Dispute settlement

- WTO members filed eight new disputes in 2011, the lowest number in the history of the WTO.

- Since the WTO was created in 1995, the most active users of the dispute settlement system have been the United States (98), the European Union (85), Canada (33) and Brazil (25).

- In 2011, the Dispute Settlement Body adopted the panel report examining its largest case so far, involving the European Union and Airbus.

- Two new members of the Appellate Body were appointed in 2011: Mr Ujal Singh Bhatia (India) and Mr Thomas R. Graham (United States).

Did you know?

427

By the end of 2011, 427 disputes had been filed by WTO members since the WTO's creation in 1995.

Dispute settlement activity in 2011

In 2011, the Dispute Settlement Body (DSB) received eight notifications from WTO members of formal requests for consultations under the Dispute Settlement Understanding (DSU), less than half the number (17 notifications) received in 2010. This is the lowest number in the history of the WTO, the next lowest being 12 in 2005. Although the volume of new activity is low, the dispute settlement mechanism is currently dealing with numerous cases. The DSB adopted eight panel and five Appellate Body reports, including those in the largest case to come before the dispute settlement system, the case involving the European Union and Airbus (see below).

In addition to the several panels already working, the DSB established nine new panels in 2011 to adjudicate 13 new cases (where more than one complaint is filed on the same matter, such complaints are normally adjudicated by a single panel).

Recent years have seen the increasing participation of developing countries in the WTO dispute settlement mechanism. In eight of the years in the period 2001-2011, the number of requests for consultations (the first formal step in dispute settlement proceedings) from developing country members equalled or surpassed those from developed country members. In fact, relative to their level of trade (imports/exports), the active participation of some developing countries in the dispute settlement mechanism exceeds by some margin that of some developed countries.

This increased participation by developing countries may be due in part to the presence of the Geneva-based Advisory Centre on WTO Law (ACWL), which celebrated its tenth anniversary in 2011. The Centre, which is completely independent from the WTO, has assisted developing and least-developed countries with some 40 WTO disputes since the Centre was established. Speaking at an event to commemorate the anniversary, Director-General Pascal Lamy stated that 'by ensuring that the legal benefits of the WTO are shared among all members, the ACWL contributes to the effectiveness of the WTO legal system, in particular its dispute settlement procedures, and to the realisation of the WTO's development objectives'.

Background on dispute settlement activity

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB, which met 19 times during 2011, has sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions (impose trade sanctions) in the event of non-compliance with those recommendations and rulings.

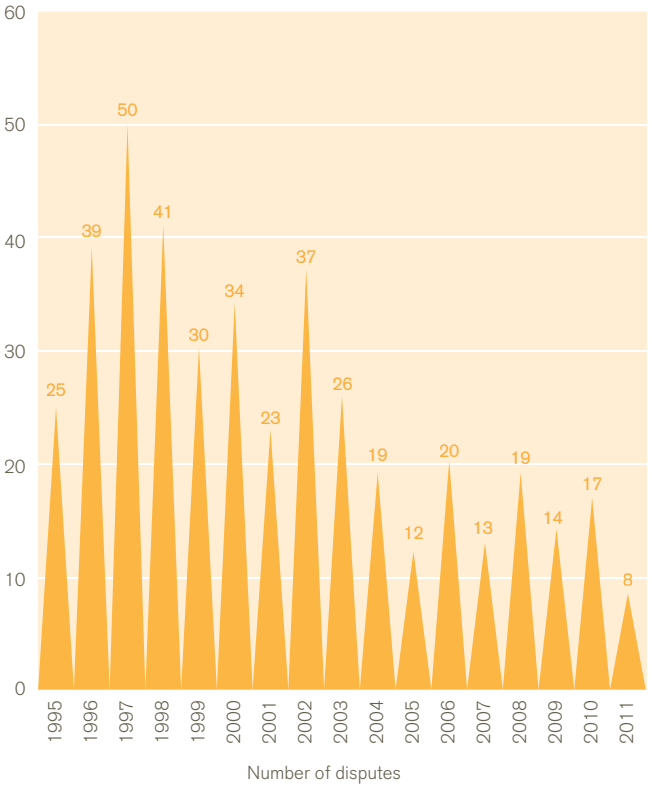
Table 1: WTO members involved in disputes, 1995 to 2011

Member	Complainant	Respondent
Antigua and Barbuda	1	0
Argentina	15	17
Armenia	0	1
Australia	7	10
Bangladesh	1	0
Belgium	0	3
Brazil	25	14
Canada	33	17
Chile	10	13
China	8	23
Colombia	5	3
Costa Rica	5	0
Croatia	0	1
Czech Republic	1	2
Denmark	0	1
Dominican Republic	0	7
Ecuador	3	3
Egypt	0	4
El Salvador	1	0
European Union (formerly EC)	85	70
France	0	4
Germany	0	2
Greece	0	2
Guatemala	8	2
Honduras	7	0
Hong Kong, China	1	0
Hungary	5	2
India	19	20
Indonesia	5	4
Ireland	0	3

Table 1: WTO members involved in disputes, 1995 to 2011 (continued)

Member	Complainant	Respondent
Japan	14	15
Korea, Republic of	15	14
Malaysia	1	1
Mexico	21	14
Moldova	1	1
Netherlands	0	3
New Zealand	7	0
Nicaragua	1	2
Norway	4	0
Pakistan	3	2
Panama	5	1
Peru	3	4
Philippines	5	6
Poland	3	1
Portugal	0	1
Romania	0	2
Singapore	0	1
Slovak Republic	0	3
South Africa	0	3
Spain	0	2
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
Ukraine	2	1
United Kingdom	0	3
United States of America	98	113
Uruguay	1	1
Venezuela, Bolivarian Republic of	1	2
Viet Nam	1	0

Figure 1: Number of disputes filed per year



The following provides an update on developments in 2011 in cases that 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 dispute is initiated. Cases initiated in 2011, and still at the consultation stage, are listed at the end of the section. Before 30 November 2009, the European Union was known in the WTO as the European Communities.

WT/DS48: European Communities – Measures Concerning Meat and Meat Products (Hormones)

Complainant: Canada

Respondent: European Communities

On 17 March 2011 the European Union (formerly the European Communities) and Canada notified the DSB of a memorandum of understanding regarding the importation of beef from animals not treated with certain growth-promoting hormones and increased duties applied by Canada to certain products of the European Union, agreed by Canada and the European Commission on 17 March 2011.

WT/DS217, WT/DS234: United States – Continued Dumping and Subsidy Offset Act of 2000

Complainants: Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand (DS217), and Canada and Mexico (DS234)

Respondent: United States

On 8 April 2011 the European Union notified the DSB of the new list of products on which the additional import duty would apply, prior to the entry into force of a level of suspension of concessions. On 26 August 2011 Japan made a similar notification to the DSB.

WT/DS294: United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)

Complainant: European Communities

Respondent: United States

On 7 September 2011 the European Union and the United States jointly requested the Arbitrator to suspend its work for a further period of four months and two days (an earlier request was made in September 2010), in the context of informal discussions with respect to implementation of the DSB's recommendations and rulings in this dispute. On the basis of this request, the Arbitrator decided to suspend its work for a further period.

As requested by the parties, the suspension is for four months and two days, and if there is no 'contrary written communication' from the European Union within that period, the suspension will be automatically terminated and the work of the Arbitrator will resume on 9 January 2012. The last date on which a 'contrary written communication' may be received by the Arbitrator is 6 January 2012. In the event that no such communication or written request for resumption is received from either party by the Arbitrator by 6 January 2012, it will resume its work on 9 January 2012 and circulate its decision on 16 January 2012.

WT/DS316: European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft

Complainant: United States

Respondent: European Communities

On 18 May 2011 the Appellate Body report was circulated to members.

The Appellate Body upheld the panel's finding that certain subsidies provided by the European Union and certain member state governments to Airbus (the European aircraft consortium) are incompatible with Article 5(c) ('Adverse Effects') of the Subsidies and Countervailing Measures (SCM) Agreement because they have caused serious prejudice to the interests of the United States. The principal subsidies covered by the ruling include financing arrangements (known as 'Launch Aid' or 'member state financing') provided by France, Germany, Spain, and the UK for the development of the A300, A310, A320, A330/A340, A330-200, A340-500/600 and A380 LCA (large civil aircraft) projects.

The ruling also covers certain equity infusions provided by the French and German governments to companies that formed part of the Airbus consortium. Additionally, it covers certain infrastructure measures provided to Airbus, namely, the lease of land at the Mühlenberger Loch industrial site in Hamburg, the right to exclusive use of an extended runway at Bremen airport, regional grants by the German authorities in Nordenham, and

Spanish government grants and regional grants by Andalucia and Castilla-La Mancha in Sevilla, La Rinconada, Toledo, Puerto Santa Maria, and Puerto Real. The Appellate Body found that the effect of the subsidies was to displace exports of Boeing single-aisle and twin-aisle LCA from the European Union, Chinese, and Korean markets and Boeing single-aisle LCA from the Australian market. Moreover, the Appellate Body confirmed the panel's determination that the subsidies caused Boeing to lose sales of LCA in the campaigns involving the A320 (Air Asia, Air Berlin, Czech Airlines and easyJet), A340 (Iberia, South African Airways and Thai Airways International) and A380 (Emirates, Qantas and Singapore Airlines) aircraft.

However, for different reasons, the Appellate Body excluded certain measures from the scope of the finding of serious prejudice. In particular, the finding under Article 5(c) of the SCM Agreement no longer includes the 1998 transfer of a 45.76% interest in Dassault Aviation to Aérospatiale; the special purpose facilities at the Mühlenberger Loch industrial site in Hamburg, Aéroconstellation industrial site and associated facilities (taxiways, parking, etc.) in Toulouse, or the various research and technology development (R&TD) measures that had been challenged by the United States (Spanish PROFIT Programme, grants under second, third, fourth, fifth, and sixth EC Framework Programmes; 1986-1993 R&TD grants by the French government; Luftfahrtforschungsprogramm I, II, and III German grants; grants by Bavarian, Bremen, and Hamburg authorities; civil aircraft research and development and aeronautics research programmes by the UK government). The Appellate Body also reversed the panel's findings of displacement in Brazil, Mexico, Singapore and Chinese Taipei, and of threat of displacement in India.

Moreover, the Appellate Body disagreed with the panel's views on when subsidies can be considered as being de facto contingent upon anticipated export performance. Consequently, the Appellate Body reversed the panel's findings that the financing provided by Germany, Spain and the UK to develop the A380 was contingent upon anticipated exportation and thus a prohibited export subsidy under Article 3.1(a) ('Prohibition') and footnote 4 of the SCM Agreement. The Appellate Body also rejected the United States' cross-appeal of the panel finding that it had not been established that certain other member State financing contracts constituted prohibited export subsidies.

As a consequence, the Appellate Body reversed the panel's recommendation that the European Union withdraw prohibited subsidies within 90 days. The Appellate Body also found that the United States' claims regarding an alleged unwritten launch aid/member state financing programme were outside its jurisdiction. The Appellate Body findings are thus limited to specific instances of funding under such financial contracts and other specific subsidy payments. In addition, the Appellate Body reversed the panel's findings regarding the rate of return that a market lender would have demanded for launch aid/member state financing loans because they were not based on an objective assessment, but found that a benefit was conferred even on the basis of the European Union's own calculations.

Finally, with respect to the actionable subsidies that have been found to cause adverse effects to the interests of the United States, the panel's recommendation that the European Union 'take appropriate steps to remove the adverse effects or … withdraw the subsidy' stands.

The panel in this case was established in July 2005. The panel circulated its report to WTO members on 30 June 2010, and the European Union filed a notice of appeal on 21 July 2010. The Appellate Body report was circulated on 18 May 2011.

At its meeting on 1 June 2011, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

At the DSB meeting on 17 June 2011, the European Union informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations, and within the time limit set out in the SCM Agreement. On 1 December 2011, the European Union notified the DSB that it had taken appropriate steps to bring its measures into conformity with its WTO obligations, as required by Article 7.8 ('Remedies') of the SCM Agreement and Article 19.1 ('Panel and Appellate Body Recommendations') of the DSU.

On 9 December 2011, stating that it considered that that the actions and events listed in the EU notification did not withdraw the subsidies or remove their adverse effects for purposes of Article 7.8 of the SCM Agreement, that the European Union had therefore failed to implement the DSB's recommendations and rulings, and that subsidies are being accorded by the European Union and certain member states inconsistent with Articles 3.1(a), 3.1(b) ('Prohibition'), 5(c) ('Adverse Effects'), 6.3(a), 6.3(b), and 6.3(c) ('Serious Prejudice') of the SCM Agreement, the United States requested consultations with the European Union pursuant to Article 21.5 ('Surveillance of Implementation of Recommendations and Rulings') of the DSU. On the same date, stating that it considered that the European Union and certain member states had failed to comply with the DSB's recommendations and rulings, the United States requested authorization by the DSB to take countermeasures pursuant to Article 22 ('Compensation and the Suspension of Concessions') of the DSU and Article 7.9 ('Remedies') of the SCM Agreement.

WT/DS322: United States – Measures Relating to Zeroing and Sunset Reviews

Complainant: Japan

Respondent: United States

On 12 September 2011 the United States and Japan jointly requested the Arbitrator to continue the suspension of its work until 7 November 2011, on which date the suspension would be automatically terminated and the work of the Arbitrator would resume unless Japan submitted a written communication to the contrary to the Arbitrator by 7 November 2011 (an earlier request was made in September 2010). On 7 November 2011 the United States and Japan jointly requested the Arbitrator to continue the suspension of its work. On the basis of this request, the Arbitrator decided to continue the suspension of its work.

As requested by the parties, the suspension would be automatically terminated and the work of the Arbitrator would resume on 1 December 2011 unless Japan submitted a written communication to the contrary to the Arbitrator by 30 November 2011. On 30 November 2011, the United States and Japan jointly made a further request to the Arbitrator to continue the suspension of its work. On the basis of this request, the Arbitrator decided to continue the suspension of its work. The work of the Arbitrator will resume on 9 January 2012, unless Japan submits a written communication to the contrary to the Arbitrator by 8 January 2012.

WT/DS344: United States – Final Anti-Dumping Measures on Stainless Steel from Mexico

Complainant: Mexico

Respondent: United States

The compliance panel in this dispute was composed on 13 May 2011. On 9 November 2011 the Chair of the compliance panel informed the DSB that the timetable adopted by the compliance panel after consultation with the parties envisaged that the final report would be issued to parties by March 2012 and that the compliance panel expected to conclude its work within that time frame.

WT/DS353: United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint

Complainant: European Communities

Respondent: United States

On 31 March 2011 the panel report was circulated to members. The panel upheld the European Communities' claims that some of the measures maintained by the states of Washington, Kansas, Illinois, the NASA aeronautics research and development measures, some of the Department of Defense aeronautics research and development measures, and measures relating to the Foreign Sales Corporations (FSC)/ Extraterritorial Income Exclusion (ETI) Act constituted specific subsidies. Specific subsidies – that is subsidies that are given to an enterprise or industry or group of enterprises or industries – are subject to the disciplines of the SCM Agreement. The panel estimated the total amount of these subsidies between 1989 and 2006 to have been worth at least US$5.3 billion.

The panel also held that the measures relating to the FSC/ ETI Act constituted prohibited export subsidies because they were contingent upon export performance. In other words the granting of these export subsidies was tied to actual or anticipated exportation or export earnings. The panel further found that a number of the specific subsidies (i.e. the NASA and Department of Defense aeronautics research and development subsidies, the FSC/ETI Act and the Washington State business and occupation tax subsidies) adversely affected the European Communities' interests. The panel found that the effect of these subsidies was actual or potential displacement and impedance of exports of Airbus large civil aircraft from third country markets, significant price suppression and significant lost sales.

The panel rejected the European Communities' claims that the other challenged measures constituted specific subsidies and/or that they caused serious prejudice and that the Washington State taxation measures enacted under House Bill 2294 (entitled 'An Act Related to Retaining and Attracting the Aerospace Industry to Washington State') were prohibited export subsidies.

The panel exercised judicial economy as regards the European Communities' claims that the specific subsidies caused adverse effects in the form of a threat of significant price suppression and that the United States had acted inconsistently with the bilateral 1992 agreement between the United States and the European Communities on trade in large civil aircraft, thereby constituting serious prejudice to the European Communities' interests.

On 1 April 2011 the European Union notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel. On 28 April 2011, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel. On 4 July 2011 the Chair of the Appellate Body informed the DSB that due to the considerable size of the record and complexity of the appeal, the

need to hold multiple sessions of the oral hearing, and taking into account the Appellate Body's current overall workload, it would not be able to circulate its report within 60 days.

WT/DS363: China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products

Complainant: United States

Respondent: China

The reasonable period of time for implementation of the DSB's recommendation and rulings agreed by the United States and China expired on 19 March 2011. At the DSB meeting of 25 March 2011, China reported that it had made efforts to implement the DSB recommendations and had completed amendments to most measures. The United States expressed concern over the lack of any apparent progress by China in bringing its measures into compliance. On 13 April 2011 the United States and China informed the DSB of Agreed Procedures under Articles 21 ('Surveillance of Implementation of Recommendations and Rulings') and 22 ('Compensation and the Suspension of Concessions') of the DSU.

WT/DS367: Australia – Measures Affecting the Importation of Apples from New Zealand

Complainant: New Zealand

Respondent: Australia

At the DSB meeting on 25 January 2011, Australia informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that meets its WTO obligations. Australia said it would conduct a review of the existing policy for New Zealand apples for the three pests at issue and that it needed a reasonable period of time to do so. On 31 January 2011 Australia and New Zealand informed the DSB that they had agreed that the reasonable period of time to implement the DSB's recommendations and rulings would expire on 17 August 2011.

This period of time would allow Australia to be in a position to issue import permits for New Zealand apples from that date, based on any conditions that may arise out of the current review. At the DSB meeting on 2 September 2011, Australia reported that it had adopted the measures necessary to comply with the DSB's recommendations and rulings and as of 19 August 2011 imports of New Zealand apples into Australia had commenced. However, New Zealand questioned whether Australia had fully complied with the DSB's recommendations and rulings. On 13 September 2011 New Zealand and Australia informed the DSB of Agreed Procedures under Articles 21 ('Surveillance of Implementation of Recommendations and Rulings') and 22 ('Compensation and the Suspension of Concessions') of the DSU.

WT/DS369: European Communities – Certain Measures Prohibiting the Importation and Marketing of Seal Products

Complainant: Canada

Respondent: European Union

At its meeting on 25 March 2011, the DSB established a panel. Argentina, China, Colombia, Ecuador, Japan, Mexico, Norway and the United States reserved their third-party rights.

WT/DS371: Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines

Complainant: Philippines

Respondent: Thailand

At its meeting on 17 December 2010, the DSB agreed that, upon a request by Thailand or the Philippines, the DSB, no later than 24 February 2011, would adopt the panel report unless Thailand or the Philippines notified the DSB of its decision to appeal the report. On 22 February 2011 Thailand notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the panel report. On 21 April 2011 the Chair of the Appellate Body notified the DSB that it would not be able to issue its report within 60 days due to the time required for completion and translation. On 17 June 2011 the Appellate Body report was circulated to members.

Thailand's appeal was limited to certain of the panel's findings under Article III:2 ('National Treatment on Internal Taxation and Regulation'), Article III:4 and Article X:3(b) ('Publication and Administration of Trade Regulations') of the General Agreement on Tariffs and Trade (GATT) 1994. The Appellate Body upheld the panel's finding that Thailand acts inconsistently with Article III:2, first sentence, of the GATT 1994 by subjecting imported cigarettes to internal taxes in excess of those applied to like domestic cigarettes. The Appellate Body agreed with the panel that this measure affects the respective tax liability imposed on imported and like domestic products. The Appellate Body therefore rejected Thailand's characterization of the measure as 'administrative requirements', as well as Thailand's argument that the measure should have been examined under Article III:4 and not Article III:2 of the GATT 1994.

The Appellate Body also upheld the panel's finding that Thailand acts inconsistently with Article III:4 of the GATT 1994 by according less favourable treatment to imported cigarettes than to like domestic cigarettes. The Appellate Body found that the panel properly analysed this measure and its implications in the marketplace, and therefore agreed with the panel that this measure accords less favourable treatment to imported cigarettes by imposing the additional administrative requirements only on resellers of imported cigarettes.

The Appellate Body further found that the panel did not fail to ensure due process or to comply with its duty under Article 11 ('Function of Panels') of the DSU by accepting and relying upon evidence, submitted by the Philippines late in the panel proceedings, relating to one of the administrative requirements. Due to an error in the panel's identification of the basis for its finding, the Appellate Body reversed the panel's finding that Thailand had not satisfied its burden of proving its defence under Article XX(d) ('General Exceptions') of the GATT 1994. In completing the legal analysis, however, the Appellate Body found, as had the panel, that Thailand failed to establish that the administrative requirements at issue are justified under Article XX(d) of the GATT 1994.

Finally, the Appellate Body upheld the panel's finding that Thailand acts inconsistently with Article X:3(b) of the GATT 1994 by failing to maintain or institute independent tribunals or procedures for the prompt review of customs guarantee decisions. The Appellate Body saw no error in the panel's conclusion that Thailand's system for the review of guarantees does not comply with the obligation to ensure prompt review under Article X:3(b) because such review is not available until after a final determination of customs value has been made.

At its meeting on 15 July 2011, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

On 11 August 2011 Thailand informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner that respected its WTO obligations and that it would need a reasonable period of time to do so. On 23 September 2011 Thailand and the Philippines informed the DSB that they had mutually agreed that the reasonable period of time for Thailand to comply with the DSB's recommendation and rulings regarding paragraphs 8.3(b) and (c) of the panel report would be 15 months, expiring on 15 October 2012. With respect to the DSB's recommendation and rulings regarding all other measures, the reasonable period of time to comply would be 10 months, expiring on 15 May 2012.

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

On 6 July 2011 the European Union and the United States, the European Union and Japan and the European Union and Chinese Taipei notified the DSB of separate sequencing agreements made concerning Articles 21 ('Surveillance of Implementation of Recommendations and Rulings') and 22 ('Compensation and the Suspension of Concessions') of the DSU. In these agreements the parties notified the DSB which of the two procedures laid down in Articles 21 and 22 would take priority. At the DSB meeting on 20 July 2011, the European Union stated that it had adopted measures necessary to comply with the DSB's recommendations and rulings in June 2011 and that these measures ensured the full and timely implementation of the DSB's recommendations and rulings. At the same meeting, the United States, Japan and Chinese Taipei expressed some doubts concerning the measures adopted by the European Union.

WT/DS379: United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China

Complainant: China

Respondent: United States

On 11 March 2011 the Appellate Body report was circulated to members. This dispute concerns countervailing and anti-dumping duties simultaneously imposed by the United States on four products originating in China following concurrent countervailing duty and anti-dumping investigations, where the United States Department of Commerce (USDOC) treated China as a non-market economy (NME). The United States began applying its countervailing duty legislation to imports from China in 2007 as a result of the USDOC determination that it was able to identify and countervail subsidies granted by the Chinese Government.

China appealed certain panel findings regarding the USDOC's determinations on whether a financial contribution had been paid by a 'public body', 'specificity' of subsidies, 'benefit benchmarks' and the imposition of 'double remedies' in the form of anti-dumping and countervailing duties. The Appellate Body found that a 'public body' is an entity that possesses, exercises, or is vested with, governmental authority. In completing the analysis, the Appellate Body found that the United States had acted inconsistently with Articles 1.1(a)(1) ('General Provisions'), 10 ('Application of Article VI of GATT 1994'), and 32.1 ('Other Final Provisions') of the Subsidies and Countervailing Measures (SCM) Agreement in finding that certain Chinese state-owned enterprises that supplied a number of goods to investigated companies constituted 'public bodies'. The Appellate Body also found that the United States had not acted inconsistently with

the same obligations in determining that certain state-owned commercial banks that provided loans to investigated companies constituted 'public bodies'.

The Appellate Body upheld the panel's finding that China did not establish that the United States acted inconsistently with Article 2.1(a) ('Specificity') of the SCM Agreement by determining, in the new pneumatic off-the-road tyres investigation, that state-owned commercial bank (SOCB) lending was a specific subsidy to the tyre industry. The Appellate Body also upheld the panel's interpretation of the reference to the term 'subsidy' in Article 2.2 ('Specificity') of the SCM Agreement as referring to whether the availability of the subsidy as a whole is limited by reason of the geographical location, and rejected China's appeal concerning a panel statement about a 'distinct regime' in the laminated woven sacks investigation.

The Appellate Body upheld the panel's interpretation of Article 14(d) ('Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient') of the SCM Agreement as allowing an investigating authority to reject in-country private prices if these prices are distorted due to the government's predominant role in the market. It further found that the panel properly concluded that the USDOC could determine that private prices in China were distorted and could not be used as benchmarks for calculating the amount of the benefit.

The Appellate Body upheld the panel's interpretation of Article 14(b) ('Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient') of the SCM Agreement and found that the panel did not err in finding that the USDOC's decision not to rely on interest rates in China as benchmarks for SOCB loans denominated in renminbi (RMB) was not inconsistent with Article 14(b). The Appellate Body reversed the panel's finding that the proxy benchmark actually used by the USDOC to calculate the benefit from RMB denominated SOCB loans was not inconsistent with Article 14(b), on the ground that the panel adopted a standard of review that failed to comply with its duty under Article 11 ('Function of Panels') of the DSU to make an objective assessment of the matter. The Appellate Body was unable to complete the analysis of China's claim under Article 14(b) of the SCM Agreement regarding the proxy benchmark used by the USDOC.

Finally, the Appellate Body reversed the panel's finding that 'double remedies', that is, the offsetting of the same subsidization twice through the concurrent imposition of anti-dumping duties based on an NME methodology and countervailing duties, are not prohibited under the SCM Agreement. The Appellate Body found that double remedies are inconsistent with the requirement in Article 19.3 ('Imposition and Collection of Countervailing Duties') of the SCM Agreement that countervailing duties be levied in the appropriate amounts in each case.

The Appellate Body completed the legal analysis and found that, by declining to address China's claims concerning double remedies in the four countervailing duty investigations at issue, the United States had failed to determine the 'appropriate' amount of countervailing duties within the meaning of Article 19.3 of the SCM Agreement and that, therefore, the United States acted inconsistently with Article 19.3 and, consequently, with Articles 10 and 32.1 of the SCM Agreement.

At its meeting on 25 March 2011, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

At a meeting on 21 April 2011, the United States informed the DSB that it intended to implement the DSB recommendations and rulings and that it would need a reasonable period of time in which to do so. On 5 July 2011 China and the United States 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 11 months. Accordingly, the reasonable period of time is due to expire on 25 February 2012.

WT/DS381: United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

Complainant: Mexico

Respondent: United States

On 15 September 2011 the panel report was circulated to members. This dispute concerns certain US measures regulating the use of a 'dolphin-safe' label for tuna products on the US market. The measures set out the conditions under which the label may be used. These conditions relate to the manner in which the fish has been caught. In particular, tuna caught by setting on dolphins (i.e. encircling dolphins in a net to catch the tuna associating with them) is not eligible for the label.

The panel found that the US dolphin-safe labelling provisions are a technical regulation within the meaning of the TBT Agreement because, although the use of the dolphin-safe label is discretionary, it is not possible to make any dolphin-safe claim in offering products on the US market except by complying with the terms of the measures.

The panel also found that the dolphin-safe labelling provisions do not discriminate against Mexican tuna products and are therefore not inconsistent with Article 2.1 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the TBT (Technical Barriers to Trade) Agreement because the requirement of not setting on dolphins embodied in the US dolphin safe provisions as a condition for access to the label does not in itself place Mexican tuna products at a disadvantage as compared to US and other imported tuna products. However, the panel concluded that the dolphin-safe labelling provisions were more trade-restrictive than necessary to fulfil their legitimate objectives and were therefore inconsistent with Article 2.2 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the TBT Agreement.

In this context, the panel found in particular that fishing methods other than setting on dolphins may be harmful to dolphins, and that tuna caught outside the Eastern Tropical Pacific by such methods is eligible for dolphin-safe labelling, so the measures are not fully capable of fulfilling their objectives. Finally, the panel found that the dolphin-safe labelling provisions were not in violation of Article 2.4 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the TBT Agreement, which requires technical regulations to be based on relevant international standards where possible. In this regard, the panel found that the standard referred to by Mexico is a relevant international standard for the purposes of the US dolphin-safe provisions and that the United States had not used it as basis for its measures.

However, the panel also found that this standard would not be appropriate or effective to achieve the US objectives because it would not address the 'unobserved' effects of setting on dolphins (i.e. the indirect effects of the chase, such as separation of calves from their mothers, exhaustion and vulnerability to predators), which the United States had identified as something it sought to address though the measures. In light of its findings under the TBT Agreement, the panel considered it unnecessary to address also Mexico's non-discrimination claims under the GATT 1994.

On 31 October 2011 Mexico and the United States requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU, to 20 January 2012. At its meeting on 11 November 2011, the DSB agreed that, upon a request by Mexico or the United States, the DSB, no later than 20 January 2012, would adopt the panel report, unless Mexico or the United States notified the DSB of its decision to appeal the report.

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

On 25 March 2011 the panel report was circulated to members. In this dispute Brazil's complaint was focused on the alleged use by the United States Department of Commerce (USDOC) of a particular methodology, known as 'zeroing' when calculating the margin of dumping of investigated exporters in the anti-dumping proceedings conducted against certain orange juice products from Brazil. The panel concluded that Brazil had established that the United States acted inconsistently with Article 2.4 ('Determination of Dumping') of the Anti-Dumping Agreement when it used zeroing to determine the weighted-average margins of dumping and the importer-specific assessment rates of two companies in the two administrative reviews at issue under the orange juice anti-dumping duty order, and that the United States' 'continued use' of 'zeroing' in proceedings under the orange juice anti-dumping duty order was inconsistent with Article 2.4 of the Anti-Dumping Agreement.

On 8 April 2011 Brazil and the United States requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU, to 17 June 2011. At its meeting on 21 April 2011, the DSB agreed that, upon a request by Brazil and the United States, the DSB, no later than 17 June 2011, would adopt the panel report unless Brazil or the United States notified the DSB of its decision to appeal.

At its meeting on 17 June 2011, the DSB adopted the panel report.

On 17 June 2011 Brazil and the United States notified 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 nine months. Accordingly, the reasonable period of time is due to expire on 17 March 2012.

At the DSB meeting on 19 December 2011, the United States informed the DSB that the USDOC was continuing with its on-going work to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings.

WT/DS384, WT/DS386: United States – Certain Country of Origin Labelling (COOL) Requirements

Complainants: Canada (DS384), Mexico (DS386)

Respondent: United States

On 18 November 2011 the panel reports were circulated to members. This dispute concerns US measures setting out the United States' mandatory country of origin labelling regime for beef and pork (COOL measure), as well as a letter issued by the US Secretary of Agriculture, Tom Vilsack, on the implementation of the COOL measure (Vilsack letter).

The panel found that the COOL measure was a technical regulation under the TBT Agreement and that it was inconsistent with the United States' WTO obligations. In particular, the panel found that the COOL measure violates Article 2.1 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the Technical Barriers to Trade (TBT) Agreement by according less favourable treatment to imported Canadian and Mexican cattle and to imported Canadian hogs than to like domestic products. The panel also found that the COOL measure did not fulfil its legitimate objective of providing consumers with information on origin, and therefore violates Article 2.2 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the TBT Agreement.

As regards the Vilsack letter, the panel found that the letter's 'suggestions for voluntary action' went beyond certain obligations under the COOL measure, and that the letter therefore constituted unreasonable administration of the COOL measure in violation of Article X:3(a) ('Publication and Administration of Trade Regulations') of the General Agreement on Tariffs and Trade (GATT) 1994. The panel refrained from reviewing the Vilsack letter under the TBT Agreement, as it found that the letter was not a technical regulation under that Agreement.

On 21 December 2011 Canada, Mexico and the United States requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU to 23 March 2012.

WT/DS391: Korea – Measures Affecting the Importation of Bovine Meat and Meat Products from Canada

Complainant: Canada

Respondent: Korea

On 28 June 2011 Canada requested the panel to suspend its proceedings pursuant to Article 12.12 ('Panel Procedures') of the DSU until further notice. Upon invitation from the panel, Korea informed the panel on 1 July 2011 that it agreed to Canada's request. The panel decided on 4 July 2011 to grant Canada's request and suspended its work and subsequently notified the DSB of its decision. On 4 July 2011 Canada circulated to the DSB a copy of a communication Canada sent to Korea on 25 June 2011 in relation to the suspension of the panel proceedings.

WT/DS394, WT/DS395, WT/DS398: China – Measures Related to the Exportation of Various Raw Materials

Complainants: United States (DS394), European Union (DS395), Mexico (DS398)

Respondent: China

On 5 July 2011 the panel reports were circulated to members. This dispute concerns export restraints that China imposes on the export of a number of raw materials. Upon its accession to the WTO, China undertook to eliminate all export duties (taxes) except for a number of products listed in an Annex to its Protocol of Accession. In this protocol, China also committed not to apply export quotas (restrictions on the amount that can be exported). In one of its key findings, the panel found that China's export duties were inconsistent with the commitments that China had agreed to in its Protocol of Accession.

The panel found that the wording of China's Protocol of Accession did not allow China to use the general exceptions in Article XX ('General Exceptions') of the General Agreement on Tariffs and Trade (GATT) 1994 to justify its WTO-inconsistent export duties. The panel considered that even if China were able to rely on certain exceptions available in the WTO rules to justify its export duties, it had not complied with the requirements of those exceptions. The panel also found that export quotas imposed by China on some of the raw materials were inconsistent with Article XI ('General Elimination of Quantitative Restrictions') of the GATT 1994. The panel also concluded that China's export quotas were not justified pursuant to Article XX of the GATT 1994.

China had argued in its defence that some of its export duties and quotas were justified under Article XX of the GATT 1994 because they related to the conservation of exhaustible natural resources for some of the raw materials. However, China was not able to demonstrate that it imposed these restrictions in accordance with the requirements of Article XX, namely that they were imposed in conjunction with restrictions on domestic production or consumption of the raw materials so as to conserve the raw materials.

China had also claimed in connection with other measures that its export quotas and duties were justified under Article XX of the GATT 1994 as necessary for the protection of the health of its citizens. China, however, was unable to demonstrate that its export duties and quotas would lead to a reduction of pollution in the short- or long-term and therefore contribute towards improving the health of its people.

Regarding the administration and allocation of its export quotas, China successfully defended its practices as consistent with Article X:3 ('Publication and Administration of Trade Regulations') of the GATT 1994 in claims brought by the United States and Mexico, whereas the European Union succeeded in its separate claim that it brought against China under that provision.

China also committed in its Protocol of Accession to eliminate all restrictions on the 'right to trade' – rights given to enterprises by China in parallel to market access and non-discrimination provisions guaranteed under the WTO. The complainants were successful in most of their trading rights claims.

The panel also found that certain aspects of China's export licensing regime, applicable to several of the products at issue, restrict the export of the raw materials and so are inconsistent with Article VIII ('Fees and Formalities connected with Importation and Exportation') of the GATT 1994.

On 31 August 2011 China notified the DSB of its decision to appeal certain issues of law and legal interpretations in the panel report. On 6 September 2011, the United States, the European Union and Mexico notified the DSB that they intended to appeal certain issues of law and legal interpretations in the panel reports. On 28 October 2011 the Chair of the Appellate Body notified the DSB that due to the significant size of this appeal, including the number and complexity of the issues raised by both China and each of the three other appellants, the Appellate Body would not be able to circulate its report within 90 days. The Appellate Body report will be circulated to members no later than 31 January 2012.

WT/DS396, DS403: Philippines – Taxes on Distilled Spirits

Complainants: European Union (DS396), United States (DS403)

Respondent: Philippines

On 15 August 2011 the panel reports were circulated to members. The dispute concerns an excise tax on distilled spirits. By means of this tax a low flat tax is applied by the Philippines to spirits made from certain designated raw materials, while significantly higher tax rates are applied to spirits made from non-designated materials. In the Philippines, most of the domestic distilled spirits (mostly gins, brandies, rums, vodkas, whiskies and tequila type spirits) are made from one of the designated raw materials, namely cane sugar, whereas the vast majority of imported spirits are made from non-designated materials (e.g. cereals or grapes). Consequently, all domestic spirits are subject to the low flat tax, while the vast majority of imported spirits are subject to one of the higher tax rates.

The panel found that because imported spirits are taxed less favourably than domestic spirits, the Philippine measure, while facially neutral, is nevertheless discriminatory and thus violates the obligations under the first and second sentences of Article III:2 ('National Treatment on Internal Taxation and Regulation') of the General Agreement on Tariffs and Trade (GATT) 1994.

On 23 September 2011 the Philippines notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. On 28 September 2011 the European Union notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel.

The Appellate Body report was circulated on 21 December 2011.

Before the panel, the European Union and the United States each brought a complaint with respect to the WTO consistency of the Philippines excise tax on distilled spirits. Under the measure at issue, distilled spirits made from certain designated raw materials - sap of the nipa, coconut, cassava, camote, or buri palm, or from juice, syrup, or sugar of the cane - are subject to a lower specific flat tax rate.

Conversely, distilled spirits made from non designated raw materials are subject to tax rates that are 10 to 40 times higher than those applied to distilled spirits made from designated raw materials. De facto all Philippine domestic distilled spirits are made from one of the designated raw materials - sugar cane - and are therefore subject to the lower tax rate. The vast majority of imported distilled spirits are made from non-designated raw materials, and are therefore subject to the higher tax rates.

The panel found that, through its excise tax, the Philippines subjects imported distilled spirits made from non-designated raw materials to internal taxes in excess of those applied to 'like' domestic distilled spirits made from the designated raw materials, thus acting in a manner inconsistent with Article

III:2, first sentence, of the GATT 1994. The panel also found that the Philippines has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying dissimilar taxes on imported distilled spirits and on 'directly competitive or substitutable' domestic distilled spirits, so as to afford protection to Philippine production of distilled spirits.

The Philippines appealed certain of the panel's findings under Article III:2, first and second sentences, of the GATT 1994. The European Union cross appealed certain other findings of the panel concerning its claim under Article III:2, second sentence, of the GATT 1994.

On appeal, the Appellate Body upheld the panel's finding that each type of imported distilled spirit at issue – gin, brandy, rum, vodka, whisky, and tequila – made from non-designated raw materials, is 'like' the same type of distilled spirit made from designated raw materials. As a consequence, the Appellate Body upheld the panel's finding that the Philippines has acted inconsistently with Article III:2, first sentence, of the GATT 1994 by imposing on each type of imported distilled spirit internal taxes in excess of those applied to the same type of like domestic distilled spirit.

The Appellate Body reversed the panel's finding that all imported distilled spirits made from non-designated raw materials are, irrespective of their type, 'like' all domestic distilled spirits made from designated raw materials. However, the Appellate Body upheld the panel's findings that all imported and domestic distilled spirits at issue are 'directly competitive or substitutable' within the meaning of Article III:2, second sentence, of the GATT 1994. The Appellate Body also upheld the panel's finding that dissimilar taxation of imported distilled spirits, and of directly competitive or substitutable domestic distilled spirits, is applied 'so as to afford protection' to Philippine production of distilled spirits.

As a consequence, the Appellate Body upheld the panel's finding that the Philippines has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying dissimilar internal taxes to imported distilled spirits and to directly competitive or substitutable domestic distilled spirits, so as to afford protection to domestic production.

Finally, the Appellate Body reversed the panel's finding that the European Union's claim under Article III:2, second sentence, of the GATT 1994 was made in the alternative to its claim under the first sentence thereof, and concluded that the panel's finding that all imported and domestic distilled spirits are 'directly competitive or substitutable products' applied also to the European Union's claim. As a consequence, it concluded that the finding, that the Philippines acted inconsistently with Article III:2, second sentence, of the GATT 1994 by subjecting imported distilled spirits to dissimilar taxation, applied to both the European Union and the United States.

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

Complainant: China

Respondent: European Communities

On 10 January 2011 the European Union and China requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU, to 25 March 2011. At its meeting on 25 January 2011, the DSB agreed that, upon a request by the European Union and China, the DSB, no later than 25 March 2011, would adopt the panel report unless the European Union or China notified the DSB of its decision to appeal.

On 25 March 2011 the European Union notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel. On 30 March 2011 China notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the panel.

On 15 July 2011 the Appellate Body report was circulated to members. In this dispute China brought claims against the European Union alleging that the imposition of anti-dumping duties on Chinese fasteners imported into the European Union, as well as the investigation leading to their imposition, was inconsistent with the European Union's obligations under the Anti-Dumping Agreement, the GATT 1994, and the WTO Agreement. Both the European Union and China appealed certain of the panel's findings.

The Appellate Body upheld the panel's findings that Article 9(5) ('Termination without measures; imposition of definitive duties') of the European Union's Basic Anti Dumping Regulation (Basic AD Regulation) was inconsistent as such, and as applied in the fasteners investigation, with Articles 6.10 ('Evidence') and 9.2 ('Imposition and Collection of Anti-Dumping Duties') of the Anti-Dumping Agreement because it conditions the determination of individual dumping margins, and the imposition of individual anti dumping duties, on the fulfilment of an 'Individual Treatment Test'.

Under EU law, an exporter or producer from a non-market economy country (NME) will receive a countrywide dumping margin and a countrywide anti-dumping duty unless it can demonstrate that its export activities are sufficiently independent from the state to warrant individual treatment. The European Union argued that countrywide margins and duties were justified because, in NME countries, the state itself can be considered the country's single exporter.

The Appellate Body agreed with the panel that Article 6.10 requires an investigating authority to calculate individual dumping margins for each foreign exporter or producer, and that Article 9.2 requires the imposition of an anti-dumping duty on each foreign exporter or producer named in an investigation, unless an applicable exception otherwise provided for in the Agreement, such as sampling, applies. The Appellate Body found that no exception to these rules allowed for the presumption applied under the EU measure with regard to NME countries that every exporter or producer is part of a single state entity.

Regarding the anti-dumping investigation performed by the European Commission, the Appellate Body found that the European Union acted inconsistently with Article 4.1 ('Definition of Domestic Industry') of the Anti-Dumping Agreement because the 'domestic industry' defined by the European Commission did not constitute producers whose production represented a 'major proportion' of the total domestic production.

The Appellate Body further found that the European Union's failure to disclose information in a timely manner regarding product categorizations that was necessary to ensure a fair comparison for purposes of the dumping determination was inconsistent with Articles 2.4 ('Determination of Dumping'), 6.2 and 6.4 ('Evidence') of the Anti-Dumping Agreement. The Appellate Body also made several procedural findings, principally concerning the treatment of confidential information in an anti-dumping investigation under Article 6.5 and 6.5.1 of the Anti-Dumping Agreement.

In particular, the Appellate Body found that an investigating authority must ensure that where producers request confidential treatment of information provided during an investigation (including market-economy third country producers involved in anti-dumping investigations for purposes of calculating normal value), such request is supported by 'good cause', and is accompanied by a non-confidential summary of the confidential information provided. If such summaries are not provided, the authority must further ensure that statements of the reasons why summarization is not possible are provided.

On 28 July 2011 the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report. On 18 August 2011 the European Union informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner that respected its WTO obligation and that it would need a reasonable period of time to do so.

WT/DS399: United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China

Complainant: China

Respondent: United States

On 27 January 2011 China and the United States requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU to 24 May 2011. At its meeting on 7 February 2011, the DSB agreed that, upon a request by China and the United States, the DSB, no later than 24 May 2011, would adopt the panel report, unless China or the United States notified the DSB of its decision to appeal pursuant to Article 16.4 of the DSU.

On 24 May 2011 China notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the panel report. On 5 September 2011 the Appellate Body report was circulated to members.

China appealed aspects of the panel's finding that, in imposing the safeguard measure in respect of imports of certain passenger vehicle and light truck tyres from China, the United States did not act inconsistently with its obligations under Section 16 of China's Accession Protocol. Under Section 16 of the Protocol, other WTO Members have the right to impose safeguard measures on imports from China alone when such imports are 'increasing rapidly' so as to be a 'significant cause' of material injury to the domestic industry.

The Appellate Body upheld the panel's finding that the USITC did not fail to properly evaluate whether imports from China met the specific threshold under Paragraph 16.4 of China's Accession Protocol of 'increasing rapidly'. The Appellate found that Paragraph 16.4 requires investigating authorities to assess import trends over a sufficiently recent period, and to determine whether imports are increasing significantly, either in absolute or relative terms, within a short period of time.

With respect to the particular causation standard set out under Paragraph 16.4 of China's Accession Protocol, the Appellate Body found that the term 'a significant cause' in Paragraph 16.4 of the Protocol requires that rapidly increasing imports make an 'important' or 'notable' contribution in bringing about material injury to the domestic industry. The Appellate Body explained that an investigating authority can make a determination as to whether subject imports are a 'significant' cause of material injury only if it ensures that effects of other known causes are not improperly attributed to subject imports.

Turning to China's specific claims of error in relation to the panel's review of the USITC's causation analysis, the Appellate Body upheld the panel's finding that the USITC did not err in its assessment of the conditions of competition in the overall US tyres market. The Appellate Body further upheld the panel's finding that the USITC's reliance on overall coincidence between an upward movement in imports from China and a downward movement in injury factors supported the USITC's finding that rapidly increasing imports from China were a significant cause of material injury to the domestic industry.

The Appellate Body also upheld the panel's finding that China failed to establish that the USITC improperly attributed injury caused by other factors to imports from China. The Appellate Body found that the panel did not err in its review of the USITC's analysis of the US industry's business strategy and the reasons for certain US plant closures; did not err in concluding that the USITC properly found that imports from China had injurious effects independent of changes in demand; and did not improperly attribute to Chinese imports the effects of imports from third countries.

The Appellate Body said it considered the panel's analysis to have been sufficient particularly given that, under Paragraph 16.4 of the Protocol, rapidly increasing imports from China may be one of several causes that contribute to producing or bringing about material injury to the domestic industry.

Finally, the Appellate Body found that the panel did not act inconsistently with Article 11 ('Function of Panels') of the DSU in its review of the USITC's causation analysis.

Given that it had not found in its report that the United States acted inconsistently with any of its WTO obligations, the Appellate Body made no recommendation to the DSB pursuant to Article 19.1 ('Panel and Appellate Body Recommendations') of the DSU.

On 5 October 2011 the DSB adopted the Appellate Body report and the panel report, as upheld by the Appellate Body report.

WT/DS400, WT/DS401: European Communities – Measures Prohibiting the Importation and Marketing of Seal Products

Complainants: Canada (DS400), Norway (DS401)

Respondent: European Union

On 11 February 2011 Canada requested the establishment of a panel. At its meeting on 25 March 2011, the DSB established a panel. On 14 March 2011 Norway requested the establishment of a panel. At its meeting on 21 April 2011, the DSB established a panel.

As provided for in Article 9.1 ('Procedures for Multiple Complainants') of the DSU with regard to multiple complainants, the DSB agreed that the panel established at the DSB meeting on 25 March to examine the complaint by Canada would also examine Norway's complaint. Argentina, Canada (in respect of Norway's complaint), China, Colombia, Ecuador, Iceland, Japan, Mexico, Namibia (in respect of Norway's complaint), Norway (in respect of Canada's complaint) and the United States reserved their third-party rights.

WT/DS402: United States – Use of Zeroing in Anti-Dumping Measures involving Products from Korea

Complainant: Korea

Respondent: United States

On 18 January 2011 the panel report was circulated to members. This dispute concerned the United States' use of zeroing in three anti-dumping cases involving certain products from Korea, namely, stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades.

The panel upheld Korea's claim. Specifically, the panel found that the 'zeroing' methodology used by the United States Department of Commerce (USDOC) in calculating the margins of dumping in the three anti-dumping investigations at issue was inconsistent with Article 2.4.2 ('Determination of Dumping') of the Anti-Dumping Agreement because the USDOC did not take into account all comparable export transactions when calculating the dumping margins at issue.

On 24 February 2011 the panel report was adopted by the DSB.

At the DSB meeting of 25 March 2011, the United States stated that it intended to implement the DSB recommendations and rulings in a manner that respected its WTO obligations and added that it would need a reasonable time to do so. On 17 June 2011 Korea and the United States informed the DSB that they had mutually agreed on the reasonable period of time for the United States to comply with the DSB recommendations and rulings.

With respect to the calculation of certain margins of dumping in the stainless steel plate in coils from Korea and stainless steel sheet and strip in coils from Korea investigations, the reasonable period of time was nine months, and expired on 24 November 2011. With respect to the calculation of certain margins of dumping in the diamond sawblades from Korea investigation, the reasonable period of time was eight months and expired on 24 October 2011.

At a meeting on 19 December 2011, the United States reported that it had fully implemented the DSB's recommendations and rulings within the reasonable period of time agreed by the parties.

WT/DS404: United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam

Complainant: Viet Nam

Respondent: United States

On 11 July 2011 the panel report was circulated to members. This dispute concerned a number of anti-dumping measures on certain frozen warmwater shrimp from Viet Nam and certain practices of the United States Department of Commerce (USDOC) in anti-dumping investigations.

The panel upheld Viet Nam's claim that the USDOC's use of zeroing to calculate the dumping margins of respondents selected for individual examination was inconsistent with Article 2.4 ('Determination of Dumping') of the Anti-Dumping Agreement. In addition, the panel found that Viet Nam had established the existence of the 'zeroing methodology' as a rule or norm of general and prospective application. Relying on prior Appellate Body rulings, the panel upheld Viet Nam's claims that this methodology, as it relates to the use of simple zeroing in administrative reviews, is 'as such' 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.

The panel rejected Viet Nam's claims with respect to the USDOC's decisions to limit its examination in the second and third administrative reviews at issue. Viet Nam had argued that the USDOC had applied Article 6.10 ('Evidence') of the Anti-Dumping Agreement, which allows for such limited examinations, in a manner that deprived Vietnamese respondents of substantive rights under Article 6.10 itself, as well as under Articles 9.3, 11.1 ('Duration and Review of Anti-Dumping Duties and Price Undertakings') and 11.3.

Moreover, the panel rejected Viet Nam's claims that the USDOC had violated the first sentence of Article 6.10.2 of the Anti-Dumping Agreement, which provides that an authority that has limited its examination shall nevertheless determine individual margins of dumping for non-selected respondents that submit a 'voluntary response'. The panel also rejected Viet Nam's claim under the second sentence of Article 6.10.2, which provides that '[v]oluntary responses shall not be discouraged'.

The panel upheld Viet Nam's claim that the 'all others' rate applied by the USDOC in the administrative reviews at issue was inconsistent with Article 9.4 ('Imposition and Collection of Anti-Dumping Duties') of the Anti-Dumping Agreement because it was established on the basis of margins calculated with zeroing.

Finally, in the determinations at issue, the USDOC had applied a 'Vietnam-wide entity' rate to certain Vietnamese exporters or producers that could not establish independence from the Vietnamese Government in their commercial and sales operations. The panel upheld a claim by Viet Nam that the USDOC had acted inconsistently with Article 9.4 of the Anti-Dumping Agreement when it failed to apply to this Viet Nam-wide entity the 'all others' rate applied to respondents not selected for individual examination.

The panel reasoned that Article 9.4 does not entitle the authorities of the importing member to render the application of the 'all others' rate conditional on the fulfilment of certain requirements, such as independence from the Government. The panel also found that the application of a 'facts available' rate to the Vietnam-wide entity in the second administrative review and of a rate that was in substance a facts available rate in the third administrative review was inconsistent with Article 6.8 ('Evidence') of the Anti-Dumping Agreement.

On 2 September 2011 the panel report was adopted.

At the DSB meeting on 27 September 2011, the United States stated that it intended to implement the DSB's recommendations and ruling in a manner that respected its WTO obligations. The United States added that it would need a reasonable period of time to do so. On 31 October 2011 Viet Nam and the United States 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 ten months. Accordingly, the reasonable period of time is due to expire on 2 July 2012.

WT/DS405: European Union – Anti-Dumping Measures on Certain Footwear from China

Complainant: China

Respondent: European Union

On 28 October 2011 the panel report was circulated to members. The panel found that Article 9(5) ('Termination without measures; imposition of definitive duties') of the EU Basic Anti-Dumping Regulation is inconsistent with the European Union's WTO obligations, and that the European Union had acted inconsistently with the Anti-Dumping Agreement in some aspects of the original investigation and expiry review. The panel rejected the bulk of China's specific claims of violation in connection with the original investigation and expiry review, and resulting definitive and review regulations.

More particularly, the panel concluded that Article 9(5) of the EU Basic Anti-Dumping Regulation was as such inconsistent with the European Union's obligations under Articles 6.10 ('Evidence'), 9.2 ('Imposition and Collection of Anti-Dumping Duties') and 18.4 ('Final Provisions') of the Anti-Dumping Agreement, Article I:1 ('General Most-Favoured-Nation Treatment') of the General Agreement on Tariffs and Trade (GATT) 1994 and Article XVI:4 ('Miscellaneous Provisions') of the WTO Agreement, and that the application of Article 9(5) of the EU Basic Anti-Dumping Regulation in the footwear original investigation was inconsistent with Articles 6.10 and 9.2 of the Anti-Dumping Agreement. The panel found that the European Union acted inconsistently with Article 2.2.2(iii) ('Determination of Dumping') of the Anti-Dumping Agreement with respect to the determination of the amounts for administrative, selling, and general costs and profit for one producer-exporter in the original investigation, and that the European Union acted inconsistently with its obligations under Articles 6.5 and 6.5.1 ('Evidence') of the Anti-Dumping Agreement with respect to the confidential treatment, or the non-confidential summarization, of certain information in the original investigation and the expiry review.

The panel found that that China had not established that the European Union acted inconsistently with: (a) Article 6.10.2 of the Anti-Dumping Agreement in the examination of individual treatment requests of four Chinese producers in the original investigation; (b) Articles 2.4 ('Determination of Dumping') and 6.10.2 of the Anti-Dumping Agreement, Paragraph 15(a)(ii) ('Price Comparability in Determining Subsidies and Dumping') of China's Accession Protocol, and Paragraphs 151(e) and (f) of China's Accession Working Party Report, in the examination of certain Chinese producers' applications for market economy treatment in the original investigation; (c) Article 6.10 of the Anti-Dumping Agreement in selecting the sample for the dumping determination in the original investigation; (d) Article 11.3 ('Duration and Review of Anti-Dumping Duties and Price Undertakings') of the Anti-Dumping Agreement in the procedure for and selection of Brazil as analogue country in the expiry review; (e) Articles 2.1 and 2.4 ('Determination of Dumping') of the Anti-Dumping Agreement and Article VI:1 ('Anti-dumping and Countervailing Duties') of the GATT 1994 in the procedure for and selection of Brazil as analogue country in the original investigation; (f) Article 11.3 of the Anti-Dumping Agreement with respect to the PCN system used in the expiry review; (g) Article 2.4 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 with respect to the PCN system used, and the adjustment for leather quality made, in the original investigation; (h) Article 2.6 ('Determination of Dumping') of the Anti-Dumping Agreement, read together with Articles 3.1 ('Determination of Injury') and 4.1 ('Definition of Domestic Industry') of the Anti-Dumping Agreement, with respect to the scope of the product under consideration, or the like product; (i) Articles 3.1 and 6.10 ('Evidence') of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 in the procedure for and selection of the sample for the injury analysis in the original investigation and the expiry review; and (j) Article 11.3 of the Anti-Dumping Agreement in the procedure for and selection of the sample for the injury determination in the expiry review.

Nor with regard to; (k) Article 3.3 ('Determination of Injury') of the Anti-Dumping Agreement in making a cumulative assessment in the original investigation; (l) Article 11.3 ('Duration and Review of Anti-Dumping Duties and Price Undertakings') of the Anti-Dumping Agreement in finding likelihood of continuation or recurrence of injury in the expiry review; (m) Articles 3.4, 3.1 and 3.2 ('Determination of Injury') of the Anti-Dumping Agreement in the evaluation of injury indicators in the original investigation; (n) Articles 3.5 and 3.1 of the Anti-Dumping Agreement in determining causation in the original investigation; (o) Article 6.1.1 ('Evidence') of the Anti-Dumping Agreement and Paragraph 15(a) ('Price Comparability in Determining Subsidies and Dumping') of China's Accession Protocol in allowing less than 30 days to respond to the MET/IT claim forms in the original investigation; (p) Article 6.1.2 of the Anti-Dumping Agreement with respect to certain questionnaire responses in the expiry review; (q) Article 6.4 of the Anti-Dumping Agreement, and as a consequence or independently, Article 6.2 of the Anti-Dumping Agreement, with respect to certain information in the original investigation and expiry review; (r) Article 6.5 of the Anti-Dumping Agreement, and as a consequence or independently, Article 6.2 of the Anti-Dumping Agreement, in the confidential treatment of certain information in the original investigation; (s) Article 6.5.1 of the Anti-Dumping Agreement, and as a consequence or independently, Article 6.2 of the Anti-Dumping Agreement, in connection with the non-confidential summarization of certain information in the original investigation; and (t) Article 6.5.2 of the Anti-Dumping Agreement, and as a consequence, Article 6.2 of the Anti-Dumping Agreement, with respect to certain information in the non-confidential questionnaire responses of the sampled EU producers in the original investigation.

Nor with regard to: (u) Article 6.5 in the confidential treatment of certain information in the expiry review; (v) Article 6.5.1 of the Anti-Dumping Agreement in connection with the non-confidential summarization of certain information in the expiry review; (w) Article 6.5.2 of the Anti-Dumping Agreement with respect to certain information in the expiry review; (x) Article 6.2 of the Anti-Dumping Agreement with respect to certain information in the expiry review; (y) Articles 3.1 ('Determination of Injury') and 6.8 of the Anti-Dumping Agreement in not applying facts available in the expiry review; (z) Article 6.9 of the Anti-Dumping Agreement with respect to the time provided for submission of comments on the Additional Final Disclosure in the original investigation; (aa) Article 12.2.2 ('Public Notice and Explanation of Determinations') of the Anti-Dumping Agreement in connection with the information and explanations provided in respect of specific issues in the original investigation and expiry review; and (ab) Articles 3.1, 3.2, 9.1 ('Imposition and Collection of Anti-Dumping Duties') and 9.2 of the Anti-Dumping Agreement with respect to the imposition and collection of anti-dumping duties in the original investigation.

The panel considered, and for the most part rejected, the European Union's preliminary objections to China's claims. In addition, the panel concluded that Article 17.6(i) ('Consultation and Dispute Settlement') of the Anti-Dumping Agreement does not impose any obligations on the investigating authorities of WTO members in anti-dumping investigations that could be the subject of a finding of violation, and therefore dismissed all of China's claims of violation of Article 17.6(i). The panel applied judicial economy with respect to some of China's claims regarding all three measures.

As the review and definitive regulations had expired as of 31 March 2011, the panel concluded that there was no basis for a recommendation to the DSB that it request the European Union to bring the regulation into conformity with its WTO obligations. With respect to Article 9(5) ('Termination without measures; imposition of definitive duties') of the Basic Anti-Dumping Regulation, the panel recommended that the European Union bring this measure into conformity with its obligations under the WTO Agreements. The panel declined to make a suggestion on how the DSB recommendations and rulings could be implemented by the European Union.

On 6 December 2011 China and the European Union requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU, to no later than 22 February 2012. At its meeting on 19 December 2011, the DSB agreed that, upon a request by China or the European Union, the DSB, no later than 22 February 2012, would adopt the panel report, unless China or the European Union notified the DSB of its decision to appeal the panel report.

WT/DS406: United States – Measures Affecting the Production and Sale of Clove Cigarettes

Complainant: Indonesia

Respondent: United States

On 2 September 2011 the panel report was circulated to members. This dispute concerns a measure that bans the production and sale of clove cigarettes, as well as most other flavoured cigarettes, in the United States. However, the measure excludes menthol-flavoured cigarettes from the ban. Indonesia is the world's main producer of clove cigarettes, and the vast majority of clove cigarettes consumed in the United States prior to the ban were imported from Indonesia.

The panel found that by banning clove cigarettes but not menthol cigarettes, the United States' ban on flavoured cigarettes is inconsistent with the national treatment obligation in Article 2.1 ('Preparation, Adoption and Application of Technical Regulations by Central Government Bodies') of the Technical Barriers to Trade (TBT) Agreement. The panel's finding that clove and menthol cigarettes are 'like products' within the meaning of Article 2.1 of the TBT Agreement is largely based on its factual findings that both types of cigarettes are flavoured and appeal to youth.

The panel rejected Indonesia's second main claim, which is that the ban violates Article 2.2 of the TBT Agreement. The panel found that Indonesia failed to demonstrate that the ban is more trade-restrictive than necessary to fulfil the legitimate objective of reducing youth smoking, taking account of the risks non-fulfilment would create.

On 15 September 2011 Indonesia and the United States requested the DSB to adopt a draft decision extending the 60-day time period for adoption of panel reports stipulated in Article 16.4 ('Adoption of Panel Reports') of the DSU, to 20 January 2012. At its meeting on 27 September 2011, the DSB agreed that, upon a request by Indonesia or the United States, the DSB, no later than 20 January 2012, would adopt the panel report, unless Indonesia or the United States notified the DSB of its decision to appeal the panel report.

WT/DS412: Canada – Certain Measures Affecting the Renewable Energy Generation Sector

Complainant: Japan (DS412), (see also DS426)

Respondent: Canada

On 1 June 2011 Japan requested the establishment of a panel. At its meeting on 20 July 2011, the DSB established a panel. Australia, China, the European Union, Honduras, Korea, Norway, Chinese Taipei and the United States reserved their third-party rights. Subsequently, Brazil, El Salvador, India, Mexico and Saudi Arabia reserved their third-party rights. On 26 September 2011 Japan requested the Director-General to determine the composition of the panel. On 6 October 2011 the Director-General composed the panel.

WT/DS413: China – Certain Measures Affecting Electronic Payment Services

Complainant: United States

Respondent: China

On 11 February 2011 the United States requested the establishment of a panel. At its meeting on

25 March 2011, the DSB established a panel. Australia, Ecuador, the European Union, Guatemala, India, Japan and Korea reserved their third-party rights. On 23 June 2011 the United States requested the Director-General to determine the composition of the panel. On 4 July 2011 the Director-General composed the panel. On 7 September 2011 in response to a request from China, the Panel issued a preliminary ruling to the parties and third parties indicating that the United States' request for the establishment of a panel is consistent with the requirements of Article 6.2 ('Establishment of Panels') of the DSU.

WT/DS414: China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States

Complainant: United States

Respondent: China

On 11 February 2011 the United States requested the establishment of a panel. At its meeting on 25 March 2011, the DSB established a panel. Argentina, the European Union, Honduras, India, Japan, Korea, Saudi Arabia and Viet Nam reserved their third-party rights. On 10 May 2011 the panel was composed. The panel has informed the DSB that it expects to conclude its work by May 2012.

WT/DS415, WT/DS416, WT/DS417, WT/DS418: Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric

Complainants: Costa Rica (DS415), Guatemala (DS416), Honduras (DS417), El Salvador (DS418)

Respondent: Dominican Republic

At its meeting on 7 February 2011, the DSB agreed to establish a single panel, pursuant to Article 9.1 ('Procedures for Multiple Complainants') of the DSU, to examine complaints DS415, DS416, DS417 and DS418. China, Colombia, the European Union, Nicaragua, Panama, Turkey and the United States reserved their third-party rights. Subsequently, Costa Rica, El Salvador and Honduras reserved their third-party rights in respect of each other's disputes. On 1 March 2011 Costa Rica, El Salvador, Guatemala and Honduras jointly requested the Director-General to determine the composition of the panel. On 11 March 2011 the Director-General composed the panel.

The panel issued its final report to the parties on 28 November 2011. It is expected that the final report will be circulated to members following translation, to be completed by late January 2012.

Table 2: Requests for consultations made during 2011 (also includes those disputes where a panel was either requested or established)

WT/DS No.	TITLE	COMPLAINANT	DATE OF INITIAL REQUEST	AGREEMENTS CITED
WT/DS427	China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States	United States	20 September 2011	General Agreement on Tariffs and Trade (GATT) Anti-Dumping Agreement (ADP) Subsidies and Countervailing Measures Agreement (SCM)
WT/DS426	Canada – Measures Relating to the Feed-In Tariff Program	European Union	11 August 2011	GATT Trade-Related Investment Measures Agreement (TRIMS) SCM
WT/DS425	China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union	European Union	25 July 2011	GATT ADP
WT/DS424	US – Anti-Dumping Measures on Imports of Stainless Sheet and Strip in Coils from Italy	European Union	1 April 2011	GATT ADP
WT/DS423	Ukraine – Taxes on Distilled Spirits	Moldova	2 March 2011	GATT
WT/DS422	US – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China	China	28 February 2011	GATT ADP
WT/DS421	Moldova – Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge)	Ukraine	17 February 2011	GATT
WT/DS420	US – Anti-Dumping Measures on Corrosion-Resistant Carbon Steel Flat Products from Korea	Korea	31 January 2011	GATT ADP

Appellate Body

Nine appeals of panel reports were filed with the Appellate Body in 2011, up from three in 2010, out of a total of 11 panel reports for which the 60-day deadline for adoption or appeal expired during the year. All nine appeals related to original panel proceedings. There were no appeals relating to compliance with earlier rulings and recommendations. In December, two new members were appointed to the Appellate Body.

Seven Appellate Body reports were circulated during 2011. Details of the Appellate Body's findings are set out on 90, 91-2 and 95-9. These reports brought to 108 the number of reports circulated by the Appellate Body since the creation of the WTO in 1995. The appellate proceedings in US – Large Civil Aircraft (2nd complaint) and China – Raw Materials were still in progress at the end of 2011.

A full list of appeals filed and Appellate Body reports circulated in 2011 is provided in Table 3.

Table 3: Appeals filed and Appellate Body reports in 2011

Panel reports appealed	Date of appeal	Appellant	Document number	Other appellant	Document number	Circulation date of AB report
Thailand – Cigarettes (Philippines)	22 Feb 2011	Thailand	WT/DS371/8			17 June 2011
EC – Fasteners (China)	25 March 2011	European Communities	WT/DS397/7	China	WT/DS397/8	15 July 2011
United States – Large Civil Aircraft (2nd complaint)	1 April 2011	European Communities	WT/DS353/8	United States	WT/DS353/10	appeal in progress
United States – Tyres (China)	24 May 2011	China	WT/DS399/6			5 Sept 2011
China – Raw Materials	31 Aug 2011	China	WT/DS394/11	United States	WT/DS394/12	appeal in progress
China – Raw Materials	31 Aug 2011	China	WT/DS395/11	European Union	WT/DS395/12	appeal in progress
China – Raw Materials	31 Aug 2011	China	WT/DS398/10	Mexico	WT/DS398/11	appeal in progress
Philippines – Distilled Spirits	23 Sept 2011	Philippines	WT/DS396/7	European Union	WT/DS396/8	21 Dec 2011
Philippines – Distilled Spirits	23 Sept 2011	Philippines	WT/DS403/7	European Union	WT/DS403/8	21 Dec 2011

Appellate Body members

Until 11 December 2011, when two new members were appointed, the seven Appellate Body members were:

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

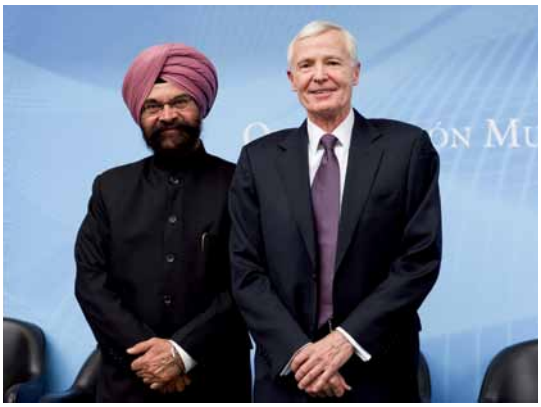
Ms Lilia R. Bautista served as Chair of the Appellate Body from 17 December 2010 to14 June 2011, and Ms Jennifer A. Hillman served as Chair of the Appellate Body from 15 June to 10 December 2011. Ms Yuejiao Zhang was elected by Appellate Body members to serve as Chair for the period 11 December 2011 to 31 May 2012.

The terms of office of Ms Jennifer A. Hillman and Ms Lilia R. Bautista expired on 10 December 2011. On 18 November 2011, the Dispute Settlement Body appointed Mr Ujal Singh Bhatia (India) and Mr Thomas R. Graham (United States) to serve for four years as Appellate Body members commencing on 11 December 2011. Mr Bhatia and Mr Graham were sworn in on 8 December 2011.

From left to right: Ricardo Ramírez-Hernández, David Unterhalter, Yuejiao Zhang, Shotaro Oshima, Jennifer A. Hillman, Ujal Singh Bhatia, Lilia R. Bautista, Peter Van den Bossche and Thomas R. Graham.

Background on the Appellate Body

The Appellate Body consists of seven members appointed by the Dispute Settlement Body. Each member is appointed for a term of four years, with the possibility of being reappointed for one further four-year term. Three members of the Appellate Body hear an appeal of a panel's ruling. Any party to a dispute may appeal the panel report to the Appellate Body. The appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel.



New members of the Appellate Body, Ujal Singh Bhatia (left) and Thomas R. Graham.

Ujal Singh Bhatia (India)

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

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

Mr Bhatia previously served as Joint Secretary in the Indian Ministry of Commerce, where he focused on the legal aspects of international trade. During this period, he was also a member of the Appellate Committee under the Foreign Trade (Development and Regulation) Act. The committee heard appeals of exporters and importers against the orders of the Director-General Foreign Trade. Mr Bhatia was also Joint Secretary of the Ministry of Information and Broadcasting and held various positions in the public and private sectors of the Indian state of Orissa.

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

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

Thomas R. Graham (United States)

Thomas R. Graham was born in the United States. Before becoming a member of the Appellate Body, he headed the international trade group of a major law firm in Washington, DC. In that capacity, Mr Graham represented respondents in non-US trade remedy cases, negotiated the settlement of disputes, assisted in WTO dispute settlement proceedings, and headed the practice's committee on long-term planning and development.

Prior to that, Mr Graham served for several years as the deputy head of the international practice group of a large multinational law firm. In private law practice, Mr Graham has participated in trade remedy proceedings, often collaborating with local counsel and national authorities in various countries to develop legal interpretations of laws and regulations consistent with GATT/WTO agreements and negotiating the resolution of international trade disputes.

Mr Graham served as Deputy General Counsel in the Office of the US Trade Representative, where he was instrumental in the negotiation of the Tokyo Round Agreement on Technical Barriers to Trade and where he represented the US Government in dispute settlement proceedings under the GATT.

Earlier in his career, Mr Graham spent three years in Geneva as a legal officer at the United Nations.

Mr Graham taught for many years at the Georgetown Law Center as an adjunct professor. He has written several articles and monographs on international trade law and policy as a guest scholar at the Brookings Institution and as a senior associate at the Carnegie Endowment for International Peace.

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