WORLD TRADE ORGANIZATION

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APPELLATE BODY

ANNUAL REPORT FOR 2008

FEBRUARY 2009

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ABBREVIATIONS USED IN THIS ANNUAL REPORT

Abbreviation	**Description**
ACP	African, Caribbean, and Pacific
ADB	Asian Development Bank
Ad Note	*Ad* Note to Articles VI:2 and 3 of the GATT 1994
Amended CBD	Amended Customs Bond Directive
Anti-Dumping Agreement	*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
ATC	*Agreement on Textiles and Clothing*
CCC	Commodity Credit Corporation
CKD	completely knocked down
CRCICA	Cairo Regional Centre for International Commercial Arbitration
Decree 125	Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles (Decree of the People's Republic of China, No. 125)
Doha Article I Waiver	Fourth Session of the Ministerial Conference held in Doha, European Communities – The ACP-EC Partnership Agreement, Decision of 14 November 2001, WT/MIN(01)/15; WT/L/436
DRAMs	dynamic random access memories
DSB	Dispute Settlement Body
DSU	*Understanding on Rules and Procedures Governing the Settlement of Disputes*
EC Bananas Import Regime	Bananas import regime the European Communities had in place between 1 January 2006 and 31 December 2007, enacted through Council Regulation (EC) No. 1964/2005 of 29 November 2005 on the tariff rates for bananas
EBR	enhanced continuous bond requirement
GATS	*General Agreement on Trade in Services*
GATT 1994	*General Agreement on Tariffs and Trade 1994*
GIR	General Rules for the Interpretation of the Harmonized System
GSM	General Sales Manager
ICC	International Chamber of Commerce

Abbreviation	Description
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
Import Licensing	*Agreement on Import Licensing Procedures*
JECFA	Joint FAO/WHO Expert Committee on Food Additives
MERCOSUR	Mercado Común del Sur (Southern Common Market)
MFN	most-favoured nation
MGA	melengestrol acetate
mt	metric tonnes
OCDs	ordinary customs duties
ODCs	other duties or charges
OECD	Organisation for Economic Co-operation and Development
Rules of Conduct	*Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*, adopted by the DSB on 3 December 1996, WT/DSB/RC/1
SCGP	Supplier Credit Guarantee Program
SCM Agreement	*Agreement on Subsidies and Countervailing Measures*
SKD	semi-knocked down
SPS	sanitary and phytosanitary
SPS Agreement	*Agreement on the Application of Sanitary and Phytosanitary Measures*
TBT Agreement	*Agreement on Technical Barriers to Trade*
TRIMs Agreement	*Agreement on Trade-Related Investment Measures*
TRIPS Agreement	*Agreement on Trade-Related Aspects of Intellectual Property Rights*
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization

Abbreviation	Description
US Customs	United States Customs and Border Protection
URAA	Uruguay Round Agreements Act
USDOC	United States Department of Commerce
Vienna Convention	*Vienna Convention on the Law of Treaties*, done at Vienna, 23 May 1969, 1155 UNTS 331; 8 International Legal Materials 679
Working Procedures	*Working Procedures for Appellate Review*, WT/AB/WP/5, 4 January 2005
WTO	World Trade Organization
WTO Agreement	*Marrakesh Agreement Establishing the World Trade Organization*

WORLD TRADE ORGANIZATION
APPELLATE BODY

ANNUAL REPORT FOR 2008

I. Introduction

This Annual Report provides a summary of the activities undertaken in 2008 by the Appellate Body and its Secretariat.

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

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

Proceedings under the DSU may be divided into several stages. In the first stage, Members are required to hold consultations in an effort to reach a mutually agreed solution to the matter in dispute. If the consultations are not successful, the dispute may advance to an adjudicative stage in which the complaining Member requests that the DSB establish a panel to examine the matter. Panelists are chosen by agreement of the parties; if the parties cannot agree, either party may request that the composition of the panel be determined by the WTO Director-General. Panels shall be composed of well-qualified governmental and/or non-governmental individuals with expertise in international trade law or policy. The panel's function is to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements."[2] The panel process includes written submissions by the main parties and also by third parties that have notified their interest in the dispute to the DSB. Panels usually hold two meetings with the parties, one of which also includes a session with third parties. Panels set out their factual and legal findings in an interim report that is subject to comments by the parties. The final report is issued to the parties,

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

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

Article 17 of the DSU stipulates that a standing Appellate Body will be established by the DSB. The Appellate Body is composed of seven Members each appointed to a four-year term, with a possibility to be reappointed once. The expiration dates of terms are staggered, ensuring that not all Members begin and complete their terms at the same time. Members of the Appellate Body must be persons of recognized authority; with demonstrated expertise in law, international trade, and the subject matter of the covered agreements generally; and not be affiliated with any government. Members of the Appellate Body should be broadly representative of the membership of the WTO. Appellate Body Members elect a Chairperson to serve a one-year term, which can be extended for an additional one-year period. The Chairperson is responsible for the overall direction of Appellate Body business. Each appeal is heard by a Division of three Appellate Body Members. The process for the selection of Divisions is designed to ensure randomness, unpredictability, and opportunity for all Members to serve, regardless of their national origin. To ensure consistency and coherence in decision-making, Divisions exchange views with the other four Members of the Appellate Body before finalizing Appellate Body reports. The Appellate Body receives legal and administrative support from its Secretariat. The conduct of Members of the Appellate Body and its staff is regulated by the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*[3] (*Rules of Conduct*). These Rules emphasize that Appellate Body Members shall be independent, impartial, and avoid any direct or indirect conflict of interest.

Any party to the dispute may appeal the panel report to the Appellate Body. WTO Members that were third parties at the panel stage may also participate and make written and oral submissions in the appellate proceedings, but they may not appeal the panel report. The appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings are conducted in accordance with the procedures established in the DSU and the *Working Procedures for Appellate Review*[4] (*Working Procedures*), drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to WTO Members for their information. Proceedings include the filing of written submissions by the participants and the third participants, and an oral hearing. The Appellate Body report is circulated to WTO Members in the three official languages within 90 days of the date when the appeal was initiated, and is posted on the WTO website immediately upon circulation to Members.[5] In its report, the Appellate Body may uphold, modify, or reverse the legal findings and conclusions of the panel.

Panel and Appellate Body reports must be adopted by WTO Members acting collectively through the DSB. Under the reverse consensus rule, a report is adopted by the DSB unless all WTO Members formally object to its adoption.[6] Upon adoption, Appellate Body reports and panel reports (as modified by the Appellate Body) become binding upon the parties.

The final stage follows the adoption by the DSB of a panel or Appellate Body report that includes a finding of inconsistency of a measure of the responding Member with its WTO obligations. Article 21.3 of the DSU provides that the responding Member should in principle comply immediately. However, where immediate compliance is "impracticable", the responding Member shall have a reasonable period of time to implement the DSB's recommendations and rulings. The "reasonable period of time" may be determined by the DSB, by agreement between the parties, or

[3]The *Rules of Conduct*, as adopted by the DSB on 3 December 1996 (WT/DSB/RC/1), are directly incorporated into the *Working Procedures for Appellate Review* (WT/AB/WP/5), as Annex II thereto. (See WT/DSB/RC/2, WT/AB/WP/W/2)

[4]WT/AB/WP/5.

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

[6]Articles 16.4 and 17.14 of the DSU.

through arbitration pursuant to Article 21.3(c) of the DSU. In such arbitration, a guideline for the arbitrator is that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances. Arbitrators have indicated that the reasonable period of time shall be the shortest time possible in the implementing Member's legal system. To date, arbitrations pursuant to Article 21.3(c) of the DSU have been conducted by current or former Appellate Body Members acting in an individual capacity.

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

If the responding Member does not bring its WTO-inconsistent measure into compliance with its obligations under the covered agreements within the reasonable period of time, the complaining Member may request negotiations with the responding Member with a view to finding mutually acceptable compensation as a temporary and voluntary alternative to full compliance. Compensation is subject to acceptance by the complaining Member, and must be consistent with the WTO agreements. If no satisfactory compensation is agreed upon, the complaining Member may request authorization from the DSB, pursuant to Article 22 of the DSU, to suspend the application of concessions or other obligations under the WTO agreements to the responding Member. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment resulting from non-compliance with the DSB recommendations and rulings. The responding Member may request arbitration if it objects to the level of suspension proposed or considers that the principles and procedures concerning the sector or covered agreement to which the suspension may apply have not been followed.[7] Such arbitration shall be carried out by the original panel, if its members are available. Compensation and the suspension of concessions or other obligations are temporary measures; neither is to be preferred to full implementation.[8]

A party to a dispute may request good offices, conciliation, or mediation as alternative methods of dispute resolution at any time.[9] In addition, under Article 25 of the DSU, WTO Members may have recourse to arbitration as an alternative to the regular procedures set out in the DSU and described above.[10] Recourse to arbitration and the procedures to be followed are subject to mutual agreement of the parties.[11]

[7]In principle, the suspension of concessions or other obligations must relate to the same trade sector or agreement as the measure found to be inconsistent. However, if this is impracticable or ineffective for the complaining Member and if circumstances are serious enough, the complaining party may seek authorization to suspend concessions with respect to other sectors or agreements.

[8]Article 22.1 of the DSU.

[9]Article 5 of the DSU.

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

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

II. Composition of the Appellate Body

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

On 27 November 2007, the DSB appointed four new Members of the Appellate Body. Lilia R. Bautista (Philippines) and Jennifer Hillman (United States) were sworn in on 17 December 2007, and replaced Merit E. Janow (United States) and Yasuhei Taniguchi (Japan), whose terms expired on 13 December 2007. Shotaro Oshima (Japan) and Yuejiao Zhang (China) began their terms of office on 1 June 2008, replacing Georges Abi-Saab (Egypt) and A.V. Ganesan (India).[12] Mr. Oshima and Ms. Zhang had been sworn in on 20 May 2008.

The composition of the Appellate Body in 2008 and the respective terms of office of its Members are set out in Tables 1A and 1B.

TABLE 1A: COMPOSITION OF THE APPELLATE BODY – 1 JANUARY TO 31 MAY 2008

Name	Nationality	Term(s) of office
Georges Michel Abi-Saab	Egypt	2000–2004 2004–2008
Luiz Olavo Baptista	Brazil	2001–2005 2005–2009
Lilia R. Bautista	Philippines	2007–2011
Arumugamangalam Venkatachalam Ganesan	India	2000–2004 2004–2008
Jennifer Hillman	United States	2007–2011
Giorgio Sacerdoti	Italy	2001–2005 2005–2009
David Unterhalter	South Africa	2006–2009

TABLE 1B: COMPOSITION OF THE APPELLATE BODY – 1 JUNE TO 31 DECEMBER 2008

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

[12]WT/DSB/M/242.

In accordance with Rule 15 of the *Working Procedures*, Mr. Ganesan was authorized by the Appellate Body to complete the disposition of the appeals in *US – Shrimp (Thailand)* and *US – Customs Bond Directive*, even though his second term as Appellate Body Member was to expire before the completion of the appellate proceedings. Likewise, Mr. Abi-Saab was authorized to complete the disposition of the appeals in *US – Continued Suspension* and *Canada – Continued Suspension*, which also would not be completed before the expiration of his second term as Appellate Body Member.

On 12 November 2008, Mr. Baptista informed the Chairman of the DSB that, owing to health reasons, he was compelled to resign from the office of Appellate Body Member.[13] Pursuant to Rule 14 of the *Working Procedures*, his resignation becomes effective in 90 days, that is, 13 February 2009.

Mr. Baptista served as Chairman of the Appellate Body from 18 December 2007 to 17 December 2008.[14] Pursuant to Rule 5(1) of the *Working Procedures*, Appellate Body Members elected Mr. David Unterhalter to serve as Chairman of the Appellate Body from 18 December 2008 to 11 December 2009.[15]

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

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

III. Appeals

Under Rule 20(1) of the *Working Procedures*, an appeal is commenced by giving notice in writing to the DSB and filing a Notice of Appeal with the Appellate Body Secretariat. Rule 23(1) of the *Working Procedures* allows a party to the dispute other than the initial appellant to join the appeal, or appeal on the basis of other alleged errors, by filing a Notice of Other Appeal within 12 days of the filing of the Notice of Appeal.

Thirteen appeals were filed in 2008, eight of which included an "other appeal". Ten appeals related to original proceedings and three appeals related to panel proceedings brought pursuant to Article 21.5 of the DSU. Further information regarding the thirteen appeals filed in 2008 is provided in Table 2.

[13]WT/DSB/46.
[14]WT/DSB/45.
[15]WT/DSB/48.

TABLE 2: APPEALS FILED IN 2008

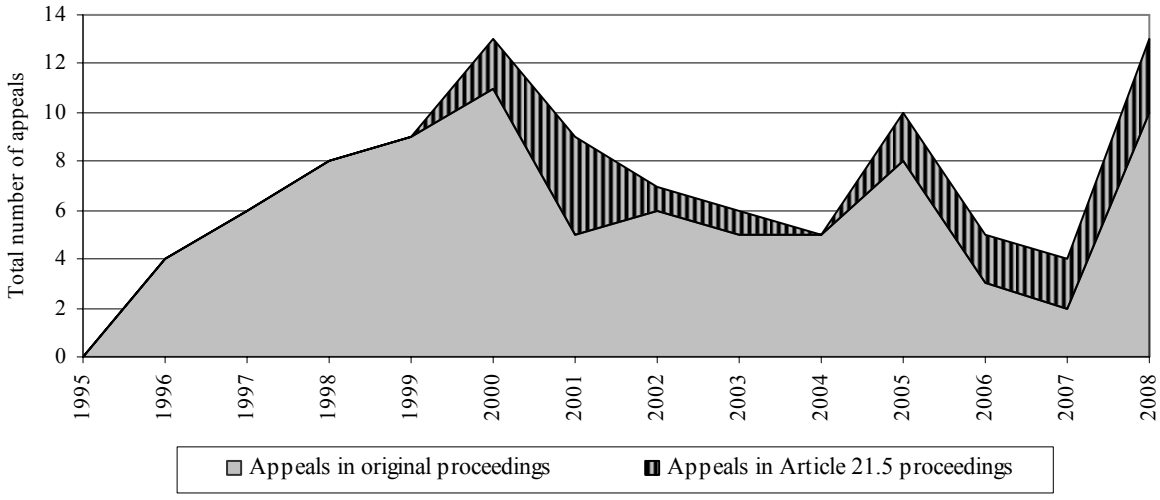
Panel reports appealed	Date of appeal	Appellant [a]	Document number	Other appellant [b]	Document number
US – Stainless Steel (Mexico)	31 Jan 2008	Mexico	WT/DS344/7	- - -	- - -
US – Upland Cotton (Article 21-5 – Brazil)	12 Feb 2008	United States	WT/DS267/33	Brazil	WT/DS267/34
US – Shrimp (Thailand)	17 Apr 2008	Thailand	WT/DS343/10	United States	WT/DS343/11
US – Customs Bond Directive	17 Apr 2008	India	WT/DS345/9	United States	WT/DS345/10
US – Continued Suspension	29 May 2008	European Communities	WT/DS320/12	United States	WT/DS320/13
Canada – Continued Suspension	29 May 2008	European Communities	WT/DS321/12	Canada	WT/DS321/13
India – Additional Import Duties	1 Aug 2008	United States	WT/DS360/8	India	WT/DS360/9
EC – Bananas III (Article 21.5 – Ecuador II)	28 Aug 2008	European Communities	WT/DS27/89	Ecuador	WT/DS27/91
EC – Bananas III (Article 21.5 – US)	28 Aug 2008	European Communities	WT/DS27/90	- - -	- - -
China – Auto Parts (EC)	15 Sept 2008	China	WT/DS339/12	- - -	- - -
China – Auto Parts (US)	15 Sept 2008	China	WT/DS340/12	- - -	- - -
China – Auto Parts (Canada)	15 Sept 2008	China	WT/DS342/12	- - -	- - -
US – Continued Zeroing	6 Nov 2008	European Communities	WT/DS350/11	United States	WT/DS350/12

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

Appellate proceedings were consolidated in *US – Shrimp (Thailand)* and *US – Customs Bond Directive*; *US – Continued Suspension* and *Canada – Continued Suspension*; *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)*; and *China – Auto Parts (EC)*, *China – Auto Parts (US)*, and *China – Auto Parts (Canada)*. Further information about the consolidation of these appeals is provided in section VI below.

Information on the number of appeals filed each year since 1995 is provided in Annex 3. Figure 1 shows the ratio of appeals dealing with original disputes to appeals dealing with complaints brought pursuant to Article 21.5 of the DSU.

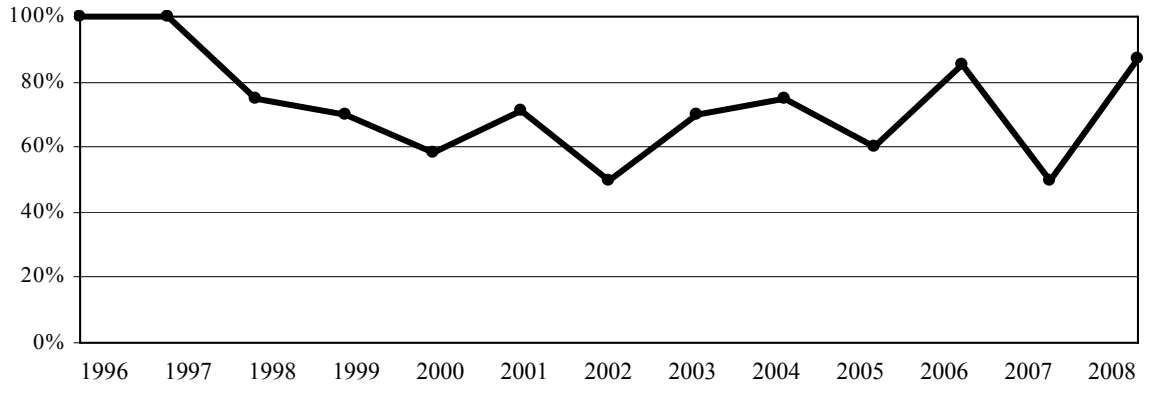
Figure 1: Appeals in original proceedings and Article 21.5 proceedings 1996–2008



There were three panel reports circulated in 2007 for which the 60-day deadline for adoption or appeal did not expire until 2008.[16] Two of these panel reports were appealed.[17] Thirteen panel reports were circulated in 2008; for one, the 60-day deadline for adoption or appeal does not expire until February 2009.[18] One panel report circulated in 2008 was adopted by the DSB without having been appealed.[19] In total, 13 of the 15 panel reports for which the 60-day deadline expired in 2008 were appealed.

Figure 2 shows the percentage of panel reports appealed by year of adoption since 1996. No panel reports were appealed in 1995. The overall average of panel reports that have been appealed from 1995 to 2008 is 68 per cent.

Figure 2: Percentage of panel reports appealed 1996–2008 *



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

[16]The Panel Reports in *EC – Salmon (Norway)*, *US – Upland Cotton (Article 21.5 – Brazil)*, and *US – Stainless Steel (Mexico)* were circulated to WTO Members on 16 November and 18 and 20 December 2007, respectively.

[17]The Panel Reports in *US – Stainless Steel (Mexico)* and *US – Upland Cotton (Article 21.5 – Brazil)* were appealed on 31 January and 12 February 2008, respectively. The Panel Report in *EC – Salmon (Norway)* was adopted by the DSB on 15 January 2008, without appeal.

[18]The Panel Report in *US – Zeroing (EC) (Article 21.5 – EC)* was circulated to WTO Members on 17 December 2008.

[19]The Panel Report in *Mexico – Olive Oil* was adopted by the DSB on 21 October 2008.

IV. Appellate Body Reports

Twelve Appellate Body reports were circulated during 2008. As of the end of 2008, the Appellate Body has circulated a total of 96 reports. Table 3 provides further details on the Appellate Body reports circulated in 2008.

TABLE 3: APPELLATE BODY REPORTS CIRCULATED IN 2008

Case Title	Document number	Date circulated	Date adopted by the DSB
US – Stainless Steel (Mexico)	WT/DS344/AB/R	30 April 2008	20 May 2008
US – Upland Cotton (Article 21.5 – Brazil)	WT/DS267/AB/RW	2 June 2008	20 June 2008
US – Shrimp (Thailand)	WT/DS343/AB/R	16 July 2008	1 August 2008
US – Customs Bond Directive	WT/DS345/AB/R	16 July 2008	1 August 2008
US – Continued Suspension	WT/DS320/AB/R	16 October 2008	14 November 2008
Canada – Continued Suspension	WT/DS321/AB/R	16 October 2008	14 November 2008
India – Additional Import Duties	WT/DS360/AB/R	30 October 2008	17 November 2008
EC – Bananas III (Article 21.5 – Ecuador II)	WT/DS27/AB/RW2/ECU and Corr.1	26 November 2008	11 December 2008
EC – Bananas III (Article 21.5 – US)	WT/DS27/AB/RW/USA and Corr.1	26 November 2008	22 December 2008
China – Auto Parts (EC)	WT/DS339/AB/R	15 December 2008	12 January 2009
China – Auto Parts (US)	WT/DS340/AB/R	15 December 2008	12 January 2009
China – Auto Parts (Canada)	WT/DS342/AB/R	15 December 2008	12 January 2009

A. *Agreements Covered*

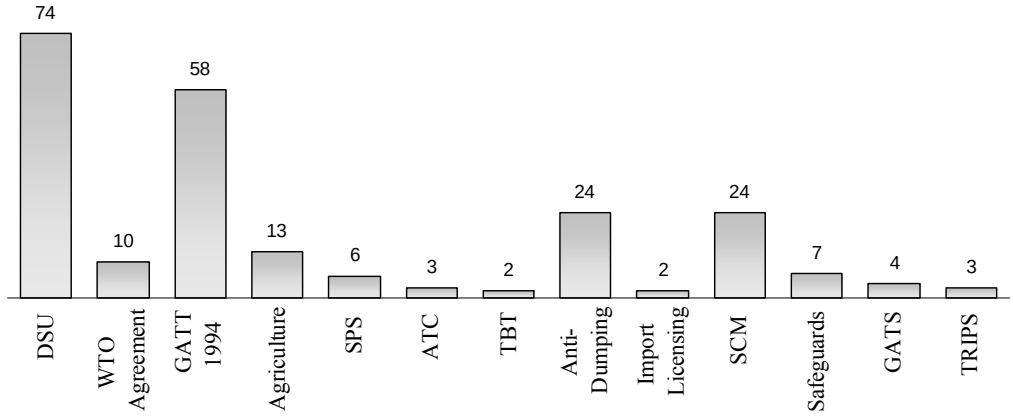
The following table shows which WTO agreements were addressed in the twelve Appellate Body reports circulated in 2008.

TABLE 4: WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED IN 2008

Case	Document number	WTO agreements covered
US – Stainless Steel (Mexico)	WT/DS344/AB/R	*Anti-Dumping Agreement* GATT 1994 DSU
US – Upland Cotton (Article 21.5 – Brazil)	WT/DS267/AB/RW	*SCM Agreement* *Agreement on Agriculture* DSU
US – Shrimp (Thailand)	WT/DS343/AB/R	*Anti-Dumping Agreement* *SCM Agreement* GATT 1994 DSU
US – Customs Bond Directive	WT/DS345/AB/R	*Anti-Dumping Agreement* *SCM Agreement* GATT 1994 DSU
US – Continued Suspension	WT/DS320/AB/R	DSU *SPS Agreement*
Canada – Continued Suspension	WT/DS321/AB/R	DSU *SPS Agreement*
India – Additional Import Duties	WT/DS360/AB/R	GATT 1994
EC – Bananas III (Article 21.5 – Ecuador II)	WT/DS27/AB/RW2/ECU and Corr.1	GATT 1994 DSU *WTO Agreement*
EC – Bananas III (Article 21.5 – US)	WT/DS27/AB/RW/USA and Corr.1	GATT 1994 DSU
China – Auto Parts (EC)	WT/DS339/AB/R	GATT 1994
China – Auto Parts (US)	WT/DS340/AB/R	GATT 1994
China – Auto Parts (Canada)	WT/DS342/AB/R	GATT 1994

Figure 3 shows the number of times specific WTO agreements have been addressed in the 96 Appellate Body reports circulated from 1996 through 2008.

Figure 3: WTO agreements addressed in appeals 1996–2008



Annex 5 contains a breakdown by year of the frequency with which the specific WTO agreements have been addressed in appeals from 1996 through 2008.

B. *Findings and Conclusions*

The Appellate Body's findings and conclusions in the twelve Appellate Body reports circulated in 2008 are summarized below.

- **Appellate Body Report, *US – Stainless Steel (Mexico)*, WT/DS344/AB/R**

This dispute concerned the calculation of margins of dumping by the United States Department of Commerce (USDOC) based on a methodology that does not fully reflect export prices that are above normal value (zeroing).

Mexico appealed the panel's finding that simple zeroing in assessment reviews is not, as such, inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, and 9.3 of the *Anti-Dumping Agreement*.[20] According to Mexico's description, simple zeroing in periodic reviews occurs when an investigating authority compares the prices of individual export transactions against monthly weighted average normal values and treats as zero the results of comparisons where the export price exceeds the monthly weighted average normal value, when aggregating comparison results in order to calculate a margin of dumping for the product under consideration. Mexico argued that, in any anti-dumping proceedings—including assessment reviews under Article 9.3 of the *Anti-Dumping Agreement*—the margin of dumping must be calculated in respect of individual exporters or foreign producers for the product under consideration as a whole and that dumping cannot exist in relation to a specific type, model, or category of the product under consideration or in relation to individual transactions.

[20]The term "assessment review" describes the periodic review of the amount of anti-dumping duty by the USDOC, which is required under United States law at least once during each 12-month period beginning on the anniversary of the date of publication of an anti-dumping duty order, if a request for such a review has been received. In the case of the first assessment proceedings following the issuance of the Notice of Antidumping Duty Order, the period of time may extend to a period of up to 18 months in order to cover all entries that may have been subject to provisional measures.

The Appellate Body reversed the panel's finding and found instead that simple zeroing in assessment reviews is, as such, inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*, because it results in the levying of anti-dumping duties that exceed the exporter's or foreign producer's margin of dumping—which operates as a ceiling for the amount of anti-dumping duties that can be levied in respect of the sales made by an exporter.

Based on an analysis of the relevant provisions of the GATT 1994 and the *Anti-Dumping Agreement*[21], the Appellate Body found that: (a) "dumping" and "margin of dumping" are exporter-specific concepts; (b) "dumping" and "margin of dumping" have the same meaning throughout the *Anti-Dumping Agreement*; and (c) an individual margin of dumping is to be established for each investigated exporter or foreign producer, and the amount of anti-dumping duty levied in respect of an exporter or foreign producer shall not exceed its margin of dumping. The Appellate Body further emphasized that the concepts of "dumping", "injury", and "margin of dumping" are interlinked and that, therefore, these terms should be considered and interpreted in a coherent and consistent manner for all parts of the *Anti-Dumping Agreement*. Based on this reasoning, the Appellate Body disagreed with the proposition that importers "dump" and can have "margins of dumping". As it had done in previous cases, the Appellate Body also rejected the notion that dumping and margins of dumping can be found to exist at the level of individual transactions. The Appellate Body explained that such an interpretation cannot be reconciled with a proper interpretation and application of Articles 3, 5.8, 6.10, 8, 9.4, 9.5, 11.2, and 11.3 of the *Anti-Dumping Agreement*.

As regards the question of whether it is permissible—in duty assessment proceedings under Article 9.3 of the *Anti-Dumping Agreement*—to disregard the amount by which the export price exceeds the normal value, the Appellate Body recalled the requirement in Article 9.3 that the amount of anti-dumping duty "shall not exceed the margin of dumping as established under Article 2" of that Agreement. The Appellate Body observed that its examination of the context of Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* had confirmed that the term "margin of dumping", as used in those provisions, relates to the "exporter" of the "product" under consideration and not to individual "importers" or "import transactions", and that the concepts of "dumping" and "dumping margin" apply in the same manner throughout the *Anti-Dumping Agreement*. The Appellate Body concluded that, under Article VI:2 and Article 9.3, the margin of dumping established for an exporter in accordance with Article 2 operates as a ceiling for the total amount of anti-dumping duties that can be levied on the entries of the subject merchandise from that exporter. The Appellate Body added that it saw no basis in Articles VI:1 and VI:2 of the GATT 1994 or in Articles 2 and 9.3 of the *Anti-Dumping Agreement* for disregarding the results of comparisons where the export price exceeds the normal value when calculating the margin of dumping for an exporter or foreign producer.

Mexico also appealed the panel's finding that simple zeroing, as applied by the USDOC in the five assessment reviews at issue in this dispute, is not inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement*. The Appellate Body reversed this finding for the same reasons it reversed the panel's finding that simple zeroing in assessment reviews is, as such, inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*. The Appellate Body found that the United States acted inconsistently with its obligations under Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* by using simple zeroing in the five assessment reviews at issue in this dispute.

In relation to Article VI:1 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*, Mexico requested the Appellate Body not only to reverse the panel's findings, but also to find that the United States acted inconsistently with these provisions. However, having reversed all the panel findings that had been appealed, the Appellate Body did not consider it necessary to make an

[21]Including Article VI of the GATT 1994 and Articles 2.1, 3.1, 3.5, 5.2, 5.8, 6.10, 6.11, 6.7, 8.1, 8.2, 8.5, 9.1, 9.3, 9.4, 9.5, 11.1, and 11.2 of the *Anti-Dumping Agreement.*

additional finding on Mexico's claims under Article VI:1 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*.

Mexico additionally appealed the panel's finding that zeroing in assessment reviews is not, as such, inconsistent with Article 2.4 of the *Anti-Dumping Agreement*. Mexico contended that simple zeroing violates the requirement in Article 2.4 to make a fair comparison of normal value and export price, because it distorts the prices of certain export transactions and artificially inflates the magnitude of dumping given that export prices that exceed the normal value are systematically ignored. The Appellate Body reversed the panel's finding because it was based on the panel's reasoning and findings relating to Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement*, which had been reversed. The Appellate Body noted that the panel offered no additional reasoning that could independently support its finding under Article 2.4. Having reversed all the panel findings that had been appealed, and recalling that it had found zeroing to be inconsistent with Article 2.4 in previous disputes, the Appellate Body found it unnecessary to make a further finding in addition to the reversal of the panel's finding under Article 2.4.

Finally, Mexico alleged that the panel acted inconsistently with Article 11 of the DSU by making findings that "directly contradict" those in previous Appellate Body reports adopted by the DSB that address identical issues with respect to the same party. More specifically, Mexico asserted that, by making findings and reaching conclusions that are identical to those that have already been reversed by previous Appellate Body reports adopted by the DSB, the panel had failed to comply with its function under Article 11 to assist the DSB in discharging its responsibilities under the DSU.

The Appellate Body recalled that Appellate Body reports are not binding except with respect to resolving the particular dispute between the parties. The Appellate Body emphasized, however, that this does not mean that subsequent panels are free to disregard the legal interpretations and reasoning contained in previous Appellate Body reports that have been adopted by the DSB. The legal interpretations embodied in adopted panel and Appellate Body reports become part and parcel of the *acquis* of the WTO dispute settlement system. The Appellate Body added that ensuring "predictability" in the dispute settlement system, as contemplated in Article 3.2 of the DSU, implies that, absent cogent reasons, an adjudicatory body will resolve the same legal question in the same way in a subsequent case.

Moreover, the Appellate Body noted that, in the hierarchical structure contemplated in the DSU, panels and the Appellate Body have distinct roles to play. It also emphasized that the creation of the Appellate Body by WTO Members to review legal interpretations developed by panels shows that Members recognized the importance of consistency and stability in the interpretation of their rights and obligations under the covered agreements. The Appellate Body observed that this is essential to promote "security and predictability" in the dispute settlement system, and to ensure the "prompt settlement" of disputes. The Appellate Body further underscored that the panel's failure to follow previously adopted Appellate Body Reports addressing the same issues undermines the development of a coherent and predictable body of jurisprudence clarifying Members' rights and obligations under the covered agreements as contemplated under the DSU. Clarification, as envisaged in Article 3.2 of the DSU, elucidates the scope and meaning of the provisions of the covered agreements in accordance with customary rules of interpretation of public international law. While the application of a provision may be regarded as confined to the context in which it takes place, the relevance of clarification contained in an adopted Appellate Body report is not limited to the application of a particular provision in a specific case.

Against this background, the Appellate Body emphasized that it was deeply concerned about the panel's decision to depart from well-established Appellate Body jurisprudence clarifying the interpretation of the same legal issues and explained that the panel's approach had serious implications for the proper functioning of the WTO dispute settlement system. Nevertheless, considering that the panel's failure flowed, in essence, from the panel's misguided understanding of the legal provisions at

issue, and having corrected the panel's erroneous legal interpretation and reversed all of the panel's findings that had been appealed, the Appellate Body did not make an additional finding that the panel also failed to discharge its duties under Article 11 of the DSU.

- **Appellate Body Report, *US – Upland Cotton (Article 21.5 – Brazil)*, WT/DS267/AB/RW**

This dispute concerned a challenge brought by Brazil against the measures taken by the United States to comply with the DSB's recommendations and rulings in *US – Upland Cotton*. In the original proceedings, the panel and the Appellate Body found that the United States provided domestic support, export subsidies, and import substitution subsidies to upland cotton, as well as export credit guarantees to upland cotton and certain other products, in contravention of certain provisions of the *Agreement on Agriculture* and the *SCM Agreement*.

The United States appealed two of the panel's preliminary conclusions. First, the United States appealed the panel's conclusion that Brazil's claims regarding export credit guarantees issued under the revised General Sales Manager (GSM) 102 programme for pig meat and poultry meat were within the scope of the compliance proceedings. The Appellate Body stated that it would first identify the "measure taken to comply" by the United States, and would then determine whether there were any limitations on the claims that could be raised by Brazil with respect to that measure in the compliance proceedings. The Appellate Body noted that, following the adoption of the DSB's recommendations and rulings, the United States revised the fee structure in relation to the GSM 102 programme in its totality, and the new fee structure applied to export credit guarantees for all eligible commodities without distinction. Therefore, the Appellate Body considered that the revised GSM 102 programme should be treated in an integrated manner as the "measure taken to comply". Turning to the question of whether there was a limitation on the claims that could be raised by Brazil, the Appellate Body emphasized that the scope of claims that may be raised in Article 21.5 proceedings is not unbounded. The Appellate Body found that, because Brazil's claims against export credit guarantees provided under the original GSM 102 programme to pig meat and poultry meat had not been resolved on the merits in the original proceedings, allowing Brazil's claims in the Article 21.5 proceedings would not give Brazil an unfair "second chance" to make a case that it had failed to make out in the original proceedings. On this basis, the Appellate Body upheld the panel's conclusion that Brazil's claims relating to pig meat and poultry meat were properly within the scope of the Article 21.5 proceedings. As a result, the Appellate Body found it unnecessary to address Brazil's conditional other appeal that the panel erred in finding that the revised GSM 102 programme itself was not the measure that was the subject of Brazil's claims.

Secondly, the United States appealed the panel's finding that marketing loan and counter-cyclical payments made after 21 September 2005[22] were properly within the scope of the Article 21.5 proceedings.[23] The Appellate Body explained that Article 7.8 of the *SCM Agreement* specifies the actions that the implementing Member must take when a subsidy granted or maintained by that Member has been found to have resulted in adverse effects to the interests of another Member. It noted that the use of the terms "shall take" and "shall withdraw" indicate that compliance with Article 7.8 of the *SCM Agreement* will usually involve some action by the respondent Member.

[22]Article 7.9 of the *SCM Agreement* provides that "[i]n the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures ...". The panel and Appellate Body reports in the original proceedings were adopted on 21 March 2005. Thus, the six-month period referred to in Article 7.9 expired on 21 September 2005.

[23]Before the panel, the United States submitted that the subsidies subject to the obligation in Article 7.8 of the *SCM Agreement* to "take appropriate steps to remove the adverse effects or ... withdraw the subsidy" were the subsidies provided during marketing years 1999-2002 which the original panel had found to cause "present" serious prejudice. Thus, the United States argued that marketing loan and counter-cyclical payments made after 21 September 2005 were not properly within the scope of the Article 21.5 proceedings.

A Member would normally not be able to abstain from taking any action on the assumption that the subsidy will expire or that the adverse effects of the subsidy will dissipate on their own. The Appellate Body further reasoned that, in the case of recurring annual payments, the obligation in Article 7.8 would extend to payments "maintained" by the respondent Member beyond the time period examined by the panel for purposes of determining the existence of serious prejudice, as long as those payments continue to have adverse effects. Otherwise, the adverse effects of subsequent payments would simply replace the adverse effects that the implementing Member was under an obligation to remove. Thus, the Appellate Body agreed with the panel that, "to the extent marketing loan payments and counter-cyclical payments made by the United States after 21 September 2005 are provided under the same conditions and criteria as the marketing loan payments and counter-cyclical payments subject to the original panel's finding of 'present' serious prejudice, they are subject to the obligation of the United States under Article 7.8 of the *SCM Agreement* to take appropriate steps to remove the adverse effects of the subsidy". For these reasons, the Appellate Body upheld the panel's finding that Brazil's claims against marketing loan and counter-cyclical payments made by the United States after 21 September 2005 were properly within the scope of the Article 21.5 proceedings. Because the Appellate Body upheld this finding of the panel, it did not find it necessary to address Brazil's conditional other appeal that the panel erred in concluding that the original panel's findings did not cover the marketing loan and counter-cyclical payments programmes *per se*.

Another issue appealed by the United States was the panel's finding that the effect of the marketing loan and counter-cyclical payments provided after 21 September 2005 is significant price suppression within the meaning of Article 6.3(c) of the *SCM Agreement*.[24] The United States alleged that the panel's finding was legally erroneous and that the panel failed to make an objective assessment of the matter as required by Article 11 of the DSU. The Appellate Body began by setting out its understanding of the type of analysis a panel is expected to conduct when determining whether the effect of subsidies is significant price suppression. The Appellate Body distinguished between price suppression and price depression[25] and noted that, in contrast to price depression, price suppression is not a directly observable phenomenon. Therefore, the examination of price suppression necessarily involves a counterfactual analysis of whether prices would have been higher or would have increased more in the absence of the subsidies.

The Appellate Body noted that the analysis of price suppression would usually focus on the effects of the subsidies on production levels by examining whether there was more production than there otherwise would have been as a result of the marketing loan and counter-cyclical payments. This marginal production attributable to the subsidy would be expected to have an effect on world prices, particularly if the subsidy is provided in a country with a meaningful share of world output, such as the United States. The Appellate Body further observed that one way of doing the counterfactual analysis is by using economic modelling and other quantitative techniques. The Appellate Body added that in this case the panel could have gone further in its evaluation and comparative analysis of the economic simulations presented by the parties and the particular parameters used.

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[24]Article 6.3(c) of the *SCM Agreement* provides:

> Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:
>
> ...
>
> (c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market[.]

[25]Price depression concerns a situation where prices decrease; by contrast, price suppression refers to a scenario where prices would have been higher, or would have risen more, in the absence of the challenged subsidy.

Regarding the claim by the United States that the panel failed to determine what degree of price suppression it considered "significant", the Appellate Body stated that the panel could have provided a clearer explanation of how the factors that it examined supported the finding that the price suppression was "significant". Nevertheless, it ultimately upheld the panel's finding, noting that several of the factors evaluated by the panel supported the proposition that the effect of marketing loan and counter-cyclical payments is "significant" price suppression in the world market for upland cotton. On the issue of causation and non-attribution, the United States claimed that the panel had failed to conduct a proper non-attribution analysis under Article 6.3(c) of the *SCM Agreement* and upheld the panel's overall causation analysis. The Appellate Body accepted the panel's choice of a "but for" approach for the assessment of causation under Article 6.3(c) of the *SCM Agreement*, noting that the standard chosen by the panel reflected the counterfactual nature of the price suppression analysis, whereby the panel had to determine whether the world price of upland cotton would have been higher in the absence of the subsidies (that is, but for the subsidies). The Appellate Body understood the panel's "but for" standard as requiring that price suppression be the effect of the subsidies at issue and that there be a "genuine and substantial relationship of cause and effect" between the subsidies and price suppression. The Appellate Body then turned to the United States' allegation that the panel had failed to make a proper non-attribution analysis of price suppression caused by factors other than the subsidies. The Appellate Body found that the panel was not required to conduct a more thorough analysis of the role of China in world upland cotton trade (the only other factor raised by the United States), because the United States had not demonstrated *prima facie* that Chinese consumption of cotton and changes in China's trade policies have a suppressing effect on the price of upland cotton in the world market.

The Appellate Body also rejected the claims by the United States against the panel's analysis of a number of factors which supported the findings of significant price suppression, namely: (i) that the revenue-stabilizing effect of marketing loan and counter-cyclical payments insulated United States producers of upland cotton from market signals; (ii) the panel's choice of the parameters for determining the cost of production of upland cotton in the United States which the panel used in its analysis of the gap between the total costs of production of United States upland cotton producers and their market revenues; (iii) the panel's treatment of economic simulation models; (iv) the panel's analysis of the impact of the elimination of Step 2 payments; (v) the inferences drawn by the panel from the magnitude of marketing loan and counter-cyclical payments; and (vi) the United States' substantial proportionate influence in the world upland cotton market. The Appellate Body explained that many of the claims raised by the United States against the panel's reasoning were primarily directed at the panel's appreciation and weighing of the evidence, and the inferences that the panel drew from the evidence, both of which generally fall within the panel's authority as trier of fact. The Appellate Body reviewed those allegations by the United States under the objective assessment standard of Article 11 of the DSU. The Appellate Body found that, in the analysis of these various factors, the panel neither disregarded, distorted, nor misrepresented evidence and arguments submitted by the parties, and that the panel did not rely excessively on the findings from the original proceedings or fail to provide reasoned and adequate explanations for its conclusions in the light of plausible alternative explanations. For these reasons, the Appellate Body found that the panel did not fail to carry out an objective assessment of the facts, as required by Article 11 of the DSU and upheld the panel's conclusion that the effect of marketing loan and counter-cyclical payments is significant price suppression.

The United States further claimed that the panel erred in its application of item (j) of the Illustrative List of Export Subsidies to the facts of the case in finding that the revised GSM 102 export credit guarantee programme constitutes an "export subsidy". In addition, the United States alleged that, in making this finding, the panel failed to make an objective assessment of the matter, as required by Article 11 of the DSU.

Under item (j) of the Illustrative List of Export Subsidies, the "provision by governments ... of export credit guarantee ... programmes ... at premium rates which are inadequate to cover the long-

term operating costs and losses of the programmes" constitutes an "export subsidy". The Appellate Body recalled its findings in the original proceedings that the test set out in item (j) is essentially financial and that the focus of item (j) is on the inadequacy of the premiums. The Appellate Body further explained that, to the extent relevant data is available, an analysis under item (j) will primarily involve a quantitative evaluation of the financial performance of a programme, and may include both historical data and projections. Qualitative evidence concerning a programme's structure, design, and operation may serve as a supplementary means for assessing the adequacy of premiums. Thus, as a general matter, the Appellate Body considered it appropriate for the panel to have first examined the evidence of a quantitative nature, before evaluating evidence concerning the structure, design, and operation of the programme as additional elements for appraisal.

The United States argued that the panel erroneously relied on evidence submitted by Brazil regarding initial estimates reported in the 2007 and 2008 United States budgets, which projected losses for the guarantees issued under the revised GSM 102 programme between 2006 and 2008 (namely, the 2006-2008 cohorts). A cohort is comprised of all guarantees issued in a given year. In so doing, the United States argued, the panel improperly failed to take into account re-estimates data submitted by the United States, which projected profits for the GSM 102, GSM 103, and Supplier Credit Guarantee Program (SCGP) export credit guarantee programmes from 1992 to 2006 (the data relating to 2006 concerned the operation of the revised GSM 102 programme).

As regards the panel's reliance on the original panel's reasoning that the re-estimates would not necessarily turn all initially estimated costs into profits, the Appellate Body noted the different factual circumstances in the original and the compliance proceedings. More specifically, while the re-estimates data submitted to the original panel showed overall losses, the re-estimates data submitted to the panel indicated overall profits for the period 1992-2006, as well as profits for two cohorts closed after the original proceedings. Moreover, the Appellate Body expressed serious concern with regard to the panel's statement that "because [the re-estimates] are revised *estimates*, they do not establish that the programmes were provided at no net cost to the United States Government". The Appellate Body observed that even though both the initial estimates and the re-estimates (except for the closed cohorts) are projections and subject to uncertainty, the panel marginalized the re-estimates data on the basis of this uncertainty; at the same time, the panel considered the initial estimates important even though they too are estimates. The Appellate Body further noted that the panel next examined the Commodity Credit Corporation (CCC)'s Financial Statements for fiscal years 2005 and 2006 submitted by Brazil, which reported an estimated loss relating to the CCC's export credit guarantees outstanding as of September 2006. Thus, the Appellate Body found that the panel dismissed the import of the re-estimates, which was the central piece of evidence relied upon by the United States for its defence, on the basis of internally inconsistent reasoning, and compounded the matter by relying on evidence that suffered from the same limitation and uncertainty as the re-estimates. Therefore, the Appellate Body found that in dismissing the import of the re-estimates data, the panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the matter before it. On this basis, the Appellate Body reversed the panel's intermediate finding that "the initial subsidy estimates provide a strong indication that GSM 102 export credit guarantees are provided against premia which are inadequate to cover the long-term operating costs and losses of the GSM 102 programme."

Turning to examine whether it could complete the analysis, the Appellate Body noted that both the re-estimates data and the CCC's Financial Statements were relevant for the quantitative appraisal of the long-term financial performance of the revised GSM 102 programme, because both were routinely produced by the United States Government and neither was produced specifically for this dispute. Yet, the Appellate Body recalled that the former projected overall profits whereas the latter estimated loss. Therefore, the Appellate Body found that the quantitative evidence submitted by Brazil and the United States gave rise to equal probabilities that point to opposite conclusions as to the binary outcome in item (j), that is, whether an export credit guarantee programme is making losses or profits. The Appellate Body went on to review the panel's examination of the additional evidence

submitted by Brazil concerning the structure, design, and operation of the revised GSM 102 programme, "which further convince[d]" the panel that export credit guarantees issued under the revised GSM 102 programme were provided at premiums inadequate to cover its long-term operating costs and losses, and found no reversible errors. Such evidence included various factors relating to the structure, design, and operation of the revised GSM 102 programme, and a comparison of GSM 102 fees with minimum premium rates provided in the OECD Arrangement on Officially Supported Export Credits. The Appellate Body upheld the panel's finding that the revised GSM 102 programme is not designed to cover its long-term operating costs and losses. It concluded that, in the light of the two plausible outcomes with similar probabilities that emerged from the quantitative evidence, the panel's finding on the non-quantitative evidence provided a sufficient evidentiary foundation for the conclusion that the revised GSM 102 programme operates at a loss. On this basis, the Appellate Body upheld the panel's overall conclusion that the revised GSM 102 export credit guarantee programme constitutes an export subsidy because it is provided against premiums which are inadequate to cover its long-term operating costs and losses within the meaning of item (j) of the Illustrative List of Export Subsidies.

As a consequence of upholding the panel's finding that that export credit guarantees issued under the revised GSM 102 programme are export subsidies, the Appellate Body noted that the following additional findings of the panel also stand: the United States acted inconsistently with Articles 10.1 and 8 of the *Agreement on Agriculture*, and Articles 3.1(a) and 3.2 of the *SCM Agreement*, by providing export credit guarantees for unscheduled products (including upland cotton) and three scheduled products (rice, poultry meat, and pig meat) in a manner that resulted in the circumvention of United States' export subsidy reduction commitments; and the United States failed to bring itself into conformity with the DSB's recommendations and rulings stemming from the original proceedings.

- **Appellate Body Reports, *US – Shrimp (Thailand)*, WT/DS343/AB/R / *US – Customs Bond Directive*, WT/DS345/AB/R**

These appeals concerned the enhanced continuous bond requirement (EBR) which was imposed by United States Customs and Border Protection (US Customs), with effect from 1 February 2005, pursuant to four instruments constituting the Amended Customs Bond Directive (Amended CBD) on imports of frozen warmwater shrimp subject to anti-dumping duties (subject shrimp). The EBR sought to secure payments of anti-dumping and countervailing duties owed at the rates reassessed in periodic reviews under the United States retrospective duty assessment system. As a result of the EBR, importers of shrimp from certain countries are required to post (i) cash deposits equal to the margin of dumping found to exist in the original investigation or the most recent assessment review; (ii) a basic bond amount (required of all importers of merchandise into the United States); as well as (iii) an enhanced continuous bond (equivalent to 100 per cent of the anti-dumping or countervailing duty rate established in the original anti-dumping or countervailing duty order, or the most recent administrative review, multiplied by the value of imports made by the importer during the previous 12 months).

Before the panel, the complainants argued that the EBR is not consistent with Article 18.1 of the *Anti-Dumping Agreement*, which prohibits WTO Members from taking "specific action against dumping ... except in accordance with the provisions of GATT 1994", as interpreted by the *Anti-Dumping Agreement*.[26] The United States responded that the EBR, as applied to subject shrimp, did not constitute "specific action against dumping" and that, in any event, it was "in accordance" with

[26]It was undisputed that the GATT provisions referred to in Article 18.1 are Article VI and the *Ad* Note.

Article VI of the GATT 1994, in particular, the *Ad* Note to Article VI:2 and 3 (*Ad* Note), because the EBR constituted "reasonable security".[27]

As none of the participants appealed the panel's finding that the EBR constitutes "specific action against dumping", the Appellate Body stated that it was not expressing a view on this finding of the panel. The Appellate Body began its analysis by considering the panel's finding that the temporal scope of the *Ad* Note authorizes security requirements after the imposition of an anti-dumping duty order. In particular, the Appellate Body turned to the interpretation of the phrase in the *Ad* Note "pending final determination of the facts in any case of suspected dumping", which Thailand and India contended limited the temporal scope of application of the *Ad* Note to security taken as provisional measures during an original anti-dumping duty investigation. The Appellate Body found useful contextual guidance in the wording preceding the phrase: "security ... for the payment of anti-dumping or countervailing ... duty". For the Appellate Body, the reference to "payment" reveals the nature of the obligation whose performance the security seeks to guarantee, that is, the payment of anti-dumping or countervailing duties. The risk of non-payment of such duties exists both during an original investigation (for which provisional measures can be taken under Article 7 of the *Anti-Dumping Agreement*) as well as subsequently. Under the United States retrospective duty assessment system, a risk of non-payment arises in respect of the difference between the amount collected at the time of importation and the liability that may finally be determined in an assessment review. The Appellate Body noted that in retrospective systems, the "final determination of the facts" is not complete until an assessment review has been conducted. As regards the phrase "suspected dumping", the Appellate Body agreed with Thailand and India that the existence of "dumping" is no longer "suspected" after the imposition of an anti-dumping duty order. However, "dumping" in the *Ad* Note also covers the related concept of the magnitude of dumping, which, in the United States retrospective system, is determined only in an assessment review. Thus, until an assessment review is conducted, and the import entries are liquidated, there is uncertainty regarding the magnitude of dumping, so that in that respect dumping remains "suspected".

The Appellate Body next addressed Thailand's and India's appeals of the panel's legal interpretation that cash deposits required under United States law are not anti-dumping duties subject to the disciplines of Article 9 of the *Anti-Dumping Agreement*.[28] The panel had developed this contextual reasoning to support its finding regarding the temporal scope of the *Ad* Note. Given that a claim had not been raised before the panel by India or Thailand against the cash deposits required under United States law, and because a ruling on this issue was not necessary to determine the WTO-consistency of the EBR, the Appellate Body declared the panel's finding that cash deposits are not subject to the disciplines of Article 9.3 to be of no legal effect. Having said this, the Appellate Body noted that, whilst nomenclature under domestic law is not determinative, United States law itself states that importers may not post bonds as security following the issuance of an anti-dumping duty order, but must instead make cash deposits of estimated anti-dumping duties at levels not exceeding the dumping margins established in the anti-dumping duty order or assessed in the most recent review.

The Appellate Body addressed two additional considerations raised by Thailand and India. First, in response to the concern that previous Appellate Body Reports limited the permissible actions

[27]The *Ad* Note states, in relevant part, that "a Member may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization."

[28]Under the United States' retrospective anti-dumping duty assessment system, the USDOC collects "cash deposits" at the time of each entry of the subject merchandise at the "estimated anti-dumping duty deposit rate of the relevant exporter". Subsequently, once a year, during the anniversary month of the anti-dumping duty order, interested parties may request the USDOC to conduct an assessment review to determine the final liability for payment of anti-dumping duties owed on entries that occurred during the previous year. If no assessment review is requested, the cash deposits made on entries during the previous year are automatically assessed as the final duties.

against dumping to definitive anti-dumping duties, provisional measures and price undertakings, the Appellate Body explained that whether security constitutes "specific action against dumping" should be evaluated in the light of the particular circumstances in which it is applied. Security, as accessory to a principal obligation to pay anti-dumping duties, should be viewed as a component of the imposition and collection of such duties, and does not necessarily, in and of itself, constitute a fourth autonomous category of response to dumping. Secondly, the Appellate Body disagreed with the argument of Thailand and India that Article 7 on provisional measures subsumed the *Ad* Note, although there is some overlap in the scope of application of Article 7 and the *Ad* Note. Thus security could also be taken after the issuance of the definitive anti-dumping order.

For these reasons, the Appellate Body upheld the finding of the panel that the *Ad* Note authorizes the taking of reasonable security after the imposition of an anti-dumping duty order, pending the determination of the final liability for the payment of the anti-dumping duty.

Before considering whether the EBR, as applied, constitutes "reasonable security" within the meaning of the *Ad* Note, the Appellate Body developed a two-step test for determining the reasonableness of security. First, there should be a determination that the margins of dumping of exporters are likely to increase, such that there will be a significant additional liability to be secured. This determination must have a rational and sufficient evidentiary basis. The second step of the test requires a determination of whether the security is commensurate with the magnitude of the non-payment risk. The Appellate Body was of the view that such an analysis must include a determination of the "likelihood of default" by individual importers and reversed the panel's finding to the contrary.

Turning to the EBR, as applied, the Appellate Body noted that US Customs had applied the EBR because: (i) in the agriculture and aquaculture sectors, the margins of dumping increased in one third of the cases and this increase was significant; (ii) these sectors represented the source of the bulk of defaults; and (iii) the potential additional liability was significant due to the large volumes of shipments subject to anti-dumping duty orders. In reviewing the panel findings, the Appellate Body did not consider that the likelihood of an increase in the margins and the need to secure significant additional liability had been demonstrated. The United States' reliance on margins of dumping increasing in 38 per cent of the cases in the agriculture and aquaculture sector, as whole, did not constitute sufficient evidence to demonstrate that an increase in margins of dumping for subject shrimp was likely, because *inter alia* this evidence did not include cases of increases in margins concerning subject shrimp. The Appellate Body therefore upheld the conclusion of the panel that the EBR, as applied, was not a "reasonable" security under the *Ad* Note.

The United States appealed the panel's finding that the EBR, as applied to subject shrimp, is not "necessary" to secure compliance with certain United States "laws and regulations" governing the final collection of anti-dumping duties, within the meaning of Article XX(d) of the GATT 1994. In examining this claim, the Appellate Body considered a "threshold" question raised by India as to whether the United States can justify the EBR under Article XX(d), following a finding that the EBR constitutes "specific action against dumping", and that the EBR is inconsistent with Article 18.1 of the *Anti-Dumping Agreement*, as well as the *Ad* Note to Articles VI:2 and 3 of the GATT 1994. Assuming *arguendo* that such a defence was available, the Appellate Body upheld the panel's finding that the EBR is not "necessary" to secure compliance with certain United States "laws and regulations" governing the final collection of anti-dumping duties because the United States had not demonstrated that the margins of dumping were likely to increase resulting in significant additional unsecured liability. For the Appellate Body, in the absence of such a demonstration, it could not be said that taking security, such as the EBR, is "necessary" in the sense that it contributed to the realization of the objective of ensuring the final collection of anti-dumping duties in the event of default by importers. In the light of this conclusion, the Appellate Body did not express a view on the threshold question of whether a defence under Article XX(d) was available to the United States in respect of a measure that had been found to be inconsistent with Article 18.1 of the *Anti-Dumping Agreement* because it was inconsistent with the *Ad* Note to Articles VI:2 and 3 of the GATT 1994.

India claimed on appeal that the panel erred in not including, in its terms of reference, two United States provisions—one statutory and one regulatory—which had been mentioned in India's panel request, but not in its request for consultations. The Appellate Body upheld the panel's finding because the inclusion of these instruments would have "expanded the scope of the dispute" between the parties. In assessing the United States' defence under Article XX(d), the Appellate Body also found that the panel had not breached Article 11 of the DSU when it included among the "laws and regulations" with which the EBR was designed to secure compliance, not only laws and regulations cited by the United States, but also those cited by Thailand and India.

India made additional "as such" claims under Articles 1, 9, 18.1, and 18.4 of the *Anti-Dumping Agreement* and Articles 10, 19, 32.1, and 32.5 of the *SCM Agreement*; and "as applied" claims under Article 9 of the *Anti-Dumping Agreement* regarding the Amended CBD. These claims were consequential to the Appellate Body reversing certain related "as applied" findings by the panel in respect of the EBR. As India's "as such" claims were largely predicated on legal interpretations of the *Ad* Note that the Appellate Body had rejected in its discussion of the "as applied" claims, the Appellate Body upheld the panel's rejection of the "as such" claims raised by India regarding the Amended CBD.

- **Appellate Body Reports, *US – Continued Suspension*, WT/DS320/AB/R / *Canada – Continued Suspension*, WT/DS321/AB/R**

These disputes concerned complaints brought by the European Communities against the continued application of suspension of concessions by Canada and by the United States. The suspension of concessions was authorized by the DSB, pursuant to Article 22 of the DSU, as a result of the European Communities' failure to implement the recommendations and rulings in the *EC – Hormones* dispute. In that dispute, Canada and the United States had challenged European Communities' Directive 96/22/EC, which imposed an import ban on meat from cattle treated with six hormones—oestradiol-17β, progesterone, testosterone, trenbolone acetate, zeranol, and melengestrol acetate (MGA). In *EC – Hormones*, the import ban imposed under Directive 96/22/EC was found to be inconsistent with Article 5.1 of the *SPS Agreement* because it was not based on a risk assessment. The European Communities replaced Directive 96/22/EC with Directive 2003/74/EC, which maintained a definitive import ban on meat from cattle treated with oestradiol-17β, and applied a provisional ban on meat treated with progesterone, testosterone, trenbolone acetate, zeranol and MGA, on the basis of scientific opinions issued by the Scientific Committee on Veterinary Measures relating to Public Health of the European Communities between 1999 and 2002. The European Communities argued that, as a result of its notification to the DSB of Directive 2003/74/EC, a measure that it considers implemented the DSB's recommendations and rulings in *EC – Hormones*, Canada and the United States should have ceased suspending concessions. The European Communities also claimed that, if Canada and the United States did not consider that Directive 2003/74/EC brought about compliance, they should have initiated panel proceedings under Article 21.5 of the DSU.

The Appellate Body began by analyzing the provisions of the DSU that are applicable in the post-suspension stage of a dispute, that is, after a WTO Member has applied suspension of concessions upon obtaining authorization from the DSB, because another WTO Member has failed to implement the DSB's recommendations and rulings stemming from a WTO dispute. In particular, the Appellate Body focused its analysis on the first resolutive condition in Article 22.8 of the DSU, which the Appellate Body considered must be understood as requiring substantive removal of the measure found to be inconsistent in the original proceedings. According to the Appellate Body, this means that the application of the suspension of concessions may continue until the removal of the measure found by the DSB to be inconsistent results in substantive compliance. The Appellate Body cautioned that this does not mean that Members can remain passive once concessions have been suspended pursuant to the DSB's authorization. It explained that the requirement that the suspension of concessions must be temporary indicates that the suspension of concessions is an abnormal state of

affairs that is not meant to continue indefinitely. WTO Members must act in a cooperative manner so that the normal state of affairs, that is, compliance with the covered agreements and absence of the suspension of concessions, may be restored as quickly as possible. Thus, both the suspending Member and the implementing Member share the responsibility to ensure that the application of the suspension of concessions is temporary. The Appellate Body added that, where, as in this dispute, an implementing measure is taken that replaces the measure found to be inconsistent and Members disagree as to whether the new measure achieves substantive compliance, both Members have a duty to engage in WTO dispute settlement in order to establish whether the resolutive conditions in Article 22.8 have been met and whether, as a consequence, the suspension of concessions must be terminated. The Appellate Body noted that once substantive compliance has been confirmed in WTO dispute settlement, the authorization to suspend concessions lapses by operation of law (*ipso jure*), because it has been determined that one of the resolutive conditions set forth in Article 22.8 is fulfilled.

The European Communities argued that the adoption of an implementing measure must be presumed to bring about compliance in the light of the general international law principle of good faith. The Appellate Body rejected this argument explaining that the presumption of good faith attaches to the actor, but not to the action itself. Thus, even if the European Communities were presumed to have acted in good faith when adopting the implementing measure, that does not mean the measure has achieved substantive compliance. Consequently, the Appellate Body disagreed with the European Communities' argument that the mere existence of an implementing measure adopted in good faith and its subsequent notification to the DSB required Canada and the United States to cease the application of the suspension of concessions.

In addition, the European Communities argued that the panel exceeded its mandate by examining the consistency of Directive 2003/74/EC with the *SPS Agreement*. This argument was also rejected by the Appellate Body. In its analysis, the Appellate Body recalled its conclusion that the original measure found to be WTO-inconsistent will not be considered removed within the meaning of Article 22.8 unless substantive compliance is achieved. This meant that whether Directive 2003/74/EC brings the European Communities into compliance with the DSB's recommendations and rulings in *EC – Hormones* was an issue the panel had to resolve in order to determine whether Canada and the United States were required to terminate the suspension of concessions pursuant to Article 22.8 and whether failing to do so constituted a violation of Article 23.1, read together with Articles 22.8 and 3.7 of the DSU. For this reason, the Appellate Body upheld the panel's finding that "it has jurisdiction to consider the compatibility of the [European Communities'] implementing measure with the *SPS Agreement* as part of its review of the claim raised by the European Communities with respect to Article 22.8 of the DSU."

The Appellate Body next turned to the European Communities' argument that, where a WTO Member continues to suspend concessions because it considers that the implementing measure does not achieve compliance with the DSB's recommendations and rulings or is otherwise inconsistent with the covered agreements, the suspending Member has an obligation to initiate Article 21.5 proceedings. The Appellate Body observed that Article 21.5 provides for specific procedures for adjudicating a disagreement as to the consistency with the covered agreements of measures taken by a Member to implement the DSB's recommendations and rulings. Thus, the Appellate Body concluded that panel proceedings under Article 21.5 are the proper procedure for resolving the disagreement as to whether Directive 2003/74/EC has achieved substantive compliance and whether, as a result, the resolutive condition in Article 22.8 that requires termination of the suspension of concessions has been met. Next, the Appellate Body addressed the panel's finding that good offices, consultations, and arbitration under Article 25 of the DSU were other procedures available to the European Communities for obtaining the termination of the suspension of concessions. The Appellate Body distinguished these alternative and voluntary means of dispute settlement from compulsory adjudication. It noted that such alternative and voluntary means of dispute settlement are not available where, as in this case, the dispute must proceed to the adjudication phase. Having

determined that Article 21.5 proceedings are the proper proceedings, the Appellate Body found that the language of Article 21.5 is neutral as to which party may initiate the proceedings and thus determined that such proceedings could be initiated by either the original complainants (in this case, Canada and the United States) or by the original respondent (the European Communities). It then rejected the various reasons put forward by the European Communities in support of its view that Article 21.5 proceedings can only be initiated by the original complainants, such as the adversarial nature of WTO dispute settlement, the possibility that an original complainant would fail to appear in proceedings initiated by the original respondent, and potential problems relating to the scope of the terms of reference. The Appellate Body also explained how the burden of proof would apply in Article 21.5 proceedings initiated by the original respondent claiming that it has brought itself into compliance.

In their other appeals, Canada and the United States alleged that the panel erred in finding that they breached Articles 23.2(a) and 23.1 of the DSU by continuing the suspension of concessions after the notification of Directive 2003/74/EC, and requested the Appellate Body to reverse these findings. The Appellate Body found that the maintenance of the suspension of concessions that has been duly authorized by the DSB will not constitute a violation of Article 23.1, as long as it is consistent with other rules of the DSU, including paragraphs 2 through 8 of Article 22. In the Appellate Body's view, the legality of the continued suspension of concessions in this case depends on whether the measure found to be inconsistent in *EC – Hormones* has been substantively removed within the meaning of Article 22.8 of the DSU. Accordingly, the Appellate Body found that the panel erred in considering that the European Communities' claims under Articles 23.2(a), 23.1, and 21.5 could be examined separately from whether the European Communities implemented the DSB's recommendations and rulings in *EC – Hormones*. Consequently, the Appellate Body found that the panel erred in concluding that, "by maintaining the suspension of concessions even after the notification of [Directive 2003/74/EC]", Canada and the United States are "seeking redress of a violation with respect to [this Directive], within the meaning of Article 23.1 of the DSU". The Appellate Body, furthermore, agreed with the panel in *US – Section 301 Trade Act* that a "determination" within the meaning of Article 23.2(a) "implies a high degree of firmness or immutability, i.e. a more or less final decision by a Member in respect of the WTO consistency of a measure taken by another Member". Hence, the Appellate Body rejected the panel's finding that statements made by Canada and the United States at DSB meetings constituted a "determination" within the meaning of Article 23.2(a). It also rejected the panel's finding that the fact that Canada and the United States maintained the suspension of concessions confirmed that they had made a "determination" contrary to Article 23.2(a). In addition, the Appellate Body reversed the panel's finding that Canada and the United States had "failed to make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under the DSU", in breach of Article 23.2(a).

The European Communities' claimed on appeal that the panel failed to respect the principle of due process and, consequently, also failed to make an objective assessment of the matter under Article 11 of the DSU, in selecting and relying upon two of the scientific experts consulted by the panel. The Appellate Body agreed with the European Communities that the standard for self-disclosure set out in section VI.2 of the *Rules of Conduct* is relevant for purposes of determining whether it is appropriate for a panel to appoint a person as a scientific expert. It explained that whether the disclosed information is likely to affect or give rise to justifiable doubts as to the person's independence or impartiality must be objectively determined and properly substantiated. Where a panel determines on the correct facts that there is a likelihood that the expert's independence and impartiality may be affected, or that justifiable doubts arise as to the expert's independence or impartiality, the panel must not appoint such person as an expert.

After addressing the applicable standard, the Appellate Body examined the European Communities' claim that the panel should not have appointed two scientific experts because of their previous affiliation with the Joint FAO/WHO Expert Committee on Food Additives (JECFA). The

Appellate Body considered that there was an objective basis to conclude that the institutional affiliation with JECFA of the two experts, and their participation in JECFA's evaluations of six of the hormones at issue, was likely to affect or give rise to justifiable doubts as to their independence or impartiality given that the evaluations conducted by JECFA lie at the heart of the controversy between the parties. For the Appellate Body, the appointment and consultations with the two experts compromised the panel's adjudicative independence and impartiality. Therefore, the Appellate Body found that the panel infringed the European Communities' due process rights. Because the appointment and consultations with the two experts compromised the panel's adjudicative independence and impartiality, the Appellate Body also found that the panel failed to comply with its duties under Article 11 of the DSU.

In its appeal of the panel's interpretations and conclusions relating to the *SPS Agreement*, the European Communities raised several claims concerning the panel's findings under Articles 5.1 and 5.7 of the *SPS Agreement.* The Appellate Body began its analysis by providing guidance on the interpretation and application of these provisions. The particular aspects covered in the analysis include: the general disciplines applicable to the taking of SPS measures, including the concepts of risk assessment and appropriate level of protection, as well as the possibility of taking measures on the basis of minority scientific views; the scope of factors that may be considered in a risk assessment (in particular, the misuse or abuse and difficulties of control in the administration of a substance); the requirement to analyze the specific risks at issue; whether quantification of risk is required; the burden of proof; the standard of review applicable to a panel's examination of a risk assessment performed by a WTO Member; the relationship between Articles 5.1 and 5.7; the general requirements for the taking of a provisional SPS measure under Article 5.7; the particular requirement that the relevant scientific evidence be insufficient to perform a risk assessment; the relevance of the level of protection chosen by a WTO Member for the determination of whether the relevant scientific evidence is insufficient to perform a risk assessment; the relationship between the existence of international standards and the ability of a WTO Member to take a provisional SPS measure; and, finally, under what conditions scientific evidence that was sufficient to perform a risk assessment at a point in time can subsequently become insufficient in the light of new scientific developments.

The Appellate Body examined the distinction drawn by the panel between "risk assessment" and "risk management" and concluded that it was not consistent with the Appellate Body's interpretation in *EC – Hormones*. The Appellate Body then turned to the European Communities' argument that the distinction that the panel drew between "risk assessment" and "risk management" resulted in the exclusion of certain factors from the panel's analysis under Article 5.1 of the *SPS Agreement*, in particular evidence concerning misuse or abuse and difficulties of control in the administration of hormones to cattle for growth promotion. The Appellate Body found that, by summarily dismissing the evidence on misuse or abuse in the administration of the hormones in the manner that it did, the panel incorrectly interpreted and applied Article 5.1 and the definition of "risk assessment" in Annex A of the *SPS Agreement*.

The European Communities also argued that the panel had incorrectly required demonstration of actual adverse effects arising from the hormones at issue and a demonstration of a direct causal relationship between the hormones in question and the adverse health effects. The Appellate Body observed that the European Communities was correct in arguing that it was not required to demonstrate that the adverse health effects would actually arise. Instead, the European Communities was required to demonstrate the possibility that these adverse effects could arise from the presence of residues of oestradiol-17β in meat from treated cattle. The Appellate Body, however, considered that this is what the panel required when it examined the European Communities' risk assessment. The Appellate Body also explained that the European Communities had to evaluate whether a causal connection exists between the consumption of meat from cattle treated with oestradiol-17β and the possibility of adverse health effects. Nevertheless, this did not mean that the European Communities was required to establish a direct causal relationship between the possibility of adverse health effects and the residues of oestradiol-17β in bovine meat. In order to meet the requirements of Article 5.1

and Annex A of the *SPS Agreement*, it was sufficient for the European Communities to demonstrate that the additional human exposure to residues of oestradiol-17β in meat from treated cattle is one of the factors contributing to the possible adverse health effects. The European Communities was not required to isolate the contribution made by residues of oestradiol-17β in meat from cattle treated with the hormone for growth promotion from the contributions made by other sources. The Appellate Body explained that where multiple factors may contribute to a particular risk, a risk assessor is not required to differentiate the individual contribution made by each factor. The Appellate Body found, in this regard, that the panel did not err in requiring a specific evaluation of the risks arising from the presence of residues of oestradiol-17β in meat or meat products from cattle treated with the hormone for growth-promoting purposes.

Another claim made on appeal by the European Communities was that the panel improperly required quantification of the alleged risks. The Appellate Body recalled that the definition of a risk assessment does not require WTO Members to establish a minimum magnitude of risk, or express it in numerical terms, but observed that it is nevertheless difficult to understand the concept of risk as being devoid of any indication of potentiality. The Appellate Body explained that a risk assessment is intended to identify adverse effects and evaluate the possibility that such adverse effects might arise. This distinguishes an ascertainable risk from theoretical uncertainty. After reviewing the panel's analysis, the Appellate Body concluded that the panel did not incorrectly interpret Article 5.1 and paragraph 4 of Annex A of the *SPS Agreement* as requiring quantification of risk.

The European Communities challenged the panel's articulation and application of the burden of proof. The Appellate Body identified several flaws in the panel's description of how it would allocate the burden of proof. In the section addressing the DSU, the Appellate Body provided guidance as to how the burden of proof should be allocated in a dispute such as this one, in which there is a disagreement as to whether the suspension of concessions must be terminated under Article 22.8 of the DSU.

Finally, the European Communities argued that the panel applied an improper standard of review and thereby failed to make an objective assessment of the matter. The Appellate Body recalled that it is the WTO Member's task to perform the risk assessment, while a panel's task is to review that risk assessment. Where a panel goes beyond this limited mandate and acts as a risk assessor, it would be substituting its own scientific judgement for that of the risk assessor and, consequently, would exceed its functions under Article 11 of the DSU. Therefore, the review mandate of a panel is not to determine whether the risk assessment undertaken by a WTO Member is correct or based on the best science, but rather to determine whether that risk assessment is supported by coherent reasoning and scientific evidence and its conclusions are objectively justifiable. Moreover, the Appellate Body recalled that a WTO Member may properly base an SPS measure on divergent or minority views, as long as these views are from qualified and respected sources. Although the scientific basis need not represent the majority view within the scientific community, it must nevertheless have the necessary scientific and methodological rigour to be considered reputable science. The Appellate Body found that the panel approached its task without proper regard to the standard of review and the limitations this places upon the appraisal of expert testimony. The Appellate Body also found that the panel effectively disregarded evidence that was potentially relevant for the European Communities' case, in contravention of its duty to make an "objective assessment of the facts of the case" pursuant to Article 11 of the DSU.

Thus, the Appellate Body reversed the panel's finding that the European Communities has not satisfied the requirements of Article 5.1 and Annex A, paragraph 4, of the *SPS Agreement*. As a consequence, it also reversed the panel's findings that Directive 2003/74/EC was not based on a risk assessment within the meaning of Article 5.1 of the *SPS Agreement* and that the European Communities' "implementing measure on oestradiol-17β is not compatible with Article 5.1 of the *SPS Agreement*." The Appellate Body, however, was unable to complete the analysis and thus made no

findings on the consistency or inconsistency of the European Communities' import ban relating to oestradiol-17β.

The Appellate Body then turned to the European Communities appeal of the panel's findings concerning Article 5.7 of the *SPS Agreement*. The Appellate Body disagreed with the panel's finding that the determination of whether scientific evidence is sufficient to assess the existence and magnitude of a risk must be disconnected from the intended level of protection. The Appellate Body explained that the fact that a WTO Member has chosen to set a higher level of protection may require it to perform certain research as part of its risk assessment that is different from the parameters considered and the research carried out in the risk assessment underlying an international standard. Nonetheless, the Appellate Body emphasized that whatever level of protection a WTO Member chooses does not pre-determine the outcome of its determination of the sufficiency of the relevant scientific evidence. The determination as to whether available scientific evidence is sufficient to perform a risk assessment must remain, in essence, a rigorous and objective process.

The European Communities also argued that the panel considered the existence of international standards as establishing an "irrebuttable presumption" that the relevant scientific evidence in this case is not "insufficient" for the purposes of Article 5.7. The Appellate Body explained that the presumption of consistency of SPS measures conforming to international standards established under Article 3.2 does not apply where a Member has chosen a higher level of protection and does not adopt a measure that conforms to an international standard. According to the Appellate Body, the existence of a risk assessment performed by JECFA does not mean that scientific evidence underlying it must be considered to be sufficient such that provisional measures within the meaning of Article 5.7 cannot be taken. Moreover, scientific evidence that may have been relied upon by an international body when performing the risk assessment that led to the adoption of an international standard at a certain point in time may no longer be valid, or may become insufficient in the light of subsequent scientific developments. However, the Appellate Body added that it is nevertheless reasonable for a WTO Member challenging the consistency with Article 5.7 of a provisional SPS measure adopted by another Member to submit JECFA's risk assessments and supporting studies as evidence that the scientific evidence is not insufficient to perform a risk assessment. Yet, such evidence is not dispositive and may be rebutted by the Member taking the provisional SPS measure. Having examined the panel's analysis, the Appellate Body rejected the European Communities' contention that the panel had understood the existence of an international standard as establishing an irrebuttable presumption.

In addition, the European Communities took issue with the panel's finding that where an international standard exists "there must be a *critical mass* of new evidence and/or information that calls into question the fundamental precepts of previous knowledge and evidence so as to make relevant, previously sufficient, evidence now insufficient." The Appellate Body considered that the panel's "critical mass" test could be understood as requiring that the new scientific evidence lead to a paradigm shift, which is too inflexible. Such a test imposed an excessively high threshold in terms of the change in the scientific evidence that would make previously sufficient evidence insufficient. This erroneous threshold led the panel to fail to attribute significance to evidence that could cast doubt on whether the relevant scientific evidence still permits of a sufficiently objective assessment of risk.

Moreover, the Appellate Body disagreed with the panel's use of JECFA's risk assessments as "benchmarks" for determining "insufficiency" under Article 5.7. The Appellate Body explained that in circumstances where a Member adopts a higher level of protection than that reflected in the international standard, the legal test that applies to the "insufficiency" of the evidence under Article 5.7 is not made stricter. Consequently, the Appellate Body reversed the panel's finding setting out "a "critical mass" test.

The Appellate Body also addressed the panel's allocation of the burden of proof under Article 5.7, which was challenged by the European Communities, and found that the panel erred in

this respect for reasons similar to those that it had explained in connection with the panel's assessment under Article 5.1 of the *SPS Agreement*. However, the Appellate Body found that the panel did not err by limiting its review to the insufficiencies in the relevant scientific evidence identified by the European Communities.

The Appellate Body concluded that the panel erred in its interpretation and application of Article 5.7 of the *SPS Agreement* by adopting an incorrect legal test to assess the European Communities' explanations concerning the insufficiencies in the relevant scientific evidence. Having determined that the panel incorrectly interpreted and applied Article 5.7 of the *SPS Agreement*, the Appellate Body did not find it necessary to address the European Communities' claim that the panel acted inconsistently with Article 11 of the DSU.

Accordingly, the Appellate Body reversed the panel's finding that "it has not been demonstrated that relevant scientific evidence was insufficient, within the meaning of Article 5.7 of the *SPS Agreement*, in relation to any of the five hormones with respect to which the European Communities applies a provisional ban." The Appellate Body observed that the panel's finding that "the [European Communities'] compliance measure does not meet the requirements of Article 5.7 of the *SPS Agreement* as far as the provisional ban on progesterone, testosterone, zeranol, trenbolone acetate and melengestrol acetate is concerned" was premised on the panel's earlier finding concerning the "insufficiency" of the relevant scientific information and, therefore, it too could not stand. However, the Appellate Body was unable to complete the analysis and, hence, made no findings on the consistency or inconsistency of the European Communities' provisional SPS measure relating to progesterone, testosterone, zeranol, trenbolone acetate, and MGA.

The Appellate Body stated that, because it was unable to complete the analysis as to whether Directive 2003/74/EC has brought the European Communities into substantive compliance within the meaning of Article 22.8 of the DSU, the recommendations and rulings adopted by the DSB in *EC – Hormones* remain operative. In the light of the obligations arising under Article 22.8 of the DSU, the Appellate Body recommended that the DSB request the United States, Canada, and the European Communities to initiate Article 21.5 proceedings without delay in order to resolve their disagreement as to whether the European Communities has removed the measure found to be inconsistent in *EC – Hormones* and whether the application of the suspension of concessions by Canada and the United States remains legally valid.

- **Appellate Body Report, *India – Additional Import Duties*, WT/DS360/AB/R**

This dispute concerned a complaint brought by the United States against two specific border measures imposed by India on imports of certain products entering its customs territory. In particular, the United States challenged: the "Additional Duty" imposed by India on imports of alcoholic liquor for human consumption (beer, wine, and distilled spirits, collectively "alcoholic beverages"); and the "Extra-Additional Duty" imposed by India on imports of a wider range of products, including certain agricultural and industrial products, as well as alcoholic beverages. Before the panel, the United States claimed that the Additional Duty, when imposed in conjunction with India's basic customs duty, is inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994 because it results in the imposition of duties that exceed the "ordinary customs duties" or "other duties or charges" set forth in India's Schedule of Concessions. The United States brought a similar claim against the Extra-Additional Duty. In response, India contended that the Additional Duty and the Extra-Additional Duty are charges equivalent to internal taxes imposed consistently with Article III:2 and, consequently, are justified under Article II:2(a) of the GATT 1994. At the time of the establishment of the panel, India levied both the Additional Duty and the Extra-Additional Duty in addition to its "basic customs duty". After the establishment of the panel, India issued new Customs Notifications that exempted the products listed therein from the imposition of the Additional Duty and provided, under certain conditions, for a refund of the Extra-Additional Duty paid upon a product's importation.

The panel found, however, that its terms of reference did not extend to these new Customs Notifications.

On appeal, the United States challenged the panel's interpretation of Articles II:1(b), II:2(a), and III:2 of the GATT 1994. The Appellate Body disagreed with the panel that ordinary customs duties (OCDs) and other duties or charges (ODCs) within the meaning of Article II:1(b) must always be considered to "inherently discriminate against imports". The Appellate Body explained that it did not see a basis for the panel's conclusion that "inherent discrimination" is a relevant or necessary feature of duties and charges covered by Article II:1(b). In particular, the Appellate Body observed that Article II:1(b) does not set out a specific rationale for imposing duties or charges, and there exist rationales other than "inherent discrimination" for applying such duties or charges. The Appellate Body considered that the second sentence of Article II:1(b) could be read to suggest that, even if OCDs inherently discriminate against imports, ODCs cover all duties or charges of any kind imposed on or in connection with importation other than OCDs, including duties or charges that do not inherently discriminate against imports. The Appellate Body also disagreed with the panel that Articles II:2(b) and II:2(c) provide contextual support for the proposition that duties and charges falling under Article II:2 do not "inherently discriminate against imports". The Appellate Body explained that, for anti-dumping and countervailing duties under Article II:2(b), there is nominally no domestic charge that would serve as the counterpart to which such duties would correspond. Likewise, charges under Article II:2(c) are imposed exclusively on imports, and also do not have an obvious domestic counterpart.

The Appellate Body further found that the panel erred in its interpretation of two elements of Article II:2(a), that is, "equivalence" and "consistency with Article III:2". In particular, the Appellate Body disagreed with the panel's conclusions that the term "equivalent" does not require any quantitative comparison of the charge and the internal tax, and that understanding the term "equivalent" as requiring a quantitative comparison would make redundant the reference to consistency with Article III:2. Instead, the Appellate Body considered that the term "equivalent" calls for a comparative assessment that is both qualitative and quantitative in nature. According to the Appellate Body, such an assessment is not limited to the relative function of a charge and an internal tax, but must also include quantitative considerations relating to their effect and amount.

In addition, the Appellate Body found that the panel erred in its interpretation that the element of "consistency with Article III:2" is not a necessary condition in the application of Article II:2(a). The Appellate Body considered that Article II:2(a) should not be interpreted in a manner that reads out the significance, for purposes of an Article II:2(a) inquiry, of the element of "consistency with Article III:2", or at most ascribes to it the purpose of acknowledging, or calling attention to, relevant requirements stipulated elsewhere in the GATT 1994. Rather, the requirement of "consistency with Article III:2" must be read together with, and imparts meaning to, the requirement that a charge and internal tax be "equivalent". The Appellate Body explained that whether a charge is imposed "in excess of" a corresponding internal tax is part of an Article II:2(a) analysis, and thus found that the element of "consistency with Article III:2" forms an integral part of the assessment under Article II:2(a) of whether a charge and an internal tax are "equivalent".

Having found several errors in the panel's interpretation of Articles II:1(b) and II:2(a), the Appellate Body reversed the panel's finding that the United States failed to establish that the Additional Duty and the Extra-Additional Duty are inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994. The Appellate Body explained that, having based its analysis of the United States' claims on an erroneous interpretation of Articles II:1(b) and II:2(a), the panel could not have arrived at a proper conclusion regarding whether the Additional Duty and the Extra-Additional Duty are consistent with Articles II:1(a) and II:1(b) of the GATT 1994.

The United States also claimed that the panel erred in requiring the United States to establish a *prima facie* case that the Additional Duty and Extra-Additional Duty "inherently discriminate

against imports". The Appellate Body recalled the general rules concerning the burden of proof, whereby a complainant must put forward arguments and evidence sufficient to establish a *prima facie* case of WTO-inconsistency regarding a respondent's measure, and observed that what is required to satisfy this burden will necessarily vary from case to case. The Appellate Body explained that, although the complainant must establish the *prima facie* case in support of its complaint, the respondent bears the burden of proving the facts that it asserts in its defence. The Appellate Body further emphasized that not every challenge under Article II:1(b) will require a showing with respect to Article II:2(a). However, the Appellate Body found that, in the circumstances of this dispute, where the potential for application of Article II:2(a) was clear from the face of the challenged measures, the United States was required to present arguments and evidence that the Additional Duty and the Extra-Additional Duty were not justified under Article II:2(a). The Appellate Body added that India, in asserting that the challenged measures were justified under Article II:2(a), was required to adduce arguments and evidence in support of its assertion. The Appellate Body further cautioned that failure of a party to prove the facts it asserts leaves that party at risk of losing the case.

Having reversed the panel's interpretation and findings under Articles II:1(a), II:1(b), and II:2(a), the Appellate Body declined to make an additional finding on the United States' claim under Article 11 of the DSU that the panel failed to carry out an objective assessment of the matter before it.

The Appellate Body turned to consider the United States' request that it complete the analysis and rule on whether the Additional Duty on alcoholic beverages and the Extra-Additional Duty are inconsistent with these provisions. The Appellate Body noted that India had not contested the United States' assertion that the Additional Duty and the Extra-Additional Duty, when applied in conjunction with the basic customs duty, may subject imports of certain products to an aggregate amount of duties that is in excess of the rates specified in India's Schedule of Concessions. Instead, India had argued that the Additional Duty and the Extra-Additional Duty are charges equivalent to internal taxes imposed consistently with Article III:2 and, consequently, are justified under Article II:2(a) of the GATT 1994. India explained that the Additional Duty was intended to counterbalance state-level excise taxes, while the Extra-Additional Duty was intended to counterbalance three categories of internal taxes: (i) state value-added or sales taxes; (ii) India's Central Sales Tax; and (iii) other local taxes and charges imposed by state or local governments.

Regarding the issue of whether the Additional Duty was justified under Article II:2(a), the Appellate Body observed that there was no specific information before the panel regarding the excise duties actually levied by different states on alcoholic beverages, or evidence regarding the form and structure of the rates of such duties. Although the Appellate Body noted India's statement to the panel that the rates of Additional Duty were the result of a "process of averaging", and the panel's observation that this "could have meant that the rate of [Additional Duty] for alcoholic liquor exceeded the rate of excise duty applicable to like domestic alcoholic liquor in some States and in some price bands", the Appellate Body also pointed out the panel's statement that it had not been provided "further particulars" regarding the averaging process or the fiscal burden imposed in different states on low and high-priced alcoholic beverages. In these circumstances, the Appellate Body *considered* that the Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports of alcoholic beverages in excess of the excise duties applied on like domestic products, and consequently, that this would render the Additional Duty inconsistent with Article II:1(b) to the extent that it results in the imposition of duties on alcoholic beverages in excess of those set forth in India's Schedule of Concessions.

As to whether the Extra-Additional Duty was justified under Article II:2(a), the Appellate Body noted the panel's observation that there was "no evidence" in the record to demonstrate that, on the date of establishment of the panel, there were states that did not levy internal taxes or charges on products subject to the Extra-Additional Duty; or that relevant internal taxes or charges were, in fact, imposed on products subject to the Extra-Additional Duty in the course of their import into India's

customs territory. At the same time, the Appellate Body recalled the panel's finding that, at the time of the establishment of the panel, there was no refund or credit of the Extra-Additional Duty against certain internal taxes paid in respect of a domestic re-sale transaction. The Appellate Body also recalled the panel's observation that "there could conceivably be" circumstances where the Extra-Additional Duty was levied at a rate that was higher than the rate resulting from imposition of the relevant internal taxes on like domestic goods. On this basis, the Appellate Body *considered* that the Extra-Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports in excess of the sales tax, value-added tax, and other local taxes and charges that India alleges are equivalent to the Extra-Additional Duty, and consequently, that this would render the Extra-Additional Duty inconsistent with Article II:1(b) to the extent that it results in the imposition of duties in excess of those set forth in India's Schedule of Concessions.

As regards India's other appeal, the Appellate Body disagreed that the panel acted contrary to Articles 3.2, 11, and 19 of the DSU in providing "concluding remarks" relating to the entry into force of new Customs Notifications issued by India that provided certain exemptions from payment of the Additional Duty and the Extra-Additional Duty. The Appellate Body explained that the panel's "concluding remarks" did not amount to legal findings or recommendations within the meaning of the first sentence of Article 19.1 of the DSU. Instead, the Appellate Body said they were simply explanations of the panel's conclusions, which are permissible.

In the light of these considerations, the Appellate Body made no recommendation, in this case, to the DSB pursuant to Article 19.1 of the DSU.

- **Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II)*, WT/DS27/AB/RW2/ECU and Corr.1 / *EC – Bananas III (Article 21.5 – US)*, WT/DS27/AB/RW/USA and Corr.1**

These disputes concerned the European Communities' regime for the importation of bananas established by Council Regulation (EC) No. 1964/2005[29] and associated implementing regulations (EC Bananas Import Regime), specifically a tariff quota of 775,000 metric tonnes (mt) for duty-free imports of bananas originating in African, Caribbean, and Pacific (ACP) countries and a most-favoured nation (MFN) tariff of €176/mt applicable to imports from non-ACP countries.

The European Communities' Schedule of Concessions sets out the following commitments on bananas: under tariff heading 0803.00.12, a bound rate of €680/mt and a tariff quota of 2.2 million mt, with an in-quota tariff rate bound at €75/mt. The tariff quota is subject to the terms and conditions indicated in the Bananas Framework Agreement attached to the European Communities' Schedule. Before the panel in the compliance proceedings, both Ecuador and the United States claimed that Council Regulation (EC) No. 1964/2005 and associated implementing regulations failed to implement the DSB's recommendations and rulings in the original proceedings, and that the European Communities' revised import regime for bananas was inconsistent with the GATT 1994.

In its appeal, the European Communities alleged that the panel acted inconsistently with Article 9.3 of the DSU by maintaining different timetables for the Article 21.5 proceedings between the European Communities and Ecuador and between the European Communities and the United States. The Appellate Body found that the panel did not exceed the bounds of its discretion in maintaining different timetables for the two Article 21.5 proceedings at issue. The Appellate Body considered that Article 9.3 requires panels, to the extent possible, to harmonize timetables, but does not require the adoption of identical timetables in multiple proceedings and leaves a margin of discretion to panels. The Appellate Body also found that the European Communities' due process rights had not been infringed.

[29]Council Regulation (EC) No. 1964/2005 of 29 November 2005 on the tariff rates for bananas.

Another claim raised by the European Communities on appeal was that the panel erred in finding that the United States and Ecuador were not barred by the Understandings on Bananas they had concluded with the European Communities in 2001 from initiating the present compliance proceedings. The European Communities contended that the Understandings constituted a "mutually agreed solution" that precluded recourse to Article 21.5. The panel had found that the Understandings on Bananas could "legally bar" Ecuador and the United States from bringing compliance challenges only if they "constituted a positive solution and effective settlement to the dispute". However, according to the panel, this was not the case here because: (i) the Understandings on Bananas provided only for a means, that is, a series of future steps, for resolving and settling the dispute; (ii) the adoption of the Understandings on Bananas was subsequent to the adoption of recommendations, rulings, and suggestions by the DSB; and (iii) the parties had made conflicting communications to the DSB concerning the Understandings on Bananas.

The Appellate Body disagreed with the panel's reasoning that the Understandings must constitute a "positive solution and effective settlement" to the dispute to preclude recourse to Article 21.5 proceedings. The Appellate Body found that the mere agreement to a "solution" does not necessarily imply that parties waive their right to have recourse to the dispute settlement system in the event of a disagreement as to the existence or consistency with the covered agreements of a measure taken to comply. Rather, the Appellate Body considered that there must be a clear indication in the agreement between the parties of a relinquishment of the right to have recourse to Article 21.5 of the DSU. The Appellate Body found no such relinquishment in the Understandings on Bananas and therefore concluded that the complainants were not precluded from initiating these Article 21.5 proceedings. Thus, the Appellate Body upheld the panel's finding, albeit for different reasons.

The Appellate Body, moreover, disagreed with the panel on the relevance of the timing of the Understandings. The Appellate Body found that nothing in the DSU prevented parties to a dispute from reaching a settlement that would preclude recourse to Article 21.5 proceedings after the adoption of recommendations and rulings by the DSB and that Article 22.8 of the DSU clearly envisaged the possibility of entering into mutually agreed solutions after recommendations and rulings are made by the DSB. The Appellate Body also found that, where the text of the Understandings was clear, the communications to the DSB by the parties had limited relevance, if any, for the purpose of interpreting the Understandings.

In the United States case, the European Communities further claimed on appeal that the panel erred in finding that the EC Bananas Import Regime constituted a "measure taken to comply" within the meaning of Article 21.5 of the DSU and was therefore properly before the panel. The European Communities argued that, in the Understanding on Bananas, the United States and the European Communities had agreed to consider the adoption of a tariff quota-based import regime, as provided in subparagraph C.2 of the Understandings, as the final "measure taken to comply", and that the dispute was resolved with the introduction of that regime. The Appellate Body rejected this argument and found instead that it was clear from the language of the Understanding that the tariff quota-based import regime was intended to be of an interim nature rather than the final measure that would bring the European Communities into compliance. Therefore, the Appellate Body found that the EC Bananas Import Regime was in itself a "measure taken to comply" and thus could be challenged in Article 21.5 compliance proceedings.[30]

The European Communities additionally alleged that the panel in the United States case erred in making findings with respect to a measure that had ceased to exist subsequent to the establishment of

[30]Because it had already found that the EC Bananas Import Regime, established by Council Regulation (EC) No. 1964/2005, was itself a "measure taken to comply" and could be challenged in compliance proceedings, the Appellate Body clarified that it was not necessary to establish whether a "particularly close relationship" existed between that Regime and the 2002-2005 bananas import regime that the European Communities contended was the measure taken to comply.

the panel, but before the panel issued its report. The Appellate Body held that once a panel has been established and the terms of reference for the panel have been set, the panel has the competence to make findings with respect to the measures covered by its terms of reference. The Appellate Body therefore considered that is was within the discretion of the panel to decide how it took into account subsequent modifications or a repeal of the measure at issue.

The European Communities appealed the panel's finding that the panel was not precluded from conducting, under Article 21.5 of the DSU, the assessment requested by Ecuador in this dispute. The European Communities argued that in bringing itself into compliance it had implemented a suggestion made by the first Ecuador compliance panel pursuant to Article 19.1 of the DSU. Moreover, the European Communities claimed that the panel erred by not assessing in the Article 21.5 proceedings whether the European Communities had effectively implemented any of the suggestions of the first Ecuador compliance panel. The Appellate Body found that the measures actually taken by a Member to comply with DSB recommendations and rulings, whether or not they follow the suggestions for implementation made in previous proceedings, are the subject matter of Article 21.5 proceedings. Therefore, Ecuador had the right to challenge before a compliance panel the measure actually taken to comply by the European Communities, whether or not such measure implemented a suggestion made pursuant to Article 19.1 of the DSU. The Appellate Body also found that means of implementation suggested by panels or the Appellate Body in previous proceedings may provide useful guidance and assistance to Members and facilitate implementation especially in complex cases; however, the fact that a Member has chosen to follow a suggestion does not create a presumption of compliance in Article 21.5 proceedings because the guidance provided by suggestions is necessarily prospective in nature and cannot, therefore, take account of all circumstances in which implementation may occur. The Appellate Body, therefore, upheld the panel's decision to assess whether the EC Bananas Import Regime was consistent with the covered agreements, rather than to examine whether the European Communities had complied with one of the suggestions for implementation made by the first Ecuador Article 21.5 panel.

The European Communities also appealed the panel's findings in both the Ecuador and United States disputes that the EC Bananas Import Regime, and in particular the duty-free tariff quota of 775,000 mt reserved for imports from ACP countries, was inconsistent with Article XIII:1, the chapeau of Article XIII:2, and Article XIII:2(d) of the GATT 1994.[31] According to the European Communities, the ACP duty-free tariff quota of 775,000 mt was not a restriction within the meaning of Article XIII, but a preference subject only to the requirements of Article I:1; it simply limited the tariff preference granted to ACP countries, while imposing no quantitative limitation on "aggrieved Members", that is to say MFN suppliers such as Ecuador. The Appellate Body observed that tariff quotas are in principle lawful under the GATT 1994, but their application is, under the terms of Article XIII:5, made subject to the disciplines of Article XIII. The Appellate Body found that Article XIII:1 should be read as requiring that no tariff quota be applied by a Member on the importation of any product of the territory of any other Member, unless the importation of the like product of all third countries is similarly made subject to the tariff quota. Consequently, the term "similarly restricted" requires, in the case of tariff quotas, that imports of like products from all third countries be given access to, and an opportunity of participation in, the tariff quota. Therefore, the Appellate Body found that the ACP tariff quota, which was reserved for imports from ACP countries and denied access to non-ACP countries, did not apply to, or "similarly restrict", imports of like products from non-ACP countries in contravention of Article XIII:1. The Appellate Body also found that the ACP tariff quota failed to meet the requirements regarding distribution and allocation in Article XIII:2, insofar as the exclusion of non-ACP suppliers from the tariff quota was not aimed "at a distribution of trade ... approaching as closely as possible the shares which the various Members might be expected to obtain in the absence of [the] restrictions", as required by Article XIII:2. Finally

[31]The panel had also found that the zero tariff preference for ACP imports was inconsistent with Article I:1 of the GATT 1994 and could not be justified by invoking the Doha Article I Waiver because the Waiver had expired on 1 January 2006. The European Communities did not appeal that finding.

the Appellate Body found that the exclusion of non-ACP suppliers from the quota allocation did not respect the allocation requirements in Article XIII:2(d), based upon the representative proportions of Members having a substantial interest in the banana market of the European Communities. This is so because allocating the entire tariff quota exclusively to ACP countries, and reserving no shares to non-ACP suppliers, cannot be considered to be based on the respective shares that ACP and non-ACP supplier countries might be expected to obtain in the European Communities' banana market in the absence of the tariff quota.

In addition, the European Communities appealed the panel's finding that the Doha waiver from Article I:1 of the GATT 1994[32] (Doha Article I Waiver) constituted a "subsequent agreement" within the meaning of Article 31(3)(a) of the *Vienna Convention on the Law of Treaties*[33] (*Vienna Convention*), by virtue of which WTO Members had agreed to extend the tariff quota concession (at a level of 2.2 million mt with an in-quota rate of €75/mt) in the European Communities' Schedule of Concessions beyond 31 December 2002, when the Bananas Framework Agreement annexed to that Schedule was to expire. The European Communities also appealed the panel's consequential finding that the tariff of €176/mt applied by the European Communities to MFN imports is inconsistent with Article II:1(b) of the GATT 1994 because it is in excess of its tariff bindings on bananas. The European Communities argued that the Doha Article I Waiver did not constitute an agreement on the interpretation or the application of its market access commitments, nor an amendment to its Schedule; therefore, it could not have extended the duration of the tariff quota concession beyond 31 December 2002. The Appellate Body reversed the panel's finding that, by virtue of the Doha Article I Waiver, WTO Members had agreed to extend the tariff quota concession beyond 31 December 2002. The Appellate Body reasoned that the function of a waiver is not to modify the interpretation or application of existing provisions in the covered agreements, let alone to add to or amend the rights and obligations under an agreement or Schedule. Therefore, the Doha Article I Waiver could not be regarded as an agreement on the application of the European Communities' market access commitments within the meaning of Article 31(3)(a) of the *Vienna Convention*, which extended the tariff quota concession in the European Communities' Schedule. The Appellate Body found that the Doha Article I Waiver does not constitute an amendment of the European Communities' Schedule because it was not adopted in accordance with the requirements and procedures of Article X of the *WTO Agreement*. The Appellate Body analyzed the terms and conditions of the Doha Article I Waiver and found that it did not interpret or modify the tariff quota concession, as bound in the European Communities' Schedule, or the Bananas Framework Agreement. The Waiver was concerned with the zero-duty preference for ACP suppliers, not with the tariff quota concession for MFN suppliers specified in the European Communities' Schedule.

Ecuador raised an other appeal that was conditioned upon the Appellate Body reversing the panel's finding that the Doha Article I Waiver extended the European Communities' tariff quota concession (in an amount of 2.2 million mt bound at the in-quota rate of €75/mt) beyond 31 December 2002. Ecuador challenged the panel's finding that the European Communities' tariff quota concession for bananas was "unequivocally intended to expire on 31 December 2002", on account of paragraph 9 of the Bananas Framework Agreement. The Appellate Body reversed the panel's finding and found that the tariff quota concession of 2.2 million mt bound at the in-quota rate of €75/mt in the European Communities' Schedule of Concessions did not expire on 31 December 2002. Instead it found that the tariff quota concession remains in force until the rebinding process and the negotiations pursuant to Article XXVIII of the GATT 1994 have been completed, and the resulting tariff rate has been consolidated in the European Communities' Schedule. The Appellate Body found that the expiration date in paragraph 9 of the Bananas Framework Agreement only concerned the agreement among its signatories on the allocation of shares within the overall tariff

[32]Fourth Session of the Ministerial Conference held in Doha, *European Communities – The ACP-EC Partnership Agreement*, Decision of 14 November 2001, WT/MIN(01)/15; WT/L/436. The Doha Article I Waiver expired on 31 December 2007 in respect of ACP products other than bananas.

[33]Done at Vienna, 23 May 1969, 1155 UNTS 331; 8 International Legal Materials 679.

quota. Therefore, the Appellate Body disagreed with the panel that "the expiration of the Bananas Framework Agreement on 31 December 2002 would automatically imply expiration of the European Communities' tariff quota concession under the terms of its Schedule". Having concluded that the tariff quota concession in the European Communities' Schedule had not expired on 31 December 2002 and remains in force, the Appellate Body upheld, albeit for different reasons, the panel's ultimate conclusion that that the tariff applied by the European Communities at a rate of €176/mt to MFN imports of bananas, without consideration of the tariff quota of 2.2 million mt bound at an in-quota tariff rate of €75/mt, is inconsistent with the first sentence of Article II:1(b) of the GATT 1994, insofar as it constitutes "an ordinary customs duty in excess of that set forth and provided for in Part I of the European Communities' Schedule, and results in a treatment for the commerce of bananas from MFN countries (i.e., non-ACP WTO Members) that is less favourable than that provided for in Part I [of the] European Communities' Schedule."

Finally, the European Communities appealed the panel's finding that to the extent that the EC Bananas Import Regime contained measures inconsistent with certain provisions of the GATT 1994, it nullified or impaired benefits accruing to the United States under that Agreement. The European Communities claimed that, considering that the United States was a net importer and did not export bananas, the preference for ACP bananas did not deprive the United States of any competitive opportunity to export bananas towards the market of the European Communities, nor did it change the United States' competitive relationship with any banana exporting country in the world. The Appellate Body upheld the panel's finding of nullification or impairment with respect to the United States. The Appellate Body noted that Article 3.8 of the DSU places the burden on the respondent of rebutting the presumption that a GATT-inconsistent measure nullifies or impairs the benefits accruing to the complainant. The Appellate Body found that the European Communities' argument that the United States did not have an interest in exporting bananas to the European Communities was not sufficient to rebut the presumption of nullification or impairment under Article 3.8 resulting from a breach of the GATT 1994. It observed that the United States could at any time start exporting the few bananas it produces to the European Communities; while this was unlikely, it did not disprove that the United States was a potential exporter. Moreover, the inconsistent measures could have an impact upon the domestic banana market of the United States. The Appellate Body agreed with the panel that the arguments of the European Communities on the alleged lack of nullification or impairment have not rendered irrelevant the considerations made by the panel and by the Appellate Body in the course of the original proceedings, regarding the actual and potential trade interests of the United States in this dispute.

- **Appellate Body Reports, *China – Auto Parts (EC)*, WT/DS339/AB/R / *China – Auto Parts (US)*, WT/DS340/AB/R / *China – Auto Parts (Canada)*, WT/DS342/AB/R**

This was the first appeal filed by China since its accession to the WTO in 2001. China appealed findings made by the panel regarding the consistency of certain Chinese measures affecting imported auto parts with several GATT 1994 provisions, and with paragraph 93 of China's Accession Working Party Report. Before the panel, Canada, the European Communities and the United States had challenged three instruments enacted by the Chinese Government that affect auto parts imported into China, namely: Policy on Development of the Automotive Industry (Order of the National Development and Reform Commission (No. 8)); Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles (Decree of the People's Republic of China, No. 125) (Decree 125); and Rules on Verification of Imported Automobile Parts Characterized as Complete Vehicles (Public Announcement of the Customs General Administration of the People's Republic of China, No. 4 of 2005). The measures impose a 25 per cent charge on imported auto parts used in the production of motor vehicles in China, if, based on criteria specified under the measures, the imported auto parts are deemed to have the "essential character" of complete motor vehicles. The amount of the charge is equivalent to the average tariff rate applicable to complete motor vehicles under China's

Schedule of Concessions and is higher than the average 10 per cent tariff rate that applies to auto parts.

The charge is imposed following assembly of the relevant vehicle model(s), and the measures set out a number of procedural and administrative steps designed to determine whether the charge applies[34], and ensure tracking and reporting of the imported auto parts, along with payment of the charge, in respect of the relevant auto parts. It is immaterial whether the auto parts that are "characterized as complete vehicles" are imported in multiple shipments—that is at various times, in various shipments, from various suppliers and/or from various countries—or in a single shipment. It is also immaterial whether the automobile manufacturer imported the parts itself or purchased them in the Chinese market through a third-party supplier.[35]

The panel found, as a preliminary matter, that the charge imposed on auto parts under the measures is an internal charge, under Article III:2, and not as argued by China, an ordinary customs duty under Article II:1(b). The panel also found that China's measures violate Articles III:2 and III:4. In the *alternative*, the panel held that, even if the charge were to be considered an ordinary customs duty, it is inconsistent with Article II:1(a) and (b).[36]

China appealed the panel's resolution of the preliminary question as to whether the charge at issue is an internal charge falling under Article III:2 of the GATT 1994, or an ordinary customs duty falling under Article II:1(b), and, consequently, the panel's characterization of the charge as an internal charge. In particular, China argued that the panel erred in separating the threshold question of whether the charge is an ordinary customs duty from the question of whether the Harmonized System allows China to apply Rule 2(a) of the General Rules for the Interpretation of the Harmonized System (GIR 2(a)) to the import, in multiple entries, of auto parts that are related through their subsequent assembly into a motor vehicle.[37] China submitted that, if the panel had properly taken account of the rules of the Harmonized System, it would have determined that the charge is an ordinary customs duty falling under Article II:1(b) and that GIR 2(a) permits auto parts to be classified as complete motor vehicles.

The Appellate Body examined the analytical approach to the threshold issue employed by the panel and found that the panel did not err in deciding to initially, and separately, determine whether the charge imposed under the measures at issue fell within the scope of Article II:1(b) or Article III:2, especially in the light of the panel's statement that a charge cannot be, at the same time, an ordinary customs duty and an internal charge. The Appellate Body then proceeded to consider the panel's interpretation of the term "ordinary customs duties" and in so doing addressed China's argument that the panel was required to determine whether the charge is an ordinary customs duty by evaluating

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[34]These procedural steps comprise prior self-evaluation by the automobile manufacturers that use imported parts, as well as: verification by customs authorities; registration; provision of bonds prior to the importation of auto parts; customs clearance; and payment and collection of the charge.

[35]However, if the automobile manufacturer purchases imported parts from such an independent third-party supplier, the automobile manufacturer may deduct from the 25 per cent charge that is due the value of any customs duties that the third-party supplier paid on the importation of those parts, provided that the automobile manufacturer can furnish proof of the payment of such import duties.

[36]For both findings, under Articles II and III, the panel rejected a defence raised by China under Article XX(d) of the GATT 1994 that the measures were "necessary to secure compliance" with China's Schedule.

[37]GIR 2(a) provides:

> Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

whether it relates to a valid classification of the product under the Harmonized System. The Appellate Body explained that, although the Harmonized System may be relevant context for the interpretation of Members' Schedules of Concessions, and, in particular, classification issues related to products listed therein, it was not clear how the Harmonized System was relevant to the examination of the meaning and scope of application of Article II:1(b) as opposed to Article III:2 of the GATT 1994. The Appellate Body agreed with the panel that the right of a Member to impose a duty and the obligation of an importer to pay such duty accrue at the moment, and by virtue, of importation; classification rules, which determine under which tariff heading a product falls are not relevant to assessing the nature of that charge; nor, as the panel found, is the moment at which the charge is collected or paid relevant. The Appellate Body also agreed with the panel that a key indicator of whether a charge constitutes an internal charge within the meaning of Article III:2 is whether the obligation to pay the charge accrues because of an internal factor which occurs after the importation of the product into an importing Member. Based on these considerations, the Appellate Body found that the Harmonized System does not provide context that is relevant to the threshold question or to the assessment of the respective scope of application of ordinary customs duties in the first sentence of Article II:1(b) and internal charges in Article III:2 of the GATT 1994 that must be undertaken in answering that question. In other words, the Harmonized System is not context that is relevant to resolving the question of *whether* a charge is an ordinary customs duty or an internal charge; rather, it is relevant to the issue of *which* ordinary customs duty applies to a particular *product* according to its proper classification once the preliminary threshold question is resolved. The Appellate Body therefore found that the panel did not err in interpreting the terms "ordinary customs duties" and "internal charges" without relying on the rules of the Harmonized System, including GIR 2(a).

In the light of these interpretations, the Appellate Body turned to review the panel's assessment of the charge imposed under the challenged measures. The Appellate Body explained that a panel's determination of whether a specific charge falls under Article II:1(b) or Article III:2 must be made in the light of the characteristics of the measure and the circumstances of the case. Such a determination requires a panel to identify all relevant characteristics of the measure, and recognize which features are most central to that measure, and which are to be accorded the most significance for purposes of characterizing the relevant charge and, thereby, properly determining the discipline(s) to which it is subject under the covered agreements. In this case, the Appellate Body agreed with the legal significance placed by the panel on the specific characteristics of the measures that it considered decisive of its characterization as an internal charge. These characteristics included: the fact that the obligation to pay the charge accrues internally after entry of the auto parts into China and their assembly into motor vehicles; that the charge is imposed on automobile manufacturers, and not importers in general; that the charge is imposed based on how imported parts are used and not based on parts as they enter; and that identical auto parts imported at the same time and in the same container can be subject to different charges. The Appellate Body also noted additional characteristics of the measures that support the panel's characterization (including the fact that it is the declaration of duty payment made subsequent to the assembly of auto parts into a complete motor vehicle that determines whether the charge will be applied). Likewise, the Appellate Body agreed with the panel that other characteristics of the charge that appeared to be typical of an ordinary customs duty were not decisive. These characteristics included the fact that the language used to describe it in the measures at issue is language that is typically reserved for border charges; China's explanation that the charge relates to the administration and enforcement of China's tariff provisions for motor vehicles; China's view that parts imported directly by an automobile manufacturer remain subject to customs control until after assembly and production of the relevant vehicle model; and the fact that the charge is administered primarily by China's customs authorities. The Appellate Body noted in particular that the way in which a Member's domestic law characterizes its own measures, although useful, cannot be dispositive of the characterization of such measures under WTO law.

Based on the above, the Appellate Body found that the panel did not err in its analytical approach to the threshold issue; in its interpretation of the terms "ordinary customs duties" in Article II:1(b) and "internal charge" in Article III:2 of the GATT 1994; or in its application of these

interpretations to the measures before it. The Appellate Body therefore upheld the panel's resolution of the threshold issue and characterization of the charge under the measures as an internal charge. As China's appeal of the panel's finding that the charge under the measures is inconsistent with Article III:2 was based solely on its argument that the panel erred in its resolution of the threshold issue, the Appellate Body consequently upheld the panel's finding that the measures at issue are inconsistent with Article III:2, first sentence, in that they subject imported auto parts to an internal charge that is not applied to like domestic auto parts.

China also appealed the panel's finding that the measures are inconsistent with Article III:4, partly on the basis that the panel erred in its resolution of the threshold issue. As the Appellate Body had upheld the panel's finding on the threshold issue, the Appellate Body similarly rejected this part of China's appeal. The second part of China's appeal in respect of the panel's finding under Article III:4 was, however, based on the panel's finding that the measures at issue influence an automobile manufacturer's choice between domestic and imported auto parts and thus affect the internal use of imported auto parts. In dismissing this aspect of China's appeal, the Appellate Body expressed its agreement with the panel that the measures "affect" the conditions of competition for imported auto parts as compared to like domestic auto parts. The Appellate Body observed that the measures create incentives for automobile manufacturers to limit their use of imported auto parts relative to domestic parts so as to avoid meeting the criteria under the measures and thus avoid attracting the 25 per cent charge. The measures at issue also impose administrative procedures and delays on automobile manufacturers using imported parts which would be avoided if exclusively domestic auto parts were used. The Appellate Body therefore upheld the panel's conclusion that the measures at issue are inconsistent with Article III:4 of the GATT 1994, since they accord imported auto parts less favourable treatment than like domestic auto parts.

In addition, China appealed the panel's alternative finding that the term "motor vehicles" in China's Schedule of Concessions could not encompass auto parts imported in multiple shipments, and that the charge under the measures was therefore inconsistent with Article II:1(a) and (b). In the event that the Appellate Body were to reverse the panel on the threshold issue, China did not appeal the other finding on which the panel based its conclusion, namely, that the "essential character" test under Article 21(2) and (3) and Article 22 of Decree 125 necessarily leads to a violation of Article II:1(a) and (b) of the GATT 1994. China argued however that, if the Appellate Body were to uphold the panel's finding that the charge under the measures at issue is an internal charge, then the Appellate Body should declare both of the panel's alternative findings under Article II:1(a) and (b) to be "moot and of no legal effect". In considering whether to examine the alternative findings of the panel, the Appellate Body noted that none of the participants had appealed the panel's decision to make these alternative findings, and suggested that, in certain circumstances, it may be appropriate for panels to do so. Nonetheless, the Appellate Body found it unnecessary to review the panel's alternative findings as the assumption on which they had been made—that is, that the Appellate Body would find that the panel had erred in its resolution of the threshold issue and that the charge imposed under the measures is an ordinary customs duty rather than an internal charge—had not been fulfilled. The Appellate Body also declined China's request to declare the alternative findings "moot and of no legal effect".

Lastly, the Appellate Body considered China's appeal of the panel's findings under paragraph 93 of China's Accession Working Party Report in respect of a claim raised by Canada and the United States. The panel had found that the measures apply to imports of CKD (completely knocked down) and SKD (semi-knocked down) kits[38] and violate China's commitment under paragraph 93 of China's Accession Working Party Report, which provides that if China created tariff lines for such kits, the tariff rates would be no more than 10 per cent. China made two allegations of a preliminary nature regarding the panel's finding: first, that the panel erred in construing the measures

[38]CKD and SKD kits refer to all, or nearly all, of the auto parts and components necessary to assemble a complete vehicle, which must be packaged and shipped in a single shipment, and which must go through the assembly process to become a complete vehicle after they have been imported into the importing country.

at issue as imposing a charge on automobile manufacturers that import CKD and SKD kits and declare and pay duties at the border; and, secondly, that the panel erred in ruling on a claim for which a *prima facie* case had not been established by either the United States or Canada. In the event that its preliminary arguments did not succeed, China also claimed that the panel erred in finding that, by creating separate tariff lines at the ten-digit level for CKD and SKD kits in its national tariff, and by enacting the measures, China fulfilled the condition, and violated its commitment, in paragraph 93.

The Appellate Body began its analysis of China's arguments by examining Articles 2(2) and 21(1) of Decree 125 on their face. Contrary to the panel's finding, the Appellate Body could not find any indication in Article 2(2) that importers of CKD and SKD kits are exempted under the measures from only the administrative procedures, while remaining subject to the charge. In the Appellate Body's view, the statement "these Rules shall not apply" in Article 2(2) referred to all of the Rules of Decree 125, comprising the procedural steps that precede and/or accompany the imposition of the "charge" under the measures, and the charge itself. Nor did the Appellate Body find support for the panel's reading of Article 21(1) as providing the legal basis for the imposition of the "charge", as this provision was merely a definitional provision. For these reasons, the Appellate Body did not see how the charge imposed under the measures could be separated from the procedures that facilitate and give rise to its imposition.

Next, the Appellate Body turned to China's additional argument that the panel's finding that the charge imposed on CKD and SKD kits is a border charge was irreconcilable with its earlier finding that the charge under the measures is an internal charge. The Appellate Body was concerned that the panel provided no explanation of the factors that led it to characterize the charge imposed on imports under Article 2(2) as an ordinary customs duty, when elsewhere in its analysis, it treated the charge imposed under the measures at issue as an internal charge. Bearing in mind its earlier observations as to the proper approach to be adopted by panels in characterizing a charge falling under Article II:1(b) or Article III:2 of the GATT 1994, the Appellate Body did not consider the panel's approach to the characterization of the charge as an ordinary customs duty to be proper.

For these reasons, the Appellate Body found that the panel erred in construing Decree 125 to mean that Articles 2(2) and 21(1) exempt CKD and SKD kits imported under Article 2(2) from the administrative procedures but not from the charge under the measures. The Appellate Body also noted that, although the panel considered that there were distinct charges imposed under Decree 125, and that it could characterize the "charge" imposed on imports of CKD and SKD kits under Article 2(2) of Decree 125 differently—that is, as an ordinary customs duty—it did not explain why this was so. The Appellate Body consequently reversed the panel's finding that the measures at issue are inconsistent with China's commitment under paragraph 93 of its Accession Working Party Report. In the light of these findings, the Appellate Body did not find it necessary to rule on China's other preliminary claim that the United States and Canada had not made out a *prima facie* case of inconsistency; nor did the Appellate Body, given the way in which China had framed its appeal, go on to review the substance of the panel's findings that the adoption of the measures should be deemed to have created tariff lines, and that China had created tariff lines for CKD and SKD kits at a ten-digit level in its national customs tariff.

V. Participants and Third Participants in Appeals

Table 5 lists the WTO Members that participated in appeals for which an Appellate Body report was circulated during 2008. It distinguishes between a Member that filed a Notice of Appeal pursuant to Rule 20 of the *Working Procedures* and a Member that filed a Notice of Other Appeal pursuant to Rule 23(1) (known as the "other appellant"). Rule 23(1) provides that "a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Under the *Working Procedures*, parties wishing to appeal a panel report pursuant to

Rule 23(1) are required to file a Notice of Other Appeal within 12 days after the filing of the Notice of Appeal.

Table 5 also identifies those Members that participated in appeals as a third participant under paragraph (1), (2), or (4) of Rule 24 of the *Working Procedures*. Under Rule 24(1), a WTO Member that was a third party to the panel proceedings may file a written submission as a third participant within 25 days of the filing of the Notice of Appeal. Pursuant to Rule 24(2), a Member that was a third party to the panel proceedings that has not filed a written submission may, within 25 days of the filing of the Notice of Appeal, notify its intention to appear at the oral hearing and whether it intends to make an oral statement at the hearing. Rule 24(4) provides that a Member that was a third party to the panel proceedings and has neither filed a written submission in accordance with Rule 24(1), nor given notice in accordance with Rule 24(2), may notify its intention to appear at the oral hearing and request to make an oral statement.

TABLE 5: PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS FOR WHICH AN APPELLATE BODY REPORT WAS CIRCULATED IN 2008

Case	Appellant [a]	Other appellant [b]	Appellee(s) [c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
US – Stainless Steel (Mexico)	Mexico	- - -	United States	Chile European Communities Japan Thailand	China	- - -
US – Upland Cotton (Article 21.5 – Brazil)	United States	Brazil	Brazil United States	Argentina Australia Canada European Communities Japan New Zealand	Chad China India Thailand	- - -
US – Shrimp (Thailand)	Thailand	United States	United States Thailand	Brazil Chile European Communities India Japan Korea Viet Nam	China Mexico	- - -
US – Customs Bond Directive	India	United States	United States India	Brazil European Communities Japan Thailand	China	- - -
US – Continued Suspension	European Communities	United States	United States European Communities	Australia Brazil New Zealand Norway	China India Mexico Chinese Taipei	- - -

Case	Appellant [a]	Other appellant [b]	Appellee(s) [c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
Canada – Continued Suspension	European Communities	Canada	Canada European Communities	Australia Brazil New Zealand Norway	China India Mexico Chinese Taipei	- - -
India – Additional Import Duties	United States	India	India United States	Australia European Communities Japan	Chile Viet Nam	- - -
EC – Bananas III (Article 21.5 – Ecuador II)	European Communities	Ecuador	Ecuador European Communities	Belize Cameroon Colombia Côte d'Ivoire Dominica Dominican Republic Ghana Jamaica Japan Nicaragua Panama Saint Lucia Saint Vincent & the Grenadines Suriname United States	Brazil	- - -
EC – Bananas III (Article 21.5 – US)	European Communities	- - -	United States	Belize Cameroon Colombia Côte d'Ivoire Dominica Dominican Republic Ecuador Jamaica Japan Nicaragua Panama Saint Lucia Saint Vincent & the Grenadines Suriname	Brazil Mexico	- - -
China – Auto Parts (EC)	China	- - -	European Communities	Argentina Australia Japan	Brazil Mexico Chinese Taipei Thailand	- - -

Case	Appellant [a]	Other appellant [b]	Appellee(s) [c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
China – Auto Parts (US)	China	- - -	United States	Argentina Australia Japan	Brazil Mexico Chinese Taipei Thailand	- - -
China – Auto Parts (Canada)	China	- - -	Canada	Argentina Australia Japan	Brazil Mexico Chinese Taipei Thailand	- - -

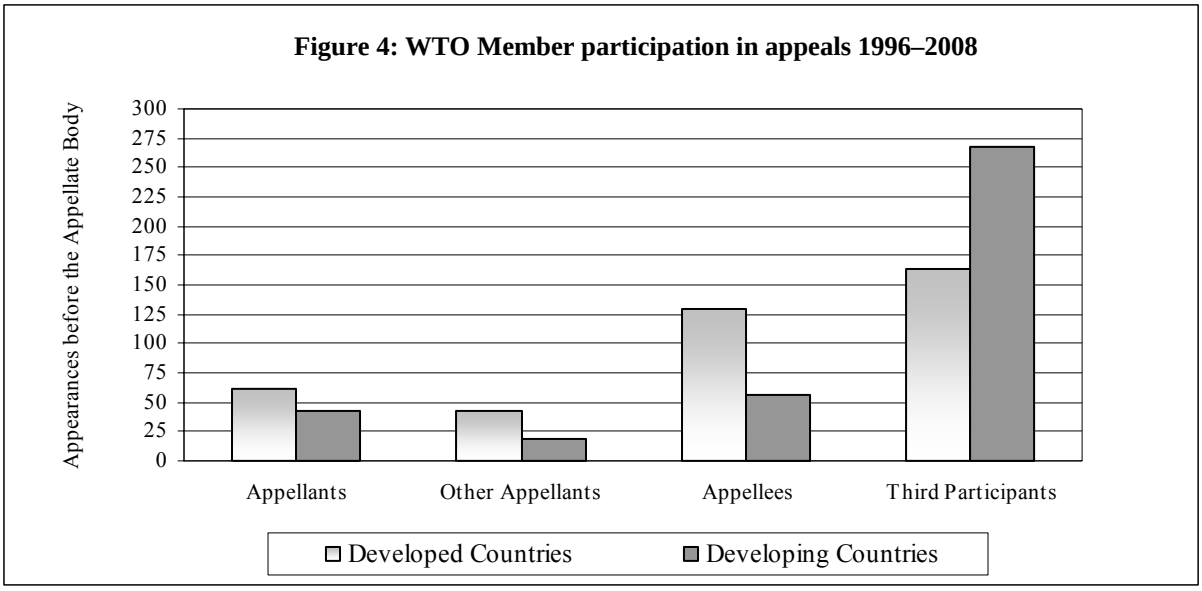
[a] Pursuant to Rule 20 of the *Working Procedures*.
[b] Pursuant to Rule 23(1) of the *Working Procedures*.
[c] Pursuant to Rule 22 or 23(3) of the *Working Procedures*.

A total of 32 WTO Members appeared at least once as appellant, other appellant, appellee, or third participant in appeals for which an Appellate Body report was circulated during 2008. Of these 32 WTO Members, 7 were developed country Members and 25 were developing country Members.

Of the 141 total appearances by WTO Members before the Appellate Body during 2008, 89 were by developing country Members and 52 by developed country Members. Developing country Members made 6 appearances as appellant, 3 as other appellant, 5 as appellee, and 75 appearances as third participant. Developed country Members made 6 appearances as appellant, 4 as other appellant, 14 as appellee, and 28 as third participant.

Figure 4 shows the ratio of developed country Members to developing country Members in terms of appearances made as appellant, other appellant, appellee, and third participant in appellate proceedings from 1996 through 2008.

Figure 4: WTO Member participation in appeals 1996–2008



Annex 6 provides a statistical summary and details on WTO Members' participation as appellant, other appellant, appellee, and third participant in appeals for which an Appellate Body report was circulated from 1996 through 2008.

VI. Working Procedures for Appellate Review

No amendments were made to the *Working Procedures* during 2008. The current version of the *Working Procedures* is contained in document WT/AB/WP/5, which was circulated to WTO Members on 4 January 2005.

The following procedural issues were raised in appeals for which an Appellate Body report was circulated in 2008.

Public observation of the oral hearing

Public observation of the oral hearing was authorized for the first time in the *US – Continued Suspension* and *Canada – Continued Suspension* appeals. The request to open the hearing to public observation was made by all of the participants. Third participants were given an opportunity to comment in writing on the request. Some third participants supported the request, while others objected to it. A hearing was held with the participants and third participants, exclusively dedicated to exploring the issues raised by the request to authorize public observation. Having considered the views of the participants and third participants, the Division decided to authorize the public observation of the oral hearing. The Division issued a Procedural Ruling explaining the basis of its decision and setting out the additional procedures adopted for purposes of those appeals, pursuant to Rule 16(1) of the *Working Procedures*. This Procedural Ruling may be found in Annex 7.

Public observation was also requested by the participants and authorized by the Division in the *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)* appeals.[39] The Division invited comments from the third participants before deciding on the request. The reasons underlying the Division's decision and the additional procedures adopted for that purpose were set out in a Procedural Ruling, which may be found as an annex to the Appellate Body reports.

Observation of the oral hearing by the public was made possible via closed-circuit television broadcast to a separate room. Notice concerning the authorization of public observation and registration instructions were posted on the WTO website. Eighty individuals registered to view the oral hearing in *US – Continued Suspension* and *Canada – Continued Suspension*, and 75 individuals registered for the oral hearing in *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)*.

Consolidation of appellate proceedings

Four appellate proceedings involved appeals of more than one panel report: *US – Shrimp (Thailand)* and *US – Customs Bond Directive*; *US – Continued Suspension* and *Canada – Continued Suspension*; *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)*; and *China – Auto Parts (EC)*, *China – Auto Parts (US)*, and *China – Auto Parts (Canada)*. The appellate proceedings in the first three cases were consolidated in the interests of "fairness and orderly procedure", as referred to in Rule 16(1) of the *Working Procedures*, and in agreement with the participants. A single Division was selected to hear and decide each consolidated proceedings, and a single oral hearing was held for each consolidated proceedings. The appeal of the panel reports in *China – Auto Parts* was also conducted as a single appeal.

Some of the third parties in *US – Shrimp (Thailand)* and *US – Customs Bonds Directive*, and in *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)*, were not the same. Nevertheless, the respective Divisions invited all third parties in each of the consolidated

[39]Public observation of the oral hearing was likewise requested and authorized in *US – Continued Zeroing*. The oral hearing was held on 11-12 December 2008. The 90-day period for circulation of the Appellate Body report in that case expires on 4 February 2009.

proceedings to attend the single oral hearing, noting, however, the understanding that, in their written submissions and oral statements, the third participants would address only the issues appealed in the dispute(s) to which they were third parties in the panel proceedings.[40]

At the request of two of the participants, two separate Appellate Body reports were issued in *US – Continued Suspension* and *Canada – Continued Suspension*.[41] In *EC – Bananas III (Article 21.5 – Ecuador II)* and *EC – Bananas III (Article 21.5 – US)*, the Appellate Body issued separate reports in the form of a single document. Each document contains identical sections summarizing the participants' submissions and setting forth the reasoning of the Appellate Body, but contains separate findings and conclusions for each panel report appealed. The same procedure was followed in the appeal of the panel reports in *China – Auto Parts*.

Sufficiency of the Notice of Appeal

In *EC – Bananas III (Article 21.5 – US)*, the appellee claimed that the Notice of Appeal did not satisfy the requirements of Rule 20(2)(d) of the *Working Procedures* and requested that the Appellate Body dismiss the appeal on these grounds. Although the Appellate Body found deficiencies in the Notice of Appeal, it held that the formal defects in the Notice of Appeal did not give rise to procedural detriment of the kind that would warrant the dismissal of the appeal.[42] The Appellate Body, however, clarified that it would not make findings under Article 11 of the DSU because "no separate claim under Article 11 of the DSU [had] been raised in the Notice of Appeal".[43]

Extension of terms of Mr. A.V. Ganesan and Mr. Georges Abi-Saab

Pursuant to Rule 15 of the *Working Procedures*, Mr. A.V. Ganesan was authorized by the Appellate Body to complete the disposition of the appeals in *US – Shrimp (Thailand)* and *US – Customs Bond Directive*, even though his second term as Appellate Body Member was to expire before the completion of the appellate proceedings.[44] Mr. Georges Abi-Saab was authorized to complete the disposition of the appeals in *US – Continued Suspension* and *Canada – Continued Suspension*, which also would not be completed before the expiration of his second term as Appellate Body Member.[45]

Extension of time period for circulation of the Appellate Body report

The 90-day time period for circulation of the Appellate Body report was extended in *US – Upland Cotton (Article 21.5 – Brazil)* and in *US – Continued Suspension* and *Canada – Continued Suspension*.[46] In each case, the participants agreed that, due to the size and complexity of the appeals, additional time was required to complete the appellate proceedings. Additional time was allocated for

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[40]Appellate Body Reports, *US – Shrimp (Thailand) / US – Customs Bond Directive*, para. 16; Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 23.

[41]Appellate Body Reports, *US – Continued Suspension / Canada – Continued Suspension*, footnote 62 to para. 27.

[42]Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 283.

[43]Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 285.

[44]Appellate Body Reports, *US – Shrimp (Thailand) / US – Customs Bond Directive*, para. 16. Mr. Ganesan's term of office was due to expire on 31 May 2008. The Notice of Appeal was filed on 17 April 2008. The Appellate Body report was circulated on 16 July 2008.

[45]Appellate Body Reports, *US – Continued Suspension / Canada – Continued Suspension*, para. 27. Mr. Abi-Saab's term of office was due to expire on 31 May 2008. The Notice of Appeal was filed on 29 May 2008. The Appellate Body report was circulated on 16 October 2008.

[46]Appellate Body Report, *US – Upland Cotton (Article 21.5 – Brazil)*, para. 14; Appellate Body Reports, *US – Continued Suspension / Canada – Continued Suspension*, para. 29.

filing the appellees' submissions and the third participants' submissions and notifications, pursuant to Rules 16, 22, 23, 24, and 26 of the *Working Procedures*. The time period was extended to 111 days in *US – Upland Cotton (Article 21.5 – Brazil)* and to 140 days in *US – Continued Suspension* and *Canada – Continued Suspension*.

Correction of clerical errors

Requests to correct clerical errors in the participants' submissions, pursuant to Rule 18(5) of the *Working Procedures*, were made in *US – Stainless Steel (Mexico)*, *US – Customs Bond Directive*, and *India – Additional Import Duties*.[47] A request to correct clerical errors in the Notice of Appeal, pursuant to Rule 18(5), was made in *China – Auto Parts*.[48] After inviting comments from the other participants and third participants, the respective Divisions granted authorization to correct these clerical errors.

Extension of time period to file submissions

In the *US – Shrimp (Thailand)* and *US – Customs Bond Directive* proceedings, a request to extend the deadline for filing submissions was made in connection with the consolidation of the proceedings. Pursuant to Rule 16(2) of the *Working Procedures* and after consultations with the participants, the Division extended the time periods for the filing of the other appellants' submissions, as well as the for the filing of the appellees' and third participants' submissions.[49] In the *US – Customs Bond Directive* case, one appellant requested that the time period for filing its appellant's submission be extended by one working day, pursuant to Rule 16(2) of the *Working Procedures*, due to certain unforeseen developments. After hearing the views of the other participants, the Division gave that appellant an extension until 1 p.m. of the day following the original deadline, and also granted a similar extension for the filing of the appellees' and third participants' submissions.[50]

Change of date of the oral hearing

Pursuant to Rule 16(2) of the *Working Procedures*, a request was made in *China – Auto Parts* to change the dates scheduled for the oral hearing by one day. None of the participants or third participants objected to the request. The Division decided to change the starting time of the oral hearing from the morning to the afternoon of the day on which it was originally scheduled to begin.[51]

Requests concerning submissions filed after the deadline

Requests were made in *US – Stainless Steel (Mexico)* and in *US – Continued Suspension* and *Canada – Continued Suspension* concerning the status of submissions filed on the day they were due, but after the 5 p.m. deadline set forth in the Working Schedules of these appeals. These requests were made pursuant to Rule 18(1) of the *Working Procedures*. In *US – Stainless Steel (Mexico)*, the Division emphasized that "[c]ompliance with established time periods by all participants regarding the filing of submissions is an important element of due process of law" and "is a matter of fairness and orderly procedure, which are referred to in Rule 16(1) of the *Working Procedures*".[52] However, in the circumstances of that appeal, the Division considered the submission as filed. In *US – Continued Suspension* and *Canada – Continued Suspension*, the Division reiterated "the importance of all

[47]Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 5; Appellate Body Report, *US – Customs Bond Directive*, para. 20; Appellate Body Report, *India – Additional Import Duties*, para. 11.

[48]Appellate Body Reports, *China – Auto Parts (EC)*, *China – Auto Parts (US)*, and *China – Auto Parts (Canada)*, para. 9.

[49]Appellate Body Reports, *US – Shrimp (Thailand) / US – Customs Bond Directive*, para. 16.

[50]Appellate Body Reports, *US – Shrimp (Thailand) / US – Customs Bond Directive*, paras. 17 and 18.

[51]Appellate Body Reports, *China – Auto Parts (EC)*, *China – Auto Parts (US)*, and *China – Auto Parts (Canada)*, para. 10.

[52]Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 164.

participants adhering strictly to the time-limits set out in the Working Schedule, given the time constraints imposed upon both the participants and the Appellate Body Members in these proceedings" and "also noted that the failure to strictly observe such time-limits can have an impact upon the fairness and the orderly conduct of the proceedings".[53] At the oral hearing, the Division ruled that, "in the light of the particular time-limits concerned and potential prejudice that might be involved", it would consider the submissions as filed.[54]

Unsolicited *amicus curiae* briefs

An unsolicited *amicus curiae* brief was received in the *China – Auto Parts* appellate proceedings. Having given the participants and the third participants an opportunity to express their views, the Division hearing the appeal did not find it necessary to rely on this *amicus curiae* brief in rendering its decision.[55]

VII. Arbitrations under Article 21.3(c) of the DSU

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

Three Article 21.3(c) arbitration proceedings were carried out in 2008. One of the arbitrators was appointed by agreement of the parties. The other two arbitrators were appointed by the Director-General because the parties were unable to agree on an arbitrator.

- ***Japan – DRAMs (Korea)*, WT/DS336/16**

On 17 December 2007, the DSB adopted the Appellate Body and panel reports in *Japan – DRAMs (Korea)*.[56] Korea and Japan requested that David Unterhalter act as arbitrator in these proceedings pursuant to Article 21.3(c) of the DSU.[57] Mr. Unterhalter accepted the appointment on 5 March 2008.

As the implementing Member, Japan proposed that the reasonable period of time for implementation of the DSB's recommendations and rulings should be 15 months from the date of adoption of the panel and Appellate Body reports. Japan claimed that implementation would require modification of the original countervailing duty through a new Cabinet Order replacing the Cabinet Order authorizing the original countervailing duty. It explained that the procedure necessary under Japanese laws and regulations to modify a Cabinet Order includes a new countervailing duty investigation. Following the conduct of an investigation (comprising an initial preparatory and then actual investigatory stage) the Cabinet can decide to replace the original countervailing duty order only after separate reviews are conducted by two independent entities.

[53]Appellate Body Reports, *US – Continued Suspension* / *Canada – Continued Suspension*, para. 30.
[54]Appellate Body Reports, *US – Continued Suspension* / *Canada – Continued Suspension*, para. 30.
[55]Appellate Body Reports, *China – Auto Parts (EC)*, *China – Auto Parts (US)*, and *China – Auto Parts (Canada)*, para. 11.
[56]A summary of the Appellate Body Report in *Japan – DRAMs (Korea)* may be found in the Appellate Body Annual Report for 2007.
[57]WT/DS336/15.

Korea contested the need for 15 months, and proposed instead five months, or failing that, two weeks from the date of the issuance of the arbitration award. In view of the nature of the findings by the Appellate Body, Korea considered that immediate revocation of the countervailing duty order was required. In the event that the arbitrator disagreed, Korea believed the time proposed by Japan for an investigation was unjustified and should be reduced.

The arbitrator recognized that his task was to determine *by when* an implementing Member must comply, but considered that, in doing so, he was required to consider *how* a Member proposes to implement. This entails a consideration of whether the means for implementation chosen by the Member are consistent with the recommendations and rulings of the DSB, and specifically whether the proposed implementing action falls within the range of permissible actions that can be taken in order to implement these recommendations and rulings consistently with the WTO agreements. Turning to the arguments of Japan and Korea as to the permissible means of implementation in this case, the arbitrator noted that, in general, implementing Members can choose either to withdraw the measure found to be WTO-inconsistent, or modify that measure through remedial action. In this case, Japan could choose to modify the aspects of its determination found to be inconsistent through reconsideration of facts on the original investigatory record, as well as by gathering additional facts. The arbitrator cautioned, however, that, as conceded by Japan at the oral hearing, Japan could not conduct a *de novo* investigation, and any new evidence collected would have to be confined to the period examined in the original countervailing duty investigation.

The arbitrator then considered what, in the light of the specific steps proposed by Japan, constituted a reasonable period of time. The arbitrator accepted Japan's submission that the procedures foreseen in Japan's Customs Tariff Law is the only way to modify an original countervailing duty order found to be WTO-inconsistent by the DSB. However, the arbitrator did not believe that the full 15 months requested by Japan was reasonable for a number of reasons. The arbitrator noted that not all of the investigatory steps, or the timeframes for these steps referred to by Japan, were mandatory under Japan's laws and regulations, which suggested that Japan had some flexibility in shortening the time for making a re-determination. Moreover, the arbitrator was not convinced that Japan had proven that there is a "standard practice" in respecting due process rights of interested parties, since Japan had never before been called upon to implement DSB recommendations and rulings in trade remedy cases. In any event, a balance had to be struck between respecting due process rights of interested parties (who had had an opportunity to participate in the original investigation) and the exigencies of promptness in conducting a re-determination for purposes of implementation. Finally, the arbitrator was of the view that the review by the investigating authorities, as well as the decision by the Japanese Cabinet, could be expedited, in the absence of minimum time-limits mandated in Japan's laws and regulations governing these procedures, and in view of a Japanese precedent for shortening this process referred to by Korea.

Taking all of the above-mentioned factors into account, the arbitrator determined that the "reasonable period of time" for implementation of the DSB's recommendations and rulings in this case was eight months and two weeks, expiring on 1 September 2008.

- ***Brazil – Retreaded Tyres*, WT/DS332/16**

On 17 December 2007, the DSB adopted the Appellate Body and panel reports in *Brazil – Retreaded Tyres*. The principal issue in this dispute was whether Brazil's import ban on retreaded tyres, which was found to be inconsistent with Article XI of the GATT 1994, could be justified as a measure necessary to protect human, animal, or plant life or health. The Appellate Body found that imports of used tyres under court injunctions and the exemption of imports of retreaded tyres from MERCOSUR countries from the general ban resulted in the import ban on imports of retreaded tyres

into Brazil being applied in a manner that constitutes arbitrary or unjustifiable discrimination within the meaning of the chapeau of Article XX of the GATT 1994.[58]

Because the parties were unable to agree on an arbitrator, the Director-General appointed former Appellate Body Member Yasuhei Taniguchi to act as the arbitrator in the Article 21.3(c) proceedings to determine the reasonable period of time.[59] Mr. Taniguchi accepted the appointment on 30 June 2008.

Brazil proposed that the reasonable period of time for implementation of the DSB's recommendations and rulings should be 21 months from the date of adoption of the panel and Appellate Body reports. Brazil claimed that implementation would require the following steps. First, imports of used tyres under court injunctions would be halted by obtaining a decision of the Federal Supreme Court confirming the constitutionality of the import ban on used tyres. Secondly, Brazil would engage in negotiations with its MERCOSUR partners in order to establish new regulatory disciplines for the importation of used and retreaded tyres within MERCOSUR. Thirdly, Brazil was seeking a ruling from the Federal Supreme Court declaring the unconstitutionality of measures adopted by the State of Rio Grande do Sul that purport to regulate imports of retreaded tyres. Brazil did not request a particular period of time concerning the fines imposed through certain Presidential Decrees, since such fines were, according to Brazil, accessory measures that stand or fall with the import ban.

The European Communities contested that implementation of the recommendations and rulings of the DSB in this dispute would require 21 months. Instead, the European Communities argued that the reasonable period of time for implementation should be 10 months from the date of adoption of the panel and Appellate Body Reports. The European Communities suggested that Brazil repeal or modify through legislative or regulatory action the measures found to be WTO-inconsistent. In the European Communities' view, the proceedings before the Federal Supreme Court proposed by Brazil were not a suitable basis for the calculation of the reasonable period of time, because the government has no control over the outcome of these judicial proceedings.

In keeping with previous arbitration awards, the arbitrator found that Brazil, as the implementing Member, has a measure of discretion in choosing the means of implementation. Therefore, the arbitrator considered that Brazil could, in principle, remain within the range of permissible action to comply with the DSB's recommendations and rulings by either lifting the import ban on retreaded tyres, and thus removing the inconsistency with Article XI of the GATT 1994, or modifying the existing import ban in a way that would rectify the inconsistencies with the chapeau of Article XX so that it would be justified under that provision. The arbitrator considered that, while it was for Brazil to identify a particular method of implementation, it was necessary to consider aspects of the envisaged means of implementation in determining what would be a reasonable period of time for Brazil to comply with the recommendations and rulings of the DSB. This is because, in order to determine by *when* Brazil must comply, it was relevant to consider *how* it proposed to do so.

The arbitrator then considered what, in the light of the specific steps proposed by Brazil, constituted a reasonable period of time. First, with respect to the inconsistency stemming from imports of used tyres on the basis of preliminary court injunctions, the arbitrator rejected the European Communities' argument that the judicial proceedings before the Federal Supreme Court proposed by Brazil were not a suitable basis for the calculation of the reasonable period of time. The arbitrator accepted Brazil's argument that legislative or regulatory action would not prevent lower courts from issuing further injunctions based on challenges to the constitutionality of the used tyres ban. Therefore, the arbitrator found that implementation through judiciary action could not be

[58]A full summary of the Appellate Body Report in *Brazil – Retreaded Tyres* may be found in the Appellate Body Annual Report for 2007.

[59]WT/DS332/15.

a priori excluded from the range of permissible action. However, the arbitrator considered that the reasonable period of time to conclude such proceedings before the Federal Supreme Court should not be calculated on the basis of the average duration of a sample of a somewhat different type of proceedings from a past five-year period as requested by Brazil, but, rather, on the basis of an assessment of the state of affairs of the particular proceedings pending before the Federal Supreme Court aimed at confirming the constitutionality of the used tyres ban.

Secondly, with respect to the inconsistency stemming from the MERCOSUR exemption from the ban on imports of retreaded tyres, the arbitrator rejected Brazil's request to factor into his calculation additional time for negotiations with MERCOSUR countries on a new regional tyre trade regime. Referring to the arbitration in *EC – Chicken Cuts*, the arbitrator found that a Member seeking to take steps outside its domestic decision-making process bears the burden of establishing that these external elements of its proposed means of implementation are a requirement under the law of the external system. The arbitrator found that, in the present case, Brazil had not established that negotiating new disciplines on trade in tyres within the ambit of MERCOSUR was required under MERCOSUR law. In making this finding, the arbitrator also took into account the fact that, twice since the circulation of the panel report in this dispute, Brazil had unilaterally introduced modifications to the MERCOSUR exemption through domestic measures.

Finally, with respect to the inconsistency stemming from measures adopted by the State of Rio Grande do Sul, the arbitrator found that judiciary action proposed by Brazil to remedy that inconsistency could not be *a priori* excluded from the range of permissible action. However, the arbitrator considered that such proceedings could be concluded more expeditiously than suggested by Brazil.

On this basis, the arbitrator determined a "reasonable period of time" for implementation of the DSB's recommendations and rulings in this dispute of 12 months, expiring on 17 December 2008.

- ***US – Stainless Steel (Mexico)*, WT/DS344/15**

On 20 May 2008, the DSB adopted the Appellate Body and panel reports in *US – Stainless Steel (Mexico)*.[60] The Director-General appointed former Appellate Body Member Florentino Feliciano to act as arbitrator in the proceedings to determine the reasonable period of time, after the parties had failed to agree on an arbitrator.[61] Mr. Feliciano accepted the appointment on 1 September 2008.

The United States requested 15 months to bring itself into compliance with the recommendations and rulings of the DSB and stressed that the termination of the methodology of simple zeroing in assessment reviews would require complex changes to its duty assessment methodology. In particular, the United States asserted that changes would be needed to address the issue of how anti-dumping duties are allocated among importers for assessment purposes, especially in the case where, for some importers, importing from the same exporter or foreign producer subject to an anti-dumping order, the aggregation of the results of multiple comparisons of monthly weighted-average normal value and individual export prices, yields a negative result. The United States pointed out that two means of implementation were under consideration—(i) legislative action; and (ii) administrative action. The United States argued that should implementation by administrative means be chosen, the procedure set out in Section 123 of the Uruguay Round Agreements Act (URAA) would be followed. Furthermore, the United States submitted that the impending Presidential and Congressional elections would lengthen the period needed for the implementation of the recommendations and rulings of the DSB. According to the United States, irrespective of the

[60]A summary of the Appellate Body Report in *US – Stainless Steel (Mexico)* may be found in section IV.B *supra*.

[61]WT/DS344/14.

means of implementation chosen, the process would require the participation of the new Congress and the new Administration, so that the process could not begin before late January 2009.

Mexico requested that the reasonable period of time should not exceed seven months. It argued that the arbitrator should take into account, as a particular circumstance, the fact that the United States has been under an obligation to eliminate simple zeroing since at least 9 May 2006, when the DSB adopted the recommendations and rulings in *US – Zeroing (EC)*, and that the United States has also been under an obligation to eliminate simple zeroing "as such" since the DSB adopted the recommendations and rulings in *US – Zeroing (Japan)* on 24 January 2007. Mexico noted that the reasonable period of time should be the shortest period of time possible within the legal system of the implementing Member, and submitted that administrative implementation is the fastest path and should be the basis for the arbitrator's determination. Mexico disagreed that elimination of simple zeroing required legislative action, pointing out that the USDOC has the legal authority to address the issue of the allocation of anti-dumping duties among importers for assessment purposes. Mexico further contended that the United States might resort to administrative action under the Administrative Procedure Act, and that such an action would allow implementation within a shorter period of time than that required for action under Section 123 of the URAA. In any event, Mexico expressed the view that the process of implementation under Section 123 could be completed in seven months from the date of adoption of the DSB's recommendations and rulings, and that such a period of time would allow for compliance to be completed before a new Administration takes office.

As to the question of whether implementation should be through legislative or administrative action, the arbitrator first noted that both methods were within the range of permissible means that are capable of achieving the elimination of simple zeroing in assessment reviews. He recalled that although his task is not to decide which method or type of measure should be chosen by an implementing Member to comply with the recommendations and rulings of the DSB, it did fall within his mandate to assess what would be the shortest period possible within the legal system of the implementing Member for effective implementation. Since implementation through administrative action usually takes a shorter period of time than implementation through legislative action, and given that the United States had not established that legislative implementation would be more effective than administrative implementation, the arbitrator made his determination on the basis of the period of time within which administrative action eliminating the methodology of simple zeroing in assessment reviews could be completed.

Because Section 123 of the URAA addresses specifically the implementation of the recommendations and rulings of the DSB, the arbitrator considered the timing and sequence of procedural steps provided for in Section 123 of the URAA as particularly relevant in his determination. The arbitrator noted that the recommendations and rulings of the DSB concern the elimination of simple zeroing in assessment reviews, and that this issue is distinct from the issue of the "allocation of antidumping duties among the importers for assessment purposes". He pointed out, however, that both issues are closely related and thus the complexity associated with the resolution of the latter issue might be considered as a particular circumstance to be taken into account in the determination of a reasonable period of time for eliminating of the methodology of simple zeroing in assessment reviews. At the same time, the arbitrator indicated that this particular circumstance could not justify a delay in implementation as provisional administrative allocation rules might be devised and put into effect while the long-term administrative or legislative allocation standards are being developed. In addition, the arbitrator rejected the United States' argument that the impending Presidential and Congressional elections constituted a factor that should be given weight in his determination, observing that the administrative process under Section 123 of the URAA could be initiated and moved forward under the current Administration and then completed after the new Administration and Congress took office.

Finally, the arbitrator addressed Mexico's argument that he should consider as a particular circumstance the DSB recommendations and rulings in previous disputes concerning the simple zeroing methodology used by the United States in assessment reviews. The arbitrator noted that those disputes involved different complainants and were at different procedural stages of WTO dispute settlement, including proceedings under Article 21.5 of the DSU. Therefore, the arbitrator considered that those disputes should be attributed limited relevance in his determination.

Based on the above considerations, the arbitrator determined a "reasonable period of time" for implementation of the recommendations and rulings of the DSB of 11 months plus 10 days, expiring on 30 April 2009.

VIII. Technical Assistance

Appellate Body Secretariat staff participated in the WTO Biennial Technical Assistance and Training Plan: 2008-2009[62], particularly in activities relating to training in dispute settlement procedures. Overall, Appellate Body Secretariat staff participated in 13 technical assistance activities during the course of 2008.

Annex 8 provides further information about the activities carried out by Appellate Body Secretariat staff in 2008 falling under the WTO Technical Assistance and Training Plan.

IX. Other Activities

On 27 May 2008, Appellate Body Members held a joint meeting with the Members of the International Law Commission of the United Nations. At the meeting, they discussed several topics of common interest, including various approaches to treaty interpretation, the MFN treatment principle, the relationship between municipal and international law, and the standard of review applied by international tribunals and other dispute settlement mechanisms.

A roundtable discussion with former and current Members of the Appellate Body was held at the Graduate Institute of International and Development Studies in Geneva on 27 May 2008. Former Appellate Body Members Claus-Dieter Ehlermann, Florentino Feliciano, Julio Lacarte-Muró, Mitsuo Matsushita, and Yasuhei Taniguchi were joined by Luiz Olavo Baptista, Georges Abi-Saab, Lilia Bautista, A.V. Ganesan, Jennifer Hillman, Shotaro Oshima, Giorgio Sacerdoti, David Unterhalter, and Yuejiao Zhang. The event was open to the public.

Judge Rüdiger Wolfrum, President of the International Tribunal for the Law of the Sea, and Mr. Philippe Gautier, Registrar of the Tribunal, visited the Appellate Body on 1 August 2008.

The WTO Public Forum was held on 24-25 September 2008. The Forum's theme this year was "How Can the Trading System be Taken into the Future?" Mr. Giorgio Sacerdoti participated as a speaker in a panel on "Settling Disputes among Members".

Mr. Luiz Olavo Baptista participated as Chairman of the Appellate Body in a conference entitled "International Courts and Tribunals – The Challenges Ahead", which was organized by the Council of Europe, on 6-7 October 2008, at Lancaster House, London.

The Appellate Body Secretariat participates in the WTO internship programme, which allows post-graduate university students to gain practical experience and a deeper knowledge of the global multilateral trading system. Interns in the Appellate Body Secretariat obtain first-hand experience of the procedural and substantive aspects of WTO dispute settlement and, in particular, appellate proceedings. The internship programme is open to nationals of WTO Members and to nationals of

[62]WT/COMTD/W/160.

countries and customs territories engaged in accession negotiations. The Appellate Body Secretariat generally hosts two interns concurrently; each internship is generally for a three-month period. During 2008, the Appellate Body Secretariat welcomed interns from Australia, Brazil/Germany, India, Italy, Japan/Iran, Mexico, South Africa/Canada, and Spain. A total of 73 students, of 40 nationalities, have completed internships with the Appellate Body Secretariat since 1998. Further information about the WTO internship programme, including eligibility requirements and application instructions, may be obtained online at: <www.wto.org/english/thewto_e/vacan_e/intern_e.htm>.

The Appellate Body Secretariat hosts a *Speakers Series*, in which it invites scholars and practitioners with expertise in law, economics, and trade policy to speak on topical issues relating to international trade, public international law, and international dispute settlement. Professors David A. Gantz and Francisco Orrego Vicuña participated in the *Speakers Series* in 2008. In addition to the *Speakers Series*, the Appellate Body Secretariat runs a *Research Series*, aimed at doctoral students and young academics. The objective of the programme is to provide an opportunity for doctoral students working on their theses, and young academics working on research papers, to present and discuss their research in an informal setting with the Geneva-based trade community.

Appellate Body Secretariat staff participated in briefings organized for groups visiting the WTO, including students. In these briefings, Appellate Body Secretariat staff speak to visitors about the WTO dispute settlement system in general, and appellate proceedings in particular. Appellate Body Secretariat staff also participated as judges in moot court competitions. In addition, Appellate Body Members and Secretariat staff occasionally give lectures and participate in conferences and seminars dealing with international trade issues. A summary of these activities carried out by Appellate Body Secretariat staff during the course of 2008 can be found in Annex 8.

ANNEX 1

MEMBERS OF THE APPELLATE BODY
(1 JANUARY TO 31 DECEMBER 2008)

BIOGRAPHICAL NOTES

Georges Michel Abi-Saab (Egypt) (2000–2008)

Born in Egypt on 9 June 1933, Georges Michel Abi-Saab is Honorary Professor of International Law at the Graduate Institute of International Studies in Geneva (having taught there from 1963 to 2000); Honorary Professor at Cairo University's Faculty of Law; and a Member of the Institute of International Law.

Professor Abi-Saab served as consultant to the Secretary-General of the United Nations for the preparation of two reports on "Respect of Human Rights in Armed Conflicts" (1969 and 1970), and for the report on "Progressive Development of Principles and Norms of International Law Relating to the New International Economic Order" (1984). He represented Egypt in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974 to 1977), and acted as Counsel and advocate for several governments in cases before the International Court of Justice (ICJ) as well as in international arbitrations. He has also served twice as judge ad hoc on the ICJ, as Judge on the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, and as a Commissioner of the United Nations Compensation Commission. He is a Member of the Administrative Tribunal of the International Monetary Fund and of various international arbitral tribunals (ICSID, ICC, CRCICA, etc.).

Professor Abi-Saab graduated in law from Cairo University and pursued his studies in law, economics, and politics at the Universities of Paris, Michigan (MA in Economics), Harvard Law School (LLM and SJD), Cambridge, and Geneva (*Docteur en Sciences Politiques*). He also held numerous visiting professorships, *inter alia*, at Harvard Law School, the Universities of Tunis, Jordan, the West Indies (Trinidad), as well as the Rennert Distinguished Professorship at NYU School of Law and the Henri Rolin Chair in Belgian Universities.

Professor Abi-Saab is the author of numerous books and articles, including: *Les exceptions préliminaires dans la procédure de la Cour internationale: Étude des notions fondamentales de procédure et des moyens de leur mise en œuvre* (Paris, Pedone, 1967); *International Crises and the Role of Law: The United Nations Operation in Congo 1960–1964* (Oxford University Press, 1978); *The Concept of International Organization* (as editor) (Paris, UNESCO, 1981; French edition, 1980); and of two courses at the Hague Academy of International Law: "Wars of National Liberation in the Geneva Conventions and Protocols" (*Recueil des cours*, vol. 165 (1979–IV)); and the "General Course of Public International Law" (in French) (*Recueil des cours*, vol. 207 (1987–VII)).

Luiz Olavo Baptista (Brazil) (2001–2009)

Born in Brazil on 24 July 1938, Luiz Olavo Baptista taught International Trade Law at the University of São Paulo Law School for many years. He has been a Member of the Permanent Court of Arbitration at The Hague since 1996, and of the International Chamber of Commerce Institute for International Trade Practices and of its Commission on Trade and Investment Policy, since 1999. In addition, he has been one of the arbitrators designated under MERCOSUR's Protocol of Brasilia since 1993. Professor Baptista was senior partner at the L.O. Baptista Law Firm, in São Paulo, Brazil, where he focused his practice on corporate law, arbitration, and international litigation. He has been practicing law for almost 40 years, advising governments, international organizations, and large

corporations in Brazil and in other jurisdictions. Professor Baptista has been an arbitrator at the United Nations Compensation Commission (E4A Panel), in several private commercial disputes and State-investor proceedings, as well as in disputes under MERCOSUR's Protocol of Brasilia. In addition, he has participated as a legal advisor in diverse projects sponsored by the World Bank, UNCTAD, UNCTC, and UNDP. He obtained his law degree from the Catholic University of São Paulo, pursued post-graduate studies at Columbia University Law School and The Hague Academy of International Law, and received a Ph.D. in International Law from the University of Paris II. He was Visiting Professor at the University of Michigan (Ann Arbor) from 1978 to 1979, and at the University of Paris I and the University of Paris X between 1996 and 2000. Professor Baptista has published extensively on various issues in Brazil and abroad.

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

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

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

Arumugamangalam Venkatachalam Ganesan (India) (2000–2008)

Born in Tirunelveli, Tamil Nadu, India on 7 June 1935, Arumugamangalam Venkatachalam Ganesan has been a distinguished civil servant of India. He was appointed to the Indian Administrative Service, a premier civil service of India, in May 1959, and served in that service until June 1993. In a career spanning over 34 years, he has held a number of high level assignments, including Joint Secretary (Investment), Department of Economic Affairs, Government of India (1977–1980); Inter-Regional Adviser, UNCTC, United Nations Headquarters, New York (1980–1985); Additional Secretary, Department of Industrial Development, Government of India (1986–1989); Chief Negotiator of India for the Uruguay Round of Multilateral Trade Negotiations and Special Secretary, Ministry of Commerce, Government of India (1989–1990); Civil Aviation Secretary of the Government of India (1990–1991); and Commerce Secretary of the Government of India (1991–1993). He represented India on numerous occasions in bilateral, regional, and multilateral negotiations in the areas of international trade, investment, and intellectual property rights. Between 1989 and 1993, he represented India at the various stages of the Uruguay Round of Multilateral Trade Negotiations.

After his retirement from civil service, Mr. Ganesan served as an expert and consultant to various agencies of the United Nations system, including UNIDO and UNDP, in the field of international trade, investment, and intellectual property rights. He has also spoken extensively to the business, managerial, scientific, and academic communities in India on the scope and substance of the Uruguay Round negotiations and Agreements and their implications. Until his appointment to the Appellate Body of the WTO in 2000, he was a Member of the Government of India's High Level Trade Advisory Committee on Multilateral Trade Negotiations. He was also a Member of the

Permanent Group of Experts under the *SCM Agreement*, and a Member of a WTO dispute settlement panel in 1999–2000 in the *US – Section 110(5) Copyright Act* case.

Mr. Ganesan has written numerous newspaper articles and monographs dealing with various aspects of the Uruguay Round Agreements and their implications. He is also the author of many papers on trade, investment, and intellectual property issues for UNCTAD and UNIDO, and has contributed to books published in India on matters concerning the Uruguay Round, including intellectual property rights issues.

Mr. Ganesan holds M.A. and M.Sc. degrees from the University of Madras, India.

Jennifer Hillman (United States) (2007–2011)

Born in the United States on 29 January 1957, Jennifer Hillman serves as a Distinguished Visiting Fellow and Adjunct Professor of Law at the Georgetown University Law Center's Institute of International Economic Law. Her work focuses on the WTO dispute settlement system, the WTO agreements related to trade remedies, and WTO jurisprudence related to trade remedies. She is also a Senior Transatlantic Fellow at the German Marshall Fund for the United States.

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

Shotaro Oshima (Japan) (2008–2012)

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

From 2002 to 2005, Mr. Oshima was Japan's Permanent Representative to the WTO, during which time he served as Chair of the General Council and of the Dispute Settlement Body. Prior to his time in Geneva, he served as Deputy Foreign Minister responsible for economic matters and was designated as Prime Minister Koizumi's Personal Representative to the G-8 Summit in Canada in June 2002. In the same year he served as the Prime Minister's Personal Representative to the United Nations World Summit on Sustainable Development in South Africa. From 1997 to 2000, he served as Director-General for Economic Affairs in the Ministry of Foreign Affairs, responsible for formulating and implementing major policy initiatives in Japan's external economic relations.

Since April 2008, he is Visiting Professor at the Graduate School of Public Policy, the University of Tokyo.

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

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

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

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

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

David Unterhalter (South Africa) (2006–2009)

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

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

Yuejiao Zhang (China) (2008–2012)

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

Ms. Zhang served as a Board Director to the West African Development Bank from 2005 to 2007. Between 1998 and 2004, she held various senior positions at the Asian Development Bank (ADB), including as Assistant General Counsel, Co-Chair of the Appeal Committee, and Director-General of the ADB. Prior to this, she held several positions in government and academia in China, including as Director-General of Law and Treaties at the Ministry of Foreign Trade and Economic Cooperation (1984–1997), where she was involved in drafting many of China's trade laws. From 1987 to 1996, she was one of China's chief negotiators on intellectual property and was involved in the preparation of China's patent law, trademark law, and copyright law. She also served as the chief legal counsel for China's WTO accession. Between 1982 and 1985, Ms. Zhang worked as legal counsel at the World Bank. She was a Member of the Governing Council of UNIDROIT (International Institute for the Unification of Private Law) from 1987 to 1999 and a Board Member of IDLO (International Development Law Organization) from 1988 to 1999. Ms. Zhang has a Bachelor of Arts from China High Education College, a Bachelor of Arts from Rennes University of France, and a Master of Laws from Georgetown University Law Center.

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Director of the Appellate Body Secretariat

Werner Zdouc

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

ANNEX 2

I. FORMER APPELLATE BODY MEMBERS

Name	Nationality	Term(s) of office
Said El-Naggar	Egypt	1995–2000 *
Mitsuo Matsushita	Japan	1995–2000 *
Christopher Beeby	New Zealand	1995–1999 1999–2000
Claus-Dieter Ehlermann	Germany	1995–1997 1997–2001
Florentino Feliciano	Philippines	1995–1997 1997–2001
Julio Lacarte-Muró	Uruguay	1995–1997 1997–2001
James Bacchus	United states	1995–1999 1999–2003
John Lockhart	Australia	2001–2005 2005–2006
Yasuhei Taniguchi	Japan	2000–2003 2003–2007
Merit E. Janow	United States	2003–2007 **

* Messrs El-Naggar and Matsushita decided not to seek a second term of office. However, the DSB extended their terms until the end of March 2000 in order to allow the Selection Committee and the DSB the time necessary to complete the selection process of replacing the outgoing Appellate Body Members. (See WT/DSB/M70, pp. 32-35)
** Ms. Janow decided not to seek a second term of office. Her term ended on 11 December 2007.

Mr. Christopher Beeby passed away on 19 March 2000.

Mr. Said El-Naggar passed away on 11 April 2004.

Mr. John Lockhart passed away on 13 January 2006.

II. FORMER CHAIRPERSONS OF THE APPELLATE BODY

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

ANNEX 3

APPEALS FILED: 1995–2008

Year	Notices of Appeal filed	Appeals in original proceedings	Appeals in Article 21.5 proceedings
1995	0	0	0
1996	4	4	0
1997	6 [a]	6	0
1998	8	8	0
1999	9 [b]	9	0
2000	13 [c]	11	2
2001	9 [d]	5	4
2002	7 [e]	6	1
2003	6 [f]	5	1
2004	5	5	0
2005	10	8	2
2006	5	3	2
2007	4	2	2
2008	13	10	3
Total	**97**	**80**	**17**

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

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

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

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

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

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

ANNEX 4

PERCENTAGE OF PANEL REPORTS APPEALED BY YEAR OF ADOPTION: 1995–2008 [a]

	All panel reports			Panel reports other than Article 21.5 reports [b]			Article 21.5 panel reports		
Year of adoption	Panel reports adopted [c]	Panel reports appealed [d]	Percentage appealed [e]	Panel reports adopted	Panel reports appealed	Percentage appealed	Panel reports adopted	Panel reports appealed	Percentage appealed
1996	2	2	100%	2	2	100%	0	0	–
1997	5	5	100%	5	5	100%	0	0	–
1998	12	9	75%	12	9	75%	0	0	–
1999	10	7	70%	9	7	78%	1	0	0%
2000	19	11	58%	15	9	60%	4	2	50%
2001	17	12	71%	13	9	69%	4	3	75%
2002	12	6	50%	11	5	45%	1	1	100%
2003	10	7	70%	8	5	63%	2	2	100%
2004	8	6	75%	8	6	75%	0	0	–
2005	20	12	60%	17	11	65%	3	1	33%
2006	7	6	86%	4	3	75%	3	3	100%
2007	10	5	50%	6	3	50%	4	2	50%
2008	11	9	82%	8	6	75%	3	3	100%
Total	**143**	**97**	**68%**	**118**	**80**	**68%**	**25**	**17**	**68%**

[a] No panel reports were adopted in 1995.

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

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

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

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

ANNEX 5

WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED THROUGH 2008 [a]

Year of circulation	DSU	WTO Agmt	GATT 1994	Agriculture	SPS	ATC	TBT	TRIMs	Anti-Dumping	Import Licensing	SCM	Safe-guards	GATS	TRIPS
1996	0	0	2	0	0	0	0	0	0	0	0	0	0	0
1997	4	1	5	1	0	2	0	0	0	1	1	0	1	1
1998	7	1	4	1	2	0	0	0	1	1	0	0	0	0
1999	7	1	6	1	1	0	0	0	0	0	2	1	0	0
2000	8	1	7	2	0	0	0	0	2	0	5	2	1	1
2001	7	1	3	1	0	1	1	0	4	0	1	2	0	0
2002	8	2	4	3	0	0	1	0	1	0	3	1	1	1
2003	4	2	3	0	1	0	0	0	4	0	1	1	0	0
2004	2	0	5	0	0	0	0	0	2	0	1	0	0	0
2005	9	0	5	2	0	0	0	0	2	0	4	0	1	0
2006	5	0	3	0	0	0	0	0	3	0	2	0	0	0
2007	5	0	2	1	0	0	0	0	2	0	1	0	0	0
2008	8	1	9	1	2	0	0	0	3	0	3	0	0	0
Total	**74**	**10**	**58**	**13**	**6**	**3**	**2**	**0**	**24**	**2**	**24**	**7**	**4**	**3**

[a] No appeals were filed in 1995.

ANNEX 6

PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS: 1995–2008

As of the end of 2008, there were 153 WTO Members[1], of which 67 (44 per cent) have participated in appeals in which Appellate Body reports were circulated between 1996 and 2008.[2]

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

I. STATISTICAL SUMMARY

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Antigua & Barbuda	1	0	1	0	2
Argentina	2	3	5	12	22
Australia	2	1	5	22	30
Barbados	0	0	0	1	1
Belize	0	0	0	4	4
Benin	0	0	0	1	1
Bolivia	0	0	0	1	1
Brazil	8	4	12	22	46
Cameroon	0	0	0	3	3
Canada	10	7	16	15	48
Chad	0	0	0	2	2
Chile	3	0	2	7	12
China	3	1	1	24	29
Colombia	0	0	0	7	7
Costa Rica	1	0	0	3	4
Côte d'Ivoire	0	0	0	4	4
Cuba	0	0	0	4	4
Dominica	0	0	0	4	4
Dominican Republic	1	0	1	3	5
Ecuador	0	2	2	6	10

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

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

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

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
Egypt	0	0	0	1	1
El Salvador	0	0	0	2	2
European Communities	16	13	33	45	107
Fiji	0	0	0	1	1
Ghana	0	0	0	2	2
Grenada	0	0	0	1	1
Guatemala	1	1	1	4	7
Guyana	0	0	0	1	1
Honduras	1	1	2	1	5
Hong Kong, China	0	0	0	7	7
India	6	2	7	21	36
Indonesia	0	0	1	1	2
Israel	0	0	0	1	1
Jamaica	0	0	0	5	5
Japan	6	4	10	35	55
Kenya	0	0	0	1	1
Korea	4	3	6	12	25
Madagascar	0	0	0	1	1
Malaysia	1	0	1	0	2
Mauritius	0	0	0	2	2
Malawi	0	0	0	1	1
Mexico	5	1	4	24	34
New Zealand	0	2	5	11	18
Nicaragua	0	0	0	4	4
Nigeria	0	0	0	1	1
Norway	0	1	1	10	12
Pakistan	0	0	2	2	4
Panama	0	0	0	3	3
Paraguay	0	0	0	5	5
Peru	0	0	1	2	3
Philippines	1	0	1	1	3
Poland	0	0	1	0	1
Senegal	0	0	0	1	1
St Lucia	0	0	0	4	4
St Kitts & Nevis	0	0	0	1	1

WTO Member	Appellant	Other appellant	Appellee	Third participant	Total
St Vincent & the Grenadines	0	0	0	3	3
Suriname	0	0	0	3	3
Swaziland	0	0	0	1	1
Switzerland	0	1	1	0	2
Chinese Taipei	0	0	0	15	15
Tanzania	0	0	0	1	1
Thailand	4	0	5	13	22
Trinidad &Tobago	0	0	0	1	1
Turkey	1	0	0	1	2
United States	28	13	57	27	125
Venezuela	0	0	1	6	7
Viet Nam	0	0	0	2	2
Total	**105**	**60**	**185**	**432**	**782**

II. DETAILS BY YEAR OF CIRCULATION

1996

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

1997

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

1998

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

1999

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

2000

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

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

2001

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

2002

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

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

2003

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

2004

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

2005

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

2005 (cont'd)

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

2006

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

2007

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

2008

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Stainless Steel (Mexico) WT/DS344/AB/R	Mexico	- - -	United States	Chile China European Communities Japan Thailand
US – Upland Cotton (Article 21-5 – Brazil) WT/DS267/AB/RW	United States	Brazil	Brazil United States	Argentina Australia Canada Chad China European Communities India Japan New Zealand Thailand
US – Shrimp (Thailand) WT/DS343/AB/R	Thailand	United States	United States Thailand	Brazil Chile China European Communities India Japan Korea Mexico Viet Nam
US – Customs Bond Directive WT/DS345/AB/R	India	United States	United States India	Brazil China European Communities Japan Thailand

2008 (con't)

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

<u>2008</u> (con't)

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

ANNEX 7

PROCEDURAL RULING CONCERNING THE OPENING OF THE ORAL HEARING TO PUBLIC OBSERVATION IN *US – CONTINUED SUSPENSION* AND *CANADA – CONTINUED SUSPENSION*

United States – Continued Suspension of Obligations in the EC – Hormones Dispute

AB-2008-5

Canada – Continued Suspension of Obligations in the EC – Hormones Dispute

AB-2008-6

Procedural Ruling

1. On 3 June 2008, Canada, the European Communities, and the United States each filed a request to allow public observation of the oral hearing in these proceedings.[1] The participants argued that nothing in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") or the *Working Procedures for Appellate Review* (the "*Working Procedures*") precludes the Appellate Body from authorizing public observation of the oral hearing. On 4 June 2008, we invited the third participants to comment in writing on the requests of Canada, the European Communities, and the United States. In particular, we asked third parties to provide their views on the permissibility of opening the hearing under the DSU and the *Working Procedures*, and, if they so wished, on the specific logistical arrangements proposed in the requests. We received comments on 12 June 2008 from Australia, Brazil, China, India, Mexico, New Zealand, Norway, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Australia, New Zealand, Norway, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu expressed their support for the request of the participants. Brazil, China, India, and Mexico requested the Appellate Body to deny the participants' request. According to these third participants, the oral hearing forms part of the proceedings of the Appellate Body and, therefore, is subject to the requirement of Article 17.10 of the DSU that "[t]he proceedings of the Appellate Body shall be confidential." On 16 June 2008, we invited Canada, the European Communities, and the United States to comment on the submissions made by the third participants. We also invited third participants who wished to do so to submit comments on the submissions made by the other third participants. Additional comments from Canada, the European Communities, and the United States were received on 23 June 2008. We held an oral hearing with the participants and third participants on 7 July 2008 exclusively dedicated to exploring the issues raised by the request of the participants. The participants and third participants were invited to submit by close of business, 8 July 2008, additional comments relating specifically to the technical modalities proposed by the participants for public observation. Comments were received from Brazil, China, India, and Mexico, as well as Canada, the European Communities, and the United States.

2. We consider it necessary that a ruling is made by us on the request of the participants without delay. Accordingly, we give a ruling with concise reasons. These reasons may be further elaborated in the Appellate Body report.

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[1]The participants expressed a preference for simultaneous, closed-circuit television broadcast to another room. As alternatives, they mentioned delayed television broadcast and having a separate session for the third participants who elect not to participate in the open hearing.

3. The participants have different views on the scope of the term "proceedings" in Article 17.10 of the DSU. The European Communities argues that the term "proceedings" in Article 17.10 should be interpreted narrowly as referring to the Appellate Body's internal work and does not include its oral hearing.[2] The United States refers to the Recommendations by the Preparatory Committee for the WTO. The United States contends that the Preparatory Committee viewed Article 17.10 as focused on the deliberations of the Appellate Body.[3] Canada concedes that the term "proceedings" covers the oral hearing. A similar view has been put forward by Brazil, China, India, and Mexico. We consider the term "proceedings" to mean the entire process by which an appeal is prosecuted, from the initiation of an appeal to the circulation of the Appellate Body report, including the oral hearing. This is also how the Appellate Body understood the term in *Canada – Aircraft*.[4] Having agreed with this broad interpretation of the term "proceedings", we now consider the precise meaning and scope of the confidentiality requirement in Article 17.10.

4. The third participants that object to the request to allow public observation argue that the confidentiality requirement in Article 17.10 is absolute and permits of no derogation. We disagree with this interpretation because Article 17.10 must be read in context, particularly in relation to Article 18.2 of the DSU. The second sentence of Article 18.2 expressly provides that "[n]othing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public". Thus, under Article 18.2, the parties may decide to forego confidentiality protection in respect of their statements of position. With the exception of India, the participants and third participants agreed that the term "statements of its own positions" in Article 18.2 extends beyond the written submissions referred to in the first sentence of Article 18.2, and includes oral statements and responses to questions posed by the Appellate Body at the oral hearing. The third sentence of Article 18.2 states that "Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential." This provision would be redundant if Article 17.10 were interpreted to require absolute confidentiality in respect of all elements of appellate proceedings. There would be no need to require, pursuant to Article 18.2, that a Member designate certain information as confidential. The last sentence of Article 18.2 ensures that even such designation by a Member does not put an end to the right of another Member to make disclosure to the public. Upon request, a Member must provide a non-confidential summary of the information contained in its written submissions that it designated as confidential, which can then be disclosed to the public. Thus, Article 18.2 provides contextual support for the view that the confidentiality rule in Article 17.10 is not absolute. Otherwise, no disclosure of written submissions or other statements would be permitted during any stage of the proceedings.

5. In practice, the confidentiality requirement in Article 17.10 has its limits. Notices of Appeal and Appellate Body reports are disclosed to the public. Appellate Body reports contain summaries of the participants' and third participants' written and oral submissions and frequently quote directly from them. Public disclosure of Appellate Body reports is an inherent and necessary feature of our rules-based system of adjudication. Consequently, under the DSU, confidentiality is relative and time-bound.

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[2]European Communities' request for an open hearing, para. 9. Norway also argued for a narrower understanding of the term "proceedings".

[3]United States' comments on the third participants' submissions regarding open hearings, paras. 5 and 6 (referring to Establishment of the Appellate Body: Recommendations by the Preparatory Committee for the WTO approved by the Dispute Settlement Body on 10 February 1995 (WT/DSB/1), para. 9).

[4]Appellate Body Report, *Canada – Aircraft*, para. 143. However, we note that that case did not involve a request to lift confidentiality; rather, that dispute concerned a request for additional confidentiality protection for business confidential information.

6. In our view, the confidentiality requirement in Article 17.10 is more properly understood as operating in a relational manner.[5] There are different sets of relationships that are implicated in appellate proceedings. Among them are the following relationships. First, a relationship between the participants and the Appellate Body. Secondly, a relationship between the third participants and the Appellate Body. The requirement that the proceedings of the Appellate Body are confidential affords protection to these separate relationships and is intended to safeguard the interests of the participants and third participants and the adjudicative function of the Appellate Body, so as to foster the system of dispute settlement under conditions of fairness, impartiality, independence and integrity. In this case, the participants have jointly requested authorization to forego confidentiality protection for their communications with the Appellate Body at the oral hearing. The request of the participants does not extend to any communications, nor touches upon the relationship, between the third participants and the Appellate Body. The right to confidentiality of third participants vis-à-vis the Appellate Body is not implicated by the joint request. The question is thus whether the request of the participants to forego confidentiality protection satisfies the requirements of fairness and integrity that are the essential attributes of the appellate process and define the relationship between the Appellate Body and the participants. If the request meets these standards, then the Appellate Body would incline towards authorizing such a joint request.

7. We note that the DSU does not specifically provide for an oral hearing at the appellate stage. The oral hearing was instituted by the Appellate Body in its *Working Procedures*, which were drawn up pursuant to Article 17.9 of the DSU. The conduct and organization of the oral hearing falls within the authority of the Appellate Body (*compétence de la compétence*) pursuant to Rule 27 of the *Working Procedures*. Thus, the Appellate Body has the power to exercise control over the conduct of the oral hearing, including authorizing the lifting of confidentiality at the joint request of the participants as long as this does not adversely affect the rights and interests of the third participants or the integrity of the appellate process. As we observed earlier, Article 17.10 also applies to the relationship between third participants and the Appellate Body. Nevertheless, in our view, the third participants cannot invoke Article 17.10, as it applies to their relationship with the Appellate Body, so as to bar the lifting of confidentiality protection in the relationship between the participants and the Appellate Body. Likewise, authorizing the participants' request to forego confidentiality, does not affect the rights of third participants to preserve the confidentiality of their communications with the Appellate Body.

8. Some of the third participants argued that the Appellate Body is itself constrained by Article 17.10 in its power to authorize the lifting of confidentiality. We agree that the powers of the Appellate Body are themselves circumscribed in that certain aspects of confidentiality are incapable of derogation—even by the Appellate Body—where derogation may undermine the exercise and integrity of the Appellate Body's adjudicative function. This includes the situation contemplated in the second sentence of Article 17.10, which provides that "[t]he reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made." As noted by the participants, the confidentiality of the deliberations is necessary to protect the integrity, impartiality, and independence of the appellate process. In our view, such concerns do not arise in a situation where, following a joint request of the participants, the Appellate Body authorizes the lifting of the confidentiality of the participants' statements at the oral hearing.

9. The Appellate Body has fostered the active participation of third parties in the appellate process in drawing up the *Working Procedures* and in appeal practice. Article 17.4 provides that third participants "may make written submissions to, and be given an opportunity to be heard by, the Appellate Body." In its *Working Procedures*, the Appellate Body has given full effect to this right by

[5]This relational view of rights and obligations of confidentiality is consistent with the approach followed in domestic jurisdictions with respect to similar issues, such as privilege.

providing for participation of third participants during the entirety of the oral hearing, while third parties meet with panels only in a separate session at the first substantive meeting. Third participants, however, are not the main parties to a dispute. Rather, they have a systemic interest in the interpretation of the provisions of the covered agreements that may be at issue in an appeal. Although their views on the questions of legal interpretation that come before the Appellate Body are always valuable and thoroughly considered, these issues of legal interpretation are not inherently confidential. Nor is it a matter for the third participants to determine how the protection of confidentiality in the relationship between the participants and the Appellate Body is best dealt with. In order to sustain their objections to public observation of the oral hearing, third participants would have to identify a specific interest in their relationship with the Appellate Body that would be adversely affected if we were to authorize the participants' request—in this case, we can discern no such interests.

10. The request for public observation of the oral hearing has been made jointly by the three participants, Canada, the European Communities, and the United States. As we explained earlier, the Appellate Body has the power to authorize a joint request by the participants to lift confidentiality, provided that this does not affect the confidentiality of the relationship between the third participants and the Appellate Body, or impair the integrity of the appellate process. The participants have suggested alternative modalities that allow for public observation of the oral hearing, while safeguarding the confidentiality protection enjoyed by the third participants. The modalities include simultaneous or delayed closed-circuit television broadcasting in a room separate from the room used for the oral hearing. Finally, we do not see the public observation of the oral hearing, using the means described above, as having an adverse impact on the integrity of the adjudicative functions performed by the Appellate Body.

11. For these reasons, the Division authorizes the public observation of the oral hearing in these proceedings on the terms set out below. Accordingly, pursuant to Rule 16(1) of the *Working Procedures*, we adopt the following additional procedures for the purposes of these appeals:

(a) The oral hearing will be open to public observation by means of simultaneous closed-circuit television. The closed-circuit television signal will be shown in a separate room to which duly-registered delegates of WTO Members and members of the general public will have access.

(b) Oral statements and responses to questions by third participants wishing to maintain the confidentiality of their submissions will not be subject to public observation.

(c) Any third participant that has not already done so may request authorization to disclose its oral statements and responses to questions on the basis of paragraph (a), set out above. Such requests must be received by the Appellate Body Secretariat no later than 5:30 p.m. on 18 July 2008.

(d) An appropriate number of seats will be reserved for delegates of WTO Members in the room where the closed-circuit broadcast will be shown.

(e) Notice of the oral hearing will be provided to the general public through the WTO website. WTO delegates and members of the general public wishing to observe the oral hearing will be required to register in advance with the WTO Secretariat.

(f) Should practical considerations not allow simultaneous broadcast of the oral hearing, deferred showing of the video recording will be used in the alternative.

ANNEX 8

APPELLATE BODY SECRETARIAT PARTICIPATION IN TECHNICAL ASSISTANCE, TRAINING, AND OTHER ACTIVITIES IN 2008

I. WTO BIENNIAL TECHNICAL ASSISTANCE AND TRAINING PLAN: 2008–2009

Course / Seminar	Location	Dates
Regional Trade Policy Course – Basic Principles	Jamaica (English)	4–5 February 2008
44th Trade Policy Course – Dispute Settlement	Geneva, Switzerland (English)	17–20 March 2008
43rd Trade Policy Course – Dispute Settlement	Geneva, Switzerland (English)	25–28 March 2008
Regional Trade Policy Course – Dispute Settlement	Jamaica (English)	7–11 April 2008
20th Thematic Course on Dispute Settlement	Geneva, Switzerland (English)	5–9 May 2008
Regional Trade Policy Course – Dispute Settlement	Singapore (English)	12–16 May 2008
National Dispute Settlement Seminar	Burkina Faso (French)	28–31 July 2008
Regional Dispute Settlement Seminar	Madagascar (French)	4–7 August 2008
21st Thematic Course on Dispute Settlement	Geneva, Switzerland (French)	6–10 October 2008
National Seminar and other activities on WTO Dispute Settlement and Trade Remedies	Indonesia (English)	10–14 November 2008
National Dispute Settlement Seminar	Niger (French)	26–27 November 2008
Regional Trade Policy Course – Dispute Settlement	Benin (French)	1–5 December 2008
22nd Thematic Course on Dispute Settlement	Geneva, Switzerland (English)	1–5 December 2008

II. OTHER ACTIVITIES – 2008

Activity	Location	Dates
Workshop on dispute settlement with the ASEAN Secretariat	Geneva, Switzerland	4–5 February 2008
ELSA Moot Court Competition	Geneva, Switzerland	29 April – 4 May 2008
Presentation on disputes on agricultural subsidies to the Vietnamese mission	Geneva, Switzerland	19 May 2008
Presentation on world trade regime to students at Europainstitut Wirtschaftsuniversität Wien	Vienna, Austria	6 June 2008
World Trade Institute MILE Moot Court Competition	Berne, Switzerland	3–4 July 2008

III. BRIEFINGS TO GROUPS VISITING THE WTO – 2008

Activity	Location	Dates
Talk on WTO dispute settlement to students from University of St Gallen, Switzerland	Geneva, Switzerland	15 January 2008
Overview of appellate review to members of the International Judicial Academy, Washington DC, USA	Geneva, Switzerland	24 January 2008
Talk on WTO dispute settlement to students from University of Berlin, Germany	Geneva, Switzerland	31 January 2008
Talk on WTO dispute settlement to students from University of Utrecht, Netherlands	Geneva, Switzerland	7 February 2008
Talk on WTO dispute settlement to students from Australian National University	Geneva, Switzerland	7 February 2008
Talk on WTO dispute settlement to students from Glasgow Caledonian University, Scotland	Geneva, Switzerland	28 February 2008
Talk on WTO dispute settlement to students in the Masters in International Legal Studies programme, University of Vienna, Austria	Geneva, Switzerland	11 March 2008
Talk on WTO dispute settlement to students from University of Chile	Geneva, Switzerland	14 March 2008
Talk on WTO negotiations and dispute settlement to students from University of Rotterdam, Netherlands	Geneva, Switzerland	14 March 2008
Presentation on WTO dispute settlement to students from Roger Williams University, USA	Geneva, Switzerland	2 June 2008

Activity	Location	Dates
Talk on WTO dispute settlement to students from Queen's University School of Law, Canada	Geneva, Switzerland	6 June 2008
Talk on appellate review and WTO dispute settlement to students from Washington College of Law, USA	Geneva, Switzerland	16 June 2008
Talk on appellate review to students from World Trade Institute and University of Bocconi, Italy	Geneva, Switzerland	19 June 2008
Presentation on the DSU to students from St Gallen University, Switzerland	Geneva, Switzerland	9 July 2008
Talk on WTO dispute settlement to students from Duke University, USA	Geneva, Switzerland	23 July 2008
Talk on appellate review and WTO dispute settlement to students from Universidad Adolfo Ibañez, Chile	Geneva, Switzerland	15 September 2008
Talk on the role and functions of the WTO system to students from *Cercle d'études sur l'Europe et les européens* (ACEE), Versailles, France	Geneva, Switzerland	24 October 2008
Presentation on the WTO and the multilateral trading system to students from University of St Gallen, Switzerland	Geneva, Switzerland	4 November 2008
Talk on appellate review to LLM students from University of Geneva, Switzerland	Geneva, Switzerland	21 November 2008

ANNEX 9

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS: 1995–2008

Short Title	Full Case Title and Citation
Argentina – Ceramic Tiles	Panel Report, *Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy*, WT/DS189/R, adopted 5 November 2001, DSR 2001:XII, 6241
Argentina – Footwear (EC)	Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
Argentina – Footwear (EC)	Panel Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS121/AB/R, DSR 2000:II, 575
Argentina – Hides and Leather	Panel Report, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather*, WT/DS155/R and Corr.1, adopted 16 February 2001, DSR 2001:V, 1779
Argentina – Hides and Leather (Article 21.3(c))	Award of the Arbitrator, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather – Arbitration under Article 21.3(c) of the DSU*, WT/DS155/10, 31 August 2001, DSR 2001:XII, 6013
Argentina – Poultry Anti-Dumping Duties	Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, adopted 19 May 2003, DSR 2003:V, 1727
Argentina – Preserved Peaches	Panel Report, *Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches*, WT/DS238/R, adopted 15 April 2003, DSR 2003:III, 1037
Argentina – Textiles and Apparel	Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, 1003
Argentina – Textiles and Apparel	Panel Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/R, adopted 22 April 1998, as modified by Appellate Body Report WT/DS56/AB/R, DSR 1998:III, 1033
Australia – Automotive Leather II	Panel Report, *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather*, WT/DS126/R, adopted 16 June 1999, DSR 1999:III, 951
Australia – Automotive Leather II (Article 21.5 – US)	Panel Report, *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather – Recourse to Article 21.5 of the DSU by the United States*, WT/DS126/RW and Corr.1, adopted 11 February 2000, DSR 2000:III, 1189
Australia – Salmon	Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327
Australia – Salmon	Panel Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS18/AB/R, DSR 1998:VIII, 3407
Australia – Salmon (Article 21.3(c))	Award of the Arbitrator, *Australia – Measures Affecting Importation of Salmon – Arbitration under Article 21.3(c) of the DSU*, WT/DS18/9, 23 February 1999, DSR 1999:I, 267
Australia – Salmon (Article 21.5 – Canada)	Panel Report, *Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 of the DSU by Canada*, WT/DS18/RW, adopted 20 March 2000, DSR 2000:IV, 2031

Short Title	Full Case Title and Citation
Brazil – Aircraft	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, 1161
Brazil – Aircraft	Panel Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/R, adopted 20 August 1999, as modified by Appellate Body Report WT/DS46/AB/R, DSR 1999:III, 1221
Brazil – Aircraft (Article 21.5 – Canada)	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/AB/RW, adopted 4 August 2000, DSR 2000:VIII, 4067
Brazil – Aircraft (Article 21.5 – Canada)	Panel Report, *Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/RW, adopted 4 August 2000, as modified by Appellate Body Report WT/DS46/AB/RW, DSR 2000:IX, 4093
Brazil – Aircraft (Article 21.5 – Canada II)	Panel Report, *Brazil – Export Financing Programme for Aircraft – Second Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/RW/2, adopted 23 August 2001, DSR 2001:X, 5481
Brazil – Aircraft (Article 22.6 – Brazil)	Decision by the Arbitrators, *Brazil – Export Financing Programme for Aircraft – Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS46/ARB, 28 August 2000, DSR 2002:I, 19
Brazil – Desiccated Coconut	Appellate Body Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, 167
Brazil – Desiccated Coconut	Panel Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/R, adopted 20 March 1997, as upheld by Appellate Body Report WT/DS22/AB/R, DSR 1997:I, 189
Brazil – Retreaded Tyres	Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007
Brazil – Retreaded Tyres	Panel Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R
Brazil – Retreaded Tyres (Article 21.3(c))	Award of the Arbitrator, *Brazil – Measures Affecting Imports of Retreaded Tyres – Arbitration under Article 21.3(c) of the DSU*, WT/DS332/16, 29 August 2008
Canada – Aircraft	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, 1377
Canada – Aircraft	Panel Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/R, adopted 20 August 1999, as upheld by Appellate Body Report WT/DS70/AB/R, DSR 1999:IV, 1443
Canada – Aircraft (Article 21.5 – Brazil)	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU*, WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, 4299
Canada – Aircraft (Article 21.5 – Brazil)	Panel Report, *Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU*, WT/DS70/RW, adopted 4 August 2000, as modified by Appellate Body Report WT/DS70/AB/RW, DSR 2000:IX, 4315
Canada – Aircraft Credits and Guarantees	Panel Report, *Canada – Export Credits and Loan Guarantees for Regional Aircraft*, WT/DS222/R and Corr.1, adopted 19 February 2002, DSR 2002:III, 849

Short Title	Full Case Title and Citation
Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)	Decision by the Arbitrator, *Canada – Export Credits and Loan Guarantees for Regional Aircraft – Recourse to Arbitration by Canada under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS222/ARB, 17 February 2003, DSR 2003:III, 1187
Canada – Autos	Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000, DSR 2000:VI, 2985
Canada – Autos	Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/R, WT/DS142/R, adopted 19 June 2000, as modified by Appellate Body Report WT/DS139/AB/R, WT/DS142/AB/R, DSR 2000:VII, 3043
Canada – Autos (Article 21.3(c))	Award of the Arbitrator, *Canada – Certain Measures Affecting the Automotive Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS139/12, WT/DS142/12, 4 October 2000, DSR 2000:X, 5079
Canada – Continued Suspension	Appellate Body Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS321/AB/R, adopted 14 November 2008
Canada – Continued Suspension	Panel Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS321/R, adopted 14 November 2008, as modified by Appellate Body Report WT/DS321/AB/R
Canada – Dairy	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*, WT/DS103/AB/R, WT/DS113/AB/R and Corr.1, adopted 27 October 1999, DSR 1999:V, 2057
Canada – Dairy	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*, WT/DS103/R, WT/DS113/R, adopted 27 October 1999, as modified by Appellate Body Report WT/DS103/AB/R, WT/DS113/AB/R, DSR 1999:VI, 2097
Canada – Dairy (Article 21.5 – New Zealand and US)	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001, DSR 2001:XIII, 6829
Canada – Dairy (Article 21.5 – New Zealand and US)	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/RW, WT/DS113/RW, adopted 18 December 2001, reversed by Appellate Body Report WT/DS103/AB/RW, WT/DS113/AB/RW, DSR 2001:XIII, 6865
Canada – Dairy (Article 21.5 – New Zealand and US II)	Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/AB/RW2, WT/DS113/AB/RW2, adopted 17 January 2003, DSR 2003:I, 213
Canada – Dairy (Article 21.5 – New Zealand and US II)	Panel Report, *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States*, WT/DS103/RW2, WT/DS113/RW2, adopted 17 January 2003, as modified by Appellate Body Report WT/DS103/AB/RW2, WT/DS113/AB/RW2, DSR 2003:I, 255
Canada – Patent Term	Appellate Body Report, *Canada – Term of Patent Protection*, WT/DS170/AB/R, adopted 12 October 2000, DSR 2000:X, 5093
Canada – Patent Term	Panel Report, *Canada – Term of Patent Protection*, WT/DS170/R, adopted 12 October 2000, as upheld by Appellate Body Report WT/DS170/AB/R, DSR 2000:XI, 5121

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

Short Title	Full Case Title and Citation
China – Auto Parts	Panel Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/R, WT/DS340/R, WT/DS342/R and Add.1 and Add.2, adopted 12 January 2009, as upheld (WT/DS339/R), and as modified (WT/DS340/R, WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R
Dominican Republic – Import and Sale of Cigarettes	Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R, adopted 19 May 2005, DSR 2005:XV, 7367
Dominican Republic – Import and Sale of Cigarettes	Panel Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R, DSR 2005:XV, 7425
Dominican Republic – Import and Sale of Cigarettes (Article 21.3(c))	Report of the Arbitrator, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes – Arbitration under Article 21.3(c) of the DSU*, WT/DS302/17, 29 August 2005, DSR 2005:XXIII, 11665
EC – The ACP-EC Partnership Agreement	Award of the Arbitrator, *European Communities – The ACP-EC Partnership Agreement – Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/616, 1 August 2005, DSR 2005:XXIII, 11669
EC – The ACP-EC Partnership Agreement II	Award of the Arbitrator, *European Communities – The ACP-EC Partnership Agreement – Second Recourse to Arbitration Pursuant to the Decision of 14 November 2001*, WT/L/625, 27 October 2005, DSR 2005:XXIII, 11703
EC – Approval and Marketing of Biotech Products	Panel Report, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006, DSR 2006:III-VIII
EC – Asbestos	Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243
EC – Asbestos	Panel Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/R and Add.1, adopted 5 April 2001, as modified by Appellate Body Report WT/DS135/AB/R, DSR 2001:VIII, 3305
EC – Bananas III	Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591
EC – Bananas III (Ecuador)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Ecuador*, WT/DS27/R/ECU, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:III, 1085
EC – Bananas III (Guatemala and Honduras)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Guatemala and Honduras*, WT/DS27/R/GTM, WT/DS27/R/HND, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 695
EC – Bananas III (Mexico)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by Mexico*, WT/DS27/R/MEX, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 803
EC – Bananas III (US)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States*, WT/DS27/R/USA, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, 943

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EC – Bananas III (Article 21.5 – EC)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS27/RW/EEC, 12 April 1999, and Corr.1, unadopted, DSR 1999:II, 783
EC – Bananas III (Article 21.5 – Ecuador)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/RW/ECU, adopted 6 May 1999, DSR 1999:II, 803
EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)	Appellate Body Reports, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/AB/RW2/ECU, adopted 11 December 2008, and Corr.1 / *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/AB/RW/USA and Corr.1, adopted 22 December 2008
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EC – Bananas III (Article 21.5 – US)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/RW/USA and Corr.1, adopted 22 December 2008, as upheld by Appellate Body Report WT/DS27/AB/RW/USA
EC – Bananas III (Ecuador) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB/ECU, 24 March 2000, DSR 2000:V, 2237
EC – Bananas III (US) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB, 9 April 1999, DSR 1999:II, 725
EC – Bed Linen	Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R, adopted 12 March 2001, DSR 2001:V, 2049
EC – Bed Linen	Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R, adopted 12 March 2001, as modified by Appellate Body Report WT/DS141/AB/R, DSR 2001:VI, 2077
EC – Bed Linen (Article 21.5 – India)	Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*, WT/DS141/AB/RW, adopted 24 April 2003, DSR 2003:III, 965
EC – Bed Linen (Article 21.5 – India)	Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*, WT/DS141/RW, adopted 24 April 2003, as modified by Appellate Body Report WT/DS141/AB/RW, DSR 2003:IV, 1269
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EC – Chicken Cuts (Brazil)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts, Complaint by Brazil*, WT/DS269/R, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XIX, 9295
EC – Chicken Cuts (Thailand)	Panel Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts, Complaint by Thailand*, WT/DS286/R, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XX, 9721
EC – Chicken Cuts (Article 21.3(c))	Award of the Arbitrator, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts – Arbitration under Article 21.3(c) of the DSU*, WT/DS269/13, WT/DS286/15, 20 February 2006
EC – Commercial Vessels	Panel Report, *European Communities – Measures Affecting Trade in Commercial Vessels*, WT/DS301/R, adopted 20 June 2005, DSR 2005:XV, 7713
EC – Computer Equipment	Appellate Body Report, *European Communities – Customs Classification of Certain Computer Equipment*, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, 1851
EC – Computer Equipment	Panel Report, *European Communities – Customs Classification of Certain Computer Equipment*, WT/DS62/R, WT/DS67/R, WT/DS68/R, adopted 22 June 1998, as modified by Appellate Body Report WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, DSR 1998:V, 1891
EC – Countervailing Measures on DRAM Chips	Panel Report, *European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea*, WT/DS299/R, adopted 3 August 2005, DSR 2005:XVIII, 8671
EC – Export Subsidies on Sugar	Appellate Body Report, *European Communities – Export Subsidies on Sugar*, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, adopted 19 May 2005, DSR 2005:XIII, 6365
EC – Export Subsidies on Sugar (Australia)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Australia*, WT/DS265/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIII, 6499
EC – Export Subsidies on Sugar (Brazil)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Brazil*, WT/DS266/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIV, 6793
EC – Export Subsidies on Sugar (Thailand)	Panel Report, *European Communities – Export Subsidies on Sugar, Complaint by Thailand*, WT/DS283/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIV, 7071
EC – Export Subsidies on Sugar (Article 21.3(c))	Award of the Arbitrator, *European Communities – Export Subsidies on Sugar – Arbitration under Article 21.3(c) of the DSU*, WT/DS265/33, WT/DS266/33, WT/DS283/14, 28 October 2005, DSR 2005:XXIII, 11581

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EC – Hormones (Canada)	Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada*, WT/DS48/R/CAN, adopted 13 February 1998, as modified by Appellate Body Report WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:II, 235
EC – Hormones (US)	Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States*, WT/DS26/R/USA, adopted 13 February 1998, as modified by Appellate Body Report WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:III, 699
EC – Hormones (Article 21.3(c))	Award of the Arbitrator, *EC Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Article 21.3(c) of the DSU*, WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833
EC – Hormones (Canada) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by Canada – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS48/ARB, 12 July 1999, DSR 1999:III, 1135
EC – Hormones (US) (Article 22.6 – EC)	Decision by the Arbitrators, *European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by the United States – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS26/ARB, 12 July 1999, DSR 1999:III, 1105
EC – Poultry	Appellate Body Report, *European Communities – Measures Affecting the Importation of Certain Poultry Products*, WT/DS69/AB/R, adopted 23 July 1998, DSR 1998:V, 2031
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EC – Salmon (Norway)	Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/R, adopted 15 January 2008, and Corr.1
EC – Sardines	Appellate Body Report, *European Communities – Trade Description of Sardines*, WT/DS231/AB/R, adopted 23 October 2002, DSR 2002:VIII, 3359
EC – Sardines	Panel Report, *European Communities – Trade Description of Sardines*, WT/DS231/R and Corr.1, adopted 23 October 2002, as modified by Appellate Body Report WT/DS231/AB/R, DSR 2002:VIII, 3451
EC – Scallops (Canada)	Panel Report, *European Communities – Trade Description of Scallops – Request by Canada*, WT/DS7/R, 5 August 1996, unadopted, DSR 1996:I, 89
EC – Scallops (Peru and Chile)	Panel Report, *European Communities – Trade Description of Scallops – Requests by Peru and Chile*, WT/DS12/R, WT/DS14/R, 5 August 1996, unadopted, DSR 1996:I, 93
EC – Selected Customs Matters	Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, 3791
EC – Selected Customs Matters	Panel Report, *European Communities – Selected Customs Matters*, WT/DS315/R, adopted 11 December 2006, as modified by Appellate Body Report WT/DS315/AB/R, DSR 2006:IX-X, 3915

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EC – Tariff Preferences	Panel Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/R, adopted 20 April 2004, as modified by Appellate Body Report WT/DS/246/AB/R, DSR 2004:III, 1009
EC – Tariff Preferences (Article 21.3(c))	Award of the Arbitrator, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries – Arbitration under Article 21.3(c) of the DSU*, WT/DS246/14, 20 September 2004, DSR 2004:IX, 4313
EC – Trademarks and Geographical Indications (Australia)	Panel Report, *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by Australia*, WT/DS290/R, adopted 20 April 2005, DSR 2005:X, 4603
EC – Trademarks and Geographical Indications (US)	Panel Report, *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by the United States*, WT/DS174/R, adopted 20 April 2005, DSR 2005:VIII, 3499
EC – Tube or Pipe Fittings	Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003, DSR 2003:VI, 2613
EC – Tube or Pipe Fittings	Panel Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/R, adopted 18 August 2003, as modified by Appellate Body Report WT/DS219/AB/R, DSR 2003:VII, 2701
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Guatemala – Cement I	Appellate Body Report, *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*, WT/DS60/AB/R, adopted 25 November 1998, DSR 1998:IX, 3767
Guatemala – Cement I	Panel Report, *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*, WT/DS60/R, adopted 25 November 1998, as modified by Appellate Body Report WT/DS60/AB/R, DSR 1998:IX, 3797
Guatemala – Cement II	Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, adopted 17 November 2000, DSR 2000:XI, 5295
India – Additional Import Duties	Appellate Body Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/AB/R, adopted 17 November 2008
India – Additional Import Duties	Panel Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/R, adopted 17 November 2008, reversed by Appellate Body Report WT/DS360/AB/R
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India – Autos	Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002, DSR 2002:V, 1827
India – Patents (EC)	Panel Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Complaint by the European Communities*, WT/DS79/R, adopted 22 September 1998, DSR 1998:VI, 2661

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India – Quantitative Restrictions	Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R, adopted 22 September 1999, as upheld by Appellate Body Report WT/DS90/AB/R, DSR 1999:V, 1799
Indonesia – Autos	Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1 and 2, adopted 23 July 1998, and Corr. 3 and 4, DSR 1998:VI, 2201
Indonesia – Autos (Article 21.3(c))	Award of the Arbitrator, *Indonesia – Certain Measures Affecting the Automobile Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, 7 December 1998, DSR 1998:IX, 4029
Japan – Agricultural Products II	Appellate Body Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/AB/R, adopted 19 March 1999, DSR 1999:I, 277
Japan – Agricultural Products II	Panel Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/R, adopted 19 March 1999, as modified by Appellate Body Report WT/DS76/AB/R, DSR 1999:I, 315
Japan – Alcoholic Beverages II	Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, 97
Japan – Alcoholic Beverages II	Panel Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by Appellate Body Report WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I, 125
Japan – Alcoholic Beverages II (Article 21.3(c))	Award of the Arbitrator, *Japan – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS8/15, WT/DS10/15, WT/DS11/13, 14 February 1997, DSR 1997:I, 3
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Japan – Apples	Panel Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/R, adopted 10 December 2003, as upheld by Appellate Body Report WT/DS245/AB/R, DSR 2003:IX, 4481
Japan – Apples (Article 21.5 – US)	Panel Report, *Japan – Measures Affecting the Importation of Apples – Recourse to Article 21.5 of the DSU by the United States*, WT/DS245/RW, adopted 20 July 2005, DSR 2005:XVI, 7911
Japan – DRAMs (Korea)	Appellate Body Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/AB/R and Corr.1, adopted 17 December 2007
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Japan – Film	Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, WT/DS44/R, adopted 22 April 1998, DSR 1998:IV, 1179
Japan – Quotas on Laver	Panel Report, *Japan – Import Quotas on Dried Laver and Seasoned Laver*, WT/DS323/R, 1 February 2006, unadopted
Korea – Alcoholic Beverages	Appellate Body Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, 3
Korea – Alcoholic Beverages	Panel Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/R, WT/DS84/R, adopted 17 February 1999, as modified by Appellate Body Report WT/DS75/AB/R, WT/DS84/AB/R, DSR 1999:I, 44
Korea – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Korea – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, 937
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Korea – Certain Paper (Article 21.5 – Indonesia)	Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia*, WT/DS312/RW, adopted 22 October 2007
Korea – Commercial Vessels	Panel Report, *Korea – Measures Affecting Trade in Commercial Vessels*, WT/DS273/R, adopted 11 April 2005, DSR 2005:VII, 2749
Korea – Dairy	Appellate Body Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
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Korea – Procurement	Panel Report, *Korea – Measures Affecting Government Procurement*, WT/DS163/R, adopted 19 June 2000, DSR 2000:VIII, 3541
Korea – Various Measures on Beef	Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
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Mexico – Anti-Dumping Measures on Rice	Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R, DSR 2005:XXIII, 11007
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Mexico – Corn Syrup (Article 21.5 – US)	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States*, WT/DS132/RW, adopted 21 November 2001, as upheld by Appellate Body Report WT/DS132/AB/RW, DSR 2001:XIII, 6717
Mexico – Olive Oil	Panel Report, *Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities*, WT/DS341/R, adopted 21 October 2008
Mexico – Steel Pipes and Tubes	Panel Report, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala*, WT/DS331/R, adopted 24 July 2007
Mexico – Taxes on Soft Drinks	Appellate Body Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, adopted 24 March 2006, DSR 2006:I, 3
Mexico – Taxes on Soft Drinks	Panel Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/R, adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, 43
Mexico – Telecoms	Panel Report, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, adopted 1 June 2004, DSR 2004:IV, 1537
Thailand – H-Beams	Appellate Body Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, 2701
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Turkey – Textiles	Appellate Body Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, 2345
Turkey – Textiles	Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/R, adopted 19 November 1999, as modified by Appellate Body Report WT/DS34/AB/R, DSR 1999:VI, 2363
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US – 1916 Act (EC)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by the European Communities*, WT/DS136/R and Corr.1, adopted 26 September 2000, as upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4593
US – 1916 Act (Japan)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by Japan*, WT/DS162/R and Add.1, adopted 26 September 2000, as upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4831
US – 1916 Act (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Act of 1916 – Arbitration under Article 21.3(c) of the DSU*, WT/DS136/11, WT/DS162/14, 28 February 2001, DSR 2001:V, 2017

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US – 1916 Act (EC) (Article 22.6 – US)	Decision by the Arbitrators, *United States – Anti-Dumping Act of 1916, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS136/ARB, 24 February 2004, DSR 2004:IX, 4269
US – Anti-Dumping Measures on Oil Country Tubular Goods	Appellate Body Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/AB/R, adopted 28 November 2005, DSR 2005:XX, 10127
US – Anti-Dumping Measures on Oil Country Tubular Goods	Panel Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/R, adopted 28 November 2005, as modified by Appellate Body Report WT/DS282/AB/R, DSR 2005:XXI, 10225
US – Carbon Steel	Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, 3779
US – Carbon Steel	Panel Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/R and Corr.1, adopted 19 December 2002, as modified by Appellate Body Report WT/DS213/AB/R, DSR 2002:IX, 3833
US – Certain EC Products	Appellate Body Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, 373
US – Certain EC Products	Panel Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/R and Add.1, adopted 10 January 2001, as modified by Appellate Body Report WT/DS165/AB/R, DSR 2001:II, 413
US – Continued Suspension	Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted 14 November 2008
US – Continued Suspension	Panel Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/R, adopted 14 November 2008, as modified by Appellate Body Report WT/DS320/AB/R
US – Continued Zeroing	Panel Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/R, circulated to WTO Members 1 October 2008 [appealed on 6 November 2008]
US – Corrosion-Resistant Steel Sunset Review	Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, adopted 9 January 2004, DSR 2004:I, 3
US – Corrosion-Resistant Steel Sunset Review	Panel Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/R, adopted 9 January 2004, as modified by Appellate Body Report, WTDS244/AB/R, DSR 2004:I, 85
US – Cotton Yarn	Appellate Body Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/AB/R, adopted 5 November 2001, DSR 2001:XII, 6027
US – Cotton Yarn	Panel Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/R, adopted 5 November 2001, as modified by Appellate Body Report WT/DS192/AB/R, DSR 2001:XII, 6067

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US – Countervailing Duty Investigation on DRAMS	Appellate Body Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, 8131
US – Countervailing Duty Investigation on DRAMS	Panel Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/R, adopted 20 July 2005, as modified by Appellate Body Report WT/DS296/AB/R, DSR 2005:XVII, 8243
US – Countervailing Measures on Certain EC Products	Appellate Body Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R, adopted 8 January 2003, DSR 2003:I, 5
US – Countervailing Measures on Certain EC Products	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/R, adopted 8 January 2003, as modified by Appellate Body Report WT/DS212/AB/R, DSR 2003:I, 73
US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)	Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS212/RW, adopted 27 September 2005, DSR 2005:XVIII, 8950
US – Customs Bond Directive	Panel Report, *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS345/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R, WT/DS345/AB/R
US – DRAMS	Panel Report, *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea*, WT/DS99/R, adopted 19 March 1999, DSR 1999:II, 521
US – DRAMS (Article 21.5 – Korea)	Panel Report, *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea – Recourse to Article 21.5 of the DSU by Korea*, WT/DS99/RW, 7 November 2000, unadopted
US – Export Restraints	Panel Report, *United States – Measures Treating Exports Restraints as Subsidies*, WT/DS194/R and Corr.2, adopted 23 August 2001, DSR 2001:XI, 5767
US – FSC	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations"*, WT/DS108/AB/R, adopted 20 March 2000, DSR 2000:III, 1619
US – FSC	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations"*, WT/DS108/R, adopted 20 March 2000, as modified by Appellate Body Report WT/DS108/AB/R, DSR 2000:IV, 1675
US – FSC (Article 21.5 – EC)	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW, adopted 29 January 2002, DSR 2002:I, 55
US – FSC (Article 21.5 – EC)	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/RW, adopted 29 January 2002, as modified by Appellate Body Report WT/DS108/AB/RW, DSR 2002:I, 119
US – FSC (Article 21.5 – EC II)	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW2, adopted 14 March 2006, DSR 2006:XI, 4721

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US – FSC (Article 21.5 – EC II)	Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/RW2, adopted 14 March 2006, as upheld by Appellate Body Report WT/DS108/AB/RW2, DSR 2006:XI, 4761
US – FSC (Article 22.6 – US)	Decision by the Arbitrator, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS108/ARB, 30 August 2002, DSR 2002:VI, 2517
US – Gambling	Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663 (Corr.1, DSR 2006:XII, 5475)
US – Gambling	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, 5797
US – Gambling (Article 21.3(c))	Award of the Arbitrator, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Arbitration under Article 21.3(c) of the DSU*, WT/DS285/13, 19 August 2005, DSR 2005:XXIII, 11639
US – Gambling (Article 21.5 – Antigua and Barbuda)	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Recourse to Article 21.5 of the DSU by Antigua and Barbuda*, WT/DS285/RW, adopted 22 May 2007
US – Gambling (Article 22.6 – US)	Decision by the Arbitrator, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS285/ARB, 21 December 2007
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US – Gasoline	Panel Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/R, adopted 20 May 1996, as modified by Appellate Body Report WT/DS2/AB/R, DSR 1996:I, 29
US – Hot-Rolled Steel	Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697
US – Hot-Rolled Steel	Panel Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R, adopted 23 August 2001 modified by Appellate Body Report WT/DS184/AB/R, DSR 2001:X, 4769
US – Hot-Rolled Steel (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan – Arbitration under Article 21.3(c) of the DSU*, WT/DS184/13, 19 February 2002, DSR 2002:IV, 1389
US – Lamb	Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, 4051
US – Lamb	Panel Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/R, WT/DS178/R, adopted 16 May 2001, as modified by Appellate Body Report WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX, 4107

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

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US – Offset Act (Byrd Amendment) (Japan) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Japan – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/JPN, 31 August 2004, DSR 2004:X, 4771
US – Offset Act (Byrd Amendment) (Korea) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Korea – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/KOR, 31 August 2004, DSR 2004:X, 4851
US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Mexico – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS234/ARB/MEX, 31 August 2004, DSR 2004:X, 4931
US – Oil Country Tubular Goods Sunset Reviews	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R, adopted 17 December 2004, DSR 2004:VII, 3257
US – Oil Country Tubular Goods Sunset Reviews	Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R and Corr.1, adopted 17 December 2004, as modified by Appellate Body Report, W/DS/268/AB/R, DSR 2004:VIII, 3421
US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c))	Award of the Arbitrator, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Arbitration under Article 21.3(c) of the DSU*, WT/DS268/12, 7 June 2005, DSR 2005:XXIII, 11619
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS268/AB/RW, adopted 11 May 2007
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)	Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS268/RW, adopted 11 May 2007, as modified by Appellate Body Report WT/DS268/AB/RW
US – Section 110(5) Copyright Act	Panel Report, *United States – Section 110(5) of the US Copyright Act*, WT/DS160/R, adopted 27 July 2000, DSR 2000:VIII, 3769
US – Section 110(5) Copyright Act (Article 21.3(c))	Award of the Arbitrator, *United States – Section 110(5) of the US Copyright Act – Arbitration under Article 21.3(c) of the DSU*, WT/DS160/12, 15 January 2001, DSR 2001:II, 657
US – Section 110(5) Copyright Act (Article 25)	Award of the Arbitrators, *United States – Section 110(5) of the US Copyright Act – Recourse to Arbitration under Article 25 of the DSU*, WT/DS160/ARB25/1, 9 November 2001, DSR 2001:II, 667
US – Section 129(c)(1) URAA	Panel Report, *United States – Section 129(c)(1) of the Uruguay Round Agreements Act*, WT/DS221/R, adopted 30 August 2002, DSR 2002:VII, 2581
US – Section 211 Appropriations Act	Appellate Body Report, *United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R, adopted 1 February 2002, DSR 2002:II, 589
US – Section 211 Appropriations Act	Panel Report, *United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/R, adopted 1 February 2002, as modified by Appellate Body Report WT/DS176/AB/R, DSR 2002:II, 683
US – Section 301 Trade Act	Panel Report, *United States – Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, adopted 27 January 2000, DSR 2000:II, 815

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

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US – Softwood Lumber V (Article 21.3(c))	Report of the Arbitrator, *United States – Final Dumping Determination on Softwood Lumber from Canada – Arbitration under Article 21.3(c) of the DSU*, WT/DS264/13, 13 December 2004, DSR 2004:X, 5011
US – Softwood Lumber V (Article 21.5 – Canada)	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/AB/RW, adopted 1 September 2006, DSR 2006:XII, 5087
US – Softwood Lumber V (Article 21.5 – Canada)	Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/RW, adopted 1 September 2006, reversed by Appellate Body Report WT/DS264/AB/RW, DSR 2006:XII, 5147
US – Softwood Lumber VI	Panel Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*, WT/DS277/R, adopted 26 April 2004, DSR 2004:VI, 2485
US – Softwood Lumber VI (Article 21.5 – Canada)	Appellate Body Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/AB/RW, adopted 9 May 2006, and Corr.1, DSR 2006:XI, 4761
US – Softwood Lumber VI (Article 21.5 – Canada)	Panel Report, *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, WT/DS277/RW, adopted 9 May 2006, as modified by Appellate Body Report WT/DS277/AB/RW, DSR 2006:XI, 4935
US – Stainless Steel (Korea)	Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001, DSR 2001:IV, 1295
US – Stainless Steel (Mexico)	Appellate Body Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R, adopted 20 May 2008
US – Stainless Steel (Mexico)	Panel Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R, adopted 20 May 2008, as modified by Appellate Body Report WT/DS344/AB/R
US – Stainless Steel (Mexico) (Article 21.3(c))	Award of the Arbitrator, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico – Arbitration under Article 21.3(c) of the DSU*, WT/DS344/15, 31 October 2008
US – Steel Plate	Panel Report, *United States – Anti-Dumping and Countervailing Measures on Steel Plate from India*, WT/DS206/R and Corr.1, adopted 29 July 2002, DSR 2002:VI, 2073
US – Steel Safeguards	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted 10 December 2003, DSR 2003:VII, 3117
US – Steel Safeguards	Panel Reports, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/R / WT/DS249/R / WT/DS251/R / WT/DS252/R / WT/DS253/R / WT/DS254/R / WT/DS258/R / WT/DS259/R, and Corr.1, adopted 10 December 2003, as modified by Appellate Body Report WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, DSR 2003:VIII, 3273

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US – Textiles Rules of Origin	Panel Report, *United States – Rules of Origin for Textiles and Apparel Products*, WT/DS243/R and Corr.1, adopted 23 July 2003, DSR 2003:VI, 2309
US – Underwear	Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997, DSR 1997:I, 11
US – Underwear	Panel Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted 25 February 1997, as modified by Appellate Body Report WT/DS24/AB/R, DSR 1997:I, 31
US – Upland Cotton	Appellate Body Report, *United States – Subsidies on Upland Cotton*, WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, 3
US – Upland Cotton	Panel Report, *United States – Subsidies on Upland Cotton*, WT/DS267/R, Corr.1, and Add.1 to Add.3, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, 299
US – Upland Cotton (Article 21.5 – Brazil)	Appellate Body Report, *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/AB/RW, adopted 20 June 2008
US – Upland Cotton (Article 21.5 – Brazil)	Panel Report, *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/RW and Corr.1, adopted 20 June 2008, as modified by Appellate Body Report WT/DS267/AB/RW
US – Wheat Gluten	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717
US – Wheat Gluten	Panel Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/R, adopted 19 January 2001, as modified by Appellate Body Report WT/DS166/AB/R, DSR 2001:III, 779
US – Wool Shirts and Blouses	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, 323
US – Wool Shirts and Blouses	Panel Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/R, adopted 23 May 1997, as upheld by Appellate Body Report WT/DS33/AB/R, DSR 1997:I, 343
US – Zeroing (EC)	Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, 417
US – Zeroing (EC)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/R, adopted 9 May 2006, as modified by Appellate Body Report WT/DS294/AB/R, DSR 2006:II, 521
US – Zeroing (EC) (Article 21.5 – EC)	Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/RW, circulated to WTO Members 17 December 2008

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US – Zeroing (Japan)	Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R, adopted 23 January 2007
US – Zeroing (Japan)	Panel Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/R, adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R
US – Zeroing (Japan) (Article 21.3(c))	Report of the Arbitrator, *United States – Measures Relating to Zeroing and Sunset Reviews – Arbitration under Article 21.3(c) of the DSU*, WT/DS322/21, 11 May 2007