provisions) of the DSU. Under this agreement, Canada and the European Communities agreed to establish bilateral dialogue on agricultural biotech market access issues of mutual interest.

Trade dispute: **WT/DS294**

United States – Laws, Regulations and Methodology for Calculating Dumping Margins ('Zeroing') – Recourse to Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) of the DSU by the European Communities

Complainant: **European Communities**
Respondent: **United States**

Circulation of Panel Compliance Report: 17 December 2008
Circulation of Appellate Body Compliance Report: 14 May 2009
Reports adopted: 11 June 2009

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 (Determination of Dumping) of the Anti Dumping Agreement.

Under that methodology, when calculating a margin of dumping for a product on the basis of comparisons of normal value and export prices, the results of comparisons for which the export price exceeds normal value are treated as zero.

The Appellate Body also found that the application of 'zeroing' in the periodic reviews at issue was inconsistent with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the General Agreement on Tariffs and Trade (GATT) 1994.

On 13 February 2009 the European Communities notified its intention to appeal to the Appellate Body on certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel. On 25 February 2009 the United States filed another appeal.

The Appellate Body reversed the Panel's finding that the subsequent reviews to the original determination that pre-dated the adoption of the recommendations and rulings of the DSB did not fall within the Panel's terms of reference.

The Appellate Body found, instead, that five specific 'sunset reviews' 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 (Surveillance of Implementation of Recommendations and Rulings) of the DSU.

Addressing the United States' appeal, the Appellate Body upheld the Panel's finding that two specific periodic reviews fell within the Panel's terms of reference. The Appellate Body reasoned that, insofar as those periodic reviews established assessment rates calculated with zeroing after the end of the reasonable period of time, they 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, so as to fall within the Panel's terms of reference.

Writing separately, one of the three members of the Appellate Body Division hearing the appeal opined that these two periodic reviews should not fall within the Panel's terms of reference under Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) of the DSU.

The Appellate Body also reversed the Panel's interpretation that the United States' implementation obligations did not cover actions to assess and collect anti-dumping duties when the corresponding assessment review had been concluded before the expiry of the reasonable period of time. The Appellate Body reasoned that the recommendations and rulings of the DSB required the United States to cease using zeroing in the assessment of duties by the end of the reasonable period of time.

Thus, the United States' implementation obligations also extended to connected and consequent measures that are mechanically derived from the results of an assessment review, and applied in the ordinary course of the imposition of anti-dumping duties.

On this basis, the Appellate Body upheld the Panel's findings that the United States had acted inconsistently with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the GATT 1994 by assessing and collecting anti-dumping duties calculated with zeroing in two specific periodic reviews issued after the end of the reasonable period of time. However, it reversed the Panel's finding that the United States had not acted inconsistently with those provisions by assessing and collecting anti-dumping duties calculated with zeroing after the end of the reasonable period of time in two cases where the determinations had been made before that date.

The Appellate Body was unable to complete the legal analysis and therefore declined to make findings in relation to 11 specific cases subject to the appeal. In addition, the Appellate Body reversed the Panel's findings that the United States had not acted inconsistently with Article 11.3 (Duration and Review of Anti-Dumping Duties and Price Undertakings) of the Anti-Dumping Agreement in five sunset reviews in which zeroing was relied upon and led to the extension of the relevant anti-dumping duty orders beyond the expiry of the reasonable period of time.

The Appellate Body further reversed the Panel's finding that the European Communities could not raise claims before the Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) Panel in relation to an alleged arithmetical error in the calculation of margins of dumping because it could have raised them in the original proceedings, but failed to do so.

However, the Appellate Body was unable to complete the analysis and therefore did not rule on whether the United States had failed to comply by not correcting such alleged error in one of its implementing measures.

In addition, the Appellate Body did not consider it necessary to make findings in relation to the European Communities' claim that in three specific cases the United States had acted inconsistently with Article 9.4 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement in the calculation of the 'all others' rate that applies to exporters and foreign producers that have not been individually investigated.

However, the Appellate Body disagreed with the Panel's interpretation that Article 9.4 imposes no obligation in respect of the calculation of the 'all others' rate when all margins for all exporters individually investigated are either zero, *de minimis*, or based on facts available.

Dispute settlement

Further trade disputes involving these countries can be seen on the following pages:

Canada
90, 98, 99

European Communities
84, 88, 89, 90, 91, 92, 93, 97, 98, 99, 100

United States
85, 88, 90, 91, 93, 94, 97, 98, 99, 100

Trade dispute:	WT/DS297
Croatia – Measure Affecting Imports of Live Animals and Meat Products Consultations	
Complainant: **Hungary** Respondent: **Croatia**	

On 30 January 2009, Croatia and Hungary notified the DSB that they had reached a mutually agreed solution to this case in 2003.

Trade dispute:	WT/DS316
European Communities – Measures Affecting Trade in Large Civil Aircraft	
Complainant: **United States** Respondent: **European Communities**	
Panel established: 20 July 2005	

On 3 December 2009 the Chair of the Panel informed the DSB that the Panel had issued its interim report to the parties in September 2009, and was now in the process of finalizing its report. The Panel expects to complete its work before the end of April 2010.

Trade dispute:	WT/DS322
United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) of the DSU by Japan	
Complainant: **Japan** Respondent: **United States**	
Circulation of Panel Compliance Report: 24 April 2009 Circulation of Appellate Body Compliance Report: 18 August 2009 Reports adopted: 31 August 2009	

In the original proceedings, the DSB made recommendations and rulings regarding: (a) importer-specific assessment rates calculated in certain periodic reviews, which were found to be WTO-inconsistent due to the use of zeroing; (b) a 1999 'sunset review', which was found to be WTO-inconsistent due to reliance on margins of dumping calculated using zeroing; and (c) the maintenance of zeroing procedures, which was found to be 'as such' inconsistent with WTO obligations.

In the present case, the Panel found that the United States had failed to comply with the DSB's recommendations and rulings regarding the importer-specific assessment rates determined in five of the periodic reviews at issue in the original proceedings, applying to entries of imports covered by those periodic reviews that were, or will be, liquidated after the expiry of the reasonable period of time.

Consequently, the Panel found the United States to be in continued violation of its obligations under Articles 2.4 (Determination of Dumping) and 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the General Agreement on Tariffs and Trade (GATT) 1994.

The Panel also concluded that four subsequent periodic reviews were measures taken to comply, and that the United States had acted inconsistently with Articles 2.4 and 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 by applying zeroing in the context of those periodic reviews.

Further, the Panel found that certain liquidation actions taken by the United States after the end of the reasonable period of time are measures taken to comply and are

inconsistent with Articles II:1(a) and II:1(b) (Schedules of Concessions) of the (GATT) 1994. The Panel exercised judicial economy as to whether the failure to comply with the DSB's recommendations and rulings also violated provisions of the DSU.

On 20 May 2009 the United States notified its intention to appeal to the Appellate Body on certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel.

On 18 August 2009 the Appellate Body circulated its report to WTO members. In its report, the Appellate Body upheld all of the Panel's findings that had been appealed by the United States.

The Appellate Body first upheld the Panel's finding that a periodic review that had been initiated at the time the matter was referred to the Panel and was completed during the Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) proceedings was properly within the scope of the Panel's terms of reference.

Turning to the question of whether the United States had complied with the DSB's recommendations and rulings, the Appellate Body explained *inter alia* that WTO-inconsistent conduct must cease by the end of the reasonable period of time.

In the case of the nine periodic reviews of anti-dumping duty orders at issue, the obligation to comply with the DSB's recommendations and rulings covers actions or omissions subsequent to the reasonable period of time, even if they relate to imports that entered the territory of the United States at an earlier date.

The Appellate Body further found that the fact that the periodic reviews had been challenged in domestic judicial proceedings did not excuse the United States from complying with the DSB's recommendations and rulings by the end of the reasonable period of time.

The Appellate Body therefore upheld the Panel's finding that the United States had failed to comply with the DSB's recommendations and rulings regarding the importer-specific assessment rates determined in the five periodic reviews, and had acted inconsistently with Articles 2.4 (Determination of Dumping) and 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the GATT 1994 by applying zeroing in the context of the four subsequent periodic reviews.

Finally, the Appellate Body upheld the Panel's consequential finding that certain liquidation actions taken by the United States after the end of the reasonable period of time, in connection with certain periodic reviews at issue, violated Articles II:1(a) and II:1(b) (Schedules of Concessions) of the GATT 1994 because this aspect of the United States' appeal had been premised on arguments that the Appellate Body had rejected in making findings concerning these periodic reviews.

At its meeting of 31 August 2009 the DSB adopted the Appellate Body report and the compliance panel report, as upheld by the Appellate Body report.

Trade dispute:	**WT/DS332**
Brazil – Measures Affecting the Imports of Retreaded Tyres	
Complainant: **European Communities** Respondent: **Brazil**	
Panel and Appellate Body Reports adopted: 17 December 2007	

At the DSB meeting of 25 September 2009, Brazil stated that it was now in full compliance with the DSB recommendations and rulings in this dispute. The European Communities, at the same meeting, said that it was in the process of reviewing Brazil's claim.

Further trade disputes involving these countries can be seen on the following pages:

Brazil
93, 98

European Communities
84, 87, 90, 91, 92, 93, 97, 98, 99, 100

Japan
97

United States
85, 86, 90, 91, 93, 94, 97, 98, 99, 100

Trade dispute:	WT/DS339, WT/DS340, WT/DS342
China – Measures Affecting Imports of Automobile Parts	
Complainants:	**European Communities (DS339), United States (DS340), Canada (DS342)**
Respondent:	**China**
Panel and Appellate Body Reports adopted: 12 January 2009	

At the DSB meeting on 11 February 2009, China informed the DSB that it intended to implement the DSB recommendations and rulings and that it would require a reasonable period of time to do so. On 27 February 2009, China and the European Communities, China and the United States, and China and Canada notified the DSB that they had agreed that the reasonable period of time would be seven months and 20 days. Accordingly, the reasonable period of time expired on 1 September 2009.

At the DSB meeting of 31 August 2009, China said that on 15 August 2009 the Ministry of Industry and Information Technology and the National Development and Reform Commission had issued a joint decree to halt implementation of relevant provisions in the Automobile Industry Development Policy concerning the importation of auto parts.

On 28 August 2009 the General Administration on Customs and relevant agencies had promulgated a joint decree to repeal Decree 125. As all these new decrees would come into effect on 1 September 2009, China declared that it had brought its measures into conformity with the DSB recommendations and rulings.

Trade dispute:	WT/DS343
United States – Measures Relating to Shrimp from Thailand	
Complainant:	**Thailand**
Respondent:	**United States**
Panel and Appellate Body Reports adopted: 1 August 2008	

At the DSB meeting on 20 April 2009 the United States informed the DSB that it had taken steps to implement the recommendations and rulings and stated that it was now in compliance with those recommendations and rulings. Thailand, while appreciative of the United States' efforts, said it was still considering whether the steps taken would be sufficient to bring the United States into compliance.

Trade dispute:	WT/DS345
United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties	
Complainant:	**India**
Respondent:	**United States**
Panel and Appellate Body Reports: 1 August 2008	

At the DSB meeting on 20 April 2009 the United States stated that it had notified the documents related to the additional bond requirement to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures, in accordance with the finding of the Panel.

The United States therefore was pleased to inform the DSB that it had complied with the DSB recommendations and rulings. India said that it looked forward to seeing how steps taken by the United States would be implemented in practice.

Trade dispute: **WT/DS350**

United States – Continued Existence and Application of Zeroing Methodology

Complainant: **European Communities**
Respondent: **United States**

Circulation of Panel Report: 1 October 2008
Circulation of Appellate Body Report: 4 February 2009
Reports adopted: 19 February 2009

On 6 November 2008 the European Communities notified the DSB of its decision to appeal to the Appellate Body on certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel. On 18 November 2008 the United States likewise notified the DSB of its decision to appeal on certain aspects of the Panel report.

The Panel found that the United States acted inconsistently with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the General Agreement on Tariffs and Trade (GATT) 1994 by applying zeroing in 29 periodic reviews.

The Appellate Body upheld the Panel's findings on appeal. In so doing, the Appellate Body examined Article 17.6(ii) (Consultation and Dispute Settlement), which addresses the question of 'permissible interpretations' under the Anti-Dumping Agreement.

The Appellate Body noted that Article 17.6(ii) of the Anti-Dumping Agreement contemplates a sequential analysis, whereby a panel must first apply the customary rules of interpretation codified in the Vienna Convention in an integrated and holistic fashion to the relevant treaty provisions in accordance with the first sentence of Article 17.6(ii), before engaging the question of whether there exists more than one permissible interpretation in accordance with the second sentence of that Article.

Where the application of the customary rules of interpretation give rise to an interpretative range under the first sentence of Article 17.6(ii), the function of the second sentence is 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's interpretation of Article VI:2 (Anti-Dumping and Countervailing Duties) of the GATT 1994 and Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement 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 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 zeroing in 29 periodic reviews.

Regarding the European Communities' claims concerning the continued application of the 18 anti-dumping duties, the Appellate Body reversed the Panel's finding that the European Communities failed to identify the specific measures at issue in its panel request, as required under Article 6.2 (Establishment of Panels) of the DSU.

The Appellate Body found, instead, that the panel request identified the specific measures at issue as the use of the zeroing methodology, in each of the 18 cases listed in the annex to the panel request, whereby the anti-dumping duties in these cases are maintained.

Further trade disputes involving these countries can be seen on the following pages:

Canada
86, 98, 99

China
93, 94, 97, 99, 100

European Communities
84, 87, 88, 89, 92, 93, 97, 98, 99, 100

Thailand
97, 98

United States
85, 86, 88, 93, 94, 97, 98, 99, 100

The Appellate Body further found that the measures at issue are neither rules or norms of general application, nor specific instances of application of the zeroing methodology. Rather, they constitute ongoing conduct, involving the continued use of the zeroing methodology in each of the 18 specific cases, whereby the anti-dumping duties are maintained. The Appellate Body found that the European Communities was not precluded from challenging such ongoing conduct in WTO dispute settlement.

With regard to four of the 18 anti-dumping cases challenged by the European Communities, the Appellate Body further found that the Panel's factual findings sufficiently established the continued use of the zeroing methodology in successive proceedings whereby duties in these cases are maintained.

The Appellate Body concluded that the continued application of anti-dumping duties in these four cases is inconsistent with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) 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 is inconsistent with Article 11.3 (Duration and Review of Anti-Dumping Duties and Price Undertakings) of the Anti-Dumping Agreement to the extent that reliance is placed upon a margin of dumping calculated with zeroing in making sunset review determinations.

The Appellate Body also reversed the Panel's finding that four preliminary determinations challenged by the European Communities fell outside its terms of reference, but declined to complete the analysis because these measures were pending before the United States authorities at the time of the panel request.

In addition, the Appellate Body found that the Panel acted inconsistently with Article 11 (Function of Panels) of the DSU in finding that the European Communities had failed to demonstrate that zeroing was used in seven of the periodic reviews at issue and, consequently, reversed this finding of the Panel.

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 all the submitted evidence by failing to give consideration to that evidence in its totality.

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 completed the analysis for five of these seven reviews, and found that the United States acted inconsistently with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI:2 (Anti-Dumping and Countervailing Duties) of the GATT 1994 by applying zeroing in these five reviews; however, the Appellate Body was unable to complete the analysis in respect of the two remaining periodic reviews.

The Appellate Body upheld the Panel's finding that the United States acted inconsistently with Article 11.3 (Duration and Review of Anti-Dumping Duties and Price Undertakings) of the Anti-Dumping Agreement in eight sunset reviews by relying on margins of dumping calculated in previous proceedings with the use of zeroing.

At the DSB meeting on 20 March 2009 the United States informed the DSB that it intended to bring its measures into conformity with its WTO obligations and would need a reasonable period of time to do so. On 2 June 2009 the United States and the European Communities informed the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB recommendations and rulings would be 10 months. Consequently, the reasonable period of time expired on 19 December 2009.

Trade dispute:	WT/DS353

United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint

Complainant: **European Communities**
Respondent: **United States**

Panel established: 17 February 2006

On 16 December 2009 the Chair of the Panel informed the DSB that it expected to issue its interim report to the parties in June 2010.

Trade dispute:	WT/DS355

Brazil – Anti-dumping Measures on Imports of Certain Resins from Argentina

Complainant: **Argentina**
Respondent: **Brazil**

Panel established: 24 July 2007

During 2008, Argentina had asked the Panel to suspend its work pursuant to Article 12.12 (Panel Procedures) of the DSU. The Panel agreed to this request and suspended its work until further notice. Since the Panel had not been requested to resume its work, pursuant to Article 12.12 of the DSU, the authority for the establishment of the Panel lapsed as of 5 February 2009.

Trade dispute:	WT/DS362

China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights

Complainant: **United States**
Respondent: **China**

Circulation of Panel Report: 26 January 2009
Report adopted: 20 March 2009

This dispute concerned three specific aspects of China's intellectual property system.

The first was the Copyright Law, which contained a provision that 'prohibited' works shall not receive copyright protection. The Panel concluded that this provision violated the Berne Convention, as incorporated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This does not affect China's right to prohibit the publication and distribution of works by means of censorship.

The second aspect of the dispute related to China's measures for the disposal of infringing goods seized by Customs. The Panel concluded that the TRIPS obligations on border measures do not apply to exports (which in China constitute almost all infringing goods seized by Customs). The Panel found no problem with the sequence of options available to China Customs for disposal of infringing imports but concluded that the details of the procedure for auction of counterfeit trademark goods were inconsistent with the TRIPS Agreement.

The third aspect of China's intellectual property system to be considered by the Panel concerned China's definitions of the crimes of trademark and copyright infringement. China excluded from criminal enforcement lower level infringement, which is defined in terms of turnover, profit and sales volume thresholds, and a minimum number of pirated copies. The Panel found that the TRIPS Agreement does not oblige WTO members to criminalize all trademark and copyright infringement and concluded that the evidence was inadequate to show whether the cases excluded by China's criminal thresholds were covered by the TRIPS obligation.

Further trade disputes involving these countries can be seen on the following pages:

Brazil
89

China
90, 94, 97, 99, 100

European Communities
84, 87, 88, 90, 91, 97, 98, 99, 100

United States
85, 86, 88, 90, 91, 94, 97, 98, 99, 100

On 15 April 2009, China informed the DSB that it intended to implement the DSB recommendations and rulings and that it would need a reasonable period of time to do so. On 29 June 2009, China and the United States informed the DSB that they had agreed that the reasonable period of time for China to implement the DSB recommendations and rulings would be 12 months from the adoption of the report and would expire on 20 March 2010.

Trade dispute:	**WT/DS363**
China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products	
Complainant: **United States** Respondent: **China**	
Circulation of Panel Report: 12 August 2009 Circulation of Appellate Report: 21 December 2009 Reports adopted: 19 January 2010	

This dispute concerned various Chinese measures relating to the importation into and distribution within China of reading materials (e.g. books, newspapers, periodicals, electronic publications), audiovisual home entertainment (AVHE) products (e.g. videocassettes, video compact discs, digital video discs), sound recordings (in both physical and electronic form) and films for release in movie theatres.

The Panel found that the Chinese measures at issue were inconsistent with China's commitment under its Accession Protocol to grant a 'right to trade' to foreign and Chinese enterprises and foreign individuals.

Specifically, the Chinese measures were found to restrict the right to import films, reading materials, AVHE products and sound recordings. The Panel did not accept China's defence that these measures were 'necessary to protect public morals' under Article XX(a) (General Exceptions) of the General Agreement on Tariffs and Trade (GATT) 1994, even assuming that Article XX(a) was available as a defence to claims based on the Accession Protocol.

With respect to the United States' claims under the General Agreement on Trade in Services (GATS), the Panel concluded that Chinese measures regarding distribution services for reading materials and AVHE products, as well as electronic sound recordings, were inconsistent with China's market access or national treatment commitments under the GATS.

The Panel also found that certain Chinese measures affecting the distribution of imported reading materials were inconsistent with Article III:4 (National Treatment on Internal Taxation and Regulation) of the GATT 1994.

However, the Panel determined that the United States had not demonstrated a breach in respect of a number of Chinese measures, including the challenge based on the national treatment obligation under the GATT 1994 as regards films for theatrical release and sound recordings intended for electronic distribution.

On 22 September 2009, China notified the DSB of its decision to appeal on certain issues of law and legal interpretations in the Panel report, and on 5 October 2009 the United States notified the DSB of its decision to appeal on certain aspects of the Panel report.

The Appellate Body upheld Panel findings that China's restrictions on who may import films for release in movie theatres and audiovisual products imported for publication were inconsistent with commitments assumed by China under paragraphs 1.2 and 5.1 of its Accession Protocol and paragraphs 83(d) and 84(a) and (b) of its Accession Working Party Report, namely: (i) to grant the right to import and export all goods to all enterprises and foreign individuals; and (ii) to grant such right in a non-discretionary manner.

Although China argued that its measures, which regulate content and services, were not subject to these commitments, which concern goods, the Appellate Body found that the Panel had properly determined that the measures necessarily affect who may engage in trade in goods and were, therefore, subject to, and inconsistent with, China's trading rights commitments.

China sought to defend the measures found to be inconsistent with its trading rights commitments as 'necessary' to protect public morals, within the meaning of Article XX(a) (General Exceptions) of the GATT 1994.

China contended that its measures aimed to prevent the dissemination of materials containing prohibited content. Although the Panel assumed *arguendo* that Article XX(a) was available to China as a defence, the Appellate Body made an affirmative finding that, by virtue of the language used in paragraph 5.1 of China's Accession Protocol, China could invoke Article XX(a) in this dispute. The Appellate Body upheld the Panel's ultimate finding that China had not made out such a defence.

With respect to China's asserted defence, the dispute focused on the 'necessity' of China's measures to the achievement of China's declared policy objectives, namely the protection of public morals in China.

Specifically, the issues raised on appeal concerned the question of whether China's measures made a contribution to the achievement of its objective of protecting public morals, as weighed against the restrictive effect on imports on those wishing to engage in importing, and on whether alternative measures proposed by the United States were reasonably available to China.

The Appellate Body upheld two intermediate findings made by the Panel regarding the contribution to China's objectives made by two measures, namely: (i) the requirement that entities approved to import publications be wholly state-owned enterprises; and (ii) the provisions excluding foreign-invested enterprises from engaging in the importation of the relevant products.

With respect to a third intermediate finding that was the subject of the appeal brought by the United States, the Appellate Body found that the Panel had erred in finding that a measure was apt to make a material contribution to the protection of public morals.

The Appellate Body also found that the Panel had not erred in its analysis in taking into account the restrictive effect that the relevant measures have on those wishing to engage in importing, in addition to the restrictive effect of such measures on imports, nor in finding that an alternative measure proposed by the United States (namely, that the Chinese Government be given sole responsibility for carrying out content review of the relevant imported products) was 'reasonably available' to China. The Appellate Body emphasized, however, that China may select its preferred method of implementing the DSB's recommendations and rulings.

Finally, the Appellate Body upheld the Panel's finding that China's measures prohibiting foreign-invested entities from engaging in the distribution of sound recordings in electronic form were inconsistent with the national treatment obligation in Article XVII (National Treatment) of the GATS.

The Appellate Body found that the Panel had not erred in interpreting the entry 'Sound recording distribution services' in sector 2.D of China's GATS schedule as extending to the distribution of sound recordings in electronic form (such as over the Internet or mobile telephone networks), and not, as contended by China, as being limited to the distribution of sound recordings in physical form (such as CDs).

The Panel findings that certain Chinese measures relating to the distribution of reading materials and audiovisual home entertainment products were inconsistent with Article III:4 (National Treatment on Internal Taxation and Regulation) of the GATT 1994 and Articles XVI (Market Access) and XVII (National Treatment) of the GATS were not appealed.

Further trade disputes involving these countries can be seen on the following pages:

China
90, 93, 97, 99, 100

United States
85, 86, 88, 90, 91, 93, 97, 98, 99, 100

Trade dispute:	WT/DS366
Colombia – Indicative Prices and Restrictions on Ports of Entry	
Complainant: **Panama** Respondent: **Colombia**	
Circulation of Panel Report: 27 April 2009 Report adopted: 20 May 2009	

The Panel upheld Panama's claims that Articles 128.5(e) of Decree No. 2685 and 172.7 of Resolution No. 4240, as well as the various resolutions establishing indicative prices, were inconsistent 'as such' with the obligation established in the Customs Valuation Agreement to apply, in a sequential manner, the methods of valuation provided in Articles 1, 2, 3, 5 and 6 of the Customs Valuation Agreement, and with Article 7.2(b) and (f) of the Customs Valuation Agreement.

The Panel declined to rule separately on Panama's claims that these measures were 'as such' inconsistent with Article 7.2(g) of the Customs Valuation Agreement and Article III:2 (National Treatment on Internal Taxation and Regulation), first sentence, and Article III:4 of the General Agreement on Tariffs and Trade (GATT) 1994, and on Panama's 'as applied' claims pertaining to the consistency of Colombia's indicative prices regime with the Customs Valuation Agreement as well as Article III:2, first sentence, and Article III:4 of the GATT 1994.

The Panel upheld Panama's claims that the ports of entry measure was inconsistent with Article I:1 (General Most-Favoured-Nation Treatment), the first and second sentences of Article V:2 (Freedom of Transit), the first sentence of Article V:6, and Article XI:1 (General Elimination of Quantitative Restrictions) of the GATT 1994. It declined to rule separately on Panama's claims that this measure is inconsistent with Article I:1 (General Most-Favoured-Nation Treatment) and Article XIII:1 (Non-discriminatory Administration of Quantitative Restrictions) of the GATT 1994. The Panel further rejected Colombia's defence that the ports of entry measure is justified under Article XX(d) (General Exceptions) of the GATT 1994.

The Panel concluded that, to the extent that Colombia had acted inconsistently with the provisions of the Customs Valuation Agreement and the GATT 1994, it has nullified or impaired benefits accruing to Panama. The Panel recommended that Colombia bring its measures into conformity with its obligations under the Customs Valuation Agreement and the GATT 1994.

On 7 July 2009, Panama requested binding arbitration under Article 21.3(c) (Surveillance of Implementation of Recommendations and Rulings) of the DSU. On 30 July 2009 the Director-General appointed Mr Giorgio Sacerdoti to act as arbitrator.

On 2 October 2009 the award of the Arbitrator was circulated. The Arbitrator determined that the reasonable period of time for Colombia to implement the recommendations and rulings of the DSB was eight months and 15 days from the date of adoption of the Panel report. The reasonable period expired on 4 February 2010.

Trade dispute:	DS367
Australia – Measures Affecting the Importation of Apples from New Zealand	
Complainant: **New Zealand** Respondent: **Australia**	
Panel established: 21 January 2008	

On 29 January 2010 the Panel informed the DSB that it expected to issue its final report to the parties by May 2010, as envisaged in the revised timetable adopted after consultation with the parties.

Trade dispute: WT/DS371

Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines

Complainant: **Philippines**
Respondent: **Thailand**

Panel established: 17 November 2008

On 16 February 2009 the panel was composed. On 3 September 2009 the Chair of the Panel informed the DSB that due to the complexity of the dispute, and the administrative and procedural matters involved, the Panel would not be able to complete its work in six months. The Panel expects to issue its final report to the parties in the course of March 2010.

Trade dispute: WT/DS375, WT/DS376, WT/DS377

European Communities and its Member States – Tariff Treatment of Certain Information Technology Products

Complainants: **United States (DS375), Japan (DS376), Chinese Taipei (DS377)**
Respondent: **European Communities and its member states**

Panel established: 23 September 2008

On 12 January 2009 the parties requested the Director-General to compose the panel, which he did on 22 January 2009. On 21 December 2009 the Chair of the Panel informed the DSB that the Panel expected to issue its final report to the parties by the end of April 2010.

Trade dispute: WT/DS379

United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China

Complainant: **China**
Respondent: **United States**

At its meeting on 20 January 2009 the DSB established a panel to examine the definitive anti-dumping and countervailing duties imposed by the United States on a range of products from China, including steel pipe, off-road tyres and laminated woven sacks. Argentina, Australia, Bahrain, Brazil, Canada, the European Communities, India, Japan, Kuwait, Mexico, Norway, Saudi Arabia, Chinese Taipei and Turkey reserved their third-party rights.

On 23 February 2009, China requested that the Director-General determine the composition of the panel, which he did on 4 March 2009. On 17 November 2009 the Chair of the Panel informed the DSB that the Panel expected to complete its work by May 2010.

Trade dispute: WT/DS381

United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

Complainant: **Mexico**
Respondent: **United States**

At its meeting of 20 April 2009 the DSB established a panel to examine certain measures taken by the United States concerning the importation, marketing and sale of tuna and tuna products. Argentina, Australia, Brazil, Canada, China, Ecuador, the European Communities, Guatemala, Japan, Korea, New Zealand, Chinese Taipei, Thailand, Turkey and Venezuela reserved their third-party rights.

Further trade disputes involving these countries can be seen on the following pages:

China
90, 93, 94, 99, 100

European Communities
84, 87, 88, 89, 90, 91, 93, 94, 97, 98, 99, 100

Japan
89

Mexico
99, 100

Thailand
91, 98

United States
85, 86, 88, 90, 91, 93, 94, 97, 98, 99, 100

On 2 December 2009, Mexico requested the Director-General to determine the composition of the panel, which he did on 14 December 2009.

Trade dispute:	WT/DS382
United States – Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil	
Complainant: **Brazil** Respondent: **United States**	

At its meeting of 25 September 2009 the DSB established a panel to examine United States laws, regulations, administrative procedures, practices and methodologies for calculating dumping margins in administrative reviews, involving the use of 'zeroing', and their application in anti-dumping duty administrative reviews regarding imports of certain orange juice from Brazil. Argentina, the European Communities, Japan, Korea, Mexico, Chinese Taipei and Thailand reserved their third-party rights.

Trade dispute:	WT/DS383
United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand	
Complainant: **Thailand** Respondent: **United States**	
Circulation of Panel Report: 22 January 2010	

At its meeting on 20 March 2009 the DSB established a panel to examine the application by the United States of the practice known as 'zeroing' in the United States' determination of the margins of dumping in its anti-dumping investigation of polyethylene retail carrier bags from Thailand. Argentina, the European Communities, Japan, Korea and Chinese Taipei reserved their third-party rights. On 20 August 2009 the panel was composed.

The Panel found that the United States acted inconsistently with Article 2.4.2 (Determination of Dumping), first sentence, of the Anti-Dumping Agreement by using 'zeroing' in the Final Determination, as amended, and the Order to determine the dumping margins for individually investigated Thai exporters whose margins of dumping were not based on total facts available. The Panel recommended that the DSB request the United States to bring its measures into conformity with its obligations under the Anti-Dumping Agreement.

Trade dispute:	WT/DS384
United States – Certain Country of Origin Labelling (COOL) Requirements	
Complainant: **Canada (see also WT/DS386)** Respondent: **United States**	

At its meeting on 19 November 2009 the DSB established a single panel, pursuant to Article 9.1 (Procedures for Multiple Complainants) of the DSU, to examine this dispute and dispute DS386 concerning the United States measure requiring country of origin labelling (COOL) in respect of certain agricultural products including beef and pork. Argentina, Australia, Brazil, China, Colombia, the European Communities, Guatemala, India, Japan, Korea, Mexico, Peru, New Zealand and Chinese Taipei reserved their third-party rights.

Trade dispute: WT/DS386

United States – Certain Country of Origin Labelling Requirements

Complainant: **Mexico (see also WT/DS384)**
Respondent: **United States**

At its meeting on 19 November 2009 the DSB established a single panel, pursuant to Article 9.1 (Procedures for Multiple Complainants) of the DSU, to examine this dispute and dispute DS384 concerning the country of origin labelling (COOL) provisions adopted by the United States in respect of certain agricultural products including beef and pork. Argentina, Australia, Brazil, Canada, China, Colombia, the European Communities, Guatemala, India, Japan, Korea, Peru, New Zealand and Chinese Taipei reserved their third-party rights.

Trade dispute: WT/DS389

European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States

Complainant: **United States**
Respondent: **European Communities**

At its meeting on 19 November 2009 the DSB established a panel to examine certain European Communities measures affecting poultry meat and poultry meat products from the United States. Australia, China, Guatemala, Korea, New Zealand, Norway and Chinese Taipei reserved their third-party rights.

Trade dispute: WT/DS391

Korea – Measures Affecting the Importation of Bovine Meat and Meat Products from Canada

Complainant: **Canada**
Respondent: **Korea**

At its meeting on 31 August 2009 the DSB established a panel to examine measures affecting the importation of bovine meat and meat products from Canada. Argentina, Brazil, China, the European Communities, India, Japan, Chinese Taipei and the United States reserved their third-party rights.

On 4 November 2009, Canada requested the Director-General to compose the panel, which he did on 13 November 2009.

Trade dispute: DS392

United States – Certain Measures Affecting Imports of Poultry from China

Complainant: **China**
Respondent: **United States**

Circulation of Panel Report: 27 April 2009
Report adopted: 20 May 2009

At its meeting on 31 July 2009 the DSB established a panel to examine certain measures taken by the United States relating to the importation of poultry products from China. Brazil, the European Communities, Guatemala, Republic of Korea, Chinese Taipei and Turkey reserved their third-party rights.

On 16 September 2009, China requested the Director-General to compose the panel, which he did on 23 September 2009.

Further trade disputes involving these countries can be seen on the following pages:

Brazil
89, 93

Canada
86, 90

China
90, 93, 94, 97, 100

European Communities
84, 87, 88, 89, 90, 91, 92, 93, 97, 100

Mexico
97, 100

Thailand
91, 97

United States
85, 86, 88, 90, 91, 93, 94, 97, 100

Trade dispute:	WT/DS394
China – Measures Related to the Exportation of Various Raw Materials (see also WT/DS395 and WT/DS398)	
Complainant: **United States** Respondent: **China**	

At its meeting on 21 December 2009 the DSB established a single panel to examine this dispute as well as DS395 and DS398 regarding China's alleged restraints on the export from China of various raw materials, pursuant to Article 9.1 (Procedures for Multiple Complainants) of the DSU. Argentina, Brazil, Canada, Chile, Colombia, Ecuador, the European Union, India, Japan, Korea, Mexico, Norway, Chinese Taipei and Turkey reserved their third-party rights.

Trade dispute:	WT/DS395
China – Measures Related to the Exportation of Various Raw Materials	
Complainant: **European Communities (See also WT/DS394 and WT/DS398)** Respondent: **China**	

At its meeting on 21 December 2009 the DSB established a single panel to examine this dispute as well as DS394 and DS398 regarding China's alleged restraints on the export from China of various raw materials, pursuant to Article 9.1 (Procedures for Multiple Complainants) of the DSU. Argentina, Brazil, Canada, Chile, Colombia, Ecuador, India, Japan, Korea, Mexico, Norway, Chinese Taipei, Turkey and the United States reserved their third-party rights.

Trade dispute:	WT/DS397
European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China	
Complainant: **China** Respondent: **European Communities**	

At its meeting on 23 October 2009 the DSB established a panel to examine this dispute. Brazil, Canada, Chile, Colombia, India, Japan, Norway, Chinese Taipei, Thailand, Turkey and the United States reserved their third-party rights.

On 30 November 2009 the European Communities requested the Director-General to determine the composition of the panel, which he did on 9 December 2009.

Trade dispute:	WT/DS398
China – Measures Related to the Exportation of Various Raw Materials	
Complainant: **Mexico (see also WT/DS394 and WT/DS395)** Respondent: **China**	

At its meeting on 21 December 2009 the DSB established a single panel, pursuant to Article 9.1 (Procedures for Multiple Complainants) of the DSU, to examine this dispute and DS395 and DS394. Argentina, Brazil, Canada, Chile, Colombia, Ecuador, the European Union, India, Japan, Korea, Norway, Chinese Taipei, Turkey and the United States reserved their third-party rights.

Requests for consultations

Dispute	Complainant	Date of request
China – Grants, Loans and Other Incentives (WT/DS390)	Guatemala	19 January 2009
Chile – Anti-Dumping Measures on Imports of Wheat Flour from Argentina (WT/DS393)	Argentina	14 May 2009
Philippines – Taxes on Distilled Spirits (WT/DS396)	European Communities	29 July 2009
United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China (WT/DS399)	China	14 September 2009
European Communities – Measures Prohibiting the Importation and Marketing of Seal Products (WT/DS400)	Canada	2 November 2009
European Communities – Measures Prohibiting the Importation and Marketing of Seal Products (WT/DS401)	Norway	5 November 2009
United States – Use of Zeroing in Anti-Dumping Measures involving Products from Korea (WT/DS402)	Korea	24 November 2009

Further trade disputes involving these countries can be seen on the following pages:

China
90, 93, 94, 97, 99

European Communities
84, 87, 88, 89, 90, 91, 92, 93, 97, 98, 99

Mexico
97, 99

United States
85, 86, 88, 90, 91, 93, 94, 97, 98, 99

Background
The Appellate Body consists of seven members appointed by the Dispute Settlement Body (DSB). Each member is appointed for a term of four years, with the possibility of being reappointed for one further four-year term. An appeal of a panel's ruling is heard by three members of the Appellate Body.

Mr Peter Van den Bossche (Belgium) was sworn in on 19 November 2009 as a member of the Appellate Body at a ceremony at the WTO.

Appellate Body

Three appeals of panel reports were filed with the Appellate Body in 2009, out of a total of five reports that could have been appealed. One of these appeals related to original panel proceedings. Two appeals related to panel proceedings under Article 21.5 (Surveillance of Implementation of Recommendations and Rulings) of the Dispute Settlement Understanding (DSU), involving cases where the parties disagreed whether the panel's original ruling had been properly implemented.

A full list of appeals filed in 2009 is provided in Table 2.

Table 2: Appeals filed in 2009

Panel reports appealed	Date of appeal	Appellant[a]	Other appellant[b]	Date of circulation of Appellate Body report	Date adopted by the DSB
US – Zeroing (EC) (Article 21.5 – EC), DS294	13 Feb 2009	European Communities	United States	14 May 2009	11 Jun 2009
US – Zeroing (Japan) (Article 21.5 – Japan), DS322	20 May 2009	United States	–	18 Aug 2009	31 Aug 2009
China – Publications and Audiovisual Products, DS363	22 Sept 2009	China	United States	21 Dec 2009	19 Jan 2010

a Pursuant to Rule 20 of the Working Procedures for Appellate Review.
b Pursuant to Rule 23(1) of the Working Procedures for Appellate Review.

Appellate Body members

At the end of 2009, the seven Appellate Body members were:

- Lilia Bautista (Philippines)
- Jennifer Hillman (United States)
- Shotaro Oshima (Japan)
- Ricardo Ramírez-Hernández (Mexico)
- David Unterhalter (South Africa)
- Peter Van den Bossche (Belgium)
- Yuejiao Zhang (China).

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 informed the Chair of the Dispute Settlement Body (DSB) that he was compelled to resign for health reasons. His resignation took effect on 11 February 2009.

On 19 June 2009 the DSB decided to appoint Ricardo Ramírez-Hernández (Mexico), whose term began on 1 July 2009, and Peter Van den Bossche (Belgium), whose term began on 12 December 2009. The DSB also decided to appoint David Unterhalter to a second term beginning on 12 December 2009. Mr Ramírez was sworn in on 20 July 2009 and Mr Van den Bossche on 19 November 2009.

David Unterhalter served as Chair of the Appellate Body from 18 December 2008 to 11 December 2009. In November 2009, Appellate Body members re-elected Mr Unterhalter to serve a second term as Chair from 12 December 2009 to 11 December 2010.

New members

Ricardo Ramírez-Hernández holds the Chair of International Trade Law at the Mexican National University in Mexico City. He was Head of the International Trade Practice for Latin America at a major law firm in Mexico City. His practice has focused on issues related to the North American Free Trade Agreement (NAFTA) and trade across Latin America, including international trade dispute resolution.

Before entering private practice, 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 multilateral agreements, including those related to the WTO, the Free Trade Area of the Americas and the Latin American Integration Association.

Mr Ramírez has represented Mexico in international trade litigation and investment arbitration proceedings, and has also served on NAFTA panels. He 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 in Mexico City.

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. He also serves on the faculty of the World Trade Institute in Berne, the China-EU School of Law in Beijing, the International Economic Law and Policy programme of the University of Barcelona, the Trade Policy Training Centre in Africa in Arusha, United Republic of Tanzania, and the Academy of International Trade and Investment Law in Macao, China. He is a member of the editorial board 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. degree 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 Walter 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 organizations 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 in 2008.

Mr Ricardo Ramírez-Hernández was sworn in on 20 July 2009.