

Dispute settlement

Dispute settlement activity in 2018	116
Appellate Body	123

Background on dispute settlement

WTO members bring disputes to the WTO if they think their rights under trade agreements are being infringed. Settling disputes is the responsibility of the Dispute Settlement Body.

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Sunanta Kangvulkij (right) succeeded Junichi Ihara as Chair of the Dispute Settlement Body in 2018.

Dispute settlement activity in 2018

- WTO members initiated **38 new disputes in 2018**, more than twice the number of 2017.
- **Twenty-eight dispute settlement reports and decisions covering 22 matters were circulated in 2018.**
- **On average, 42 proceedings were ongoing each month, nearly 10 per cent more than the previous year.**
- **WTO members remained divided on the selection process to appoint replacements for four of the seven members of the Appellate Body.**
- **A new book marked the 70th anniversary of the General Agreement on Tariffs and Trade (GATT), covering the evolution of GATT dispute settlement.**

Background on dispute settlement activity

WTO members bring disputes if they think their rights are being infringed with respect to any agreement contained in the Final Act of the Uruguay Round that is subject to the Understanding on Rules and Procedures Governing the Settlement of Disputes. The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes. The DSB has authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance over the implementation of recommendations and rulings, and authorize suspension of obligations in the event of non-compliance with those recommendations and rulings.

High number of new disputes

There were 38 new consultation requests in 2018. This is the highest number since 1998 and one of the highest since the entry into force of the WTO in 1995 (see Figure 1).

Twenty-two WTO members initiated these new disputes concerning a wide range of issues (see Table 1).

By the end of 2018, a total of 573 disputes had been initiated under the WTO dispute settlement procedures since its entry into force in 1995.

Sustained levels of dispute settlement activity

If the parties to a dispute are unable to resolve their differences through consultations, the complainant can ask for a dispute settlement panel to be established by the Dispute Settlement Body (DSB). Among the 38 disputes initiated in 2018, 24 led to the establishment of a panel by the end of 2018.

In total, the DSB established panels in 33 disputes in 2018 (see Tables 2, 3 and 4). Five of these panels were established in respect of so-called “compliance” proceedings to determine whether parties have complied with previous recommendations and rulings. Finally, four requests for arbitration were made, and one arbitration was reactivated, on the permissible level of retaliation (as a temporary remedy in the event of non-compliance).

Figure 1: Requests for consultations, 1995 to 2018

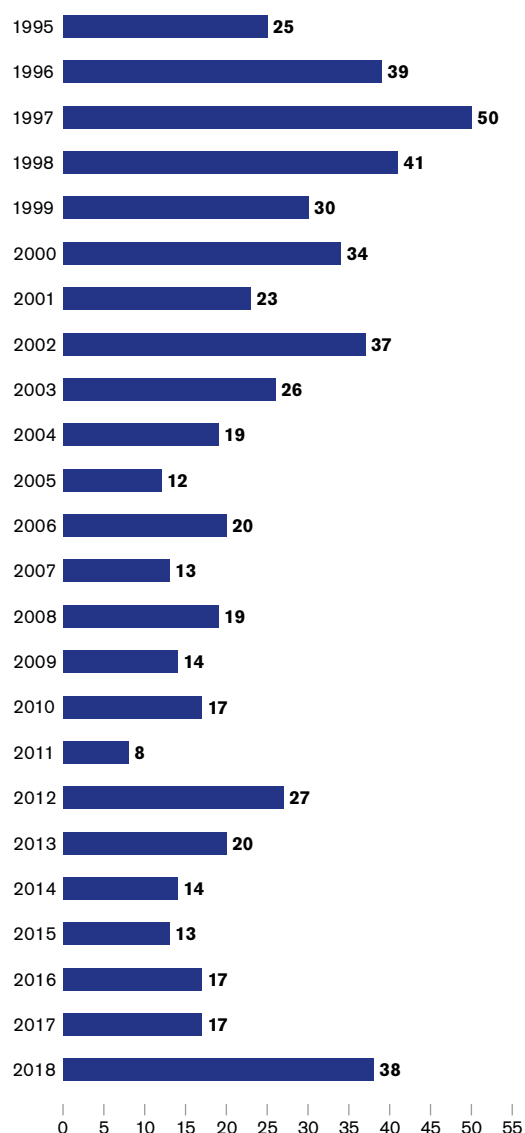


Table 1: Disputes initiated in 2018 (requests for consultations)

Title	Dispute number	Complainant	Date of initial request	Status on 31 December 2018
US – Fish Fillets (Viet Nam)	DS536	Viet Nam	8 January 2018	Panel composed
Canada – Measures Governing the Sale of Wine	DS537	Australia	12 January 2018	Panel established, panel composition ongoing
Pakistan – BOPP Film (UAE)	DS538	United Arab Emirates	24 January 2018	Panel established, panel composition ongoing
US – Facts Available	DS539	Korea, Republic of	14 February 2018	Panel composed
US – Pangasius Seafood Products	DS540	Viet Nam	22 February 2018	In consultations
India – Export Related Measures	DS541	United States	14 March 2018	Panel composed
China – Intellectual Property Rights II	DS542	United States	23 March 2018	Panel established, panel composition ongoing
US – Tariff Measures on Certain Goods (China)	DS543	China	4 April 2018	First request for establishment of a panel
US – Steel and Aluminium Products	DS544	China	5 April 2018	Panel established, panel composition ongoing
US – Safeguard Measure on PV Products	DS545	Korea, Republic of	14 April 2018	Panel established, panel composition ongoing
US – Safeguard Measure on Washers	DS546	Korea, Republic of	14 May 2018	Panel established, panel composition ongoing
US – Steel and Aluminium Products (India)	DS547	India	18 May 2018	Panel established, panel composition ongoing
US – Steel and Aluminium (EU)	DS548	European Union	1 June 2018	Panel established, panel composition ongoing
China – Transfer of Technology	DS549	European Union	1 June 2018	In consultations
US – Steel and Aluminium Products	DS550	Canada	1 June 2018	Panel established, panel composition ongoing
US – Steel and Aluminium Products (Mexico)	DS551	Mexico	5 June 2018	Panel established, panel composition ongoing
US – Steel and Aluminium Products (Norway)	DS552	Norway	12 June 2018	Panel established, panel composition ongoing
Korea – Stainless Steel Bars	DS553	Japan	18 June 2018	Panel established, panel composition ongoing
US – Steel and Aluminium Products (Russia)	DS554	Russian Federation	29 June 2018	Panel established, panel composition ongoing
Morocco – School Exercise Books (Tunisia)	DS555	Tunisia	5 July 2018	In consultations
US – Steel and Aluminium Products (Switzerland)	DS556	Switzerland	9 July 2018	Panel established, panel composition ongoing
Canada – Additional Duties (US)	DS557	United States	16 July 2018	Panel established, panel composition ongoing
China – Additional Duties	DS558	United States	16 July 2018	Panel established, panel composition ongoing
EU – Additional Duties (US)	DS559	United States	16 July 2018	Panel established, panel composition ongoing
Mexico – Additional Duties	DS560	United States	16 July 2018	Panel established, panel composition ongoing
Turkey – Additional Duties (US)	DS561	United States	16 July 2018	First request for establishment of a panel
US – Safeguard Measure on PV Products (China)	DS562	China	14 August 2018	In consultations
US – Renewable Energy	DS563	China	14 August 2018	In consultations
US – Steel and Aluminium Products (Turkey)	DS564	Turkey	15 August 2018	Panel established, panel composition ongoing
US – Tariff Measures on Certain Goods (China) II	DS565	China	23 August 2018	In consultations
Russia – Additional Duties (US)	DS566	United States	27 August 2018	Panel established, panel composition ongoing
Saudi Arabia – Protection of IPR	DS567	Qatar	1 October 2018	Panel established, panel composition ongoing
China – Imports of Sugar	DS568	Brazil	16 October 2018	In consultations
Armenia – Steel Pipes	DS569	Ukraine	17 October 2018	In consultations
Kyrgyz Republic – Steel Pipes	DS570	Ukraine	17 October 2018	In consultations
Korea – Commercial Vessels (Japan)	DS571	Japan	6 November 2018	In consultations
Peru – Biodiesel (Argentina)	DS572	Argentina	29 November 2018	In consultations
Turkey – Air Conditioning Machines (Thailand)	DS573	Thailand	5 December 2018	In consultations

Table 2: Original panels established in 2018

Title	Dispute number	Complainant	Date established
US – Softwood Lumber	DS533	Canada	9 April 2018
US – Differential Pricing Methodology	DS534	Canada	9 April 2018
Australia – A4 Copy Paper	DS529	Indonesia	27 April 2018
India – Export Related Measures	DS541	United States	28 May 2018
US – Facts Available	DS539	Republic of Korea	28 May 2018
US – Fish Fillets (Viet Nam)	DS536	Viet Nam	20 July 2018
US – Safeguard Measures on Washers	DS546	Republic of Korea	26 September 2018
US – Safeguard Measures on PV Products	DS545	Republic of Korea	26 September 2018
Canada – Measures Governing the Sale of Wine	DS537	Australia	26 September 2018
Pakistan – BOPP Film (UAE)	DS538	United Arab Emirates	29 October 2018
Korea – Stainless Steel Bars	DS553	Japan	29 October 2018
China – Intellectual Property Rights II	DS542	United States	29 October 2018
US – Steel and Aluminium Products (China)	DS544	China	21 November 2018
US – Steel and Aluminium Products (EU)	DS548	European Union	21 November 2018
US – Steel and Aluminium Products (Canada)	DS550	Canada	21 November 2018
US – Steel and Aluminium Products (Mexico)	DS551	Mexico	21 November 2018
US – Steel and Aluminium Products (Norway)	DS552	Norway	21 November 2018
US – Steel and Aluminium Products (Russia)	DS554	Russia	21 November 2018
US – Steel and Aluminium Products (India)	DS547	India	21 November 2018
Canada – Additional Duties (US)	DS557	United States	21 November 2018
China – Additional Duties (US)	DS558	United States	21 November 2018
EU – Additional Duties (US)	DS559	United States	21 November 2018
Mexico – Additional Duties (US)	DS560	United States	21 November 2018
US – Steel and Aluminium Products (Turkey)	DS564	United States	21 November 2018
US – Steel and Aluminium Products (Switzerland)	DS556	Switzerland	4 December 2018
Costa Rica – Avocados (Mexico)	DS524	Mexico	18 December 2018
Russia – Additional Duties (US)	DS566	United States	18 December 2018
Saudi Arabia – Protection of IPR	DS567	Qatar	18 December 2018



Table 3: Compliance panels established in 2018

Title	Dispute number	Complainant	Date established
India – Solar Cells (Article 21.5 – India)	DS456	India	28 February 2018
Thailand – Cigarettes (Article 21.5 – Philippines II)	DS371	Philippines	27 March 2018
US – Carbon Steel (India) (Article 21.5 – India)	DS436	India	27 April 2018
EC and certain member States – Large Civil Aircraft (Article 21.5 – EU)	DS316	European Union	27 August 2018
Russia – Pigs (EU) (Article 21.5 – EU)	DS475	European Union	21 November 2018

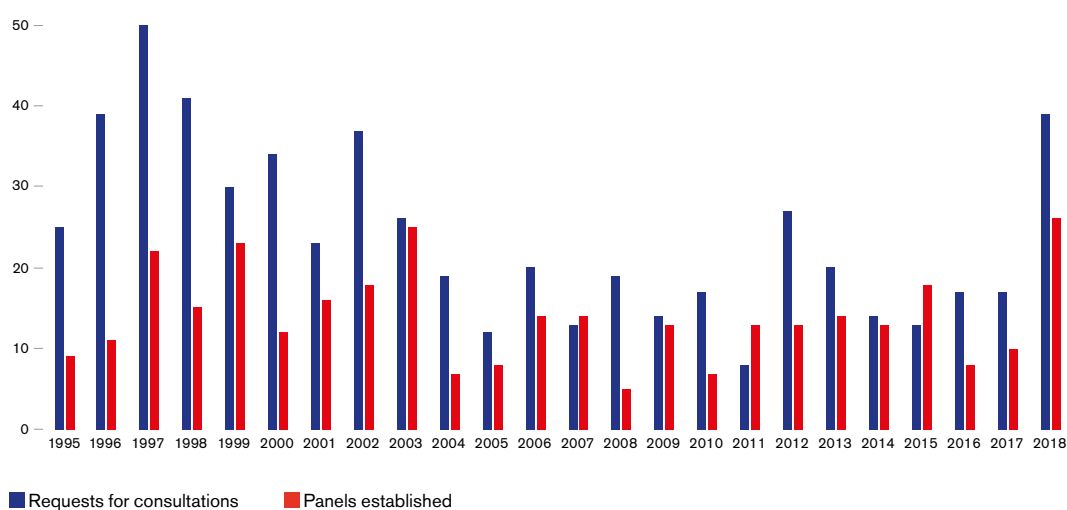
Table 4: Recourse to arbitration on the suspension of obligations in 2018

Title	Dispute number	Recourse to arbitration
India – Solar Cells	DS456	3 January 2018
US – Washing Machines	DS464	19 January 2018
EC and certain member states – Large Civil Aircraft	DS316	13 July 2018*
Indonesia – Import Licensing Regimes	DS478	14 August 2018
US – Anti-Dumping Methodologies (China)	DS471	19 September 2018

* These proceedings were initiated in 2011 and suspended in 2012 at the request of the parties. In July 2018, the United States requested the arbitrator to resume its work.

Twelve appeals were also ongoing as of the end of 2018 (see page 126).

Figure 2: Total number of disputes initiated and panels established, 1995 to 2018



Reports and decisions

In total, 28 dispute settlement reports and decisions were circulated in 2018 concerning 22 distinct matters. This included 14 “original” panel reports (concerning 11 distinct matters), four compliance panel reports, nine Appellate Body reports (concerning six distinct matters),

and one arbitral decision on the reasonable period of time for implementation of the DSB’s recommendations and rulings (see Tables 5 and 6).

The DSB adopted 11 panel reports in 2018 (including two compliance panel reports), and five Appellate Body reports.

Table 5: Original panel reports circulated and/or adopted in 2018

Title	Document symbol	Date circulated	Date adopted by the DSB (if applicable)
Russia – Commercial Vehicles*	DS479	27 January 2017	9 April 2018
EU – PET (Pakistan)*	DS486	6 July 2017	28 May 2018
Indonesia – Iron or Steel Products (Chinese Taipei)*	DS490	18 August 2017	27 August 2018
Indonesia – Iron or Steel Products (Viet Nam)*	DS496	18 August 2017	27 August 2018
US – OCTG (Korea)	DS488	14 November 2017	12 January 2018
US – Coated Paper (Indonesia)	DS491	6 December 2017	12 January 2018
EU – Biodiesel (Indonesia)	DS480	25 January 2018	28 February 2018
Korea – Radionuclides (Japan)	DS495	22 February 2018	Appealed
Korea – Pneumatic Valves (Japan)	DS504	12 April 2018	Appealed
Australia – Tobacco Plain Packaging (Honduras)	DS435	28 June 2018	Appealed
Australia – Tobacco Plain Packaging (Dominican Republic)	DS441	28 June 2018	Appealed
Australia – Tobacco Plain Packaging (Cuba)	DS458	28 June 2018	27 August 2018
Australia – Tobacco Plain Packaging (Indonesia)	DS467	28 June 2018	27 August 2018
US – Supercalendered Paper	DS505	5 July 2018	Appealed
Ukraine – Ammonium Nitrate	DS493	20 July 2018	Appealed
Russia – Railway Equipment	DS499	30 July 2018	Appealed
EU – Energy Package	DS476	10 August 2018	Appealed
Morocco – Hot-Rolled Steel (Turkey)	DS513	31 October 2018	Appealed
India – Iron and Steel Products	DS518	6 November 2018	Appealed
US – Pipes and Tubes (Turkey)	DS523	18 December 2018	Appealed

* Panel report adopted as modified or upheld by the Appellate Body following an appeal.

Table 6: Compliance panel reports adopted and/or circulated in 2018

Title	Document symbol	Date circulated	Date adopted by the DSB (if applicable)
EC and certain member states – Large Civil Aircraft (Article 21.5 – US)*	DS316	22 September 2016	28 May 2018
China – Broiler Products (Article 21.5 – US)	DS427	18 January 2018	28 February 2018
US – Countervailing Measures (China) (Article 21.5 – China)	DS437	21 March 2018	Appealed
Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)	DS461	5 October 2018	Appealed
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)	DS371	12 November 2018	Appealed

* Panel report adopted as modified or upheld by the relevant Appellate Body report.



WTO and Appellate Body secretariats

The Legal Affairs Division and the Rules Division of the WTO Secretariat service dispute settlement panel and arbitral proceedings. Depending on the subject matter of the disputes, relevant divisions in the Secretariat also contribute their expertise in their areas of specialization. Appeals are serviced by the Appellate Body Secretariat (see page 123).

Other parts of the WTO Secretariat, such as translation services, also play an important role in dispute settlement activities, as the often voluminous and complex reports of panels, arbitrators and the Appellate Body are circulated to members and made public only when they are available in the three working languages of the WTO (English, French and Spanish).

Due to the increase in dispute settlement activity in recent years, the number of posts in the legal divisions has grown to adjust to the additional workload.

Appellate Body members

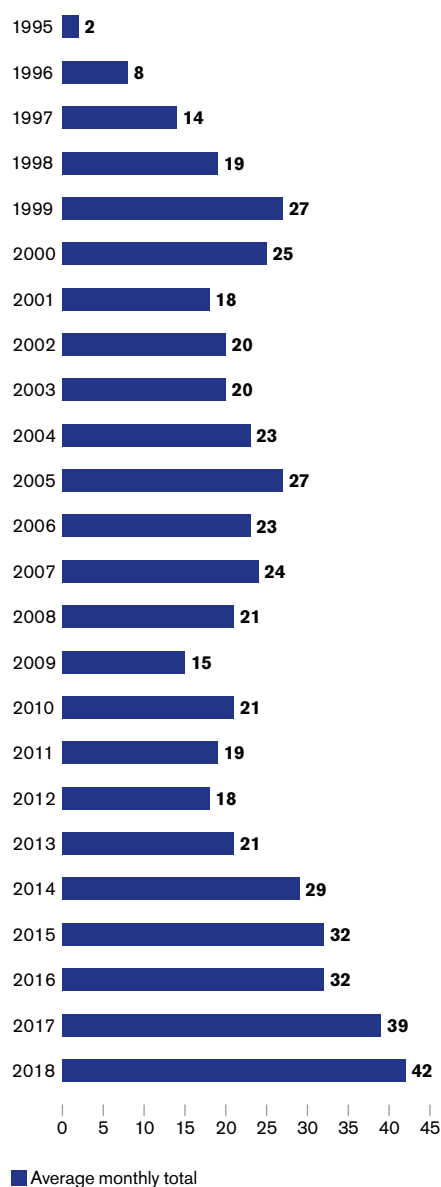
WTO members remained divided on the selection process to appoint replacements for four of the seven members of the Appellate Body, whose term in office has expired (see page 123).

Intensity of activities

Figure 3 shows the intensity of dispute settlement activities since the inception of the WTO in 1995. It displays how many panel, appellate and arbitral proceedings were ongoing each month, on average, every year from 1995 to 2018. It reveals that the level of activity in dispute settlement proceedings has been steadily increasing in recent years, including in 2018.

For the purposes of Figure 3, proceedings are counted as a single instance where they relate to the same matter, regardless of the number of complainants involved or the level of complexity of the proceedings. This provides a quantitative indication of the number of distinct issues that are subject to “active” dispute settlement proceedings (ongoing panel, arbitral or appellate proceedings). It does not seek to reflect the relative complexity of different proceedings, which has also tended to increase over time.

Figure 3: Average of monthly active disputes, 1995-2018





A new publication was launched to mark the 70th anniversary of the GATT.

New publication on evolution of GATT dispute settlement

To mark the 70th anniversary of the General Agreement on Tariffs and Trade (GATT), the WTO issued a new publication covering the evolution of GATT dispute settlement decisions and procedures from 1948 to 1995.

The publication – “GATT Disputes: 1948-1995” – represents the first comprehensive effort to consolidate information on more than 300 disputes brought by contracting parties during the GATT period. It provides factual and verified information from multiple sources, including public and internal records held by the GATT/WTO secretariats.

The publication consists of two volumes. The first volume contains an overview of GATT dispute settlement, a one-page case summary for each dispute, and annexes listing disputes by contracting party, agreement and provisions at issue. The second volume compiles for the first time all GATT dispute settlement procedures and a selection of other key documents of historical interest.

The final round of the Moot Court Competition on WTO Law was held at WTO headquarters.

As noted by DG Azevêdo in his foreword to the book, “the considerable evolution of GATT dispute settlement is a testament to the resilience and flexibility of the multilateral trading system, as well as the increasing importance of the rule of law in international trade”.

Competition on WTO law

The European Law Students’ Association (ELSA) Moot Court Competition on WTO Law took place in 2018, marking its 16th year. Five regional rounds took place in Naples, Wrocław, Washington D.C., Bangkok and Nairobi. The competition continues to grow, with over 90 schools from all over the globe participating.

The final round was hosted jointly by the WTO and the Graduate Institute of International and Development Studies in Geneva from 19 to 23 June. Students had the opportunity to compete before WTO Secretariat officials, current and former Appellate Body members, leading academics, trade lawyers and delegates, who served as panellists in the mock dispute.

In 2018 the competition’s name was changed. It will be known as the John H. Jackson Moot Court Competition in memory of the academic who was a founding figure in international trade law. The competition will continue to be organized by ELSA International.



Appellate Body

- The Appellate Body had a busy year, with 11 appeal proceedings initiated and nine reports circulated.
- Appellate Body member Shree Baboo Chekitan Servansing's term expired on 30 September 2018. Four Appellate Body positions remained vacant at the end of 2018.
- A facilitator has been appointed to help the General Council resolve differences among WTO members on the functioning of the Appellate Body.
- The WTO's dispute settlement system faces challenges to its legitimacy and very existence, Appellate Body Chair warns.

Background on the Appellate Body

Parties to a dispute can appeal a panel's ruling. Each appeal is heard by three members of an Appellate Body comprising persons of recognized authority and unaffiliated with any government. Each member is appointed for a term of four years, with the possibility of being appointed for one further four-year term. Three members of the Appellate Body hear an appeal of a panel's ruling. The appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel.

Appeals

Twelve panel reports concerning 11 matters were appealed in 2018 (see Figure 4 and Table 7). The Appellate Body completed its work on one complex appeal concerning trade in large civil aircraft filed in 2016, and work on another such appeal filed in 2017 began in 2018.

Nine Appellate Body reports concerning six matters were circulated in 2018 (see Figure 5 and Table 8). In addressing these appeals, the Appellate Body addressed issues arising under the Anti Dumping Agreement, the Technical Barriers to Trade Agreement, the General Agreement on Tariffs and Trade 1994, the Subsidies and Countervailing Measures Agreement, the Safeguards Agreement and the Enabling Clause. Since its inception, the Appellate Body has circulated 159 reports.

The four vacancies on the Appellate Body are leading to delays in the resolution of disputes. At the end of 2018, a total of seven proceedings were on hold while five proceedings were active.

Four vacancies in the Appellate Body

Shree Baboo Chekitan Servansing of Mauritius completed his first term of office on 30 September 2018. There was no consensus among members to appoint him for a second term. He continued to complete the appeals to which he had been assigned.

Members were unable to agree by the end of 2018 on the appointment of Appellate Body members to fill four vacancies.



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Ujal Singh Bhatia chaired the Appellate Body in 2018.

As of 31 December 2018, the three Appellate Body members were:

- Ujal Singh Bhatia (India) (2011-2019),
Chair of the Appellate Body in 2018
- Thomas R. Graham (United States) (2011-2019)
- Hong Zhao (China) (2016-2020)

Impasse requires urgent resolution

The impasse in the dispute settlement mechanism, particularly in the Appellate Body, was a recurrent theme in WTO members' discussions at Heads of Delegation (HoDs) meetings at the WTO.

Many members expressed serious systemic concerns with the lengthy delays in launching a selection process to appoint new Appellate Body members. Concerns about the functioning of the Appellate Body were also brought to the fore. Several members pointed out that this was the priority issue that required urgent resolution to maintain this essential pillar of the organization that underpinned the whole trading system.

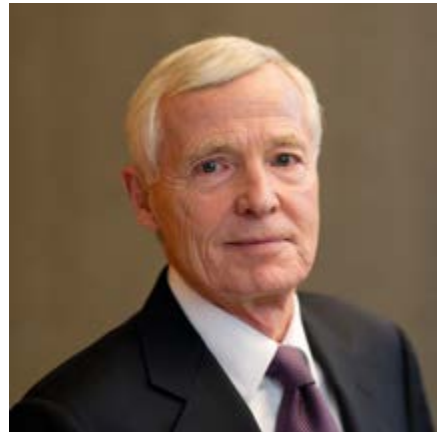
DG Azevêdo provided regular updates on his own efforts. He urged WTO members to engage actively. Some members had been thinking about ideas that could overcome the impasse or help address the situation as the impasse persisted, he said. The Director-General encouraged all members to seriously consider these ideas and put forward their own. He warned that if members did not find a solution, the multilateral trading system could be severely compromised.

By the year's end, while no breakthroughs were achieved, WTO members had started engaging more actively by putting forward ideas and proposals. Many said that it was important to expedite this discussion and find ways forward to end the impasse. In December, the General Council agreed to launch an informal process to overcome the impasse (see page 59). Ambassador David Walker of New Zealand was appointed as facilitator to assist General Council Chair Ambassador Junichi Ihara in working with WTO members to resolve differences on the functioning of the Appellate Body.

Appellate Body members



Ujal Singh Bhatia, Chair of the Appellate Body in 2018



Thomas R. Graham



Hong Zhao

Figure 4: Number of notices of appeal filed, 1995 to 2018

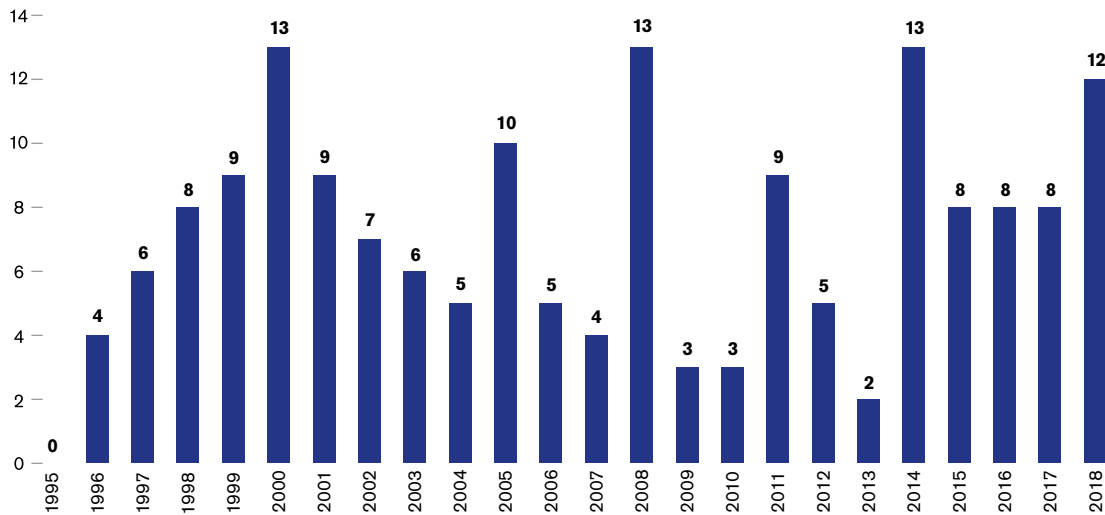


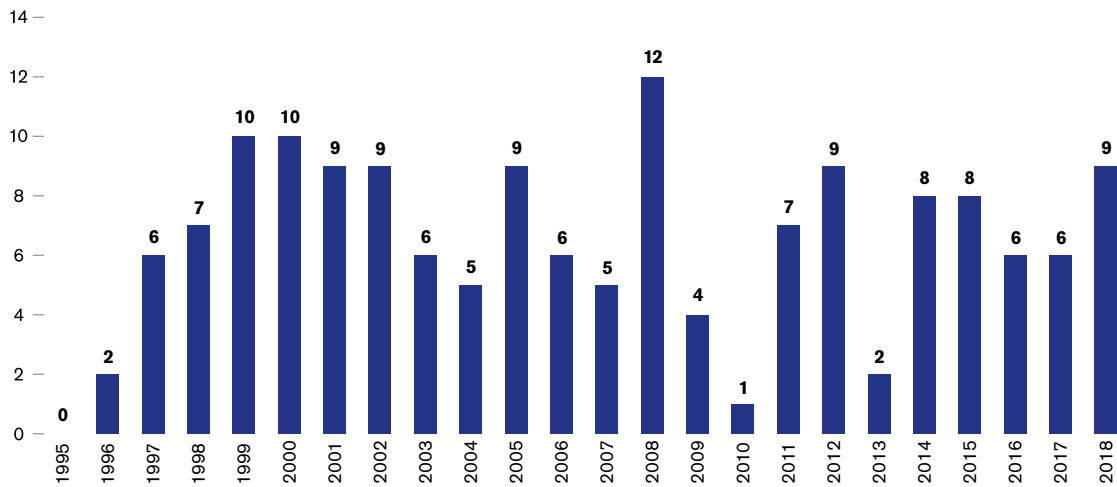
Table 7: Appeals filed and pending in 2018

Panel report appealed	Date of appeal	Appellant ^a	Document symbol	Other appellant ^b	Document symbol
US – Large Civil Aircraft (2nd complaint) (Article 21.5 – EU)	9 April 2018	Korea	WT/DS495/8	Japan	WT/DS495/9
Korea – Radionuclides	27 April 2018	United States	WT/DS437/24	China	WT/DS437/25
US – Countervailing Measures (China) (Article 21.5 – China)	28 May 2018	Japan	WT/DS504/5	Korea	WT/DS504/6
Korea – Pneumatic Valves (Japan)	19 July 2018	Honduras	WT/DS435/23	-	-
Australia – Tobacco Plain Packaging (Honduras) / Australia – Tobacco Plain Packaging (Dominican Republic)	23 August 2018	Dominican Republic	WT/DS441/23	-	-
Ukraine – Ammonium Nitrate	23 August 2018	Ukraine	WT/DS493/6	-	-
Russia – Railway Equipment	27 August 2018	Ukraine	WT/DS499/6	Russia	WT/DS499/7
US – Supercalendered Paper	27 August 2018	United States	WT/DS505/6	-	-
EU – Energy Package	21 September 2018	European Union	WT/DS476/6	Russia	WT/DS476/7
Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)	20 November 2018	Panama	WT/DS461/28	Colombia	WT/DS461/29
Morocco – Hot-Rolled Steel (Turkey)	20 November 2018	Morocco	WT/DS513/5	Turkey	WT/DS513/6
India – Iron and Steel Products	14 December 2018	India	WT/DS518/8	Japan	WT/DS518/9

^a Pursuant to Rule 20(1) of the Working Procedures.

^b Pursuant to Rule 23(1) of the Working Procedures.

Figure 5: Number of Appellate Body reports circulated, 1995 to 2018*



* Some Appellate Body reports were issued as a single document covering two or more reports.

Table 8: Appellate Body reports circulated in 2018

Case	Document symbol	Date circulated	Date adopted by the DSB
Russia – Commercial Vehicles	WT/DS479/AB/R	22 March 2018	9 April 2018
EC and certain member States – Large Civil Aircraft (Article 21.5 – US)	WT/DS316/AB/RW	15 May 2018	28 May 2018
EU – PET (Pakistan)	WT/DS486/AB/R	16 May 2018	28 May 2018
Indonesia – Iron or Steel Products* (Complaints by Viet Nam and Chinese Taipei)	WT/DS490/AB/R WT/DS496/AB/R	15 August 2018	27 August 2018
Brazil – Taxation* (Complaints by the European Union and Japan)	WT/DS472/AB/R WT/DS497/AB/R	13 December 2018	11 January 2019
US – Tuna II (Mexico) (Article 21.5 – US) / US – Tuna II (Mexico) (Article 21.5 – Mexico II)*	WT/DS381/AB/RW/USA WT/DS381/AB/RW2	14 December 2018	11 January 2019

* In these matters, Appellate Body reports bearing two separate document symbols were issued.

Challenges

In June 2018, Appellate Body Chair Ujal Singh Bhatia warned that the dispute settlement system faces increasingly complex disputes while fundamental questions have been raised about the way the WTO's dispute settlement procedures should be used. He highlighted that the impasse

in the process for appointing Appellate Body members is debilitating the Appellate Body, leading to significant delays in dispute resolution.

The Chair encouraged WTO members to engage in a reasoned and systemic dialogue that keeps at the forefront the enormous value of an effective system and the consequences of its paralysis.

David Walker was appointed as facilitator to help WTO members resolve differences on the functioning of the Appellate Body.

